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WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

In re the Marriage of:		
PATTI ANN MANUS,	)	No. 29294-1-III
Respondent,	)	
and	)	
EDWARD LEE MANUS,	)	
Appellant.	)	UNPUBLISHED OPINION

Siddoway, J. — Edward Manus appeals the decree dissolving his six-year marriage to Patti Manus, now known as Patti Ingram. He challenges the court's distribution of the parties' assets and liabilities, its asserted treatment of his gambling as marital misconduct, and its award of maintenance and attorney fees to his ex-wife. With the exception of the trial court's award of attorney fees, the amount of which was unexplained and is vacated, we affirm.

FACTS AND PROCEDURAL BACKGROUND

Edward Manus and Patti Ingram were married in September 2000. They separated

in August 2006, just short of six years of marriage. No children were born of the marriage.

In March 2007, Ms. Ingram petitioned for dissolution. Mr. Manus accepted service of the summons and petition, her financial declaration, and other preliminary notices and orders a few days later. He did not appear at the mandatory status conference set for May 24, at which point Ms. Ingram moved for and obtained an order of default. The findings, conclusions, and decree thereafter entered by the court awarded the family home to Ms. Ingram among other assets and liabilities, ordered Mr. Manus to pay her $1,000 per month as maintenance for 12 months, and ordered him to pay the $1,250 Ms. Ingram had incurred in attorney fees.

Upon learning of the disposition, Mr. Manus retained counsel and moved to set aside the decree, representing that he had been misled by Ms. Ingram to believe that her attorney would take care of the dissolution in the manner he contends was agreed by the parties, which was that their home would be sold, he would be repaid $20,000 contributed toward its purchase, they would divide any remaining equity equally, and each would retain their respective bank and retirement accounts. He challenged the award of maintenance, since Ms. Ingram was gainfully employed.

Following the conduct of discovery and review of submissions by the parties, a commissioner of the superior court granted the motion to vacate, noting the "vastly

conflicting positions of the parties regarding their assets." Clerk's Papers (CP) at 71. The letter ruling from the commissioner reported his belief that Ms. Ingram had received approximately $55,000 in community property and $72,000 in separate property under the decree while Mr. Manus had received approximately $10,000 in community property and $55,000 in separate property, and observed:

> It is typical for the court in a marriage of six years to award to each party their respective separate property and to divide equally the community property, even though all of the property of the parties is before the court. The court is aware that [sic] are claims of contributions of separate party [sic] by each party toward the acquisition of community property. But even taking those claims into consideration, there still exists substantial disparity in the distribution of community property. Thus the motion by Mr. Manus to vacate the decree is granted as it relates to the distribution of property and debts. . . . Because of the great disparity between the parties regarding characterization, contribution and valuation, this court is reluctant to address further the proper division of property and debts.

Id.

After the decree was vacated, the dissolution proceeded to a one-day trial in May 2010. Evidence presented at the trial established that the marriage was Ms. Ingram's first and Mr. Manus' second; Mr. Manus had two children from his prior marriage and came into the marriage with an obligation for child support and $15,000 in community liabilities from his prior marriage. With credit counseling and by making monthly payments, Mr. Manus had satisfied his separate obligations by April 2003,

32 months into the marriage with Ms. Ingram. Ms. Ingram owed approximately $2,000 in credit card debt at the time of the marriage.

Each party came into the marriage with retirement accounts and Ms. Ingram had a savings account with a balance of approximately $4,000. Mr. Manus owned a 1997 pickup truck, subject to a purchase money loan, and Ms. Ingram owned a 1995 Dodge Neon free and clear. She also owned furniture, appliances, other household items, and an undivided one-fourth interest in unimproved family property in Leavenworth, Washington.

At the time of the marriage and thereafter, Ms. Ingram was employed as an account technician with the Sunnyside Housing Authority. At the time of trial, she was earning approximately $36,000.00 per year. During the marriage she contributed $13,492.79 to a 401(k) retirement account.

Mr. Manus was a journeyman lineman. At the time of the marriage he was employed by Benton County Public Utility District but he quit that position shortly following the marriage and worked for several other employers. He earned $60,000 to $70,000 per year, although in the four to five months preceding the parties' separation, while temporarily working a six-day work week, he netted monthly income of almost $7,500. During the marriage, he contributed to several deferred compensation or retirement plans. The trial court found that the community interest in his retirement

accounts was $45,000 at the date of separation.

During the marriage, Ms. Ingram deposited her paychecks to a separate checking account that she maintained with her mother. For the first five years of the marriage, the couple lived in a home owned by Mr. Manus' mother and Ms. Ingram paid $300 per month rent from this separate account. She also paid $100 per month toward the telephone bills and contributed to the cost of groceries.

Remaining community expenditures and obligations were paid out of bank accounts that had been maintained by Mr. Manus at the time of the marriage and to which he added Ms. Ingram as a joint owner. Mr. Manus deposited his paychecks and earnings into the joint accounts.

In September 2005, the couple purchased a mobile home on seven acres of land for $88,000. Their down payment of $8,800 was paid with $5,000 from Mr. Manus and $3,800 from Ms. Ingram. Mortgage payments were made almost entirely from the joint account. Ms. Ingram contributed a minimal amount (the evidence suggested one payment of $337) from her separate checking account. The home and property needed a substantial amount of work and, after closing on it, Mr. Manus withdrew $25,000 from one of his retirement accounts, netting about $20,000 after taxes and penalties. From that, $13,000 was used to pay for repairs and improvements to the home and a tractor for use on the property, $4,000 was used to repay Ms. Ingram for her contribution toward the

down payment, and the remaining $3,000 was spent on a trip by the couple to Las Vegas.

Ms. Ingram contends that Mr. Manus spent thousands of dollars each year of the marriage on gambling, and at the time of trial offered in evidence a spreadsheet summarizing tens of thousands of dollars of cash withdrawals from automatic teller machines (ATMs) at gambling establishments throughout eastern Washington and Oregon. While Mr. Manus claimed that many of the ATM withdrawals were for family dinners and other community expenses, the trial court found that during the marriage over $25,000 was withdrawn and expended on gambling by Mr. Manus.

Following the parties' separation in August 2006, Mr. Manus moved out of the home. Pending trial, Mr. Manus continued to pay the mortgage and payments on the loan for the Chrysler Concorde that Ms. Ingram drove. In total, Mr. Manus paid roughly $12,000 toward her housing and car expense during the separation.

Ms. Ingram testified that after entry of the initial decree, she spent the summer preparing the property for sale, enlisted the help of family and friends to haul off debris, spent $1,984.19 on repairs and improvements, and paid delinquent irrigation assessments of approximately $1,000.00. Upon selling the property for $137,500.00, she kept the net profits of $48,446.63 as well as an escrow rebate from the parties' mortgagor of approximately $1,900.00. She used the proceeds of the sale, one of her retirement accounts, and all of her savings to make an $88,000.00 down payment on a home in

Grandview. She borrowed $60,000.00 for the balance of the purchase cost.

The court's oral ruling at the conclusion of trial and its subsequent decree left the parties with distributions that were substantially similar to the disposition ordered when the original order of default and decree were entered in 2007. It allowed Ms. Ingram to retain the entire proceeds of the home sale and escrow refund. Although this was a departure from what the court commissioner who vacated the default decree had characterized as the "typical" equal division of community property acquired during a short-term marriage, the trial court identified three reasons for its unequal distribution: (1) the community's payment of Mr. Manus' separate $15,000 debt, (2) its finding that Mr. Manus had wasted $25,000 in community funds through gambling, and (3) its finding of greater contributions to Mr. Manus' retirement holdings during the marriage. The court awarded Ms. Ingram $5,000 toward her attorney fees.

Mr. Manus moved for reconsideration. The court reduced the maintenance award from $12,000 to $8,000 but otherwise denied the motion. This appeal followed.

ANALYSIS

Mr. Manus challenges (1) the award of maintenance to Ms. Ingram, which he contends the court justified on the unpermitted basis of his asserted gambling misconduct; (2) the court's consideration of his separate $15,000 debt retired during the marriage; (3) the court's finding that he dissipated $25,000 in marital assets; (4) the court's alleged

failure to properly characterize and consider all of the parties' property; and (5) the award of attorney fees.

I

Mr. Manus first challenges the award to Ms. Ingram of $8,000 maintenance at a rate of $500 per month for 16 months. He argues that because Ms. Ingram remained gainfully employed, he paid her mortgage and auto loan payments for a year after they separated, and he alone assumed his child support obligation that had formerly been paid with community funds, it was he, and not she, whose standard of living declined following their separation. Br. of Appellant at 23. He concedes that his monthly income averaged $5,000 per month while hers was $3,020 per month, resulting in a $1,980 per month swing in his favor before taking into account the circumstances he points to as improving her situation.

It is within the trial court's discretion to award maintenance based on the factors enumerated in RCW 26.09.090. Maintenance awards are "flexible tool[s] by which the parties' standard of living may be equalized for an appropriate period of time." *In re Marriage of Washburn*, 101 Wn.2d 168, 179, 677 P.2d 152 (1984). The spouse who challenges the decision bears the heavy burden of showing an abuse of discretion by the trial court. *In re Marriage of Zahm*, 138 Wn.2d 213, 226-27, 978 P.2d 498 (1999).

"The only limitation on amount and duration of maintenance under RCW

26.09.090 is that, in light of the relevant factors, the award must be just." *In re Marriage of Bulicek*, 59 Wn. App. 630, 633, 800 P.2d 394 (1990). The primary importance in the maintenance award is the parties' economic positions following the dissolution. *In re Marriage of Spreen*, 107 Wn. App. 341, 349, 28 P.3d 769 (2001).

An award of maintenance that does not evidence a fair consideration of the statutory factors constitutes an abuse of discretion. *In re Marriage of Mathews*, 70 Wn. App. 116, 123, 853 P.2d 462 (1993). But nothing in RCW 26.09.090 requires the trial court to make explicit factual findings in its order on the given factors. *In re Marriage of Mansour*, 126 Wn. App. 1, 16, 106 P.3d 768 (2004).

Mr. Manus' first assignment of error is principally predicated on his contention that the trial court's maintenance award was based on his asserted misconduct, contrary to the statute's explicit command that maintenance be set "without regard to misconduct." RCW 26.09.090.[1] He bases this on the fact that, after announcing its decision on maintenance, the trial court made the following remarks:

> Mr. Man[u]s, you're a good earner. I want your attention here for a second, because I have been listening to you all day and watching, and I see a lot of people come through on divorces, and you're not a very good money manager, and you need to figure out a system that you know where your money is and what you're doing with it, because any honest assessment of this will indicate that you're spending way too much at the

[1] Throughout this opinion we quote the current versions of RCW 26.09.090, .080, and .140, which were amended by Laws of 2008, chapter 6, sections 1012, 1011, and 613 to make the language gender neutral and to include domestic partners.

> casino, not enough on family. You've gone through two families now, and you ended up in debt out of the first one. You've been earning good money since you got out of high school, so you don't have many working years left. So you need to rethink it. OK? That's one of the reasons I'm sympathetic to you, because I do respect you for paying your child support, and you paid a lot of things in this marriage, but honestly even your operation during the marriage wasn't really that fair, because she was putting all of her income in and paying a substantial amount of bills, and so were you, but a fair assessment of everything was it was out of balance. There was too much going out for your personal expenditures or unaccounted for. And, you know, my conclusion is it was wasted. So for what that's worth for you. OK.

Report of Proceedings (RP) (May 6, 2010—Ruling) at 5-6.

As discussed further in connection with Mr. Manus' third assignment of error, dissipation of marital assets (also characterized as "waste") does not fall within the definition of marital misconduct. More importantly here, we do not agree that the foregoing comments by the court were offered to explain the maintenance award in particular. We construe the trial court's comments on this dissipation of assets as bearing on its overall disposition of the property and maintenance issues.

The record reveals that the trial court did not view the commissioner's order vacating the 2007 decree as having vacated the original $12,000 maintenance award and that it viewed a maintenance award as appropriate, in part, to achieve an equitable distribution of property. When Ms. Ingram pointed out toward the end of the trial court's oral ruling that it had not addressed maintenance, it responded, "I forgot all about that.

I'm going to allow the $12,000 maintenance. I'm going on to allow it to be paid at a thousand dollars a month from this point forward. *I don't think that was set aside. I just think that there's nothing really to take it from.*" *Id.* at 4-5 (emphasis added). Elsewhere, the court told the parties that he would have shifted even more value to Ms. Ingram had there been liquid assets with which to do it. *Id.* at 4.[2] "The trial court may properly consider the property division when determining maintenance, and may consider maintenance in making an equitable division of the property." *In re Marriage of Estes*, 84 Wn. App. 586, 593, 929 P.2d 500 (1997).

With respect to the court's duty to consider the maintenance factors, it made no findings specific to the maintenance issue, but it reviewed the factors that bear on the maintenance issue,[3] which is all that is required. The evidence bearing on those factors supports a discretionary award of maintenance to better equalize Mr. Manus' and Ms. Ingram's economic circumstances for a period of time following the dissolution. At the time of trial, Ms. Ingram was 46 years old and Mr. Manus was 39. She earned less than half of what Mr. Manus earned during the marriage and roughly a third of what he was earning at the time of separation. The difference or disparity in earning capacity between

[2] Stating, "[I]f I were to do this on a slide rule basis, I'd probably take more from the husband. The pension value's not liquid, though. I'm going [to] leave it for him." RP (May 6, 2010—Ruling) at 4.

[3] As summarized in the brief of respondent at 16-20.

the parties is an important factor. *Stacy v. Stacy*, 68 Wn.2d 573, 576, 414 P.2d 791 (1966). While Mr. Manus emphasizes the fact that Ms. Ingram emerged from the marriage with substantial equity in a home and he had none, she had exhausted her savings and retirement account in order to purchase the house, with a view to reducing her monthly mortgage payment to an amount she could afford. In light of their relative ages and the disparity in their earning power, Mr. Manus will be in a position to realize substantial equity in a home before Ms. Ingram will rebuild her retirement resources. Mr. Manus has not demonstrated a manifest abuse of discretion by the court in awarding $8,000 maintenance.

II

Mr. Manus next claims that his $15,000 liability for community debts of his first marriage was retired before trial and was therefore not before the court for distribution. Although he cites no authority directly on point, he argues by analogy from cases holding that the court cannot "divide" assets that are no longer owned at the time of trial. A trial court distributing assets in dissolution "focuses on the assets then before it—i.e., on the parties' assets at the time of trial. If one or both parties disposed of an asset before trial, the court simply has the ability to distribute that asset." *In re Marriage of White*, 105 Wn. App. 545, 549, 20 P.3d 481 (2001) (footnote omitted); *In re Marriage of Kaseburg*, 126 Wn. App. 546, 556, 108 P.3d 1278 (2005).

Not only are the facts in the cases relied upon by Mr. Manus distinguishable on their face from the facts here, but the underlying rationale of the cases does not help him. Both *White* and *Kaseburg* recognize the discretion of a court to make adjustments in the distribution of assets that *are* before the court in order to equitably account for assets that are *no longer* before the court because they were consumed during the marriage. In *White*, for example, a wife's separate inheritance was not before the court for distribution because it had been applied to retire community debts, but its application toward those debts could be taken into consideration in dividing the assets that were available for distribution. In *Kaseburg*, the court acknowledged that a husband's transfer of community property unavailable for distribution as a result could, if found to be fraudulent, justify an adjustment in the distribution of whatever assets were available for distribution at the time of trial—although on the facts before the court, it found no fraud.

More apposite here are decisions recognizing that the community is entitled to an equitable lien for its contribution to separate property. If there is "direct and positive evidence that the increase in value of separate property is attributable to community labor or funds, the community may be equitably entitled to reimbursement for the contributions that caused the increase in value." *In re Marriage of Lindemann*, 92 Wn. App. 64, 70, 960 P.2d 966 (1998) (citing *In re Marriage of Elam*, 97 Wn.2d 811, 816-17, 650 P.2d 213 (1982)). This right of reimbursement has been applied to separate debts repaid using

community assets, *see, e.g.*, *Merkel v. Merkel*, 39 Wn.2d 102, 113-16, 234 P.2d 857 (1951), although, as pointed out in *White*, "[s]uch a right is rarely important in a dissolution action, because with or without it the court has broad discretion when distributing property and debts; a dissolution court can award property to either spouse in the absence of such a right, or a dissolution court can decline to award property to either spouse in the presence of such a right." 105 Wn. App. at 554.

Here, Mr. Manus' separate debt was paid with community assets. The trial court considered Mr. Manus' $15,000 separate debt when making its distribution not as a liability then before the court for distribution but as a debt discharged as to which the community was entitled to an equitable lien, or—as observed in *White*—as to which the court could make a fair and equitable distribution in the presence of such a right.

III

Mr. Manus next argues that his gambling expenditures were an expense for entertainment or recreation, sometimes joined in by Ms. Ingram, and were improperly characterized and charged against him. As with his earlier argument contesting the maintenance award, he points to the statutory requirement that a trial court make its disposition of the property and liabilities of the parties "without regard to misconduct." RCW 26.09.080.[4]

[4] *See* note 1.

The "misconduct" that is off-limits in distributing property and awarding maintenance does not include a husband's or wife's unwarranted dissipation of marital assets. "[C]onsideration of each party's responsibility for creating or dissipating marital assets is relevant to the just and equitable distribution of property." *In re Marriage of Williams*, 84 Wn. App. 263, 270, 927 P.2d 679 (1996). A trial court may therefore factor into its distribution a party's "negatively productive conduct" that is responsible for creating or dissipating certain marital assets. *In re Marriage of Clark*, 13 Wn. App. 805, 809, 538 P.2d 145 (1975). The clause "without regard to misconduct" "refers to immoral or physically abusive conduct within the marital relationship and does not encompass gross fiscal improvidence, the squandering of marital assets or . . . the deliberate and unnecessary incurring of tax liabilities." *In re Marriage of Steadman*, 63 Wn. App. 523, 528, 821 P.2d 59 (1991) (footnote omitted). A trial court may consider a spouse's negatively productive conduct regarding marital assets when making a just and equitable distribution of property. *Williams*, 84 Wn. App. at 270; *White*, 105 Wn. App. at 551; *see also In re Marriage of Nicholson*, 17 Wn. App. 110, 118, 561 P.2d 1116 (1977) (ruling that the trial court had a right to take the husband's concealment of assets into consideration in dividing the property).

Here, however, Mr. Manus argues that gambling is legal in Washington; that he and Ms. Ingram originally met at a casino; that they took three trips to Las Vegas

together; and that, for them, gambling was a form of entertainment or recreation. He argues that he was earning enough to reward himself and Ms. Ingram with several thousand dollars' worth of gambling expense a year during the course of their six-year marriage.

He urges us to apply the reasoning of *Williams*, in which the trial court refused to characterize a wife's expenditure of $10,000 to $12,000 on gambling during the marriage as dissipation of the marital assets because it is a legal form of entertainment, is encouraged in Washington, and the husband knew "'approximately what was going on'" with his wife's gambling. 84 Wn. App. at 270-71. On appeal, the husband contended that the debts should have been treated as waste, but this court affirmed the trial court, finding that it did not abuse its discretion. *Id.* at 271.

This court held in *Williams* that the trial court did not abuse its discretion when it balanced the extra income the wife generated by working three jobs against her excessive spending, but we did not suggest that a trial court might not reasonably exercise its discretion differently in different circumstances. In *Williams*, the husband was earning more income from a single full-time job than his wife was earning from her full-time employment, plus a weekend job, plus a night job she worked seven days a week. The facts and equitable considerations in that case were distinguishable.[5]

[5] In this connection, Mr. Manus appears to believe that his greater contribution to the couple's earned income is entitled to consideration, refusing to fully accept the fact

Mr. Manus also likens this case to *Kaseburg*, 126 Wn. App. 546. During the marriage at issue in that case, the husband's parents supported the couple's high standard of living with sizeable gifts including financing construction of the couple's dream home, amounts the husband's parents secured with an $850,000 note and deed of trust. After the couple commenced dissolution proceedings, the husband's parents foreclosed the deed of trust but allowed their son to continue living in the home. The wife argued that the inflation of marital debt constituted fiscal misconduct by her husband. The appellate court disagreed, noting that the wife shared responsibility with her husband for managing their resources and that their long-standing dependence on the husband's parents was not fiscal concealment, mismanagement, or breach of any fiduciary responsibility to the community. 126 Wn. App. at 561.

Here, by contrast, the trial court did not find Ms. Ingram to bear equal

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that his earnings, like Ms. Ingram's, were community property. We agree with the trial court's observation that this, and the parties' handling of their bank accounts, may have contributed to Mr. Manus' surprise and disappointment over the court's distribution. The court stated:

> The second observation I'd make, I think it's contributed to severe misunderstanding here is that separate bank accounts don't make separate property. You keep talking about that he paid for. Well, half of his income was hers, and half of her income is his. And it's their money. And they paid for this, and they paid for that. Now they kept it in separate accounts, and people do that sometimes. It gives them some degree of autonomy, but that doesn't make it separate property. And so that leads to some real misunderstandings, and when you try to go to settle or you try to analyze this and you take that position, you can't get this thing resolved.

RP (May 6, 2010—Ruling) at 2.

responsibility for the dissipation of funds. It weighed the amount spent in casinos against the amount that the parties ought to have been able to save and apply toward their future financial security, particularly in light of Mr. Manus' strong earning ability. It observed:

> This couple was married six years and earned between $80 and $90,000 a year income and lived in a $300 rental and eventually moved into a $90,000 house. You begin to wonder where all of the money is. And when you look down and look at all the bank records, it's real clear. There's all this ATM action at the casinos. That's where the money is. And after you pay taxes and feed yourself and pay child support and pay off back debt, that's basically all there was left.

RP (May 6, 2010—Ruling) at 2. In short, it concluded that Ms. Ingram had been deprived of the opportunity to improve her financial security with her one-half share of the parties' earnings, through no fault of her own.

Finally, there was conflicting evidence whether Mr. Manus' gambling amounted to as much as $25,000. Mr. Manus presented evidence that after the parties separated and Ms. Ingram no longer had access to the ATM for the joint account, the amount of withdrawals dropped substantially. Ms. Ingram denied that any of the ATM withdrawals were hers, however. The court's finding of $25,000 represented a discount from evidence of higher withdrawals presented by Ms. Ingram. It is the role of the trial court, not this court, to weigh the credibility of the witnesses. *In re Welfare of Sego*, 82 Wn.2d 736, 739-40, 513 P.2d 831 (1973).

We cannot say that the trial court abused its discretion in concluding that Mr.

Manus bore responsibility for dissipating marital assets to an extent that required a $25,000 adjustment in the property division.

IV

Mr. Manus next contends that the trial court erred in failing to consider all of the community property when making its distribution; specifically, he points to (1) the court's alleged failure to consider payments he made following separation on the Chrysler Concorde and on the mortgage, (2) Ms. Ingram's unilateral gift of the Dodge Neon to her niece, and (3) the trial court's finding that his retirement accounts appreciated by $45,000 during the marriage.

Chrysler Concorde and mortgage payment. "When spouses . . . are living separate and apart, their respective earnings and accumulations shall be the separate property of each." RCW 26.16.140;[6] *In re Marriage of Griswold*, 112 Wn. App. 333, 339, 48 P.3d 1018 (2002). Property divisions awarding the husband's wages and salary earned after the separation to the wife are disfavored, since such wages are the husband's separate property. *See In re Marriage of Freedman*, 35 Wn. App. 49, 52, 665 P.2d 902 (1983). Payments on community debt made postseparation are considered to be separate contributions. *In re Marriage of Sedlock*, 69 Wn. App. 484, 508, 849 P.2d 1243 (1993). When one spouse makes postseparation payments on the community's residence, the

[6] *See* note 1.

court may reimburse the spouse for the contribution, or simply provide an unequal distribution of community assets. *In re Marriage of Nuss*, 65 Wn. App. 334, 339, 828 P.2d 627 (1992); *see Koher v. Morgan*, 93 Wn. App. 398, 405, 968 P.2d 920 (1998) (upholding the trial court's reimbursement for the cost of the spouse's postseparation improvements).

The parties separated in August 2006. Ms. Ingram continued to live in the family home until it was sold. Mr. Manus continued to pay the mortgage at $675 per month, for a total of $8,100. He also continued to make car payments for the Chrysler Concorde used by Ms. Ingram at $350 per month, for a total of $4,200. Mr. Manus argues that the court failed to address or take into consideration what should have been his $12,000 right of reimbursement for paying community obligations with his separate funds.

In the trial court, Mr. Manus characterized these payments by him as one of the many items to be factored into the property distribution and as a basis for denying Ms. Ingram an award of maintenance. The parties offered bank and other financial records and documents, collectively more than two inches thick, as bearing on what they contended were relevant expenditures. We have presumed that the trial court considered Mr. Manus' postseparation payments on the Chrysler and the mortgage in the two contexts in which he urged they were relevant and have found no abuse of discretion in either the property division or the maintenance award.

We find nothing in the clerk's papers or transcripts suggesting that Mr. Manus ever asked the court to address the Chrysler and mortgage payments as discrete items as to which he was entitled to reimbursement on the basis of the authority and argument that he now offers on appeal. We will not review the trial court's decree for error on a basis that is being argued for the first time on appeal. RAP 2.5(a).

Dodge Neon. Ms. Ingram owned a 1995 Dodge Neon free and clear at the time of the marriage. At trial, Mr. Manus testified that during the marriage the Neon "drove fine, but it was on its last legs." RP (May 6, 2010—Trial) at 77-78. Ms. Ingram's undisputed valuation of the car was $600. By the time of trial, Ms. Ingram had given the Neon to her niece.

The court awarded each of the parties their separate property, with its breakdown including the Neon. Mr. Manus' complaint—a purely technical one—is that the Neon was included in that separate property breakdown. Br. of Appellant at 37. As previously noted, if an asset is disposed before trial, it is not before the court for distribution. *White*, 105 Wn. App. at 549. He offers no argument as to how he was harmed because the trial court's distribution mistakenly included the Neon. We can imagine none.

Retirement accounts. The trial court found that the community property interest in Mr. Manus' retirement accounts was $45,000 at the time of separation. CP at 107 (Finding 2.8), 111-12 (Ex. A, ¶ 4). Mr. Manus claims that this was an untenable finding

because he only contributed $4,676 during the marriage; according to him, the remaining increase in the value of his accounts was due to growth in the assets held in those accounts before the parties' marriage. Findings of fact will be affirmed if supported by substantial evidence. *City of Seattle v. Megrey*, 93 Wn. App. 391, 394, 968 P.2d 900 (1998). The evidence is viewed "in the light most favorable to the prevailing party." *Pilcher v. Dep't of Revenue*, 112 Wn. App. 428, 435, 49 P.3d 947 (2002).

While Mr. Manus claims (without citation to supporting evidence) that he contributed only $4,676 to his retirement accounts during the marriage, it is clear from this court's own effort to locate relevant evidence in the record that Mr. Manus' representation as to the extent of his contributions is wrong. The figure he relies upon is a year-to-date contribution to his National Electrical Annuity Plan account for the first half of 2006 alone. He does not address contributions to the account for other periods. His argument fails to consider statements from his Public Employees' Retirement System (PERS) Plan 2 reflecting contributions between 2000 and 2004. It fails to consider amounts contributed to his ICMA-RC 401(k) plan throughout the marriage. This, despite Mr. Manus' testimony at trial that he made contributions to four retirement or deferred income accounts during his marriage, in addition to accruing retirement benefits in PERS Plan 2.

A party is required to support its position on an issue with argument that includes

citation to relevant parts of the record. RAP 10.3(a)(6). Mr. Manus has not provided citations to the complete retirement account contribution records that would be required to support his argument. We will not comb the record to find support. *Fishburn v. Pierce County Planning & Land Servs. Dep't*, 161 Wn. App. 452, 468, 250 P.3d 146, *review denied*, 172 Wn.2d 1012 (2011).

V

RCW 26.09.140 permits the trial court to award reasonable attorney fees in a dissolution action "after considering the financial resources of both parties." When considering an award of attorney fees under this statute, the trial court generally must balance the needs of the party requesting the fees against the ability of the opposing party to pay the fees. *Bay v. Jensen*, 147 Wn. App. 641, 660, 196 P.3d 753 (2008).

If the trial court grants attorney fees under RCW 26.09.140, it must state on the record the *method* it used to calculate the award. *In re Marriage of Obaidi*, 154 Wn. App. 609, 617, 226 P.3d 787 (citing *In re Marriage of Knight*, 75 Wn. App. 721, 729, 880 P.2d 71 (1994)), *review denied*, 169 Wn.2d 1024 (2010).

Here, the court included a $5,000 award of fees to Ms. Ingram in its original oral ruling without explanation. At the hearing on Mr. Manus' motion for reconsideration, it indicated that it would not reconsider the award, elaborating, "I allowed 5,000 attorneys fees. I considered that there were that many [$17,000], but I only allowed 5. So I did

apportion it . . . . So it wasn't 17. It was only 5 for attorneys fees." RP (July 23, 2010) at 22. Its written findings address its consideration of the wife's need and the husband's ability to pay, but still provide no explanation of its method of arriving at an award of $5,000. Because the record is insufficient to enable us to review that aspect of the award, we vacate the award of attorney fees and remand.

We affirm the trial court with the exception of the vacated fee award and remand for proceedings consistent with this opinion.

A majority of the panel has determined that 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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Siddoway, J.

WE CONCUR:

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Korsmo, C.J.

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Brown, J.