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Court of Appeals
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NO. 54532-2-11

COURT OF APPEALS, DIVISION TWO
OF THE STATE OF WASHINGTON

CATHERINE S. SHUBECK
Respondent

v.

JOHN R. SHUBECK and SHELLY A. WILLIAMS
Appellants

REPLY BRIEF OF APPELLANTS

John R. Shubeck
Shelly A. Williams
Appellants, Pro Se
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TABLE OF CONTENTS

| | | |
|-------------|---|----|
| I. | INTRODUCTION | 1 |
| II. | REPLY STATEMENT OF THE CASE | 3 |
| III. | ARGUMENT | |
| | A. SCOPE | 11 |
| | The trial court erred in failing to apply RCW 19.040.081(c) in its conclusions of law when it determined Shelly’s future liability. | |
| IV. | CONCLUSION | 20 |

TABLE OF AUTHORITIES

WASHINGTON CASES:

Page

Deyong Management v. Previs
47 Wn. App. 341, 735 P.2d 79 (1987)

13

Eagle Pac. Ins. Co. v. Christensen Motor Yacht Corp.
85 Wn. App. 695, 934 P.2d 715 (1997)

13

Thompson v. Hanson
168 Wn.2d 738, 239 P.3d 537 (2009)

12, 13

STATUTES

RCW 19.40.041

12

RCW 19.40.051

12

RCW 19.40.071

12, 14, 19

RCW 19.40.081

1, 3, 4, 7, 9
11, 14, 15, 17
19

I. INTRODUCTION

In reviewing Cathy's response brief, statement of the case, and legal arguments, her response boils down to one thing. The entirety of the UFTA, least of all 19.040.081(c), does not matter. Her arguments in reply rests on a legal theory that everything a trial court does under the UFTA can be reduced 100% to a matter of discretion, because a trial court can invoke the single clause, "Any other relief the circumstances may require" as the authority to avoid other controls in the law. 19.040.071(1)(c)(iii)

Cathy does not dispute the value of the assets at the time the quit claim deeds were signed. If the trial court had followed the law, which directs that Shelly's liability be set based upon the value of the assets at the time of the transfer, this appeal would be unnecessary.

Multiple times on the record during the March 20, 2020 hearing, the trial court specifically makes a statement, "take half the value of the assets fraudulently transferred".¹ RCW 19.040.081(c) is very clear about how to apply the value of the assets transferred, which is at the time of the transfer. The Court then applies a rational found nowhere in the RCW, nor in case law, and applies a new rational prompted by the respondent's attorney to which carries forward the value of the assets far into the future, for the purpose of prospectively driving John and Shelly's behavior into the future indefinitely.

RCW 19.040.081(c) is very specific. The clock stopped on the specific dates each time a named asset was transferred. The law is clear in

¹ CP 24

that it directs the court to evaluate the value of assets transferred retrospectively to apply equity, not prospectively into the future to drive behavior. Since the trial court ignored 19.040.081(c) entirely, not a single time making mention of it in oral proceedings on the record or even in writing, the only reasonable conclusion is the trial court deliberately avoided it.

Cathy, through her attorney, has demonstrated an inability to grasp the basic computational skills required to calculate net equity on the buying and selling a real estate asset. The specific error will be described below. As a result, she erred in her calculation of the net equity, and in turn, net value of the asset transferred on the 6th Lane Home. During the March 20th hearing, the trial court rubber stamped the flawed math in Cathy's proposed order.

Because Cathy's response brief before the appellate court is the third time she has made the same error, and the trial court has demonstrated a history of repeating the same errors using her calculations, Cathy's response brief should be dismissed as flawed, and the matter of Shelly's liability be remanded to another court that will evaluate the value of the assets accurately.

II. REPLY STATEMENT OF THE CASE

The legal issue presented in the opening brief and again in this reply continues to be trial court's silence, whether it be accidental or deliberate, in not fully considering the law in its Amended Judgment the following article of the UFTA code that defines the protections of a transferee in a judgment:

Washington RCW 19.40.081(c): **Defenses, liability, and protection of transferee.** *“If the judgment under subsection (b) of this section is based upon the value of the asset transferred, the judgement 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,”*

The trial court based the amended judgement on its valuation of the assets transferred but failed to apply the critical section in the law that sets the date the value of the assets are to be calculated and, in turn, the boundaries and limits of relief available to the creditor and the protections available to the transferee.

The assets at the heart of this case and subsequent appeal are:

1. A home purchased by Shelly on September 23, 2010. John subsequently quit claimed his interest on October 11, 2012 (“6th Lane Home”),

2. A parcel of raw land purchased by Shelly as her separate property on February 24, 2014 (“Pilchuck Property”).²

3. A 2006 Dodge Ram pickup truck (“Dodge Truck”) purchased on April 7, 2011.

In addition, the trial court included funds in calculating Shelly’s liability as follows:

4. John withdraw \$24,719.49 from his UBS investment account and transferred the funds to Shelly on October 18, 2012,

5. John withdrew \$23,768.20 from his Vanguard investment account and transferred the funds to Shelly.

If the value of the assets transferred do matter, as RCW 19.040.081(c) directs, then the trial court erred in the calculation of net value transferred in the 6th Lane Home, as well as John’s interest in the Pilchuck Property when he quit claimed his interest before Shelly closed on the purchase.

It is not equitable that when John signed the quitclaim deed for the 6th Lane home on October 11, 2012, that he be granted a 50% interest in the home at the time the home sold on December 1, 2016. Shelly contributed \$399,614.10, money from the sale of her New Jersey home and funds from her separate bank accounts.^{3 4 5 6} John provided no

² The Pilchuck Property was titled only in Shelly’s name and purchased as her separate property

³ EX 15, Pg. 2125

contribution. If John had any community interest in the 6th Lane Home, it should have been established as of October 11, 2012, the date John signed the quitclaim deed. John's legal right to the property ended that day. John would not be entitled to any future appreciation, or investment by Shelly. That is the requirement of the statute. Additionally, trial court ignored the fact that the 6th Lane home lost \$80,000 of value between September 2010 and October 2012 due to the recession. John actually gave Shelly debt as a result of this transaction.

The named assets and the trial court's findings of the value of the assets on the dates of transfer are summarized here for context:⁷

| | |
|--|--------------------------|
| 6 th Lane Home equity on October 11, 2012 | \$314,000 |
| Pilchuck Property on February 24, 2014 | \$185,000 ^{8 9} |
| Dodge Truck on October 11, 2012 | \$ 22,000 |
| UBS Account on October 18, 2012 | \$ 24,719.49 |
| Vanguard Account on October 18, 2012 | \$ 23,768.20 |
| TOTAL | \$569,487.69 |

⁴ EX 41, Pg. 2727

⁵ EX 41, Pg. 2728

⁶ EX 41, Pg. 2719, 2725

⁷ CP 24-25

⁸ EX 115

⁹ EX 116

The error made by Cathy, which the trial court tacitly accepted, was the failure to calculate the net equity of the 6th Lane Home on October 11, 2012. The correct calculation for the loss of value of the 6th Lane Home follows:

| | |
|---|-------------------------------|
| 6 th Lane Home purchase price (September 2010) | \$760,000 ^{10 11 12} |
| 6 th Lane Home value on October 11, 2012 | \$688,000 |
| 6 th Lane Home net loss on October 11, 2012 | - \$72,000 |

The trial court error is the “6th Lane Home equity” calculation on October 11, 2012. The \$314,000 value was the top line equity, but not the net equity. The Net Equity of the 6th Lane Home was \$242,000

Considered in the correct context, and assuming a finding of a 50/50 community share of named assets, the trial court’s calculations of Shelly’s liability specific to the assets should have been:

| | |
|--|--------------|
| 6 th Lane Home net equity on October 11, 2012 | \$242,000 |
| Pilchuck Property on February 24, 2014 | \$185,000 |
| Dodge Truck on October 11, 2012 | \$ 22,000 |
| UBS Account on October 18, 2012 | \$ 24,719.49 |
| Vanguard Account on October 18, 2012 | \$ 23,768.20 |
| TOTAL value of the assets: | \$497,487.69 |
| ONE HALF value of the assets: | \$248,743.85 |

¹⁰ EX 20
¹¹ EX 21
¹² EX 139

From here, the court would then have applied the additional credit for Shelly's contribution toward the principal judgment as:

| | |
|---|----------------|
| ONE HALF value of the assets from above: | \$248,743.85 |
| Shelly's contribution toward the judgment | \$ (33,762.26) |
| Shelly's liability | \$214,981.59 |

Assuming all of the court's findings are verities, and that all of the assets and funds named in the findings of fact and amended judgment are community property, then the total liability for Shelly based on the RCW should be \$214,981.59. This is before applying any of her contributions toward the court registry and the subsequent court costs.

The legal issue in raised in the appellant brief and this reply continues to be trial court's silence, whether it be accidental or deliberate, in not considering in its Amended Judgment the article of the UFTA code that defines the protections of a transferee in a judgment:

RCW 19.40.081¹³

Defenses, liability, and protection of transferee.

(a) A transfer or obligation is not voidable under RCW 19.40.041(a)(1) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under RCW 19.40.071(a)(1), the

¹³ The trial court premised the prior judgment, Findings of Fact, Conclusions of Law, and amended judgment on the former 2016 Revised Code of Washington, which is reprinted here for clarity. Universal Citation: WA Rev Code § 19.40.081 (2016)

creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(1) The first transferee of the asset or the person for whose benefit the transfer was made; or

(2) Any subsequent transferee other than a good-faith transferee or obligee who took for value or from any subsequent transferee or obligee.

(c) 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.

In addition, the trial court applied a finding that **all** of John and Shelly's funds and assets were community in nature and a conclusion of law that John and Shelly shared **equally** 50/50 in every single asset. In view of the fact that John and Shelly had 17 individual bank accounts and no joint accounts, were married only nine (9) months before the purchase of the 6th Lane Home while still residents of New Jersey, and a trial record which contained 3,000 pages of bank records showing those individual accounts, it calls into question the court's use of discretion in applying such a broad brush. John and Shelly submit for the appellate court's consideration a highly visible and clear paper record of all 17 individual bank accounts and ask, based on the statute, was a conclusion of law in the Amended Judgment assigning a 50/50 community interest in all funds and assets equitable to John and Shelly?

While the court concluded that John is entitled to \$157,000 top line equity in the 6th Lane Home, the court then concluded that he is entitled to this equity *again* from the Pilchuck Property after Shelly sold the 6th Lane Home and used her net proceeds towards building a new home on Pilchuck Property. This is the definition of double dipping. John's interest in the 6th Lane Home ended on October 11, 2012. He no longer has any interest in that home and therefore has no interest in the home being constructed on Pilchuck Heights when Shelly used her funds and sweat equity toward the construction of the Pilchuck Heights home. Nonetheless the trial court, in the Amended Judgement, inflated the value of John's community interest in the Pilchuck Property at 50% of an estimated \$1 million valuation with no date given for the valuation of the Pilchuck Property. The \$1 million valuation included the net proceeds from the sale of the 6th Lane Home that Shelly used to improve the Pilchuck Property, in contradiction to RCW 19.40.081(c) which makes clear that the value of the 6th Lane Home must be established on October 11, 2012. The statute does not allow for a conclusion of law where the Plaintiff can collect on future investments made by Shelly in the Pilchuck Property.

Finally, in reading Cathy's response as well as the verbatim report from the remand hearing on March 20, 2020, it invokes an image where Shelly's inflated liability is being used as a "stick" to drive behavior far into the future. The status of John's alimony order is not before the

Washington courts. John's alimony order is before the New Jersey family court. Any future consideration of Cathy's need or John's ability to pay are settled in the New Jersey court. In this case here, John fell behind in alimony years after the quit claim deed on the 6th Lane Home was signed. Cathy immediately began collecting on the alimony arrears following a judgment in 2016, and the outstanding balance was paid in full at the end of the trial in 2017. John was current at the end of the trial and continues to be current. The appellants can find no authorities to support a conclusion of law where a judgment under UFTA was used to prospectively enforce a support order in a foreign jurisdiction.

III. ARGUMENT

A. The trial court erred in failing to apply RCW 19.40.081(c) in its conclusions of law when it determined Shelly's future liability.

The RCW relied on by the court during the trial and subsequent remand hearing, and moreover in Cathy's response in the current appeal before this court, reads in its complete form as follows:

RCW 19.40.081¹⁴

Defenses, liability, and protection of transferee.

(a) A transfer or obligation is not voidable under RCW 19.40.041(a)(1) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under RCW 19.40.071(a)(1), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(1) The first transferee of the asset or the person for whose benefit the transfer was made; or

(2) Any subsequent transferee other than a good-faith transferee or obligee who took for value or from any subsequent transferee or obligee.

(c) 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.

¹⁴ The trial court premised the prior judgment, Findings of Fact, Conclusions of Law, and amended judgment on the former 2016 Revised Code of Washington, which is reprinted here for clarity. Universal Citation: WA Rev Code § 19.40.081 (2016)

(d) Notwithstanding voidability of a transfer or an obligation under this chapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

- (1) A lien on or a right to retain any interest in the asset transferred;
- (2) Enforcement of any obligation incurred; or
- (3) A reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under RCW 19.40.041(a)(2) or 19.40.051 if the transfer results from:

- (1) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or
- (2) Enforcement of a security interest in compliance with Article 9A of Title 62A RCW.

(f) A transfer is not voidable under RCW 19.40.051(b):

- (1) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;
- (2) If made in the ordinary course of business or financial affairs of the debtor and the insider; or
- (3) If made pursuant to a good faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

Thompson v. Hanson is the best example which makes clear how 19.40.081 is applied.

RCW 19.40.081 protects a transferee's legitimate interest in the transferred property. Transferees are liable only for the amount they receive, which is determined based on the value received minus the value given. Subsection (b) limits liability to the value of the property received, and subsection (d) further limits liability to the net value received. Subsection (c) also requires the value to be determined at the time of transfer and subject to equity. We conclude the trial court's interpretation and application of RCW 19.40.081 correctly effectuated the intent of the statute. *Thompson v. Hanson*, 142 Wn. App. 53, 174 P.3d 120 (2007)

By statute, a creditor may recover judgment from the debtor's transferee. RCW 19.40.071, .081. However, the statute only allows "the creditor [to] recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less."

RCW 19.40.081(b). Subsection (c) allows for adjustment of the value of the asset transferred “as the equities may require.” RCW 19.40.081(c). The official comments to the UFTA contemplate such an adjustment for a good faith transferee that has enhanced the value of the asset through discharge of liens. Unif. Fraudulent Transfer Act, 7A pt. II U.L.A. § 8 cmt. 3. The statutory provision protecting good faith transferees from outsized judgments operates “[n]otwithstanding voidability of a transfer” and entitles a good faith transferee to “[a] reduction in the amount of the liability on the judgment” up to “the value given the debtor for the transfer or obligation.” RCW 19.40.081(d)(3) *Thompson v. Hanson*, 168 Wn.2d 738, 239 P.3d 537 (2009)

The better reading of the statute is that adopted by the Court of Appeals: RCW 19.40.081(b) limits liability to the value of the property received by the transferee and, for good faith transferees, subsection (d) further limits liability to the net value received (i.e., the value of the asset transferred less the value given the debtor). The value given the debtor, including any debt assumed, is deducted from the value of the asset transferred prior to determining the measure of judgment. Subsection (c) is the means by which this occurs, as it allows for the adjustment to the value of the asset transferred. *Thompson v. Hanson*, 168 Wn.2d 738, 239 P.3d 537 (2009)

Additional cases follow:

The UFTA limits a creditor's judgment remedy to the adjusted value of the transferred assets or the amount of the creditor's claim, whichever is less. RCW 91.40.081(b). On remand, if the trial court determines that CMYC transferred any "assets" subject to the UFTA, it must determine the adjusted value of those assets as provided in RCW 19.40.081(c). Judgment against any transferee of CMYC should be limited to either the aggregate adjusted value of the transferred assets, or the amount of Eagle Pacific's claim, whichever is less. RCW 19.40.081(b) *Eagle Pac. Ins. Co. v. Christensen Motor Yacht Corp.*, 85 Wn. App. 695, 934 P.2d 715 (1997)

We hold that a creditor may recover a money judgment from a transferee of a fraudulent conveyance who has knowingly accepted the property with an intent to assist the debtor in evading the creditor and has placed the property beyond the creditor's reach. Such a transferee is liable for the value of the property conveyed, up to the amount that the debtor owes to the creditor. *Deyong Management v. Previs*, 47 Wn. App. 341, 735 P.2d 79 (1987)

Cathy did not provide a citation of case law where a court applied “equity” prospectively into the future, or where a court assigned an estimated value to an asset more than five years after a finding of fraudulent transfer. Cathy did not because she could not find a single case, compelling or otherwise, with the same or even similar fact pattern. Instead, Cathy attempts to redirect attention in her response that Shelly (with John’s help) is building a “grand”¹⁵ home on the Pilchuck Property.

Such a projection of the value of the Pilchuck Property by the court is untenable as it could not possibly weigh the value of sweat equity invested by the Shelly in the Pilchuck Property after February 24, 2014 or for that matter the sweat equity Shelly invested in the 6th Lane Home after October 11, 2012.

When read in full context, RCW 19.40.071 provides the remedy for the creditor, and 19.40.081 provides the protection of the transferee.

Clayton v. Wilson is compelling, but only up to a point. On the one hand, the Wilson court did remand to the trial court for amended conclusions of law and judgment for of the value of the community assets at the time of the transfers. On the other hand, there are no fact patterns to suggest the 37 year Wilson marriage in any way resembles the 10 month marriage of John and Shelly when the 6th Lane Home was purchased. (November 2009 – September 2010).

¹⁵ Response brief, page 8

The trial court never made a finding of fact that John and Shelly's funds were so hopelessly commingled as to be impossible to distinguish or apportion John and Shelly's separate contributions to those assets. This is the benchmark a trial court must walk away from before it makes a finding that a married couple has a 50/50 community interest in all funds, and in turn a 50/50 share in the assets acquired by those funds. In hindsight, the trial court could not make that finding because every page of every individual bank account since John and Shelly's marriage in 2009 was in full view.

In the current action, the trial court documented each of the dates of funds transfers and the quit claim deeds, further documenting the value of each transfer at the time it was made. Then, in error, the trial court projected an estimated value of the assets years into the future after the transfers, and entered an amended judgment that memorializes Shelly's liability indefinitely. A reasonable interpretation of the phrase, "subject to adjustment as the equities may require" in RCW 19.40.081(c) would be to apply equity to the parties involved the transfer retrospectively. To interpret the same phrase as permission for a court to apply "equities" prospectively as a means to drive litigant behavior years into the future appears to be breaking new legal ground and inviting challenge to the court's use of discretion.

In a case where 3,000 pages of trial exhibits showed 17 individual bank accounts and no joint bank accounts, and where John and Shelly were married only nine (9) months at the time of the purchase of the 6th Lane Home, to apply a 50/50 community share to every single asset, based on an estimate value on an arbitrary date years into the future appears to an outsider as a conclusion of law far beyond the scope of wide latitude and discretion the court is entitled to.

The trial court relies heavily on Clayton v. Wilson as the authority to ensure that the “wife”, who was the beneficiary of the transferred assets, remained liable to the plaintiff for the community property that was transferred to her.¹⁶ Clayton v. Wilson is a case where the Wilsons were married for **37 years** and had extensive joint funds and an extensive array of community funds and assets. While it is accurate on the one hand to cite Clayton v. Wilson insofar as that scope must be applied to a judgment under the UFTA, it fails on the other hand to be relevant toward the tracing of funds and in turn the apportion of community property. A 37 year marriage is expected to have extensive commingling of assets and in turn the community nature of assets purchased by those funds. That is hardly the case here, where the 6th Lane Home was purchased only nine (9) months into a marriage before even moving to Washington State. Indeed, Clayton v. Wilson funds were hopelessly commingled and untraceable. John and Shelly’s funds, in contrast, are all easily traceable.

¹⁶ VR 23

At the end of the original trial, the court found that the value of the 6th Lane Home at the time John signed the quit claim deed on October 11, 2012 was \$688,000. The trial court further found there was a balance of \$374,000 on the mortgage at the time the 6th Lane Home was sold in December 2016, giving resulting in approximately \$314,000 in equity. (FF/CL Page #6, Finding of Fact #17) The court concluded that the community share of the 6th Lane Home was found to be the net equity in its entirety. However, the court, in error, assigned John and Shelly each a 50/50 community interest in the net equity of the 6th Lane Home when it was sold in December 2016. The correct application of the statute would have been to stop the clock on John's community interest when he signed the quit claim deed in October 2012. Even if John's community interest in the 6th Lane Home equity was apportioned at 50% at the time it was sold in December 2016, then John's interest was still only half of the net equity, although according to RCW 19.40.081(c) the timing of John's calculated interest this would be in error.

The trial court also found that the value of the Pilchuck Property at the time of the transfer on February 2014 was approximately \$180,000.¹⁷ John signed the quit claim deed on the Pilchuck Property **before** Shelly proceeded on the closing with Ticor Title, ending his interest, if any, at that moment in time. If RCW 19.40.081(c) was accurately applied and, even if the community interest was apportioned at 50/50, John transferred

¹⁷ CP 24-25

his community interest in the Pilchuck Property for half the equity, or \$90,000.

The trial court, in error, avoided the law and instead rolled the net equity from the sale of the 6th Lane Home forward into the Pilchuck Property, then assigned an estimated value of the Pilchuck Property to be “\$1 million” for the purposes of the amended judgment. The trial court, however, cited no date in its finding as to when the Pilchuck Property was valued at \$1 million. The finding was already made that the Pilchuck Property was worth approximately \$180,000 when John signed the quit claim deed in February 2014. This is a critical error, and profoundly influences an accurate calculation as to the scope of Shelly’s liability in the future.

If the trial court had diligently apportioned the community interest in the Pilchuck Property, it would have found Shelly’s contribution of \$185,000 and John’s contribution of zero (\$0) dollars. Even so, John quit claimed any interest he might have had in the Pilchuck Property title **before** closing.¹⁸ The quit claim deed was a requirement made by the Tigor Title before Shelly could close on the Pilchuck Property as her individual asset. Even in the extreme of a 50/50 community share each in the Pilchuck Property, again with no tracing the funding, John’s community interest transferred to Shelly would have been only \$90,000.

¹⁸ EX 113

The trial court misapplied the RCW 19.40.071 and RCW 19.040.081 on remand, cited unrelated case law (*Clayton v. Wilson*)¹⁹ ²⁰ as the authority on extensive commingling of community property, and ignored case law that supported that the assets named in the lawsuit were capable of a being apportioned by way of Shelly's traceable funds. The trial court, error, concluded that *all property*, including Shelly's traceable funds earned prior to marriage and before moving to Washington, was community property.²¹

¹⁹ *Clayton v. Wilson*, 145 Wn. App. 86; 186 P.3d 348 (2008)

²⁰ VR 23

²¹ CP 29, Conclusion of Law 3

IV. CONCLUSION

Cathy is asserting that what the trial court was fair in determining SCOPE that was equitable between the parties. Since she's claiming that it was equitable, it is important that we take a brief review of how we would arrive there.

On the Dodge truck, Shelly spent \$22,000 and John spent \$5,000. Is it fair that the trial court gave him 50% ownership? That would not be considered equitable by an impartial review. When we look at the house, and we see at Shelly spending \$399,000 of her own separate funds brought from New Jersey toward the purchase of the house, and we see that John did not contribute any funds toward the purchase of the 6th Lane Home. Would that be considered equitable by anyone's standard the trial court gave him 50% ownership? In addition to those two assets, the fact that Shelly was relying on her prenuptial agreement that protected 100% of her rights in whatever assets she purchased. She wasn't concerned about correcting her titles because she was protected by her prenuptial agreement, of what she contributed toward those assets. Certainly, a trial court assigning 50% ownership to John, under those circumstances, could not be considered equitable by a reasonable person's review. Finally, the Pilchuck Property, Shelly contributed 100% of the funds to purchase the property, on the same day and after John signed the quit claim deed. Since Shelly contributed 100%, and John contributed zero, and his name was

never on the title, resulting in nothing being transferred, how could it be considered equitable that the trial court awarded a 50/50 split on the improved value of that property, an asset purchased all the way back in 2014 (when the quit claim deed was signed).

After reviewing these facts, there is no way a reasonable person could look at that set of facts and consider that was an equitable ruling by the trial court.

Finally, at no time from the date John and Shelly entered into a prenuptial agreement on August 1, 2009 until now, has Shelly ever indicated verbally or by a contract or by any other way that she was gifting these assets to the marriage, and that each would enjoy 50% ownership going forward. Shelly would have had to do something to indicate she was gifting those assets to the marriage and that never happened. In fact, prior to this lawsuit being filed, John and Shelly consulted with attorneys, and legally separated, and drew up a separate property agreement that reflected how assets were being divided that completely followed their prenuptial agreement and was consistent with who's funds were used to purchase the assets.

So, there is no way a Cathy can claim that the trial court's decision to split all of these assets 50/50 was equitable, as this is the furthest thing from being equitable based on who contributed the funds for the assets.

The challenge is that it wasn't equitable, and asking for a remand to a new court assignment that is willing to consider the contributions of the parties. The trial court's finding of community property was only step one. Community property is not an automatic 50/50 split of assets when you can easily trace the contributions of funds toward those assets in a short term marriage. The law entitles the parties in a marriage to take credit for their relative contributions.

In conclusion, Shelly respectfully ask this court to:

1. Reverse the trial court's amended judgment on the extent of Shelly Williams' liability; and
2. Remand to the trial court to establish the value of the assets allegedly transferred on October 11, 2012 and February 24, 2014; and
3. Remand for further proceedings to establish John's interest in each asset on those dates, based on each parties' financial contribution in the purchase of the assets; and
4. Reverse the trial court's 50/50 split of the \$60,000 Shelly paid to the Pierce County Superior Court Registry and remand to the trial court for further proceedings to credit Shelly for this payment from her separate funds; and
5. Reverse and remand to the trial court for further proceedings to credit Shelly for the \$176,000 payment to John post trial from her separate funds; and

6. Order the assignment of a new superior court judge for remanded proceedings; and
7. Order in favor of the appellants for attorney fees and court costs.

October 12, 2020

Respectfully submitted,

A handwritten signature in cursive script, reading "John R. Shubeck", is written over a horizontal line.

John R. Shubeck, Appellant Pro Se

JOHN SHUBECK - FILING PRO SE

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