

No. 50025-6-II

IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION II

ANTHONY J.M. TABLAZON,

Appellant,

vs.

CRYSTAL H. TABLAZON,

Respondent.

APPEAL FROM THE SUPERIOR COURT
OF PIERCE COUNTY
Cause No. 15-3-04714-0

BRIEF OF APPELLANT

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Table of Contents

TABLE OF AUTHORITIES..... ii

I. ASSIGNMENTS OF ERROR.....1

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR2

III. STATEMENT OF THE CASE3

 A. Procedural History.....3

 B. Facts3

IV. ARGUMENT6

V. CONCLUSION10

TABLE OF AUTHORITIES

Cases

<i>In re Marriage of Urbana</i> , 147 Wn.App. 1, 9, 195 P.3d 959 (2008).....	6
<i>In Re the Marriage of Greenlee</i> , 65 Wn.App. 703, 829 P.2d 1120 (1992).....	9

Statutes

RCW 26.09.080.....	6
RCW 26.09.090.....	8
RCW 26.09.140.....	9

I. ASSIGNMENTS OF ERROR

1. The trial court erred when it awarded the family home to the respondent. (Findings of Fact 8, CP 8)

2. The trial court erred when it awarded respondent ten (10) years of spousal maintenance. (Findings of Fact 13, CP 11)

3. The trial court erred when it offset community assets in the form of money the respondent secreted from petitioner against alleged community debts in the property distribution. (Findings of Fact 11, CP 10)

4. The trial court erred when it awarded attorney's fees to respondent. (Findings of Fact 14, CP 11)

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether the trial court erred when it awarded the family home to respondent when such property award creates an inequitable division of property?

(Assignments of Error #1)

2. Whether the trial court erred when it awarded respondent spousal maintenance for ten (10) years when such award is an inequitable division of

property? (Assignments of Error #2)

3. Whether the trial court erred when it characterized respondent's inheritance as a loan from her parents, which loan was to be repaid through

community funds? (Assignments of Error #3)

4. Whether the trial court erred when it found that respondent's sister loaned the marital community \$50,000.00 when no documentation was provided

to substantiate such loan? (Assignments of Error #3)

5. Whether the trial court erred when it awarded respondent attorney's fees when both parties have the ability to pay their debts over time?

(Assignments of Error #4)

III. STATEMENT OF THE CASE

A. Procedural History

The appellant, Anthony Tablazon, and respondent, Crystal Tablazon, were married July 8, 1989. CP 2. They separated on September 19, 2015, and trial occurred on January 10-11, 2017. On January 27, 2017, the trial court entered Findings of Fact and Conclusions of Law about the marriage and a final Divorce Decree. CP 6-31; 33-39.

In the final divorce decree, the court awarded the family residence to the respondent, Crystal Tablazon, awarded respondent spousal support in the amount of \$2,647.70 for ten years, and awarded respondent 50% of her attorney's fees. CP 34-, 37. Mr. Tablazon appeals these awards.

B. Facts

The Tablazons married in 1989. RP 59:15-18. They separated in September 2015. *Id.* at 22. Two children were born of the marriage, but neither child resides in the family home. RP 60:17-24. During the course of the marriage, Mr. Tablazon was in the United States Army and was frequently deployed overseas. RP 61:11-23. During that time, Mrs. Tablazon was responsible for the care of the children. RP 62:4-8. Once the children started school, however, Mrs. Tablazon worked as a cosmetologist. RP 62:9-24. The last time she actually worked for wages was in November, 2013. RP 63:7-9.

Mrs. Tablazon testified that during the course of the marriage starting in approximately 2014, she received physical injuries caused by Mr. Tablazon that prevented her from working. No police or medical records were provided to

support such claims, and she never contacted anyone about said abuse. RP 65:15-67:19; 108:19-109:4. Mr. Tablazon denied any domestic violence issues during their marriage. RP 127:12-18. Mrs. Tablazon believes she is no longer able to obtain gainful employment. RP 72:9-18, 105:19-106:4.

Kailani Kim, Crystal Tablazon's sister, states that she assisted Crystal with income ranging from \$1,500.00 to \$2,500.00 per month. RP 25:12-19. Although she made this claim, money was provided in cash, and no running record of how much cash was provided. RP 46:15-20. On May 21, 2015, Crystal Tablazon transferred \$30,000.00 to her sister, Kailani Kim's bank account. RP 51:5-18. Subsequently, on September 23, 2015, Mrs. Tablazon transferred \$20,000.00 into Ms. Kim's bank account. RP 51:22-52:4.

Mr. Tablazon denied that Kailani provided the amount of money that she claims over the time of their marriage. RP 145:15-146:3. Primarily because, based upon the income and expenses they had, there was no reason to borrow money from any source. RP 146:4-7. Mr. Tablazon was not aware that respondent had transferred \$50,000.00 from her account to Kailani. RP 146:8-11. Mrs. Tablazon claimed, in her financial declaration, that she owed \$70,000.00 to her parents because of money they provided to help purchase the Tablazon's home in Gig Harbor. RP 74:8-22. Mrs. Tablazon, in answers to interrogatories, stated that she received this money as an inheritance from her parents, not as a loan. RP 112:8-11: 18-21. The tax assessed value of the parties' home was \$380,000-385,000, with a mortgage of \$105,000.00 owed against it. The total equity in the home was approximately \$280,000.00. RP 201:12-19.

Mr. Tablazon inherited his parents' home upon their death. RP 100:6-10. When the home was sold, \$130,000.00 from the sales proceeds was transferred into an account held by Mrs. Tablazon that Mr. Tablazon was not a signor on. RP 102:11-23. That money was used by Mrs. Tablazon at her sole discretion. RP 102:24-103:1. Mr. Tablazon was not aware of this account where respondent deposited the money from the sale of his parents' home. RP 144:12-21. Mrs. Tablazon acknowledged that from this \$130,000.00, she transferred \$50,000.00 to her sister when she was planning to move out of the family home in May of 2015. RP 75:8-15.

When Mr. Tablazon retired from the Army, he had been selected for promotion to E-9, rank of Sergeant Major. RP 128:8-14. Since his discharge in 2006, Mr. Tablazon has been obtaining counseling for PTSD and other issues at the Veteran's Administration Hospital in Tacoma. RP 143:1-20. He is 100% disabled. *Id.*

Mr. Tablazon was arrested in September of 2015 and was going to school at that time. RP 138:25-139:2. Before he went to school, he was employed doing security work whereupon he needed security clearance. RP 139:3-9. Because of the criminal case, and a domestic violence finding, Mr. Tablazon is not employable in the field in which he is qualified. RP 139:13-140:7. Even though Mr. Tablazon finished his schooling, and obtained a degree in management, he has still not been able to find a job. RP 140:8-25.

IV. ARGUMENT

1. DIVISION OF ASSETS AND DEBTS

As the Court is aware, RCW 26.09.080 governs the division of property and liabilities in a dissolution proceeding:

RCW 26.09.080 - Disposition of property and liabilities — Factors - In a proceeding for dissolution of the marriage or domestic partnership, legal separation, declaration of invalidity, or in a proceeding for disposition of property following dissolution of the marriage or the domestic partnership by a court which lacked personal jurisdiction over the absent spouse or absent domestic partner or lacked jurisdiction to dispose of the property, the court shall, without regard to misconduct, make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including, but not limited to:

- (1) The nature and extent of the community property;
- (2) The nature and extent of the separate property;
- (3) The duration of the marriage or domestic partnership; and
- (4) The economic circumstances of each spouse or domestic partner at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse or domestic partner with whom the children reside the majority of the time.

This Court reviews the trial court's division of property for an abuse of discretion. *In re Marriage of Urbana*, 147 Wn.App. 1, 9, 195 P.3d 959 (2008).

The trial court abuses its discretion when its ruling is manifestly unreasonable or it exercises its discretion on untenable grounds or untenable reasons. *Urbana*, 147 Wn.App. at 9-10.

Here, Mr. Tablazon contests the 100% award of the family home to respondent, offset of the \$130,000.00 respondent secreted, the 10 years of spousal

support, and the award of attorney's fees. Respectfully, the trial court's ruling with respect to this distribution and attorney award is an abuse of discretion.

As testified to and as unrebutted, Mr. Tablazon is 100% military disabled due to his military service. Although he had been employed while disabled, once he was convicted of the domestic violence offense, he could not obtain employment within the security field as he had been previously. Additionally, even though he obtained a college degree, he was still unable to find employment.

Also, as testified at trial, Mrs. Tablazon was unemployed and diagnosed with PTSD, although no percentage of disability was ever determined nor was any determination made as to the extent such malady prevented her from being employed. Based upon a lack of employment of each person, the court's award of the family home to Mrs. Tablazon, with an equity of approximately \$280,000.00 was unreasonable and an abuse of discretion as it was the primary asset of the parties.

In reaching its conclusion, the court considered the \$130,000.00 that respondent secreted into her separate account. CP 21:5-10. In offsetting this amount, the court found that the petitioner's sister loaned \$50,000.00 to the appellant and respondent during the course of their marriage, and, therefore, deducted \$50,000.00 of that community debt from the \$130,000.00. The court also determined that, of the remaining \$80,000.00, \$70,000.00 was in consideration for a loan that Crystal Tablazon obtained from her father, as opposed to an inheritance, and that the remaining \$10,000.00 was paid toward Mr. Tablazon's credit card debt during the pendency of the dissolution. No evidence

existed that the \$70,000.00 was ever repaid to Crystal Tablazon's father, yet the court determined that all \$130,000.00 was accounted for.

Respectfully, the trial court erred. The premise behind a property distribution is that it be fair and equitable. Not only did the trial court incorrectly offset the \$130,000.00 that was secreted from Mr. Tablazon, the award of the family home to petitioner deprived appellant of all significant property. Such distribution was neither fair nor equitable. As such, appellant urges this Court to reverse this ruling.

2. SPOUSAL MAINTENANCE

As the Court is aware, the statute regarding maintenance states as follows:

RCW 26.09.090 - Maintenance orders for either spouse or either domestic partner — Factors (1) In a proceeding for dissolution of marriage or domestic partnership, legal separation, declaration of invalidity, or in a proceeding for maintenance following dissolution of the marriage or domestic partnership by a court which lacked personal jurisdiction over the absent spouse or absent domestic partner, the court may grant a maintenance order for either spouse or either domestic partner. The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to misconduct, after considering all relevant factors including but not limited to:

- (a) The financial resources of the party seeking maintenance, including separate or community property apportioned to him or her, and his or her ability to meet his or her needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party;
- (b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his or her skill, interests, style of life, and other attendant circumstances;
- (c) The standard of living established during the marriage or domestic partnership;

- (d) The duration of the marriage or domestic partnership;
- (e) The age, physical and emotional condition, and financial obligations of the spouse or domestic partner seeking maintenance; and
- (f) The ability of the spouse or domestic partner from whom maintenance is sought to meet his or her needs and financial obligations while meeting those of the spouse or domestic partner seeking maintenance.

As testified to at trial, Mrs. Tablazon has the ability to work, but has chosen not to. Although the testimony of her treating doctor states she suffers from PTSD, such diagnoses was not quantified. Although some award of spousal maintenance might have been appropriate, it should be for no more than five years. Because Mr. Tablazon was not currently employed, and, given the relative positions of both parties, five years of maintenance would be an appropriate period for Mrs. Tablazon to receive maintenance, but would also provide her the incentive to return to work. Such award would be consistent with the above referenced statute and the evidence produced at trial. As such, appellant urges this Court to reverse the spousal maintenance award.

3. AWARD OF ATTORNEY'S FEES TO RESPONDENT

The court cited *In Re the Marriage of Greenlee*, 65 Wn.App. 703, 829 P.2d 1120 (1992) and RCW 26.09.140 when awarding 50% of respondent's attorney's fees. Such ruling was erroneous based upon the court's rationale.

As argued by respondent's counsel, and accepted by the court, appellant's intransigence was the basis for the award. CP 28-30. Respectfully, the instances of intransigence the trial court cites do not warrant such an award of attorney's fees because the court found that both parties had engaged in inappropriate

behavior. That respondent secreted money from appellant was considered evidence of respondent's inappropriate behavior. As such, based upon the court's finding of offsetting inappropriate behavior, no attorney's fees should have been awarded to respondent.

V. **CONCLUSION**

Mr. Tablazon respectfully urges this Court to reverse the trial court's finding related to the award of the family home to Mrs. Tablazon, the award of spousal maintenance, and the award of attorney's fees.

DATED this 11th day of August, 2017.

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CERTIFICATE OF SERVICE

I certify that on the day below set forth, I caused a true and correct copy of this brief to be served on the following in the manner indicated below:

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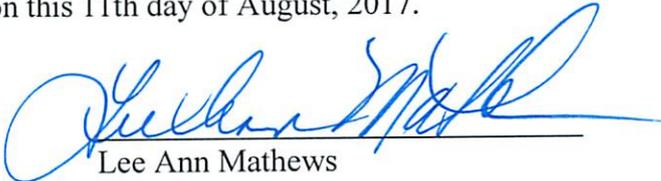
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