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NO. 54532-2-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

CATHERINE S. SHUBECK,

Respondent,

vs.

JOHN R. SHUBECK and SHELLY A. WILLIAMS

Appellants.

BRIEF OF RESPONDENT CATHERINE S. SHUBECK

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I. INTRODUCTION

This is Appellants' John Shubeck ("Mr. Shubeck) and Shelly Williams' ("Ms. Williams") second appeal from the underlying trial court case. In August 2017, the trial court granted judgment in favor of Respondent Catherine Shubeck ("Ms. Shubeck") finding that Mr. Shubeck fraudulently transferred assets to Ms. Williams with actual intent to hinder, delay, or defraud Ms. Shubeck. Appellants appealed from the judgment. This Court upheld the judgment, but remanded a small component of the case—specifically, for clarification on the extent of Ms. Williams' liability under the judgment.

A hearing on this issue was held on March 20, 2020. The trial court entered an amended judgment and held that Ms. Williams' potential future liability under the judgment would be capped at \$501,481.58. Appellants have now appealed from the amended judgment. Appellants set forth a number of issues of law and fact. As described herein, Appellants' arguments are without merit. First, with regard to their legal argument, Appellants fail to recognize the broad authority the trial court has in fashioning an appropriate remedy under RCW 19.40.071 and RCW 19.40.081(c). In the present case, the trial court used that authority to render the relief the circumstances required. Second, with regard to their factual contentions, Appellants seek to relitigate factual issues that were already decided at the underlying trial. Appellants contend that Mr. Shubeck never had an interest in the transferred assets in the first place,

and therefore could not have fraudulently transferred them. Appellants essentially ask this court to review select exhibits from the underlying trial case and trace money. This, however, was what they argued before the trial court several years ago—and lost. The only issue on appeal is whether the trial court’s amended judgment was proper under the law based on the already established facts of this case. As described below, it most certainly was.

Additionally, similar to what they have done in the past, Appellants set forth factual contentions without reference to the record. Their “Conclusion” section is ten pages long and sets forth a number of factual contentions not contained in the record. The court should disregard their Conclusion.

II. STATEMENT OF THE CASE

A. Case History

This case originally arose after Mr. Shubeck stopped paying spousal support to his ex-wife, Ms. Shubeck. *See generally* CP 19-35. After payment stopped, it soon became clear that Mr. Shubeck had sought to make himself appear insolvent, transferring assets and money to his new wife, Ms. Williams, while simultaneously reaping the benefit of those assets. *Id.* Ms. Shubeck brought suit against Mr. Shubeck and Ms. Williams for fraudulent transfers under RCW 19.40. *Id.* On August 1, 2017, the trial court entered judgment in favor of Ms. Shubeck and against both Mr. Shubeck and Ms. Williams. *See* CP 15-17. The trial court also

entered Findings of Fact and Conclusions of Law. *See* CP 19-35. Mr. Shubeck and Ms. Williams appealed from the judgment. *See* CP 37-61. This court affirmed the trial court's rulings; however, remanded the case for clarification on one issue—the extent of Ms. Williams' liability under the judgment. CP 60.

A hearing on this issue was held before the trial court on March 20, 2020. The trial court entered an amended judgment holding that Ms. Williams' potential future liability under the judgment would be capped at \$501,481.58. *See* CP 102-103. Appellants have now appealed from the amended judgment.

B. The issue on remand was to determine the scope of Ms. Williams' potential future liability under the judgment.

The central issue on remand was the scope of Ms. Williams' potential future liability under the judgment. The judgment provided that Ms. Shubeck would have the right to supplement the money judgment against Mr. Shubeck and Ms. Williams to the extent Mr. Shubeck stopped paying spousal support in the future. CP 16. There was, and still is, a real possibility that Mr. Shubeck could stop paying spousal support again.¹ If he does, Ms. Shubeck would have limited, if no, recourse against Mr. Shubeck, because he transferred essentially all of his assets to Ms. Williams, leaving him with nothing. Ms. Shubeck would have to seek

¹ It should be noted that in their brief, Appellants claim that Mr. Shubeck is being laid off from his current employer and he may not be able to find work. *See* Appellants Brief at pg. 38. In 2015, Mr. Shubeck also claimed to have retired and stopped paying spousal support. CP 26. This is what prompted the filing of the fraudulent transfer lawsuit in the first place. As it turned out, Mr. Shubeck did not actually retire, but instead, took a new job with IBM making more money than he had before. CP 27. He concealed this from Ms. Shubeck and stopped paying her spousal support. *Id.*

recourse against Ms. Williams, the beneficiary of the fraudulently transferred assets. The question on remand was, to what extent could Ms. Williams be held accountable if Mr. Shubeck were to stop paying spousal support again.

The trial court was presented with evidence of the value of the transferred assets. *See generally* CP 1-61. For her part, Ms. Shubeck utilized the Findings of Fact entered by the trial court to establish the value of assets. *Id.* The trial court agreed with this assessment and entered an amended judgment consistent with the request of Ms. Shubeck—capping Ms. Williams’ potential future liability under the judgment at \$501,481.58. CP 102-103.

C. How the trial court derived the value of assets and amended judgment.

The way in which the trial court arrived at this \$501,481.58 figure is fairly straightforward and is recapped below:

Mr. Shubeck and Ms. Williams were married in November 2009 and in September 2010 jointly purchase a home, dubbed the “6th Lane Property.” CP 20 and 22. On October 11, 2012, Mr. Shubeck quit claimed his interest in the 6th Lane Property, to Ms. Williams. CP 24. At the time of transfer, the home was valued at \$688,000 and \$374,000 was owing on the mortgage, giving Ms. Williams equity in the amount of \$314,000. *Id.*

On October 11, 2012, Mr. Shubeck transferred his interest in a 2006 Dodge Ram Truck to Ms. Williams, valued at \$22,000 at the time of transfer. *Id.*

On October 18, 2012, Mr. Shubeck withdrew \$24,719.49 from his UBS investment account and transferred the funds to Ms. Williams. *Id.*

On October 18, 2012, Mr. Shubeck withdrew \$23,768.20 from his Vanguard investment account and transferred the funds to Ms. Williams. *Id.*

In 2014, Ms. Williams and Mr. Shubeck purchased a vacant piece of property, dubbed the "Pilchuck Property." CP 24-25. At the time of closing, Mr. Shubeck quit claimed his interest in the property to Ms. Williams. At the time of trial, Mr. Shubeck and Ms. Williams were in the process of constructing a new, 6,000 square foot, water view home on the Pilchuck Property. *Id.* In order to construct the home, Mr. Shubeck and Ms. Williams utilized a home equity line of credit on the 6th Lane Property. *Id.* Mr. Shubeck also deposited his income into Ms. Williams' bank account and these funds were used to construct the home. *Id.* The 6th Lane Property was sold in December 2016 and the proceeds from that sale were used to pay off the line of credit that had been utilized to construct the Pilchuck Property home. *Id.* Thus, the equity in the 6th Lane Property was effectively transferred into the Pilchuck Property. At the time of trial, the Pilchuck Property was unencumbered and estimated to be worth over \$1,000,000. *Id.*

As a result of these transfers, Ms. Williams became the beneficiary and title owner of \$1,070,487.69 in assets and monies. From there, the trial court considered one half of those amounts, \$535,243.84, to be the value of assets Mr. Shubeck fraudulently transferred Ms. Williams. Because principal judgment in the amount of \$67,524.53 has already been entered and paid in full by Appellants, Ms. Williams was credited with half that amount, or \$33,762.26. Thus, the court ruled, any future liability against Ms. Williams that arises as a result of Mr. Shubeck failing to pay spousal support should be capped at \$501,481.58 (\$535,243.84 - \$33,762.26).

III. ARGUMENT

A. Standard and scope of review

On appeal, findings of fact are reviewed under a substantial evidence standard, defined as a “quantum of evidence sufficient to persuade a rational fair-minded person the premise is true.” *Clayton v. Wilson*, 168 Wn.2d 57, 62-63, 227 P.3d 278 (2010). “If the standard is satisfied, a reviewing court will not substitute its judgment for that of the trial court even though it may have resolved a factual dispute differently.” *Sunnyside Valley Irr. Dist. V. Dickie*, 149 Wn.2d 873, 879-880, 73 P.3d 369 (2003). Conclusions of law are reviewed de novo. *Id.* at 880.

The Uniform Voidable Transactions Act, RCW 19.40 et seq (formerly known as the Uniform Fraudulent Transfer Act) was amended in 2017 with an effective date of July 23, 2017. See S.B. 5085, 65th Leg.,

2017 Sess. (Wa. 2017); see also RCW 19.40.900. At the time of trial, the previous rendition of the statute, the Uniform Fraudulent Transfer Act (the “UFTA”), was in effect. The Judgment, Amended Judgment, and Findings of Fact and Conclusions of Law are premised on the UFTA. Therefore, this Court should analyze the issue at hand under the UFTA.

B. The trial court properly applied the law in clarifying the scope of Ms. Williams’ liability under the judgment

Former RCW 19.40.071, titled “Remedies for creditors,” states that a creditor may obtain:

- (c) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:
 - (i) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;
 - (ii) Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or
 - (iii) **Any other relief the circumstances may require.**

(emphasis added). In conjunction with this, former RCW 19.40.081(b) provides that a money judgment may be leveraged against a transferor and transferee to satisfy the creditor’s claim. Former RCW 19.40.081(c) further provides that if “the judgment under subsection (b) of this section is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, **subject to adjustment as the equities may require.** (emphasis added). When read together, this provides the trial court with broad

authority to fashion an appropriate remedy under the circumstances, as equity sometimes may require.

In the present case, the court did just that. In October 2012, shortly after being ordered to pay Ms. Shubeck spousal support, Mr. Shubeck made a series of fraudulent transfers. CP 23-24. Thereafter, he continued to fraudulently transfer property and money in furtherance of making it appear as though he was insolvent. CP 24. While it is true that Mr. Shubeck did not become delinquent in his spousal support obligation until January 2015,² the circumstances that arose in this case, required an equitable adjustment. For instance, in 2014, Mr. Shubeck quit claimed to Ms. Williams his interest in the “Pilchuck Property,” which at the time was vacant land valued at approximately \$180,000. CP 24-25. As time went on, Mr. Shubeck used his income to help construct a grand 6,000 square foot water view home on the property. *Id.* Mr. Shubeck and Ms. Williams also utilized the equity they had built in the 6th Lane Property to construct the Pilchuck Property home. *Id.* In 2016, just as Ms. Shubeck was bringing enforcement action against Mr. Shubeck for spousal support arrears, Mr. Shubeck and Ms. Williams took further steps to effectuate the fraudulent transfers. First, they executed a Separate Property Agreement, which purported to make Ms. Williams the sole owner of all the couple’s assets. CP 27. Second, taking it a step further, they filed for legal separation, later entering into an agreed upon decree of legal separation, leaving Mr. Shubeck with nothing, and ensuring that Ms. Williams would

² CP 25.

be the title owner of all the assets in questions. *Id.* Moreover, the agreed upon decree of legal separation required Mr. Shubeck to pay Ms. Williams \$9,600 in spousal support per month, done in a clear attempt to transfer his income directly to her under the guise of a spousal support obligation. *Id.* Meanwhile, Mr. Shubeck and Ms. Williams continued to reside with one another, carry on a marital relationship, and jointly benefit from the assets and Mr. Shubeck's income, demonstrating that the legal separation was sham. *Id.* At the time of trial, Appellants' main asset was the Pilchuck Property, as they had sold the 6th Lane Property during the pendency of the case and used the sale proceeds in furtherance of constructing the Pilchuck Property mansion. The trial court found the value of the Pilchuck Property at the time of trial was "estimated to be over \$1,000,000." CP 25.³

It did not make sense for the trial court to take the value of all the assets at the time of transfer. The major issue was the value of the real estate. While the value of the Pilchuck Property at the time of transfer was \$180,000, Appellants used their collective resources to transform it into a property valued at over \$1,000,000. In entering the amended judgment, the trial court made equitable adjustments to account for this.

Of paramount concern to Ms. Shubeck is that Mr. Shubeck will stop paying spousal support again. As such, the trial court properly allowed Ms. Shubeck to supplement the judgment against Ms. Williams if

³ Notably, this value was derived from Mr. Shubeck and Ms. Williams' realtor, who testified at the trial.

Mr. Shubeck were to become deficient on his spousal support obligation in the future. Ms. Williams is, after all, the beneficiary of Mr. Shubeck's interest in the transferred assets. She should not benefit to the detriment of Ms. Shubeck. Especially considering Mr. Shubeck and Ms. Williams continue to reside in the Pilchuck Property home and carry on a marital relationship. If Ms. Williams were to be stripped of any future liability, Mr. Shubeck could stop paying spousal support, leaving Ms. Shubeck with no recourse against either Mr. Shubeck or Ms. Williams, as Mr. Shubeck would be insolvent and Ms. Williams would have no liability under the fraudulent transfer judgment. This cannot be allowed to happen.

In the case of *Clayton v. Wilson*, this Court dealt with same issue that arises in the present case. 145 Wn. App. 86, 106, 186 P.3d 348 (2008). In *Wilson*, this court "remanded to the trial court for the sole purpose of amending the conclusions and judgment to clarify that Mrs. Wilson is liable to Andrew to the extent of the former community property." *Id.* There, the husband was alleged to have molested the plaintiff, and upon being arrested for molestation and concern over future civil liability, he transferred assets to his wife to place them out of reach of the plaintiff. *Id.* Thus, the court intended to ensure that the wife, whom was the beneficiary of the transferred assets, remained liable to the plaintiff for the community property portion of the property that was transferred to her. *Id.* The same theory has properly been applied in the present case.

C. The trial court did not have to go back and trace funds to establish Ms. Williams' liability under the amended judgment, as that issue was already decided by the trial court in the underlying judgment, and affirmed by this court.

Appellants argue that the trial court erred when it failed to trace funds and establish "relative contributions" of Appellants for the assets in question—essentially claiming that Mr. Shubeck did not have a community property interest in the fraudulently transferred assets. *See* Appellants' Brief at pgs. 27-37. However, there was no need for the court to even consider this proposition. This is the same argument Appellants made at trial, which was rejected by the trial court and affirmed by this court on appeal. A quick review of the Findings of Fact demonstrate that Mr. Shubeck's money was utilized to purchase the transferred assets. CP 20-28. The Conclusions of Law reads:

The Defendants have failed to overcome the heavy presumption that the assets acquired during marriage were community in nature. None of the assets in question were ever the separate property of Ms. Williams, as the Defendants failed to abide by the terms of their Prenuptial Agreement, thereby rendering it unenforceable. Mr. Shubeck's income was deposited into Ms. Williams' bank accounts throughout the marriage and she paid for the assets. The Defendants failed to abide by numerous other terms in the Prenuptial Agreement as well. Therefore, Mr. Shubeck had an interest in the assets at the time of transfer, and continues to have an interest in those assets now.

CP 29. This court affirmed the trial court's ruling. CP 52-54.

Thus, this is not even an issue on appeal and should be irrelevant to the court's consideration.

D. Ms. Shubeck is entitled to her reasonable attorney fees and expenses on appeal.

If applicable law grants a party the right to recover reasonable attorney fees or expenses on appeal, the party must request the fees and expenses in its opening brief. *See generally* RAP 18.1.

In the present case, the trial court granted fees to Ms. Shubeck in the underlying trial. CP 16. In the first appeal, this court affirmed that award and awarded fees in the appellate action. CP 60. For the same reasons the fee award was entered in the underlying case, Ms. Shubeck requests an award for fees in this appeal.

This Court can also grant fees and expenses when the appeal is frivolous or when a party fails to comply with the appellate rules. *See* RAP 18.9; *see also Reid v. Dalton*, 124 Wn. App. 113, 128, 100 P.3d 349 (2004). “An appeal is frivolous if no debatable issues are presented upon which reasonable minds might differ, and it is so devoid of merit that no reasonable possibility of reversal exists.” *See Chapman v. Perera*, 41 Wn. App. 444, 455–56, 704 P.2d 1224 (1985). In this case, much of Appellants’ appeal is frivolous. They spend a great deal of time trying to relitigate issues, which has been their modus operandi throughout this marathon of a case. They also repeatedly violate court rules by making factual contentions that are not supported by the record.

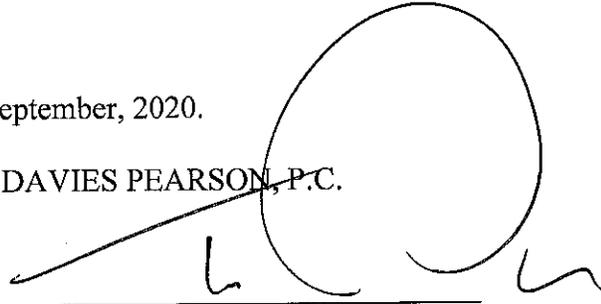
Much of Appellants conclusion is baseless and does not draw support from the record.

IV. CONCLUSION

For the reasons set forth above, Ms. Shubeck respectfully requests that this Court affirm the trial court's amended judgment.

DATED this 11th day of September, 2020.

DAVIES PEARSON, P.C.



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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee of Davies Pearson, P.C., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein.

On this date, I caused to be served via postage prepaid first class mail Brief of Respondent on:

Appellants

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And Email: jrshubeck@gmail.com; shellyonfoxisland@gmail.com

The undersigned further certifies that on this date I electronically filed the foregoing documents with the Washington State Court of Appeals, Division II, via the Washington State Appellate Court's Portal upload (<https://ac.courts.wa.gov/>).

SIGNED and DATED this ²⁴11 day of September, 2020 at Tacoma, Washington.



KATHY A. BATES
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