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No. 731947-I

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

JOSHUA CONRAD WELBORN
Appellant

v.

HEIDI MARIE MCKINNON (FKA WELBORN)
Respondent

BRIEF OF RESPONDENT

Presented by:
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COURT OF APPEALS
STATE OF WASHINGTON
DIVISION I

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I. REPLY TO ASSIGNMENTS OF ERROR

- A. The trial court did not err by ordering Appellant to pay \$345.16 per month in child support.
- B. The trial court did not err in finding that the entire balances of Appellant's UPS 401k account and Pacific Coast Benefits Trust account were community property.
- C. The trial court did not err by failing to equally split the \$6,000 in social security disability benefits received by the Appellee while the parties were still together.
- D. The trial court did not err by not including the Appellee's \$12,000 payment to Appellant in the spreadsheet attached to the trial court's Findings of Fact and Conclusions of Law.

II. STATEMENT OF ISSUES IN REPLY

- A. The Trial Court properly ordered Josh to pay \$345.16 per month in child support based on the Court's own calculations. CP 57-60.
- B. The Trial Court properly recognized the parties' long term relationship which had started five years prior to the marriage and therefore correctly found all retirement accounts to be community property.

- C. The Trial Court correctly did not split the social security disability income benefits provided as these were delegated funds for the children to which the Respondent was the custodian.
- D. The Trial Court properly did not add the payment made by the Respondent to the Appellant in the sum of \$12,000 cash as this was explained by the Trial Judge in the Decree of Dissolution of Marriage. CP 64.

III. REPLY TO ARGUMENTS

1. **The Trial Court properly ordered the Appellant to pay \$345.16 per month in child support based on the Court's own calculations.**

An appellate court will not reverse the trial court's order of child support absent a manifest abuse of discretion. In re Marriage of McCausland, 159 Wash.2d 607,615, 152 P.3d 1013 (2007). In addition, an appellate court "cannot substitute [its] judgment for that of the trial court unless the trial court's decision rests on unreasonable or untenable grounds". In re Marriage of Leslie, 90 Wash. App. 796, 802-03, 954 P.2d 330 (1998).

1. Appellant argues that the parties have a split residential/custodial schedule.

The trial court did not abuse its discretion in requiring Appellant to pay Respondent the standard calculation for child support because the trial court followed binding precedent previously established by this Court and affirmed by the Washington State Supreme Court. This Court, in *State ex rel. M.M.G. v. Graham*, 123 Wn. App. 931, 933, 99 P.3d 1248 (2004), *affd in part, rev'd in part* on other grounds held that in an equally shared residential arrangement "a trial court must calculate the basic child support amount and may then deviate from that amount based on the amount of residential time spent with the obligor parent. *State ex rel. M.M.G. v. Graham*, 123 Wn. App. 931, 933, 99 P.3d 1248 (2004), *affd in part, rev'd in part* on other grounds

The Washington State Supreme Court affirmed this holding, but reversed this Court's opinion that allowed trial courts to extrapolate guideline support when the parents' combined monthly income exceeded the economic tables.

The Appellant argues that the Trial Court erred because the parties have a split residential schedule. In his argument he refers to *In re Marriage of Arvey*, 77 Wn.App.817, 894 P.2d 1346 (1995) to justify his request. The Arvey court established a formula for determining child support when *one child resides primarily with one*

parent and another child resides primarily with the other parent, Id.
At 939.

The Washington Supreme Court, affirming the Appellate Court, previously held that the statutory child support schedule applies in shared residential situations like this case. State ex rel. M.M.G. v. Graham, 159 Wn.2d 623, 626, 632, 152 No. 70048-1-1/4 P.3d 1005 (2007); State ex rel. M.M.G. v. Graham. 123 Wn. App. 931, 933, 99 P.3d 1248 (2004), affd in part, rev'd in part on other grounds. Graham. 159 Wn.2d 623, abrogated on other grounds. In re Marriage of McCausland. 159 Wn.2d 607, 152 P.3d 1013(2007). This Court rejected the father's argument in Graham as it should similarly reject the Appellant's argument here.

Because the trial court used this approved method in calculating child support, it did not commit any error at law and did not abuse its discretion. Its child support determination should be affirmed.

2. Appellant argues that the Trial Court erred because the Court failed to deduct health insurance payments in its child support calculations.

When entering an order of child support, the Trial Court begins by setting the basic child support obligation. RCW 26.19.011(1);

Graham. 159 Wn.2d at 627. This obligation is determined from the statute's economic table, which is based on the parents' combined monthly net income, as well as the number and age of their children. RCW 26.19.011(1), .020. The economic table is presumptive for combined monthly net incomes of \$12,000 or less. RCW 26.19.020, .065. The trial court next allocates the child support obligation between the parents based on each parent's share of the combined monthly income. RCW 26.19.080(1). The court then determines the standard calculation, which is the presumptive amount of child support owed by the obligor parent to the obligee parent. RCW 26.19.011(8); Graham. 159 Wn.2d at 627.

The trial court did not abuse its discretion in refusing to deviate from the standard calculation and therefore the child support obligation should be affirmed.

3. Appellant argues that the Trial Court erred because it did not correctly use the "Supportcalc" software.

A trial court abuses its discretion if its decision rests on unreasonable or untenable grounds. Dix v. ICT Grp. Inc., 160 Wn.2d 826, 833, 161 P.3d 1016 (2007). The Appellant provides no legal evidence that the Trial Court abused its discretion. Therefore, the order for child support should be affirmed.

B. The Trial Court properly recognized the parties' long term relationship which had started five years prior to the marriage and therefore correctly found all retirement accounts to be community property.

Appellant argues that the Trial Court erred because it awarded one-half of Appellant's UPS 401(k) account and Pacific Coast Trust Benefits account balances to the Respondent. The Washington State Supreme Court has defined a committed intimate relationship as a "stable, marital-like relationship where both parties cohabit with knowledge that a lawful marriage between them does not exist." *Connell v. Francisco*, 127 Wn.2d 339, 346, 898 P.2d 831 (1995). The committed intimate relationship doctrine serves to protect unmarried parties who acquire property during their relationships by preventing the unjust enrichment of one at the expense of the other when the relationship ends. See *In re Marriage of Pennington*, 142 Wn.2d 592, 602, 14 P. 3d 764 (2000). In deciding whether the parties had a committed intimate relationship, courts consider several nonexclusive factors, none of which necessarily has more significance than another: (1) continuity of cohabitation; (2) duration of the relationship; (3) purpose of the relationship; (4) pooling of resources and services for joint projects; and (5) the intent of the parties. *Pennington*, 142 Wn.2d at 601 -05. Courts should not apply these factors in a hyper-

technical fashion, but must base the determination on the particular circumstances of each case. Pennington, 142 Wn.2d 602.

The trial court has broad discretion in distributing the marital property, and its decision will be reversed only if there is a manifest abuse of discretion. In re Marriage of Rockwell, 141 Wn .App. 234,242, 170 P.3d 572 (2007). A manifest abuse of discretion occurs when the discretion was exercised on untenable grounds. Rockwell, citing In re Marriage of Muhammad, 153 Wn .2d 795, 803, 108 P.3d 779 (2005). If the decree results in a patent disparity in the parties' economic circumstances. a manifest abuse of discretion has occurred. Rockwell. citing In re Marriage of Pea, 17 Wn.App.728, 731,566 P.2d 212 (1977).

The fact that the court's division of property was not in accordance with the Appellant's desired outcome does not prove an error or that the court abused its discretion. Accordingly, the Appellate Court must affirm the Trial Court's decision.

C. The Trial Court correctly did not split the social security benefits provided as these were delegated funds for the children to which the Respondent was custodian.

The Appellant argues that the Trial Court erred by failing to equally split the \$6,000.00 in Social Security Disability Income

(SSDI) benefits, awarded to the parties' children under custodianship of the Respondent, for the time period that the parties were still together prior to separation.

Appellant did not assign error to these facts found by the trial court. They are, therefore, verities on appeal. *Robe v. Roundup Corp.*, 148 Wash.2d 35, 42, 59 P.3d 611, 615 (2002). Even if Appellant had assigned error to these findings, he failed to provide a full verbatim report of proceedings necessary for meaningful review. In the excerpts of the verbatim report of proceedings that the Appellant did provide, the Appellant attempted to bring the matter before the Trial Judge after the Trial was completed. Official Record of Proceedings, Excerpts Page 19 Lines 24-25 and Page 20 Lines 1-19. The matter had been discussed during trial but because there is not a full verbatim report of proceedings, it cannot be argued. This Court is, therefore, duty bound to affirm the trial court's decision.

D. The Trial Court properly did not add the payment made by Respondent to Appellant in the sum of \$12,000 as this was explained by the Trial Court in the Decree of Dissolution of Marriage.

Appellant argues that the Trial Court erred by not including the Respondent's required \$12,000 in cash payment to Appellant in

the spreadsheet attached to the Trial Court's Findings of Fact and Conclusions of Law.

The Trial Judge in this case did not make a legal error in not adding the \$12,000 cash payment. In the Final Decree of Dissolution of Marriage, the Trial Judge very specifically states that the "Petitioner shall also pay to Respondent the sum of \$12,000 within 180 days of this order. This sum is an award to Respondent in lieu of a share of Petitioner's PERS retirement account. This sum also includes an adjustment to the credit card obligations assumed by Petitioner, because the credit card liabilities overstated Respondent's fair share by \$6500." CP 64.

Therefore, the Trial Judge explained the reasoning behind the separate payment of funds and the Trial Judge's decision to do so was not a legal error and must be affirmed.

V. CONCLUSION

The assignments of errors raised by the Appellant in his Appellant Brief are unsubstantiated. The record before the Appellate Court shows that there was substantial evidence for the Trial Court's decisions on all points and the Appellant's protestations lack any merit.

The decision of the Trial Court was correct in all respects and within the discretion of the Trial Judge. This matter should be affirmed.

October 26, 2015

Respectfully submitted,

A handwritten signature in black ink, appearing to read "H. McKinnon", written over a horizontal line.

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COURT OF APPEALS, DIVISION I OF THE STATE OF WASHINGTON

HEIDI MARIE MCKINNON (WELBORN),

Case No.: 731947-I

Respondent,

and

DECLARATION OF MAILING
RESPONDENT'S BRIEF

JOSHUA CONRAD WELBORN,

Appellant

On the 26th Day of October, 2015, I served a copy of the foregoing Respondent Brief to Appellant at 408 15th Ave, Kirkland, WA 98033 by U.S. Mail.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

Dated this 26th day of October, 2015.

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