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Court of Appeals
Division II
State of Washington
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NO. 53861-0-II

IN THE COURT OF APPEALS, DIVISION TWO
OF THE STATE OF WASHINGTON

SHANNON ANDERSON, Appellee/Petitioner

v.

MICHAEL ANDERSON, Appellant/Respondent.

OPENING BRIEF OF APPELLANT

Trial Court No. 17-3-00418-05

Submitted by:
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III. ASSIGNMENTS OF ERROR

Assignments of Error

1. The trial court erred by distributing the house with no attached mortgage to one spouse and distributing all current debts and the pensions that will not be realized until decades later debts to the other spouse.

Issues Pertaining to Assignments of Error

1. Did the Trial Court Abuse its Discretion by Putting the Parties in Unequal Positions for the Remainder of Their Lives.
2. Did the Trial Court Abuse its Discretion by Considering the Entire Martial Debt as Being Attributed to Both Parties.

IV. STATEMENT OF THE CASE

On June 24, 2019, the Trial Court heard testimony from the parties and their witnesses regarding the property distribution as it pertained to the retirement accounts and the real estate owned by the parties. The parties had already come to an agreement about a parenting plan, child support, and distribution of the other community assets.

At the trial, both parties presented their witnesses and arguments. The Appellee/Petitioner, through counsel, requested the court divide the debts be divided 75/25 or 80/20 (Transcript, page 143, lines 6-7).

The Appellee/Petitioner further requested that court award her marital home worth \$225,000 and the value the pensions worth \$225,000 and award to Appellant/Respondent. Transcript, page 141, 16-19).

The Appellant/Respondent, through counsel, asked for fair and equitable distribution, and specifically asked that the real estate and pension be divided arguing that there is added value in having an asset or money that can be accessed immediately (Transcript, page 145-146).

On July 2, 2019, the Trial Court entered its Memorandum Opinion. The Court awarded the real estate asset to the Appellee/Petitioner and the Pensions to the Appellant/Respondent. The Trial court valued the real estate at \$245,000 and the Pensions at \$188,566.87.

The Trial Court then went on to further assign all marital debts,

valued at \$44,000 to the Appellant/Respondent and from that, the Appellant/Respondent timely appealed.

V. ARGUMENT

Standard of Review

RCW 26.09.080 requires consideration of four factors in reaching a “just and equitable” property division. In re Marriage of Rockwell, 141 Wash. App. 235, 242–43, 170 P.3d 572 (2007). “A deferential standard of review is applied to the trial court's consideration of these factors because it is ‘in the best position to assess the assets and liabilities of the parties’ in order to determine what constitutes an equitable outcome.” In re Marriage of Brewer, 137 Wash.2d 756, 769, 976 P.2d 102 (1999). “Accordingly, ‘[a] property division made during the dissolution of a marriage will be reversed on appeal only if there is a manifest abuse of discretion.’” In re Marriage of Larson and Calhoun, 178 Wash. App. 133, 138, 313 P.3d 1228, 1230 (2013) (citing In re Marriage of Muhammad, 153 Wash.2d 795, 803, 108 P.3d 779 (2005)).

Further, “A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reason. A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it

is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.” *Larson*, 138, (citing In re Marriage of Littlefield, 133 Wash.2d 39, 46–47, 940 P.2d 1362 (1997) (citation omitted)).

Analysis

1. Did the Trial Court Abuse its Discretion by Putting the Parties in Unequal Positions for the Remainder of Their Lives?

The Trial Court erred when it made a determination that it is fair and equitable, by the standards set out by RCW 26.09.080, where they granted one spouse the house that has no attached mortgage and the other spouse received all of the current debt and pensions that would not be realized for decades.

The Court has an obligation to establish both parties, “in roughly equal positions for both of their lives.” In re Marriage of Kim, 179 Wash. App. 232, 253, 317 P.3d 555 (2014) (citing In re Rockwell, 157 Wash. App. 449, 452, 238 P.3d 1184 (2010)).

In this case, the Court set one party up to live with minimal costs, having no housing payments, child support in the amount of \$1600, and all of her share of the marital debt assigned to the husband.

Furthermore, the husband will be required to pay all of both parties interest on the debts and provide for his housing and receive no monetary

assets until he is retirement age, estimated to be 18 years out in the future.

This distribution, therefore, puts both parties in very different positions for the remainder of their lives.

Real Estate has the potential to be sold, turned into an income earning property, or even mortgaged to expand investment opportunities or educational or career advancements. Pensions and retirement accounts may not be accessed in anyway until the asset has matured. Courts cannot look to what unknowns may occur, but the courts can be flexible in considering their distribution, "Fairness is attained by considering all circumstances of the marriage and by exercising discretion, not by utilizing inflexible rules." *Larson*, 138, (citing In re Marriage of Tower, 55 Wash.App. 697, 700, 780 P.2d 863 (1989)). The Court should consider that a significant valuable asset, and access to the equity therein, is not justly and fairly offset by pensions and retirement plans that will not mature for decades.

2. Did the Trial Court Abuse its Discretion by Incorrectly Considering the Entire Marital Debt as Being Attributed to Both Parties and then order the Appellant/Respondent to Assume all Marital Debt?

The property distribution reasoning by the Court is further untenable, and therefore a manifest abuse of discretion, because the Court considered the income of the Appellant/Respondent as both an asset that he will have

to offset the award to the other spouse and an asset that is disposable and can be put towards the marital debt.

The Court then failed to consider that the Appellee/Petitioner would not have the expenses of her share of the marital debt in the final distribution.

The three times the court addressed this issue:

(1) In its opinion, the Court stated its reasoning in determining the

Appellee/Petitioner's income as:

Mrs. Anderson has a stipulated monthly income of \$1,847. She will be receiving child support in the amount of \$1628.93. Her total disposable monthly income is \$3,475.93. Her monthly household expenses are \$3632.71, leaving a monthly deficit, before allocation of the community debt, of \$156.78." (Memorandum Opinion, page 7, lines 1-4, emphasis added).

(2) The Court the addressed the income Appellant/Respondent as follows:

Mr. Anderson will receive property valued at \$188,566.87. He will assume debts of \$44,000 leaving him a net award of \$144,566.87. Mrs. Anderson will receive assets of \$245,000. Of the total net estate of \$389,566.67, Mr. Anderson will receive 37 percent, and Mrs. Anderson will receive 63%.

Each Month Mrs. Anderson will be short \$156.78. Each month, Mr. Anderson will have excess funds in the

amount of \$2303. If he applied the extra amount he has available to him each month to erase the disparity in the property distribution in this case, it would take him just over three and a half years to do so. Because of this distribution, the court is not awarding spousal maintenance or attorney fees to Mrs. Anderson. (Memorandum Opinion, page 10 line 16 through page 11 line 2).

- (3) The Trial Court also stated that the Respondent/Appellee will be able to rely on the income that is otherwise now going to paying marital debts stating:

This is a unique case where there are significant reasons to award the retirement to the husband and offset its value against the residence. First, his income places him in a far better position than Mrs. Anderson to qualify to purchase a home. Second, these children need stability. (Memorandum Opinion, page 9, lines 17-21).

Each of these statements give the Appellee/Petitioner more debt, and the Appellant/Respondent more disposable income, than will actually exist under the Court's property distribution.

VI. CONCLUSION

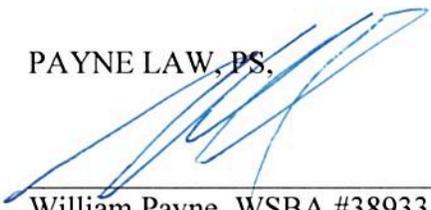
In conclusion, Mr. Anderson, Appellant/Respondent, respectfully request this honorable reviewing Court find that the Trial Court's property division was a manifest abuse of discretion because (1) the parties were put

in very different situations for the remainder of their lives, and (2) the Court seems to have considered the marital debt as having been attributed to both parties, which is not correct because it ultimately assigned all of the debt to the Appellant/Respondent.

Therefore, this should be reversed and remanded for further consideration.

Respectfully Submitted and dated this: 21st day of November, 2019

PAYNE LAW, PS.



William Payne, WSBA #38933
Attorney for Appellant/Respondent

Superior Court of Washington, County of CLALLAM

In re: Petitioner: SHANNON ELAINE ANDERSEN And Respondent: MICHAEL KENNETH ANDERSEN	COURT OF APPEALS No. 56861-0-II ^{53861-0-II} No. 17-3-00418-05 Proof of Personal Service (AFSR)
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Proof of Personal Service

Server declares:

1. My name is: Roxannee Bolster. I am **not** a party to this case. I am 18 or older.

2. **Personal Service**

I served court documents for this case to Karen Unger via email to karenlunger@gmail.com

3. **Date, time, and address of service**

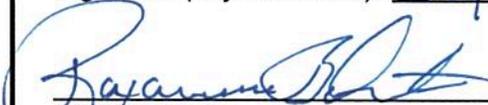
Date: November 21, 2019 Time: 12:15 [] a.m. [X] p.m.

4. **List all documents you served (check all that apply):**

[X] Other: Appellant/Respondent Opening Brief

I declare under penalty of perjury under the laws of the state of Washington that the statements on this form are true.

Signed at (city and state): Sequim WA Date: 11/21/19



Signature of server

Roxannee Bolster

Print or type name of server