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In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

STEVEN V. KETCHUM,)	No. 30078-1-III
)	
Appellant,)	
)	
v.)	UNPUBLISHED OPINION
)	
MICKELA MILLER,)	
)	
Respondent.)	
)	

Kulik, J. — Steven V. Ketchum and Mickela Miller ended their three-year committed intimate¹ relationship. The trial court divided the community-like property and debt. Mr. Ketchum appeals. He contends that the trial court failed to address all of the property and debt that were before the court. Specifically, he asserts the court failed to divide the value of the improvements to the Snyder Lane property, failed to award the missing property, and failed to divide the parties’ debt. Under a review for abuse of discretion, we remand for distribution of the value of improvements to the Snyder Lane

¹ The trial court referred to the relationship as a “meretricious relationship.” Clerk’s Papers at 44. However, our court prefers use of the term “committed intimate relationship.” *Olver v. Fowler*, 161 Wn.2d 655, 657 n.1, 168 P.3d 348 (2007).

property, and to determine what separate property or equivalent value Ms. Miller should return to Mr. Ketchum.

FACTS

Mr. Ketchum and Ms. Miller entered into a committed intimate relationship in May 2006. During the relationship, Ms. Miller assisted Mr. Ketchum in the operation of his manufacturing business, Ketchum Manufacturing. Mr. Ketchum and Ms. Miller, through Ketchum Manufacturing, improved Ms. Miller's real property, the Snyder Lane property, by finishing one structure (shop) and building another structure (pole barn).

The relationship ended in March 2009. Mr. Ketchum moved from the shared residence. A restraining order obtained by Ms. Miller prohibited Mr. Ketchum from reentering the residence to acquire his sole and separate property. Mr. Ketchum's separate property and business property disappeared while under the care of Ms. Miller. Ms. Miller claimed that "Wildman Jay" stole part of the missing property, a story that was later deemed implausible by the trial court.

In January 2011, Mr. Ketchum filed a second amended complaint against Ms. Miller. He sought division of the debts and assets accumulated during the course of the relationship and to recover the economic value of the separate property he was not allowed to recover after moving from the home.

The matter went to trial. In its property division decision, the trial court determined the parties accumulated a debt of about \$60,000, or about \$30,000 each. To equalize the property distribution, the court ordered Ms. Miller to pay Mr. Ketchum \$30,000. The court secured the debt by granting Mr. Ketchum a security interest in the Snyder Lane property. The court allowed Mr. Ketchum to foreclose on the security interest if Ms. Miller's payment was not made within three years. The court also divided specific items of community-like property. The court did not divide the property that disappeared while left in the care of Ms. Miller because the property was either not in current existence or not available for a future distribution.

Mr. Ketchum appeals. He contends that the court failed to divide the value of the improvements made to the Snyder Lane property, failed to award the property that was allegedly missing, and failed to divide all of the debt incurred during the relationship.²

ANALYSIS

We review the trial court's distribution of property after the end of a committed intimate relationship for an abuse of discretion. *Soltero v. Wimer*, 159 Wn.2d 428, 433, 150 P.3d 552 (2007). An abuse of discretion occurs if the decision is based on untenable

² Although Ms. Miller did not file a response brief, the standard of review and the responsibility of this court are the same as in any other appeal. *Adams v. Dep't of Labor & Indus.*, 128 Wn.2d 224, 229, 905 P.2d 1220 (1995).

grounds or untenable reasons. *Id.*

A property valuation made by the trial court is a material and ultimate fact that we review for substantial evidence. *In re Marriage of Crosetto*, 101 Wn. App. 89, 96, 1 P.3d 1180 (2000) (quoting *Wold v. Wold*, 7 Wn. App. 872, 878, 503 P.2d 118 (1972)).

“Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise.” *Bering v. Share*, 106 Wn.2d 212, 220, 721 P.2d 918 (1986).

We do not substitute our judgment for the trial court’s judgment on a disputed factual issue such as the valuation of property. *In re Marriage of Greene*, 97 Wn. App. 708, 714, 986 P.2d 144 (1999). When parties offer conflicting evidence in the valuation of property, a trial court considering a property division may adopt the value asserted by either party or any value between the two. *In re Marriage of Rockwell*, 141 Wn. App. 235, 250, 170 P.3d 572 (2007). A trial court does not abuse its discretion by assigning values to property within the scope of evidence. *In re Marriage of Soriano*, 31 Wn. App. 432, 436-37, 643 P.2d 450 (1982).

The Parties’ Interest in the Improvements to Ms. Miller’s Real Estate.

Washington courts have established a three-prong test for the division of property at the

conclusion of a committed intimate relationship. *Soltero*, 159 Wn.2d at 433 (quoting *In re Pennington*, 142 Wn.2d 592, 602, 14 P.3d 764 (2000)). “First, the court decides whether a [committed intimate] relationship existed. Second, ‘the trial court evaluates the interest each party has in the property acquired during the relationship. Third, the trial court then makes a just and equitable distribution of such property.’” *Id.* (quoting *Pennington*, 142 Wn.2d at 602).

Income and property that parties acquire during a committed intimate relationship should be characterized similarly to property acquired during marriage. *Id.* at 434. Unless rebutted, all property acquired during a committed intimate relationship is deemed to be community-like property. *Id.*

Community-like property is subject to equitable distribution upon dissolution of the committed intimate relationship. *Id.* However, unlike marriage, separate property is not subject to distribution after a committed intimate relationship. *Id.* Thus, the court has nothing to justly and equitably distribute if there is no community-like property. *Id.*

When community labor or funds are used to increase the value of separate property belonging to one of the parties, the community may be entitled to a right of reimbursement. *See In re Marriage of Pearson-Maines*, 70 Wn. App. 860, 869-70, 855 P.2d 1210 (1993). The community may be equitably entitled to reimbursement for the

contributions that caused the increase in value if the court is persuaded by direct and positive evidence that the increase in value of separate property is attributable to community labor or funds. *In re Marriage of Lindemann*, 92 Wn. App. 64, 70, 960 P.2d 966 (1998).

Here, the parties do not contest the trial court's conclusion that a committed intimate relationship existed.

Improvements to Snyder Lane Property. It is undisputed that the Snyder Lane property was Ms. Miller's separate property. It is also undisputed that Ketchum Manufacturing improved the Snyder Lane property by building a pole building and making improvements to an existing shop. The issue is whether the trial court abused its discretion by failing to divide the parties' interest in the improvements to the separate property. Mr. Ketchum had the burden of showing that the value of the separate property increased as a result of the improvements made by the community. *See id.*

The court determined that the value of the property was improved. The court considered an assessor's report dated December 17, 2009, showing that the assessed value of the property with improvements increased from \$61,900 to \$89,100. Ms. Miller did not present any evidence of the value of the property. The court also reviewed the records detailing the amount spent on the improvements and testimony from Ms. Miller's

contractor consultant. The trial court valued the improvements made to the Snyder Lane property at \$29,000.

The court made several findings regarding the community-like nature of the improvements. The court found that the main property value of the Snyder Lane property came from the improvements paid for by Ketchum Manufacturing; the parties pooled Ketchum Manufacturing with the Snyder Lane property in an unofficial business venture and the comingling of the separate property created community-like property; and the parties have a community interest in property and debt acquired during the relationship.

Mr. Ketchum met his burden by establishing that the value of Ms. Miller's separate property was increased by the community. The court determined that the value of the improvements to the Snyder Lane property was \$29,000. This corresponds with the increase in property value according to the assessor's report.

The trial court abused its discretion by failing to distribute the value of the improvements to the Snyder Lane property. Here, remand is appropriate for the trial court to distribute the \$29,000 in property interest created by the community in Ms. Miller's separate property.

Missing Personal Property of Mr. Ketchum. Mr. Ketchum requested that the trial court order Ms. Miller to return specific items of separate property belonging to Mr.

Ketchum. Those assets include a Harley Davidson motorcycle and parts, welders, jet pumps, impellers, and a Minn Kota bow mount tracking motor. Mr. Ketchum was unable to remove these items due to a restraining order that prohibited him from entering the Snyder Lane property where the items were stored. Ms. Miller admitted that she traded, sold, or otherwise lost possession of several of Mr. Ketchum's personal items, including the specific property at issue.

The court found business property and Mr. Ketchum's separate property that was kept in the hands of Ms. Miller had disappeared. Ms. Miller's story about "Wildman Jay" stealing the property was found to be implausible. In dealing with this property in the division, the court determined that "the property at 484 Snyder Lane that was traded off, stolen or otherwise disappeared in the time that defendant had a restraining order against plaintiff is not in current existence or available for a future distribution and therefore the court has not sought to divide this property." Clerk's Papers at 43. The trial court also determined that Ms. Miller's inability to work and continuing health problems would hamper any ability to pay with regard to the missing items.

The trial court abused its discretion by failing to order the return of the specific separate property or its value. Uncontested facts show that the property was the separate property of Mr. Ketchum. Mr. Ketchum made a specific request for the return of the

property. Mr. Ketchum's separate property was not subject to equitable distribution and needed to be returned or its equivalent value be paid by Ms. Miller.

Essentially, by declining to order the return of the property, the trial court is unjustly enriching Ms. Miller by allowing her to profit from or neglect Mr. Ketchum's separate property. The court abused its discretion by not ordering Ms. Miller to return Mr. Ketchum's separate property or its equivalent value.

Equitable Distribution of Debt. When parties offer conflicting evidence in the valuation of property, a trial court considering a property division may adopt the value asserted by either party or any value between the two. *Rockwell*, 141 Wn. App. at 250.

Mr. Ketchum presented evidence that the amount of community debt was over \$98,000. Mr. Ketchum associated \$59,971.48 of this debt with the cost of the property improvements. The remaining debt he attributed to misappropriated funds by Ms. Miller, and Ms. Miller's personal expenses. Ms. Miller presented testimony that the misappropriated funds attributed to Ms. Miller were actually cash withdrawals provided to Mr. Ketchum. Ms. Miller also presented testimony that over \$15,000 of Mr. Ketchum's personal debt was paid off during their relationship.

The court determined that during the time that Ms. Miller was working at Ketchum Manufacturing, the business debt increased to almost \$59,971.48. The trial court ordered

the \$60,000 to be divided equally between Mr. Ketchum and Ms. Miller. The trial court associated all of the debt with the business. The court did not attribute debt independently to Ms. Miller.

Both parties offered different evidence as to the valuation of the debt. Both valuations are supported by the evidence. We defer to the trial court in determining the value of the debt in the midst of the conflicting testimony. The trial court did not abuse its discretion by deciding the value of the debt within the scope of the evidence presented.

The trial court did not abuse its discretion in valuing the debt at \$60,000. The amount of the debt was based on evidence presented at trial.

We remand this matter to the trial court with instructions (1) to distribute the value of the improvements made by the community to Ms. Miller's separate property and (2) to determine the property or the equivalent value Ms. Miller should return to Mr. Ketchum.

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.

Kulik, J.

No. 30078-1-III
Ketchum v. Miller

WE CONCUR:

Brown, J.

Korsmo, C.J.