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Court of Appeals  
Division II  
State of Washington  
1/21/2020 8:00 AM

NO. 53861-0-II

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

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SHANNON ANDERSON, Appellee/Petitioner

v.

MICHAEL ANDERSON, Appellant/Respondent.

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REPLY BRIEF OF APPELLANT

Trial Court No. 17-3-00418-05

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Submitted by:  
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## II. TABLE OF AUTHORITIES

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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 Making Factual Findings that are Unsupported by the Record in Determining the Unequal Distribution of Assets.
2. Did the Trial Court put the Parties in Unequal Positions for the Rest of Their Lives.

## IV. ARGUMENT

### *Analysis*

1. Did the Trial Court Abuse its Discretion by Making Factual Findings that are Unsupported by the Record in Determining the Unequal Distribution of Assets.

The Appellant raised the issue of whether the Trial Court abused its discretion by attributing the entire amount of the marital debt to both parties when making its determination about their financial abilities. The Appellee responded with legal analysis of whether the court abuses its discretion by making unequal distributions. This response neglected to address the issue of abuse of discretion in determining economic abilities of the parties using facts not supported by the record.

The Appellant's argument on this issue is specific to abuse of discretion where the Court attributed the entire amount of marital debt to both parties, essentially counting the marital debt twice, but then awarded it to the Appellant.

As cited in the Appellant's brief,

“A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons... 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.”

*In re Marriage of Larson and Calhoun*, 178 Wash. App. 133, 138, 313 P.3d 1228, 1230 (2013), (citing *In re Marriage of Littlefield*, 133 Wash.2d 39, 46–47, 940 P.2d 1362 (1997) (citation omitted)).

In the case at bar, the court’s finding regarding the financial abilities of the parties is not based on facts supported by the evidence.

The Court sets out a discussion of the finances that are not supported by the record. The Court stated in its Memorandum Opinion:

“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).

The Court further went on to use this “monthly deficit” amount in its determination of distributing the community debt, stating:

“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.” (Memorandum Opinion, page 10 line 16 through page 11 line 2).

However, in review of the record, there is no testimony or evidence that supports the specific finding that there was a monthly deficit for the Appellee. The record does not explain where the number came from and it is unclear what expenses are attributed to the calculation of the monthly

debt.

In the present case, it is possible that the Court used the very large community debt in its calculations showing a lower income for the Appellee which was then the basis for awarding the residence with no mortgage to the Appellee; the lower income is then again the basis for assigning all of the marital debt to the Appellant, because the Appellee's income is too low to be able to pay the debts.

This is untenable and a factual finding that is not supported by the record. Therefore, there is an abuse of discretion and the case should be remanded back to the trial court for further findings or a new trial.

2. Did the Trial Court put the Parties in Unequal Positions for the Rest of Their Lives.

The Appellee argues that case law allows for unequal distributions. This is not contested by the Appellant. The issue raised on Appeal is whether the distributions place the parties in unequal positions for the rest of their lives.

In reaching a "just and equitable" property division, the trial court must consider four statutory factors: (1) the nature and extent of the community property, (2) the nature and extent of the separate property, (3) the duration of the marriage, and (4) the economic circumstances of each spouse at the time the property division is to become effective. RCW 26.09.080; In re Marriage of Rockwell, 141 Wn. App. 235, 242, 170 P.3d 572 (2007).

The trial court has broad discretion in distributing marital property, and its decision will be reversed only if there is a

manifest abuse of discretion. *Rockwell*, 141 Wn. App. at 242-43. If the decree results in a patent disparity in the parties' economic circumstances, a manifest abuse of discretion has occurred. *Id.* at 243.

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)).

The distributions of the Trial Court put the parties in unequal positions for their lifetimes. The Appellant was given nothing in the distributions that he will realize upon the finalization of the divorce and, in fact, was given all of the martial debt. The Appellant was awarded the pensions which the Appellant will not realize for decades to come. The only other significant asset is the residence with equity in the amount of \$245,000 and no mortgage, which was awarded totally to the Appellee. So, walking out court with the divorce finalized, the Appellant essentially has no financial resources other than his coming paychecks and is immediately saddled with over \$40,000 in debt.

The Appellant does not argue that a distribution of 67% to one spouse and 33% to another is inherently an abuse of discretion; it is the nature of the assets distributed that place the parties in unequal positions. A distribution in the same inequality, where the Appellant was awarded some equity in the home and the Appellee was awarded some of the retirement,

could have put the parties in relatively equal positions for the rest of their lives.

The case law stated by the Appellee actually supports Appellant's argument.

- (1) *Stacy v. Stacy*, 68 Wn.2d 573, 577, 414 P.2d 791 (1966), the court found an unequal distribution was appropriate and awarded maintenance and a larger percentage to the spouse with less earning potential; in their distribution, the court still awarded the spouse with higher earning potential \$3500 of the equity in the home.
- (2) *DeRuwe v. DeRuwe*, 72 Wn. 2d 404, 408, 433 P.2d 209 (1967), the court affirms that the lower earning potential of one spouse should be considered and finds that the spouse with the higher earning potential still retains \$600,000 of the community property.
- (3) *In re Marriage of Washburn*, 101 Wn.2d 168, 181, 677 P.2d 152 (1984), the court discusses awarding a judgement to one party for their contributions to a professional degree of the other party; this judgment was awarded and a split of community property which awarded assets to both spouses.
- (4) *In re Marriage of Morrow*, 53 Wn. App. 579, 770 P.2d 197 (1989), the court considered maintenance as a means of equalizing the parties and acknowledge that the spouse with higher earning

potential had \$500,000 in assets beyond what the court awarded that spouse in the property distribution.

(5) *In re Marriage of Tower*, 55 Wn. App. 697, 780 P.2d 863 (1989), the court's property division awarded the spouse with higher earning potential more of the assets and determined that this was fair because of a higher maintenance award.

In each of these cases, the court set out what is a fair and equitable distribution, sometimes in cases where the disparity between the spouses is much greater than in the current cases.

In every case, the spouse with the higher earning potential was awarded some assets that they realized immediately upon the finalization of the divorce.

In his case, the party with the higher earning potential was not awarded any asset he could realize immediately, and yet was assigned all of the marital debt. The award of the pensions to Appellant does not create a fair and equitable distribution, or put the parties in equal positions, because the Appellant will not see any benefit from that asset for decades.

He cannot purchase a home because he does not have funds from the marital residence for a down payment. If he suddenly becomes disabled, his income will change significantly and he would be unable to purchase a home or pay off the community debt assigned to him by the trial court.

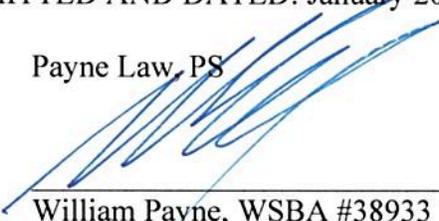
## V. CONCLUSION

In conclusion, Mr. Anderson respectfully asks the reviewing Court to find the Trial Court's property division was a manifest abuse of discretion because: 1) there was no factual basis supported by the record when the court determined the financial abilities of both parties, and; 2) parties were put in very different financial situations for the remainder of their lives.

Therefore, this case should be reversed and remanded to the trial court to allocate the community property in a fair and equitable distribution awarding each party interest in the pension asset and family residence and for further consideration to correct this manifest abuse of discretion.

RESPECTFULLY SUBMITTED AND DATED: January 20, 2020

Payne Law, PS



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William Payne, WSBA #38933  
Attorney for Appellant

Superior Court of Washington, County of CLALLAM

In re: Petitioner:  SHANNON ELAINE ANDERSEN  And Respondent:  MICHAEL KENNETH ANDERSEN	COURT OF APPEALS  No. 53861-0-II  No. 17-3-00418-05  Proof of Personal Service
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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: January 20, 2020 Time: 11:00 [ X ] a.m. [ ] p.m.

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

[X] Other: Appellant/Respondent Reply 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 WOA

Date: 1/20/2020

  
\_\_\_\_\_  
Signature of server

Roxannee Bolster  
\_\_\_\_\_  
Print or type name of server