FILED
MAY 8, 2012
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

In re the Marriage of:	)	No. 30489-2-III
KRISTINE BOWMAN,	)	
Respondent,	)	
and	)	UNPUBLISHED OPINION
JAMES W. BOWMAN JR.	)	
Appellant.	)	

Kulik, J. — James and Kristine Bowman divorced in 2010 after 22 years of marriage. Mr. Bowman contends the court abused its discretion by refusing to vacate the temporary orders, and by compensating Ms. Bowman with one-half of his 401(k), the community tax refund, and settlement proceeds. Mr. Bowman also contends the court erred by making a limited award of postsecondary support for the parties' daughter and by failing to consider the effect of the parties' bankruptcy proceedings. Lastly, Mr. Bowman asserts that he was denied a fair trial.

We affirm the trial court's orders in all respects and grant attorney fees on appeal

to Ms. Bowman.

FACTS

James and Kristine Bowman were married on December 18, 1987. The parties met while they were students at the University of Washington. Ms. Bowman dropped out of school to marry Mr. Bowman. Within one year, their son James III (J.T.) was born.

Mr. and Ms. Bowman have three children: J.T., Katarina, and A.B. When the petition for dissolution was filed, the two younger children were living at home and attending Bellarmine, a private high school. At the time of trial, A.B. was a junior in high school; Katarina was attending the University of California at San Diego; and J.T. was attending the University of Southern California.

The older children had scholarships that covered most but not all of their expenses. Katarina's uncovered expenses were $2,250 annually, and J.T.'s uncovered expenses were $4,000 annually. There were also extra expenses for travel.

During most of the marriage, Ms. Bowman was a stay-at-home mother and homemaker. In 2003, Ms. Bowman returned to school and earned her culinary degree from the Seattle Culinary Academy. Ms. Bowman started an in-home business, Last Bite, baking and selling pastries and wedding cakes. At first, Last Bite did not generate significant income, so in 2007, Ms. Bowman started working in food services at the

children's school earning $15 per hour. The Bowmans used this income to pay the children's tuition at the high school.

Ms. Bowman was initially hired to serve lunch and then to overhaul the school's lunch program. As a result, Ms. Bowman received a raise. Meanwhile, Last Bite was increasing in sales. In 2009, Ms. Bowman's gross income was $32,626.

Early in the marriage, Mr. Bowman was a loan officer for AVCO. In 1999, Mr. Bowman started Pacific Real Estate Management Company (PREMCO), a successful company that managed branches for mortgage companies. At one point, PREMCO had three offices. Mr. Bowman was a 92.5 percent owner of PREMCO. By the time of trial, Mr. Bowman had shut down PREMCO and filed for bankruptcy on its behalf. Mr. Bowman then worked as a sales manager for Prospect Mortgage.

Mr. Bowman controlled the family finances. Throughout the marriage, all of the financial statements were sent to the PREMCO office. Mr. Bowman filed all of the parties' tax returns electronically, and Ms. Bowman did not review them. As a result, Ms. Bowman had no real knowledge of the family finances. Based on lifestyle and historical expenses, Ms. Bowman determined that Mr. Bowman earned at least $10,000 net per month. On one occasion, she discovered Mr. Bowman's Social Security statement and found that in the last years, he regularly earned well over $100,000

annually.

In addition to his take home pay, Mr. Bowman also controlled other cash assets that were not shared with Ms. Bowman. In 2007, Mr. Bowman cashed out a $123,000 401(k) without Ms. Bowman's knowledge. When the parties separated in late 2008, Mr. Bowman received at least $60,000 from a lawsuit settlement related to PREMCO. Mr. Bowman also received the parties' 2007 tax refund of nearly $15,000. Mr. Bowman told Ms. Bowman that he spent these funds on different obligations.

Mr. Bowman left the family home on October 12, 2008. After he left, Ms. Bowman found that Mr. Bowman had not paid the monthly mortgage payment of $2,700 since August 2008. Ms. Bowman was only able to make one mortgage payment on her own and, by December, the house was at risk of foreclosure.

Ms. Bowman filed a petition for dissolution on December 1, 2008. She also filed a motion seeking temporary spousal maintenance and child support. Ms. Bowman asserted that the family's household expenses were $9,455 per month, which was more than she could afford on her income. She asked the court to impute income for Mr. Bowman of $10,000 net per month. She also asked the court to restrain Mr. Bowman from spending or disbursing the proceeds from the PREMCO settlement.

The hearing on Ms. Bowman's motion for temporary orders was set for

December 18, 2008, at 9:30 a.m. Mr. Bowman was provided notice but did not appear. He claims he was told by a court employee that he did not need to be present. The court ordered Mr. Bowman to pay $1,395 for the monthly support of the parties' two minor children, plus his portion of their educational expenses based on the court's finding that Mr. Bowman's monthly net income was $10,000 and that Ms. Bowman's net income was $3,608. The court ordered Mr. Bowman to pay $9,119.38 to clear the two mortgages that were delinquent. And the court ordered Mr. Bowman to pay temporary monthly spousal maintenance of $4,500. Mr. Bowman was restrained from disbursing the PREMCO settlement funds, and Ms. Bowman was awarded $10,000 in attorney fees.

Around this time, Mr. Bowman removed the family car, a Suburban, from the family residence. Ms. Bowman was greatly inconvenienced because she used the Suburban to transport the children to school and to their activities. Ms. Bowman also used the Suburban to deliver desserts for her business. Left with only her daughter's 27-year-old pickup, Ms. Bowman used friends' vehicles for delivery. After Ms. Bowman filed a motion for contempt, Mr. Bowman returned the Suburban.

Mr. Bowman refused to voluntarily comply with the terms of the temporary orders. Ms. Bowman's income from Bellarmine went primarily for the children's tuition and was automatically deducted from her paycheck. This left Ms. Bowman with the

income she made from her pastry business to meet the family's obligations, including the expenses for the children. Ms. Bowman incurred substantial credit card debt to meet the family expenses, which included disconnection notices from utilities. Because Mr. Bowman did not bring the mortgage current, her bank threatened foreclosure and eventually placed a default notice on the door of the home.

The bank notified Ms. Bowman that it would proceed with foreclosure unless she brought the mortgage current and obtained a loan modification. Losing the family home would have been particularly devastating for Ms. Bowman because the commercial kitchen in the family home was where she made her desserts.

Mr. Bowman refused to bring the mortgage current. In May 2009, Ms. Bowman received notice that the home would be sold at private auction unless the mortgage was brought current. Ms. Bowman worked extra jobs to pay off the arrearage of approximately $20,000. Ms. Bowman also accepted loans from her mother and stepfather to assist with her obligations and attorney fees.

Meanwhile, Mr. Bowman filed for personal bankruptcy and bankruptcy of PREMCO without telling Ms. Bowman. A trustee for PREMCO contacted Ms. Bowman to obtain the Suburban because it was a company asset. Ms. Bowman was forced to obtain a bankruptcy attorney and buy back the Suburban from the trustee for $6,000.

Also, Ms. Bowman's wages were garnished for bills Mr. Bowman had incurred after he moved out of the family home. This caused Ms. Bowman to file for bankruptcy. Both bankruptcy petitions were discharged by the time of trial and the majority of the parties' community debts were discharged.

On July 17, 2009, the court addressed Mr. Bowman's refusal to comply with the temporary orders, including his failure to retain the PREMCO settlement proceeds and show how or if the proceeds were disbursed. The trial court expressed concern that Mr. Bowman was dissipating or hiding assets. The court noted that Mr. Bowman paid debts to his father and Mr. Bowman's lawyer in San Francisco while Ms. Bowman was struggling to cover two mortgages on the family home. The trial court rejected Mr. Bowman's request to vacate the temporary orders, but the court left the matter open for Mr. Bowman to move separately to modify the temporary orders if he could show a change in circumstances.

Mr. Bowman resisted Ms. Bowman's discovery requests. On September 18, 2009, the trial court granted Ms. Bowman's motion to compel discovery and awarded her attorney fees of $1,500 as sanctions. The court gave Mr. Bowman two weeks to complete discovery.

The parties were originally scheduled for trial on December 1, 2009. Before trial,

Mr. Bowman filed several motions, including a motion for contempt related to the parenting plan with regard to A.B., a motion to compel discovery, a motion for walk-through of the family residence, and a motion to continue the trial date. The court granted the continuance of the trial date and expressed concern that Mr. Bowman continued his refusal to comply with earlier orders, and, particularly, had failed to pay attorney fees for Ms. Bowman. Mr. Bowman's motion to compel was continued until the date of trial; a list of personal property was to be presented on the date of trial.

One month before the parties' continued trial date, Mr. Bowman filed his fourth motion to vacate the December 2008 temporary orders. The court found no basis for the motion because the matter had been reserved for trial.

The trial took place on March 12, 2010. The court awarded Ms. Bowman the family residence, acknowledging that it had a negative value of $53,000. Ms. Bowman was awarded household furnishings valued at $10,000. Last Bite was awarded to Ms. Bowman along with the equipment owned by the company, valued at $6,000. The court also awarded Ms. Bowman her 401(k) with Bellarmine, valued at $511.

The court ordered that Ms. Bowman should be compensated for one-half of the $123,000 401(k) that Mr. Bowman had unilaterally liquidated, the $15,000 Internal Revenue Service (IRS) refund that Mr. Bowman controlled, and the $60,000 PREMCO

settlement that Mr. Bowman received around the time the parties separated. The court found that PREMCO was a closely held S-corporation and that the parties owned over 90 percent of the company. The court also found that because PREMCO was an alter ego of Mr. Bowman, the court could direct the settlement proceeds in the parties' dissolution.

For purposes of child support, the trial court found that Mr. Bowman had a monthly net income of $4,053, and Ms. Bowman had a monthly net income of $3,956. The court ordered Mr. Bowman to pay monthly child support of $738.76 for A.B. The court declined to order postsecondary support for the parties' older son, but noted that it "believes that it is appropriate that the parents share the expenses for JT that are not covered by ROTC equally." Clerk's Papers (CP) at 640. Regarding Katarina, the court determined that she "warrants and deserves support for college." CP at 640. The court ordered that each of the parents and Katarina were responsible for one-third of any expenses that exceeded scholarships and grants awarded to Katarina.

At Mr. Bowman's request, the court reconsidered Mr. Bowman's motion to vacate the December 18, 2008 temporary orders. The court categorically rejected Mr. Bowman's allegation that Ms. Bowman committed fraud or misrepresented Mr. Bowman's income to the court. The trial court found that Ms. Bowman reasonably estimated Mr. Bowman's income in light of the fact that he was secretive regarding his

income and PREMCO finances. The trial court determined that at the time the temporary orders were issued, Mr. Bowman earned less than $10,000 per month. On equitable grounds, the trial court concluded that the temporary orders should be retroactively modified.

The trial court found that Mr. Bowman should have paid undifferentiated support of $4,500 per month from January to August 2009. This amount was changed from the $5,900, which was previously ordered. Thereafter, the court found that Mr. Bowman should have paid $4,000 in undifferentiated support until the time of trial. The trial court also entered a judgment of $79,500 against Mr. Bowman for past due support he had failed to pay under the December 18, 2008 temporary orders, as modified by the court. The court also reaffirmed the judgment of $9,119.38 entered against Mr. Bowman on December 18, 2008.

Finally, the court awarded attorney fees to Ms. Bowman in the amount of $11,500. The court found Mr. Bowman intransigent, that his "actions have exacerbated the cost of attorney's fees in this case," and that those actions have been "willful, intentional and malicious." CP at 631. Mr. Bowman appeals.

ANALYSIS

Standards of Review. "'[P]ro se litigants are bound by the same rules of

procedure and substantive law as attorneys.'" *Holder v. City of Vancouver*, 136 Wn. App. 104, 106, 147 P.3d 641 (2006) (quoting *Westberg v. All-Purpose Structures, Inc.*, 86 Wn. App. 405, 411, 936 P.2d 1175 (1997)). RAP 10.3(a)(5) provides that "[r]eference to the record must be included for each factual statement." Mr. Bowman provides few citations to the record to support his factual recitation.

In a dissolution action, the trial court must make a just and equitable distribution of the property and liabilities of the parties after considering all relevant factors, including the nature and extent of the separate and community properties, the duration of the marriage, and the economic circumstances of each spouse. RCW 26.09.080. The trial court's paramount concern when distributing property in a dissolution action is the economic condition in which the decree leaves the parties. *In re Marriage of Williams*, 84 Wn. App. 263, 270, 927 P.2d 679 (1996).

Findings of fact are reviewed under the substantial evidence standard. Substantial evidence exists where there is evidence of a sufficient quantum to persuade a fair-minded person of the truth of the declared premise. *State v. Halstien*, 122 Wn.2d 109, 129, 857 P.2d 270 (1993). Mixed questions of law and fact are reviewed in terms of the substantial evidence test for quantitative determinations and de novo as to the legal aspects of the issue. *Harris v. Urell*, 133 Wn. App. 130, 137, 135 P.3d 530 (2006).

Issues involving the discretion of the court are reviewed for an abuse of discretion. *State v. Bourgeois*, 133 Wn.2d 389, 406, 945 P.2d 1120 (1997). A court abuses its discretion when it acts on untenable grounds or for untenable reasons. *In re Marriage of Gillespie*, 89 Wn. App. 390, 398-99, 948 P.2d 1338 (1997).

When exercising its broad discretion in distributing assets in a dissolution proceeding, a trial court focuses on assets before it at the time of trial. *In re Marriage of White*, 105 Wn. App. 545, 549, 20 P.3d 481 (2001); RCW 26.09.080. "If one or both parties disposed of an asset before trial, the court simply has no ability to distribute that asset at trial." *Id.* However, the court may consider a spouse's waste or concealment of assets. *In re Marriage of Wallace*, 111 Wn. App. 697, 708, 45 P.3d 1131 (2002).

An award of maintenance is within the broad discretion of the court. *In re Marriage of Terry*, 79 Wn. App. 866, 869, 905 P.2d 935 (1995). An award of maintenance must be just in light of the relevant facts, including the financial resources of each party, the duration of the marriage, the standard of living during the marriage, and the resources and obligations of the spouse seeking maintenance, including that spouse's ability for self support. *See In re Marriage of Estes*, 84 Wn. App. 586, 593, 929 P.2d 500 (1997). When determining spousal maintenance, the court is governed strongly by the need of one party and the ability of the other party to pay. *In re Marriage of Foley*,

84 Wn. App. 839, 845-46, 930 P.2d 929 (1997).

Temporary Orders. Whether a trial court vacates a validly entered order is a matter of discretion. *Morgan v. Burks*, 17 Wn. App. 193, 197, 563 P.2d 1260 (1977).

On December 18, 2008, the trial court entered temporary orders for spousal maintenance of $4,500 per month, for child support of $1,395 per month, and for judgments and attorney fees to Ms. Bowman of $19,119.38.

Mr. Bowman contends that the orders were imposed based on the assumption that his monthly income was $10,000. He asserts that he never made this amount. He also argues that Ms. Bowman knew this and committed fraud or misstated Mr. Bowman's income at the hearing.

The court denied Mr. Bowman's motion for modification of the temporary support orders. Mr. Bowman renewed this motion at trial. The trial court rejected Mr. Bowman's allegations that Ms. Bowman committed fraud or misstated Mr. Bowman's income. The trial court stated that Ms. Bowman's claim concerning Mr. Bowman's income was reasonable in light of the information available at the time. The court explained that the information available at the trial indicated that Mr. Bowman's income was less than the $10,000 per month figure used in the December 18, 2008 temporary orders.

However, recognizing that Mr. Bowman was earning less than $10,000 per month at the time of the hearing, the court concluded that Mr. Bowman could pay monthly support of at least $4,500. The court ordered this retroactively. This decreased support retroactively to the December 18, 2008 hearing date.

Ms. Bowman suggests that the retroactivity of the modified temporary orders constitutes error. Any "decree respecting maintenance or support may be modified . . . [o]nly as to installments accruing subsequent to the . . . motion." RCW 26.09.170(1). The reason for this is that "[t]emporary support installments become judgments as they fall due." *In re Marriage of Lindsey*, 54 Wn. App. 834, 835, 776 P.2d 172 (1989). However, *Lindsey* also recognizes that a retroactive change in a temporary support order may be based on equitable principles. The court clearly stated that it was modifying the orders on equitable grounds. We conclude the trial court did not abuse its discretion and affirm the court's order.

401(k), Community Tax Refund, and Settlement Proceeds. Mr. Bowman contends the trial court abused its discretion by compensating Ms. Bowman for the equivalent of one-half the 401(k) plan, the community tax refund, and settlement proceeds.

Trial courts have broad discretion in the distribution of property in marriage dissolution proceedings. *In re Marriage of Brewer*, 137 Wn.2d 756, 769, 976 P.2d 102

(1999). "The trial court is in the best position to assess the assets and liabilities of the parties and determine what is 'fair, just and equitable under all the circumstances.'" *Id.* (quoting *In re Marriage of Hadley*, 88 Wn.2d 649, 656, 565 P.2d 790 (1977)). In view of the trial court's discretion, a trial court's distribution of property will not be reversed on appeal absent a showing of manifest abuse of discretion. *Id.*

The court must apply the factors set forth in RCW 26.09.080. In addition to applying these factors, the court may consider a spouse's waste or concealment of assets when distributing the parties' assets. *Wallace*, 111 Wn. App. at 708. RCW 26.09.080 places no limit on the court's ability to consider one spouse's breach of duty to the community when the court makes an appropriate distribution of assets. The marital misconduct that a court may not consider is limited to "immoral or physically abusive conduct within the marital relationship." *In re Marriage of Steadman*, 63 Wn. App. 523, 528, 821 P.2d 59 (1991) (footnote omitted). However, the court may consider one spouse's "gross fiscal improvidence" or "squandering of marital assets" when making a fair and equitable distribution of the parties' assets and liabilities. *Id.*

In *Steadman*, the husband managed the parties' business and made decisions regarding the payment of bills, including tax liabilities. *Id.* at 526. The trial court ordered the husband to pay the business tax liabilities that were over three times the

liabilities charged to the wife. *Id.* at 528. Acknowledging that the trial court may consider this type of financial misconduct, this court upheld the allocation of debts because it was the husband's "'negatively productive conduct'" which resulted in the tax liabilities at issue. *Id.* (quoting *In re Marriage of Clark*, 13 Wn. App. 805, 809, 538 P.2d 145 (1975)).

Here, the trial court considered the same type of negatively productive conduct. The trial court was concerned that after the parties separated, Mr. Bowman did absolutely nothing to preserve the parties' remaining assets, even though he had nearly $200,000 of community funds under his unilateral control. Because those assets had been squandered, the trial court properly placed the value of those assets, had they been preserved, with Mr. Bowman and awarded Ms. Bowman an equal offset. *See Steadman*, 63 Wn. App. at 528.

In *White*, the court addressed a different situation. *White*, 105 Wn. App. 545. In *White*, the trial court erred by awarding the wife $30,511 that had been her separate property but was used to pay off the mortgage on the family residence four years before the parties' separation. *Id.* at 548. The appellate court held that these funds, which no longer existed, could not be distributed to the wife. However, the funds could be considered when dividing the property because the court had the discretion to consider

one "spouse's unusually significant contributions to (or wasting of) the assets on hand at trial." *Id.* at 551.

The court found that Mr. Bowman liquidated his 401(k) valued at $123,000 and that monies from the 401(k) went to finance the litigation resulting in the settlement. The court did not err in finding that the PREMCO settlement proceeds were community property. The court found that Mr. Bowman regularly infused community property into PREMCO and that the marital community owned more than 90 percent of the corporation. When a corporate actor controls a corporation so closely that the corporation acts on behalf of the individual, corporate assets may be used to satisfy personal debts. *See Standard Fire Ins. Co. v. Blakeslee*, 54 Wn. App. 1, 5, 771 P.2d 1172 (1989) (quoting *Pohlman Inv. Co. v. Virginia City Gold Mining Co.*, 184 Wash. 273, 283, 51 P.2d 363 (1935)). Similarly, when justice requires, a court may disregard a corporate entity in a divorce. *W.G. Platts, Inc. v. Platts*, 49 Wn.2d 203, 207-08, 298 P.2d 1107 (1956).

The trial court had broad discretion in the distribution of property and liabilities in the marriage. Here, the court's property distribution was within its discretion.

Postsecondary Support. RCW 26.19.090(2) provides that when considering whether to order postsecondary educational support, "the court shall determine whether

the child is in fact dependent and is relying upon the parents for the reasonable necessities for life." This provision states, in part:

> The court shall exercise its discretion when determining whether and for how long to award postsecondary educational support based upon consideration of factors that include but are not limited to the following: Age of the child; the child's needs; *the expectations of the parties for their children when the parents were together*; the child's prospects, desires, aptitudes, abilities or disabilities; the nature of the postsecondary education sought; and the parents' level of education, standard of living, and current and future resources. Also to be considered are the amount and type of support that the child would have been afforded if the parents had stayed together.

RCW 26.19.090(2) (emphasis added).

Here, Katarina was a minor when the dissolution action was filed. At the time of trial, Katarina had a scholarship to the University of California at San Diego. Ms. Bowman testified that her daughter was dependent on her parents to assist with expenses of approximately $2,250. Ms. Bowman testified that she contributed $250 per month to expenses beyond tuition. Both parents had attended at least some college, and the court noted that both parents had encouraged Katarina to attend college. The court found that Katarina was "a very good student," and that she "warrants and deserves support for college." CP at 640; Report of Proceedings (RP) (June 11, 2010) at 10. The court properly concluded, based on the required factors, that Mr. Bowman should contribute to Katarina's postsecondary support.

Fair Trial. Mr. Bowman claims he was denied a fair trial because Ms. Bowman did not turn over documents in a timely manner. Mr. Bowman asserts that Ms. Bowman violated local court rules by failing to serve him with pretrial information two days prior to the scheduled trial. Ms. Bowman's counsel pointed out that Mr. Bowman had been served with the pretrial form that afternoon. Ms. Bowman's pretrial discovery also apparently included information that Mr. Bowman had not been able to get through discovery.

The court stated to Mr. Bowman: "If you feel disadvantaged in terms of your ability to cross-examine the petitioner or to defend when you're called as a witness, then raise it, and I'll note the objection. It will be a standing objection." RP (Mar. 12, 2010) at 13.

Mr. Bowman made several objections during the trial. He first challenged the authenticity of three exhibits—some of his bankruptcy filings—because he had not had time to check their authenticity. The court admitted the exhibits. Mr. Bowman next challenged an appraisal and invoice, Ms. Bowman's financial declaration, a summary of Ms. Bowman's bank statements, a profit and loss statement for Last Bite, a notice to Ms. Bowman from the IRS, and a book of photographs of household goods and furnishings showing values the Bowmans had attached to the items.

During the proceedings, when Mr. Bowman could not find a document, the court gave him time to find it. With regard to any other documents, Ms. Bowman's counsel said that he had mailed and faxed the documents to Mr. Bowman the day before.

Mr. Bowman repeatedly states that he did not have time to consider the evidence prior to trial. But he does not demonstrate any prejudice from his lack of familiarity with the documents that were not available to him until trial. The court did not err by admitting this evidence, and Mr. Bowman was not denied a fair trial.

Mr. Bowman also complains that the trial was too short. Mr. Bowman argues that his trial was unfair because it lasted for only one-half day. This was a trial with two witnesses—Mr. Bowman and Ms. Bowman. Mr. Bowman originally asked for two to three days for a trial, but the trial court responded, "No. I can guarantee it won't be that." RP (Dec. 18, 2009) at 13.

A reading of the trial record reveals that Mr. Bowman was not denied his right to a fair trial. Mr. Bowman was representing himself. In response to this fact, the court exercised great patience. The court also assisted Mr. Bowman by asking questions of Ms. Bowman and Mr. Bowman.

Finally, Mr. Bowman claims prejudice because he was not allowed to walk through the house in order to value the property. Instead, Mr. Bowman was given

photographs of the house and household goods to examine. This was done because of the court's concern for A.B., the parties' youngest son, who was still living at home. When A.B. found out about his father's infidelity, he had a heated exchange with his father and ended up in counseling. The court's decision to deny the walk-through inspection by Mr. Bowman, and, instead, provide Mr. Bowman with photographs of the property was not an abuse of discretion.

Bankruptcy Proceedings. Mr. Bowman contends that the judgments Ms. Bowman obtained against him as part of the temporary orders of December 18, 2008, were discharged as part of his personal bankruptcy or the PREMCO bankruptcy.

Both parties and the corporation filed for bankruptcy. There is virtually no documentation of these bankruptcies in the record. After the March 12, 2010 trial, the court entered its findings of fact and conclusions of law. The court found that each of the parties had declared bankruptcy and found that the parties had incurred community liabilities. The court also determined:

> In addition, the judgment entered against husband on December 18, 2008 in the amount of $9,119.38 shall remain in full force and effect and shall not merge with the decree. The court reaffirms this judgment and it shall remain in full force and effect.
>
> Further, the undifferentiated family support and judgment . . . as ordered herein constitutes a domestic support obligation within the meaning of 11 U.S.C. §101(14A) of the U.S. Bankruptcy Code. They are exempt from discharge pursuant to 11 U.S.C. §523(a)(5).

CP at 630.[1]

Mr. Bowman contends the judgments in the temporary orders are invalid pursuant to 28 U.S.C. § 1334 which discusses the bankruptcy court's jurisdiction over civil proceedings arising under Title 11 U.S.C. Here, there is no challenge to the jurisdiction of the bankruptcy court. Instead, the trial court correctly applied 11 U.S.C. § 523(a)(5) to exclude any discharge of Mr. Bowman's debt for domestic support obligations.

Attorney Fees. Ms. Bowman seeks attorney fees on appeal pursuant to RCW 26.09.140. When awarding attorney fees in a dissolution action, the court must balance the needs of one party against the other party's ability to pay. *Terry*, 79 Wn. App. at 869. Ms. Bowman maintains that she has a need for her fees to be paid and that Mr. Bowman has the ability to pay. *See* RAP 18.1; RCW 26.09.140.

Ms. Bowman also asserts that she is entitled to fees because of Mr. Bowman's intransigence. Ms. Bowman contends that Mr. Bowman never sought to stay the decree but, as with the temporary orders, simply ignored it. The trial court found Mr. Bowman intransigent and that his "actions have exacerbated the cost of attorney's fees in this case." CP at 631. The court further determined that Mr. Bowman's actions were "willful, intentional and malicious." CP at 631. These unchallenged findings of fact are

[1] The $9,119.38 was to clear the delinquencies on the two mortgages.

verities on appeal. *Brewer*, 137 Wn.2d at 766.

We affirm the trial court's orders in all respects and grant attorney fees on appeal to Ms. Bowman.

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.

WE CONCUR:

_____ _____
Brown, J. Siddoway, A.C.J.