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No. 53582-3-II

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

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IN THE MATTER OF  
AIRELLE BETH VANWEY,  
Petitioner/Appellee

&

SCOTT HENRY VANWEY  
Respondent/Appellant

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BRIEF OF APPELLANT

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Desmond Kolke, WSBA # 23563  
Attorney for Scott Van Wey  
Law Offices of Desmond Kolke  
1201 Pacific Ave., #600  
Tacoma, WA 98402

TABLE OF CONTENTS

TABLE OF AUTHORITIES ..... 3

WASHINGTON STATUTES .....4

INTRODUCTION & BACKGROUND FACTS .....5

ASSIGNMENTS OF ERROR ..... 7

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR ..... 8

ARGUMENT ..... 8

CONCLUSION .....20

**TABLE OF AUTHORITIES**  
**WASHINGTON CASES**

<u>In re Marriage of Pennington</u> , 142 Wn.2d 592, 14 P.3d 764 (2000)	9
<u>In re Meretricious Relationship of Long</u> , 158 Wn.App. 919, 244 P.3d 26 (2010)	9
<u>In re Marriage of Fiorito</u> , 112 Wash.App. 657, 50 P.3d 298 (2002)	9
<u>Connell v Francisco</u> , 127 Wash.2d 339, 898 P.2d 831 (1995)	9, 10, 12, 13
<u>Lindeman v Lindeman</u> , 92 Wn. App. 64, 960 P.2d 966 (1998)	13
<u>In re Marriage of Schwarz</u> , 192 Wn. App. 181, 368 P.3d 173 (2016)	13
<u>In re Domestic Partnership of Walsh &amp; Reynolds</u> , 183 Wn. App. 830, 335 P.3d 984 (2014)	13, 14
<u>In re Marriage of Pearson-Maines</u> , 70 Wn.App. 860, 855 P.2d 1210 (1993)	14
<u>In re Marriage of Skarbek</u> , 100 Wn.App. 444, 997 P.2d 447 (2000)	14
<u>Berol v Berol</u> , 37 Wn.2d 380, 223 P.2d 1055 (1950)	14
<u>In re estate of Borghi</u> , 167 Wn.2d 480, 219 P.3d 932 (2009)	15
<u>Baker v Baker</u> , 80 Wn.2d 736, 498 P.2d 315 (1972)	15
<u>In re Marriage of Booth</u> , 114 Wash.2d 772, 791 P.2d 519 (1990).	16
<u>Dix v. ICT Grp., Inc.</u> , 160 Wash.2d 826, 161 P.3d 1016 (2007).	16
<u>In re Marriage of Schnurman</u> , 178 Wn.App. 634, 316 P.3d 514 (2013)	18

**WASHINGTON STATUTES**

**RCW 26.16.010 - .030 ..... 9**

**RCW 26.19.011(1).....16**

**RCW 26.19.071(1) - (4).....16**

**RCW 26.19.071(5).....16**

**RCW 26.19.020.....16**

**RCW 26.19.011(8).....17**

**RCW 26.19.011(4).....17**

**RCW 26.19.075(1).....17**

**RCW 26.19.075(1)(d).....18**

**RCW 26.19.075(3).....18, 19**

**RCW 26.19.011(9).....18**

**RCW 26.19.071(6) - (6)(a).....7, 8, 9,15, 21**

## **INTRODUCTION & BACKGROUND FACTS**

Sometime in April of 2009, Airelle Beth VanWey began living with Scot Henry VanWey in a duplex in Tacoma, Washington that he had been living in prior to the parties dating. (RP 217, line 19). During the time that the parties lived in the duplex in Tacoma, Washington, Mr. VanWey continued to pay the bills associated with living in the duplex as he did before Ms. VanWey had moved in because the duplex was “renting under him.” (RP 17, line 14 -18) Ms. VanWey described her contribution as “helping to pay for food and stuff like that, while I was there,” otherwise, “the bills” were kept separate. (RP 17, lines 14 - 15).

In March of 2010, the parties moved into a home purchased by Mr. VanWey located at 1210 Sigafos Ave. N.W. in Orting, Washington. Mr. VanWey was the sole obligor on the mortgage and the deed was solely in his name (CP, Exhibit 23 & 24). From March of 2010, just as was the arrangement when the parties lived in the duplex and through the entirety of the VanWey relationship, the mortgage payment on the 1210 Sigafos Ave. N.W. home was made from a separate bank account maintained by Mr. VanWey (CP, Exhibits 101, 102, 103, 104, 109, 116, 117, 118, 119, 120, 121, & 122). During the entirety of the relationship, the VanWey’s maintained separate bank accounts and separate credit cards. Each party

deposited their respective earnings into separate accounts, and the parties never applied for a bank account or credit account together. (RP 218, Lines 12-14).

In July of 2010, the parties became engaged. (RP 16, line 7).

The parties were married on January 22, 2011. (RP 105, line 6).

A child was born to them on April 11, 2013. (RP 47, line 1).

On December 12, 2017, Ms. VanWey filed a Petition for Dissolution alleging that the marriage had ended on November 4, 2017 (CP, Exhibit 123). In the Petition, Ms. VanWey alleged that the home was purchased by Mr. VanWey after the parties had begun a committed relationship. (CP Exhibit 123, page 3) and requested to be awarded an interest in the equity of the home. As to the division of debts, Ms. VanWey requested that each party be responsible for debts that were in the parties' respective names. (Exhibit 123, page 4).

On June 4, 2019, trial was held in this matter and the trial concluded the morning of June 5, 2019. In the afternoon of June 5, 2019 the Court gave its Oral Ruling (RP 216 - 222).

In the Court's Oral Ruling, the Court found that the parties had a meretricious relationship before their marriage on January 22, 2011, beginning in April, 2009 when Ms. VanWey moved into Mr. VanWey's duplex (RP 220). As a result of the Court's finding, the Court awarded Ms.

VanWey an interest in the home located at 1210 Sigafos Ave. N.W. in Orting, Washington as part of the proceedings. Further, the court did not impute income to Ms. VanWey, and denied Mr. VanWey's request for a deviation from the Washington State Child Support Schedule Worksheet calculation based on the fact of the parties' agreement for an equally shared residential plan (50/50) (RP 221, Lines 14 – 15). Finally, the court found that the debt incurred by Ms. VanWey was community debt despite her initial pleadings sworn under penalty of perjury that those debts, which were in her name were separate debt. (Exhibit 123, page 4). Mr. VanWey timely filed an appeal of these decisions.

## **II. ASSIGNMENTS OF ERROR**

A. The trial court erred in its legal conclusion that a committed intimate relationship existed when Mr. VanWey purchased the home in March of 2010.

B. The trial Court erred by not characterizing the home purchased by Mr. VanWey in March of 2010 at 1210 Sigafos Ave. N.W. as his separate property in light of the substantial evidence presented at trial.

C. The trial Court erred in not imputing income for Ms. VanWey under RCW 26.19.071(6), and denying Mr. VanWey's request for

a deviation from the Washington State Child Support Schedule Worksheet.

D. The trial Court erred in granting Ms. VanWey's request to have the debt that was in her name characterized as community debt.

### **III. ISSUES PERTAINING TO ASSIGNMENT OF ERROR**

Unlike the date of marriage that defines the beginning of a legal relationship, when does a committed intimate relationship begin?

Was it an abuse of discretion to characterize the purchase of the home by Mr. VanWey as "quasi-community property?"

Was it an abuse of discretion for the court to not impute income for Ms. VanWey under RCW 26.19.071(6), and deny Mr. VanWey's request for a deviation from the Washington State Child Support Schedule Worksheet?

Was it an abuse of discretion for the court to grant Ms. VanWey's request to have the debt that was in her name characterized as community property?

### **IV. ARGUMENT**

One of the questions before this Court is whether the trial court erred in concluding the facts at trial gave rise to the existence of a committed intimate relationship at the time that Mr. VanWey purchased the home. This determination is a mixed question of law and fact; as such, the

trial court's factual findings are entitled to deference but the legal conclusions flowing from those findings are reviewed de novo. In re Marriage of Pennington, 142 Wn.2d 592, 602-603, 14 P.3d 764 (2000).

The distribution of property from a committed intimate relationship and marriage is reviewed for an abuse of discretion. In re Meretricious Relationship of Long, 158 Wn.App. 919, 244 P.3d 26 (2010). A court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or reasons. In re Marriage of Fiorito, 112 Wash.App. 657, 663-64, 50 P.3d 298 (2002). If the court does find that there is a committed intimate relationship otherwise referred to as an equity relationship, the Court distributes all property the parties acquired through the parties' efforts during the equity relationship. In re Meretricious Relationship of Long, 158 Wn.App. at 928. In dividing the property justly and equitably, the trial court examines the relationship and the parties' property accumulation. Id. at 928-929. The trial "court may characterize property as 'separate' and 'community' by analogy to marital property. Connell v Francisco, 127 Wn.2d 339, 351, 898 P.2d 831 (1995) Also See RCW 26.16.010 - .030 (definitions of separate and community property).

As stated in Connell v Francisco, 127 Wash.2d 339, 898 P.2d 831 (1995), meretricious relationships, now referred to as committed intimate relationships, are defined as "stable relationships evidenced by such factors

as continuous cohabitation, duration of the relationship, purpose of the relationship, pooling of resources and services for mutual benefit, and the intent of the parties.” Connell v Francisco, 127 Wash.2d at 346.

A. **Did the trial Court err in its legal conclusion that a committed intimate relationship existed when Mr. VanWey purchased the home in March of 2010?**

The issue raised by Mr. VanWey in regards to the trial court’s legal conclusion that the committed intimate relationship began when the parties started to cohabit is not sufficient in light of the factors that need to be analyzed under Connell v. Francisco.

The findings of the trial court in this matter were that the parties began cohabiting in April of 2009. They had been dating for three months at that time. The trial court also concluded that the parties began sharing in expenses at that time, and when Mr. Vanwey purchased the home in his own name in March of 2010 it was because the Petitioner had accrued wedding debt on her credit cards and was responsible for those, and Mr. VanWey would qualify for the house, (RP 218, Lines 14 – 18). However that is not supported by the testimony of either party.

Ms. VanWey testified that Mr. VanWey continued to pay the bills associated with the duplex because it was “renting under him.” (RP 17, line 14 -18) Further, Ms. VanWey described her contribution as “helping

to pay for food and stuff like that, while I was there,” otherwise, “the bills” were kept separate.” (RP 17, lines 14 - 15).

The testimony at trial confirmed that this arrangement continued even through the purchase of the home in March of 2010. (RP 17, line 14 - 18).

Ms. VanWey testified that the home was purchased in Mr. VanWey’s name because they were not married and they were engaged at the time (RP 20, line 22), and that she “had all the wedding debt.” (RP 21, line 4). The testimony of Ms. VanWey that at the time Mr. VanWey purchased the home, the parties were engaged and that Ms. VanWey had incurred substantial debt in regards to the wedding was not supported by the evidence at trial, and is not credible. The facts established at trial were that the parties were engaged in July of 2010 (RP 16, line 7; RP 106) and were married on January 22, 2011 (RP 105, line 6; RP 218, line 5). Ms. VanWey would have the court believe that she had incurred debt for the wedding before March of 2010 at a time when they were not yet engaged, and the wedding, January 22, 2011, did not take place for another ten months after Mr. VanWey purchased the home in March of 2010.

It is clear from the testimony at trial that the only factor present in favor of establishing the existence of a committed relationship at the time that Mr. VanWey purchased the home in March of 2010, is that the parties

were continuously cohabitating.

In analyzing the other factors under Connell v Francisco, at the time that Mr. VanWey purchased the home, the parties had only been together about a year (duration of the relationship); it is unclear as to what the purpose of the relationship was other than they were in a dating relationship and cohabitating; there was no pooling of resources and services for mutual benefit as they maintained separate bank accounts and kept expenses separate (RP 17, lines 14 – 18; RP 133, lines 16 - 23); and there was no clear testimony as to the intent of the parties as Ms. VanWey testified that they were talking about marriage early on in the relationship and Mr. VanWey testified that he wasn't thinking about marriage until about the time he purchased the engagement ring in July of 2010 (RP 106, line 26 through RP 107, line 10).

It is for these reasons that Mr. VanWey would argue that the trial court's legal conclusion that a committed intimate relationship existed at the time he purchased the home is not supported by the evidence at trial.

The importance of the legal conclusion when the committed intimate relationship began is highlighted by the impact that such a conclusion has on the determination of when property acquired by the parties is subject to an interest held by the other party. For example when the earnings of a party from a job are subject to a "quasi-marital interest"

(Lindeman v Lindeman, 92 Wn. App. 64, 960 P.2d 966 (1998)); retirement accounts (In re Marriage of Schwarz, 192 Wn. App. 181, 368 P.3d 173 (2016)); and when because of the existence of the “equity relationship” the property is considered to be the result of the efforts of both parties and is subject to distribution by the court (In re Domestic Partnership of Walsh & Reynolds, 183 Wn. App. 830, 335 P.3d 984 (2014)).

Therefore, based on the evidence at trial, the only factor under Connell v Francisco that supports the legal conclusion that a committed intimate relationship existed at the time the home was purchased by Mr. VanWey in March of 2010, was that the parties had been cohabitating since April of 2009. As a result, under the factors outlined under Connell v Francisco, there was insufficient evidence to support a legal conclusion that a committed intimate relationship existed in March of 2010.

**B. Was it an abuse of discretion to characterize the purchase of the home by Mr. VanWey as “quasi-community property?”**

As stated previously, in a committed intimate relationship the trial “court may characterize property as ‘separate’ and ‘community’ by analogy to marital property.” Connell v Francisco, 127 Wn.2d 339, 351, 898 P.2d 831 (1995). Therefore, the character of property, whether separate or community, is determined at the time of acquisition. In re Marriage of Pearson-Maines, 70 Wn.App. 860, 865, 855 P.2d 1210 (1993). For

example, property acquired during marriage, or during the existence of a committed intimate relationship, is presumptively community, or quasi-community property.

This presumption for property acquired during a marriage, or during the existence of a committed intimate relationship, may be rebutted when a party offers clear and convincing evidence that the property was acquired with separate funds, In re Marriage of Skarbek, 100 Wn.App. 444, 449, 997 P.2d 447 (2000), or the “separate efforts” of the party. In re Domestic Partnership of Walsh & Reynolds, 183 Wn.App. 830, 335 P.3d 984 (2014).

The requirement of clear and satisfactory evidence is not met by the mere self-serving declaration of the party claiming the property in question that it was acquired from separate efforts, Id., and or from separate funds and a showing that separate funds were available for that purpose." See Berol v Berol, 37 Wn.2d 380, 382, 223 P.2d 1055 (1950). The separate efforts and or "separate funds used for such a purpose should be traced with some degree of particularity," Id.

Once the separate character of property is established, a presumption arises that it remains the separate property in the absence of sufficient evidence to show an intent to transmute the property from separate to community property.” In re estate of Borghi, 167 Wn.2d 480, 484, 219 P.3d 932 (2009). It will retain that character as long as it can be

traced or identified. Baker v Baker, 80 Wn.2d 736, 745, 498 P.2d 315 (1972).

Mr. VanWey believes that it was an abuse of discretion of the trial Court to award an interest in the home to Ms. VanWey when the evidence at trial did not support the finding that a committed intimate relationship existed at the time the home was purchased by Mr. VanWey in March of 2010. Therefore, establishing the character of the home as being acquired through the efforts of the parties during the existence of a committed intimate relationship was not based on the efforts of the parties, but was based solely on the efforts of Mr. VanWey to purchase the home as separate property and intended the home to remain so as evidenced by the years of payments made from a separate account, (RP 133, lines 16 – 23, that is supported by the exhibits admitted at trial. (CP, Exhibits 101, 102, 103, 104, 109, 116, 117, 118, 119, 120, 121, & 122) (RP 137, line 25 through RP 150, line 25; RP 152, line 19 through RP 155, line 6; RP 181, line 23 through RP 183, line 18).

**C. Was it an abuse of discretion when the court did not impute income for Ms. VanWey under RCW 26.19.071(6), and then denying Mr. VanWey's request for a deviation from the Washington State Child Support Schedule Worksheet without issuing written findings of fact to support the denial?**

A trial court's order of child support is reviewed for an abuse of discretion. In re Marriage of Booth, 114 Wash.2d 772, 776, 791 P.2d 519 (1990). A trial court abuses its discretion if its decision rests on unreasonable or untenable grounds. Dix v. ICT Grp., Inc., 160 Wash.2d 826, 833, 161 P.3d 1016 (2007). A trial court necessarily abuses its discretion if its ruling is based on an erroneous view of the law or involves incorrect legal analysis. Id.

When entering an order of child support, the trial court begins by setting the basic child support obligation, RCW 26.19.011(1). The obligation is determined by considering all sources of income for the parties, RCW 26.19.071(1) - (4); then determining each parties' monthly net income, RCW 26.19.071(5); and then determining the child support obligation from the statute's economic table which is based on the parties' combined monthly net income, as well as the number and age of their children. RCW 26.19.011(1), .020.

The trial court next allocates the child support obligation based on the parties' proportionate 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 to the obligee. RCW 26.19.011(8). If either party requests a deviation from the standard calculation, the court considers whether it is appropriate to deviate

upwards or downwards from the standard calculation. RCW 26.19.011(4), (8). Deviations from the standard calculation based on such factors as the parties' income and expenses, obligations to children from other relationships, and the children's residential schedule, are within the court's discretion. RCW 26.19.075(1).

“If the court considers a deviation based on residential schedule, it must follow a specific statutory analysis:

The court may deviate from the standard calculation if the child spends a significant amount of time with the parent who is obligated to make a support transfer payment. The court may not deviate on that basis if the deviation will result in insufficient funds in the household receiving the support to meet the basic needs of the child or if the child is receiving temporary assistance for needy families. When determining the amount of the deviation, the court shall consider evidence concerning the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent and shall consider the decreased expenses, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment.

RCW 26.19.075(1)(d). The trial court must enter written findings of fact supporting the reasons for any deviation or denial of a party's request

for deviation. RCW 26.19.075(3). After determining the standard calculation and any deviations, the trial court then orders one parent to pay the other a support transfer payment. RCW 26.19.011(9). In re Marriage of Schnurman, 178 Wn.App. 634, 639 – 640, 316 P.3d 514 (2013).

At trial, Ms. VanWey testified that she works twenty (20) hours a week at Wells Fargo and her gross wages were \$2,877.00. (RP 65, lines 6 – 14. CP 34). Ms. VanWey went on to testify that she had been working twenty (20) hours a week at Wells Fargo since 2015. (RP 67, lines 3 – 5). Ms. VanWey also testified that she was not going to ask for Wells Fargo to increase her hours because that would mean that she would not be able to take advantage of the low income housing that she had qualified for. (RP 55, line 16 through RP 56, line 5); (RP 67, lines 6 – 14).

Mr. VanWey testified at trial, and confirmed in the exhibits admitted that his monthly gross income was \$5, 556.55. (CP 34). Further, Mr. VanWey testified that because of the shared residential time, (50/50 plan), that he was asking for a residential credit. (RP 199, lines 9 – 21).

In summary, the testimony at trial showed that Ms. VanWey was voluntarily underemployed and that income should be imputed to Ms. VanWey at a fulltime rate and her current ate of pay under RCW 26.19.071(6) - (6)(a). With the imputation of income under RCW 26.19.071(6)(a), her monthly gross income would be \$5,754.00. This

would actually result in a transfer payment from Ms. VanWey.

The court in its ruling denied the request for a deviation by Mr. VanWey and did not impute income to Ms. VanWey as required by RCW 26.19.071(6)(a). The court did not enter written findings of fact supporting the reasons for denying Mr. VanWey's request as required by RCW 26.19.075(3). (RP 221, Lines 14- 15). Therefore the court abused its discretion by not only not imputing income to Ms. VanWey because she was voluntarily underemployed, but also by not entering written findings of fact in regards to the denial of Mr. VanWey's request for a deviation.

**D. Was it an abuse of discretion for the court to grant Ms. VanWey's request to have the debt that was in her name characterized as community property?**

On December 8, 2017, Ms. VanWey signed under penalty of perjury, with the help of her counsel, the Petition for Divorce that was filed on December 12, 2017. (Exhibit 123, page 5). In Exhibit 123, on page 4, Ms. VanWey, under penalty of perjury outlined the following as her separate debts to be awarded as her responsibility: Twin Star Credit Union car loan; Twin Star Credit Union Credit Card; Chase Bank Card; Chase Bank Card; & Discover Card.

At trial, Ms. VanWey asked the court to treat these as community debt. Ms. VanWey provided no documentation in support of this request

and her explanation as to why she had originally identified these debts that were in her name alone as being separate debts, was that she was not an attorney. (RP 76, line 1 through RP 83, line 7).

Ms. VanWey provided no documentation to support that the debts that she had identified under penalty of perjury in the Petition for Dissolution, with the help of her attorney as being her separate debt had in fact been community debt. It was an abuse of discretion by the court to find that these debts as identified in Exhibit 123, page 4, as community debt.

## **V. CONCLUSION**

For the reasons stated in this brief, Mr. VanWey requests that this Court find that:

1. The trial Court erred in its legal conclusion that a committed intimate relationship existed when Mr. VanWey purchased the home in March of 2010.
2. The trial Court erred by not characterizing the home purchased by Mr. VanWey in March of 2010 at 1210 Sigafos Ave. N.W. as his separate property in light of the substantial evidence presented at trial.
3. The trial court abused its discretion in not imputing income for Ms. VanWey under RCW 26.19.071(6), and denying Mr. VanWey's

request for a deviation from the Washington State Child Support Schedule Worksheet.

4. The trial Court abused its discretion in granting Ms. VanWey's request to have the debt that was in her name characterized as community debt.

As a result, the Appellant respectfully requests this Court to award attorney's fees and costs to the Appellant for pursuing this appeal, and to award any other relief the Court deems appropriate and just.

Dated this 24<sup>th</sup> day of February, 2020

Respectfully submitted,



Desmond Kolke, WSBA #23563  
Attorney for Scott Henry VanWey  
Law Offices of Desmond Kolke  
1201 Pacific Ave., #600  
Tacoma, WA 98402

# LAW OFFICES OF DESMOND KOLKE

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## Transmittal Information

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