IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Marriage of:	)	**No. 28250-3-III**
ROBIN L. ROBINS,	)	
	)	**Division Three**
Respondent,	)	
	)	
and	)	**UNPUBLISHED OPINION**
	)	
LEVI H. ROBINS,	)	
	)	
Appellant.	)	
	)	

Brown, J. ─ Levi Robins appeals the marriage dissolution court's decision to recognize and enforce a pro se property settlement agreement made after separation with his former spouse, Robin Robins. Mr. Robins mainly contends (1) his joinder revocation vitiated any settlement agreement shown in the previously agreed final court papers, (2) the court's property division was inequitable, and (3) Ms. Robins waived her right to enforce the settlement agreement. We reject his contentions and affirm.

FACTS

On February 4, 2008, Levi Robins and Robin Robins separated after a 25-year

marriage. The parties discussed and by oral agreement resolved all property division questions. On February 13, Ms. Robins prepared a marriage dissolution petition showing she would receive the parties' real property, a Chevrolet Tahoe, a boat and trailer, personal property in the house and garage, and $37,500 from Mr. Robins' 401k, while assuming all marital debt including two real estate mortgages, a Farm Plan, and a Chase Visa. Mr. Robins received the balance of his 401k and a 1979 Pickup. The petition did not list property values but accurately reflected the parties' settlement agreement. On February 15, Mr. Robins, pro se, joined in the petition and mailed it back to Ms. Robins. On February 20, 2008, Ms. Robins filed the petition in the Grant County Superior Court.

Ms. Robins prepared and mailed to Mr. Robins proposed findings of fact and conclusions of law, dissolution decree, quitclaim deed, real estate tax affidavit, and three releases of interest for the boat, its trailer, and the Tahoe. The property division was identical to the petition. The tax affidavit shows its purpose was "pursuant to decree of dissolution." Clerk's Papers at 70. Mr. Robins signed the quitclaim deed and releases (in a solicitor's office) on February 28, 2008, and the findings and conclusions, decree, and tax affidavit (in a solicitor's office) on March 4, 2008, and returned the signed documents to Ms. Robins. Thereafter, Ms. Robins solely made all debt payments.

On May 13, 2008, just before the 90-day time limit expired, Mr. Robins filed a response to the petition. He alleged the property and debt division between the parties

shown in the petition was neither fair nor equitable.

On the April 8, 2009 trial date, Ms. Robins, following her trial brief, argued the signed findings and conclusions and decree were a binding written property settlement agreement. The court continued the trial and suggested Ms. Robins resolve the issue by motion. On April 10, Ms. Robins moved to enforce settlement agreement. Mr. Robins opposed the motion. On May 20, the court ruled for Ms. Robins and entered a consistent order on June 12, 2009. Mr. Robins unsuccessfully moved for reconsideration. Mr. Robins appealed.

ANALYSIS

The issue is whether the trial court erred in deciding the parties had reached a binding oral settlement agreement reduced to writing in the findings of fact and the conclusions of law. Mr. Robins contends his joinder revocation canceled the settlement agreement, the property division is inequitable, and Ms. Robins waived the settlement agreement by waiting too long to assert it.

Trial courts have broad discretion in the distribution of property and liabilities in marriage dissolution proceedings. *Brewer v. Brewer*, 137 Wn.2d 756, 769, 976 P.2d 102 (1999). Settlement agreements are governed by general principles of contract law. *Lavigne v. Green*, 106 Wn. App. 12, 20, 23 P.3d 515 (2001). The legal effect of a contract is a question of law that we review de novo. *Yeats v. Estate of Yeats*, 90 Wn.2d 201, 204, 580 P.2d 617 (1978).

Preliminarily, Mr. Robins contends the law requires written settlement

agreements before a dissolution is filed. RCW 26.09.070 provides for "parties to a marriage or a domestic partnership, in order to promote the amicable settlement of disputes" to "enter into a written separation contract providing for the disposition of any property." RCW 26.09.070(1). "Unless the separation contract provides to the contrary, the agreement shall be set forth in the decree of dissolution." RCW 26.09.070(5).

RCW 26.09.070 was adopted in 1973 to depart from the former rule that allowed a judge to give slight deference to separation agreements between divorcing parties. *In re Marriage of Shaffer*, 47 Wn. App. 189, 733 P.2d 1013 (1987). RCW 26.09.070 does not specify an exact procedure to effect property settlement agreements. Rather, it gives marital partners more freedom to divide their property by reducing the power of the court to disregard their agreement. *See id*. at 193. Mr. Robins incorrectly argues any property division agreement has to be reached and memorialized in writing before a couple petitions to dissolve their marriage. But many couples settle their property disputes after dissolution filing. While the law may favor reaching separation agreements before petition filing, the law does not declare settlement agreements reached after petitioning for dissolution are necessarily void.

Mr. Robins next incorrectly argues the court papers cannot evidence a settlement agreement. He partly relies on his failed argument that property distributions must be memorialized in a prior separation contract. The trial court correctly directed Mr. Robins' attention to *In re Marriage of Ferree*, 71 Wn. App. 35,

856 P.2d 706 (1993). There, Division Two of this court found that settlement provisions were evidenced by findings and conclusions and a decree signed by both parties. Mr. Robins fails to distinguish or persuasively argue against *Ferree*. *See also In re Marriage of Hulscher*, 143 Wn. App. 708, 710, 180 P.3d 199 (2008) (holding that parties need not enter a separate written instrument, so long as the decree of dissolution embodies their settlement agreement); *In re Marriage of Glass*, 67 Wn. App. 378, 835 P.2d 1054 (1992) (agreement in decree of dissolution signed by both parties and their attorneys).

Next, Mr. Robins contends his *Batson* joinder revoked the settlement agreement. When one party petitions for dissolution of marriage, the court must wait 90 days before entering a dissolution decree. RCW 26.09.030. If the other party joins in the petition, the court need not decide whether the marriage is irretrievably broken. RCW 26.09.030(a). If the other party does not join in the petition or contests it, the court must find the marriage is irretrievably broken before it enters a decree of dissolution after the 90-day period. RCW 26.09.030(c).

Without authority, Mr. Robins unpersuasively argues the purpose of allowing one party to revoke his joinder to the petition within 90 days is to allow for him to change his mind regarding settlement agreements recited in the findings of fact, conclusions of law, and decree. But history shows the 90-day period provides a "cooling off" time to allow the couple to reconcile. 20 Kenneth W. Weber, Wash. Practice, Family and Cmty. Prop. Law § 43.5 (2010). And, the 90-day period is

designed to "permit a sufficient nexus between the parties and the jurisdiction of the court where such a nexus might otherwise be nonexistent." *In re Marriage of Ways*, 85 Wn.2d 693, 701, 538 P.2d 1225 (1975). Mr. Robins' revocation arguments are unpersuasive.

Next, we reject Mr. Robins' waiver and value contentions. Noting Ms. Robins did not seek to enforce the agreement before the trial date Mr. Robins merely argues she "acted directly in opposition of any presumed 'settlement' by noting the matter for a trial, conducting discovery depositions and hiring appraisers for valuation of the community real property." Br. of Appellant at 4. He asserts the relative value of property awarded to the parties under the agreement is inequitable. Finally, he notes Ms. Robins asked for a revised proposed property division in her trial brief. Mr. Robins provides no legal authority for these arguments. He does not show the trial date set is extraordinary. Nor does he show prejudice from any alleged delay. The court, within its discretion, found the property division equitable. And, no legal reason prevented Ms. Robins from preparing for trial by making alternative arguments in her trial brief.

Relying on *Bernier v. Bernier*, 44 Wn.2d 447, 267 P.2d 1066 (1954), Mr. Robins finally contends that even if the court considers the dissolution documents embody a settlement agreement, the settlement should not be binding because it was not fair and equitable. Ms. Robins correctly responds, "*Bernier* predated the current dissolution statute and no longer provides proper guidance regarding how a court should analyze whether to enforce a settlement agreement." Br. of Resp't at 4. The rule from *Bernier*

has not been the standard used by the courts since 1973. The current rule was fashioned by this court in *In re Marriage of Cohn*, 18 Wn. App. 502, 569 P.2d 79 (1977). As stated in *Shaffer*, 47 Wn. App. at 193-94:

> Before the adoption of RCW 26.09.070 in 1973, the provisions of a separation agreement were to be adopted by the trial judge only if its terms were deemed "fair and equitable." *In re Marriage of Little*, 96 Wn.2d 183, 192, 634 P.2d 498 (1981). Such agreements between spouses could be disregarded if the trial court was satisfied that the terms "do not constitute a proper division of the property." *Lee v. Lee*, 27 Wn.2d 389, 400, 178 P.2d 296 (1947). *See State ex rel. Atkins v. Superior Court*, 1 Wn.2d 677, 97 P.2d 139 (1939). In essence, the trial court needed to pay only slight deference to the separation agreement of the parties because the trial court was bound in any case to make a "just and equitable" division of the property. RCW 26.08.110. Repealed by Laws of 1973, 1st Ex. Sess., ch. 157, § 30.
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> Under the current statute, RCW 26.09.070(3), "amicable agreements are preferred to adversarial resolution of property . . . questions," and the separation contract is, therefore, binding on the parties unless the trial court finds it "unfair" at the time of execution. *Little*, 96 Wn.2d at 193. RCW 26.09.070(3) "gives even wider latitude to marital partners to independently dispose of their property by contract, free from court supervision," *Nelson v. Collier*, 85 Wn.2d 602, 610, 537 P.2d 765 (1975). *See also* Cross, *The Community Property Law in Washington*, 49 Wash. L. Rev. 729 (1974).
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> Because of this new freedom for marital partners to divide their property as they see fit, the old rule allowing the court to disregard the property division made by the parties in their agreement if the division does not conform to the trial court's view of an equitable property division, no longer is appropriate. Currently, the only question for a trial court reviewing a separation agreement is: was the agreement unfair when it was executed? If the agreement is not unfair, the parties will be held to have waived their right to have the court determine a "just and equitable" division of the property. *See In re Marriage of Matson*, 107 Wn.2d 479, 730 P.2d 668 (1986).
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> Division Three of this court, in *In re Marriage of Cohn*, 18 Wn. App. 502, 506, 569 P.2d 79 (1977), fashioned a test to be applied in determining whether a separation agreement is "unfair." The court said:
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> > (1) whether full disclosure has been made by respondent of the amount, character and value of the

> property involved, and (2) whether the agreement was entered into fully and voluntarily on independent advice and with full knowledge by the spouse of her rights.
>
> We believe that the *Cohn* test is the appropriate standard by which to determine whether a settlement agreement should be incorporated into a dissolution decree.

Regarding the first prong, Mr. Robins argues value amounts were not shown for the property involved, apparently because the court did not hear evidence on the issue. Regarding the second prong, Mr. Robins argues he lacked independent advice before signing the decree. Ms. Robins aptly responds that the second prong does not require advice of counsel for parties to a settlement agreement because no pro se couple could ever get divorced and agree to settle their property. Even so, Mr. Robins did sign some of the documents in a solicitor's office. The parties were married 25 years and appear to have equal knowledge of their property and property values. All property was disclosed and divided to the parties' initial satisfaction. Relative property values at the time of the agreement were properly left for the parties to decide.

Given all, we cannot say as a matter of law, the trial court erred in reviewing the agreement, accepting it, and rejecting Mr. Robins' unfairness arguments. Considering Mr. Robins does not dispute he freely and voluntarily entered into the agreement and he does not dispute its terms, we cannot say the court abused its considerable discretion in its rulings. In sum, Mr. Robins fails to show the agreement violated the two-prong test. Therefore, he waived his right to have the court determine a just and equitable division of property. *Schaffer*, 47 Wn. App. at 193-94.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Brown, J.

WE CONCUR:

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Kulik, C.J. Sweeney, J.