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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 28599-5-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

In re Marriage of:

IOULIA A. FRAZIER,

Respondent,

vs.

DEAN JACOB FRAZIER,

Appellant.

BRIEF OF APPELLANT DEAN JACOB FRAZIER

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A. ASSIGNMENTS OF ERROR

1. The Superior Court of Spokane County erred in entering its oral decision on August 28, 2009, with respect to its determination and refusal to award to Mr. Frazier spousal maintenance, attorney fees, and various aspects of its decision concerning property and debt distribution between the parties. [CP 89-100].

2. The Superior Court of Spokane County erred on September 15, 2009, in entering as the "II. Basis" for its Decree of Dissolution, "Findings of Fact and Conclusion of Law have been entered in this case" insofar as any such findings are supported by fact, or the record, and the accompanying conclusions are at odds with the governing law as well as the "III Decree" itself. [CP 51-55].

3. The Superior Court of Spokane County erred on September 15, 2009, in entering paragraph 3.2 of Decree of Dissolution which grossly over-valued the property awarded Mr. Frazier including "the jet ski and trailer . . . at a value of \$1,000,. . . the pellet stove . . . valued at \$1,000, . . . [and] . . . all the tools,

equipment, gardening stuff [sic] and lawn mower, valued at \$3,000."
[CP 52].

4. The Superior Court of Spokane County erred on September 15, 2009, in entering paragraph 3.3 of the Decree of Dissolution which grossly under-valued the property awarded Ms. Frazier including "the 2004 Honda, valued at \$8,000; all of the furniture, furnishings, appliances, as set forth in [the wife's] exhibit #15, except" the other items identified in said paragraph of the Decree. [CP 52].

5. The Superior Court of Spokane County further erred on September 15, 2009, in entering paragraph 3.3 of the Decree of Dissolution by mischaracterization of the property awarded Ms. Frazier, to wit, "[t]he \$11,000 held in the bank account for [the wife's] parents is a non-asset of this marriage."

6. The Superior Court of Spokane County erred on September 15, 2009, in entering paragraph 3.7 of the Decree of Dissolution denying Mr. Frazier's request for spousal maintenance. [CP 53].

7. The Superior Court of Spokane County erred on September 15, 2009, in entering paragraph 3.13 of the Decree of

Dissolution denying Mr. Frazier's request for an award of reasonable attorney fees. [CP 54].

8. The Superior Court of Spokane County also erred on September 15, 2009, in entering paragraph 3.15 of the Decree of Dissolution pertaining to the Court's summary and miscalculation of the division of property and debt in this matter, which constitutes an inequitable distribution of the same by the court. [CP 54].

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether the Superior Court improperly valued and mischaracterized certain property as awarded or distributed as between the parties? [Assignments of Error Nos. 1-5 and 8].

2. Whether the decision of the Superior Court as to the distribution of debt and liability constitutes a manifest abuse of discretion? [Assignments of Error Nos. 1-5 and 8].

3. Whether Mr. Frazier should have been awarded spousal maintenance? [Assignments of Error Nos. 1-2 and 6].

4. Whether Mr. Frazier should have been awarded reasonable attorney fees as against Ms. Frazier? [Assignments of Error Nos. 1-2 and 7].

C. STATEMENT OF THE CASE

This matter concerns a marriage dissolution proceeding and involves issues of property distribution, in terms of valuation and characterization, as well as spousal maintenance and recovery of reasonable attorney fees by Mr. Frazier. The parties, Ioulia Frazier aka Julia Frazier and Dean Frazier, were married February 19, 2005 in Kootenai County, State of Idaho. [CP 3-4]. On July 25, 2008, Ms. Frazier filed for dissolution of the marriage under Cause No. 08-3-01728-0 in the Superior Court of Spokane County, State of Washington, where Mr. and Mrs. Frazier were then residing. [CP 1-3]. They separated on the same date. [CP 72].

Thereafter, the matter proceeded to trial and on August 28, 2009, Judge Salvatore F. Cozza, entered his oral decision, denying Mr. Frazier's request for spousal maintenance and reasonable attorney fees, on the basis the Court's "philosophy" disfavored maintenance in these "modern" times, and also there was no "crying need" for an award of attorney fees to Mr. Frazier. [CP 90-92]. The Court then characterized and valued certain property, which is presently the subject of this appeal, including those items of property specifically identified in Mr. Frazier's Assignments of Error Nos. 1

Error Nos. 1 and 3-5, above. [CP 93-100].

On September 15, 2009, the Superior Court entered a Decree of Dissolution. [CP 51-55]. This appeal follows that final decision. [CP 56]. Additional facts are set forth below as they apply to the issues and argument at hand.

D. STANDARD OF REVIEW

The issues raised by Mr. Frazier on appeal are governed by the following standards of review insofar as those particular issues entail a combination of (1) issues of fact, (2) mixed issues of law and fact, (3) issues of law, and (4) issues concerning the abuse of discretion by the trial court. Errors of fact are reviewed in terms of whether there is substantial evidence in the underlying record to support the same. Thorndike v. Hesperian Orchards, Inc., 54 Wn.2d 570, 343 P.2d 103 (1959). Substantial evidence only exists when there is evidence of a sufficient quantum to persuade a fair-minded person of the truth of the declared premise set forth in a finding of fact. Olmstead v. Department of Health, 61 Wn.App. 888, 893, 812 P.2d 527 (1986); Green Thumb, Inc. v. Tiegs, 45 Wn.App. 672, 676, 726 P.2d 1024 (1980).

In contrast, mixed questions of law and fact are considered

both in terms of a quantitative determination of substantial evidence as to the latter and, as to the legal aspects of such issue, are reviewed de novo. See, State v. Horrace, 144 Wn.2d 386, 392, 28 P.3d 753 (2001). Errors which are purely legal in nature are reviewed de novo. State v. Cauthron, 120 Wn.2d 879, 887, 846 P.2d 502 (1993); State v. Dunn, 125 Wn.App. 582, 105 P.3d 1022 (2005); State v. Medina, 112 Wn.App. 40, 48 P.3d 1005 (2002).

If the findings of fact are supported by substantial evidence, the issue remains whether those findings support the conclusions of law and judgment of the trial court. See, Eggert v. Vincent, 44 Wn.App. 851, 854, 723 P.2d 527 (1986), review denied, 107 Wn.2d 1034 (1987); Silverdale Hotel Assocs. v. Lomas & Nettleton Co., 36 Wn.App. 762, 766, 677 P.2d 773 (1984). If they do not, reversal of the decision of the trial court is in order. Id.

Finally, with respect to issues addressing the trial court's exercise of discretion, the standard of review is abuse of discretion. State v. Bourgeois, 133 Wn.2d 389, 406, 945 P.2d 1120 (1997). The trial court may be said to have so abused its discretion when the court acted on untenable grounds or for untenable reasons, or erroneously interpreted or ignored the governing law as Mr. Frazier

contends in this case. State v. Robinson, 79 Wn.App. 386, 902 P.2d 652 (1995).

E. ARGUMENT

1. As set forth and described in the foregoing Assignments of Error Nos. 1-5 and 8, the Superior Court grossly mis-valued and mischaracterized certain property, ultimately resulting in an unfair and inequitable distribution of assets and debt, amounting to a manifest abuse of discretion, requiring reversal. [Issue Nos. 1 and 2].

The property and debt division set forth in the decree of dissolution [CP 51-55] fails to reflect an equitable apportionment in light of the factors listed in RCW 26.09.080. First, the evidence before the trial court clearly reflects the value of certain property was clearly mis-valued. [CP 92-100, 101-26]. In Mr. Frazier's case the property he was awarded was grossly overvalued, whereas certain property awarded Ms. Frazier was grossly under-valued. [CP 52].

In this regard, and as evidenced by Mr. Frazier's exhibits 1

through 7 [CP 101-26], the Court ignored the fact \$1,000.00 was the price originally paid for the jet ski and trailer, rather than fix a value reflecting depreciation. [CP 52]. Furthermore, and contrary to the trial court's determination [CP 96], the pellet stove was hardly worth \$1,000.00, as it had been salvaged and any increase in value was due solely to Mr. Frazier having refurbished the stove.

In addition, the Court similarly over-valued the tools, equipment, gardening materials and lawn mower. [CP 52, 96-97]. This error was even further compounded by the fact the Court treated this property as being a community asset, when the facts were clear Mr. Frazier had acquired all these items prior to marriage. [CP 101-26].

Also, in terms of mischaracterizing property, the Court similarly mistook the subject \$11,000.00 in funds held, supposedly in a bank account for Ms. Frazier's parents, to be a non-marital asset. [CP 52, 95-96]. Also, the \$12,000 Mr. Frazier put as down payment for the home located at 4703 E. 47th out of his own funds prior to marriage. Finally, as the trial record reflects, the Court grossly under-valued the 2004 Honda motor vehicle awarded Ms. Frazier at \$8,000.00. [CP 52, 94, 101-26].

Based upon these combination of infirmities, it can hardly be said the trial court reached a just and equitable apportionment of property and debt distribution in this case. See, RCW 28.09.080. Consequently, the Court's decision in this regard clearly rests upon untenable grounds, was entered for untenable reasons and, in short, constitutes a misapplication or a failure to follow the law with respect to RCW 26.09.080. See, State v. Robinson, 79 Wn.App. 386, 902 P.2d 652 (1995). Thus, the challenged decision of the Superior Court [see, Assignment of Error nos. 1-6 and 8] should be reversed on this appeal. RAP 12.2.

2. Whether the Superior Court abused its discretion in refusing to award spousal maintenance to Mr. Frazier. [Issue No. 3].

As to spousal maintenance, RCW 26.09.090 expressly requires, among other specified factors, the ability of the other spouse to pay spousal maintenance be taken into account when deciding the amount and duration, if any, of such an award. See also, In re Marriage of Washburn, 101 Wn.2d 168, 178-79, 677 P.2d 152 (1984) However, the Court totally refused to take either this

this factor into account, or the indisputable fact Mr. Frazier was, in turn, in clear financial need of an award of maintenance. [CP 72-82, 90-91]. For this reason alone, it cannot be said the trial court did, in fact, fairly or lawfully considered the issue of either the amount or duration of maintenance, awarded against Ms. Frazier in favor of Mr. Frazier, under the governing and binding criteria of RCW 26.09.090. See also, Washburn, at 178-79; Fernan v. Fernan, 39 Wn.App. 695, 694 P.2d 1092 (1984); see also, In re Marriage of Sheffer, 60 Wn.App. 51, 55, 802 P.2d 817 (1990). This amounts to a clear abuse of discretion. See, State v. Robinson, 79 Wn.App. 386, 902 P.2d 652 (1995). The simple fact a judge personally “disfavor[s]” awarding maintenance in these so-called “modern times” is not the law governing the Superior Court in this case. RCW 26.09.090. Hence, this challenged decision of the Superior Court [see, Assignments of Error Nos. 1-2 and 6] should, in turn, be reversed on this appeal. RAP 12.2.

3. Whether the Superior Court abused its discretion in refusing to award reasonable attorney fees to the husband in this case. [Issue No. 4].

Finally, and for the same reason of finances, it is clear the Superior Court abused its discretion in refusing to award Mr. Frazier attorney fees at trial. [See, Assignments of Error Nos. 1-2 and 7]. See, State v. Robinson, 79 Wn.App. 386, 902 P.2d 652 (1995). The facts dictated, in terms of the disparate financial circumstances of the parties, Mr. Frazier be awarded fees under the provisions of RCW 26.09.140. See also, Kruger v. Kruger, 37 Wn.App. 329, 333, 679 P.2d 921 (1984).

In short, the Court's decision denying Mr. Frazier fees rests upon untenable grounds, was entered for untenable reasons, and constitutes, once more, a clear and manifest abuse of discretion. See, State v. Robinson, 79 Wn.App. 386, 902 P.2d 652 (1995). Thus, this challenged decision of the Superior Court [see, Assignments of Error Nos. 1-2 and 7] should also be reversed. RAP 12.2.

F. REQUEST FOR AWARD OF ATTORNEY FEES

In accordance with RAP 18.1(b), Dean Frazier, respectfully requests his costs and expenses, including reasonable attorney fees incurred with respect to this review, as such costs and fees are authorized by RCW 26.09.140. See also, Kruger v. Kruger, 37

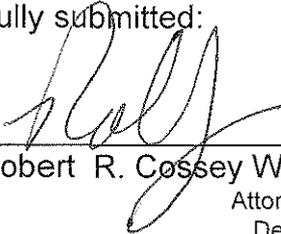
Wn.App. 329, 333, 679 P.2d 921 (1984). Mr. Frazier remains in financial need and Ms. Frazier has the corresponding financial ability to pay Mr. Frazier's fees and costs on this appeal.

G. CONCLUSION

Based upon the foregoing factual points and legal authorities, Appellant Dean Frazier, respectfully requests the decisions and judgment of the Superior Court be reversed and this matter remanded for further proceedings with instruction the relief requested on this appeal be granted.

DATED this 15th day of December 2011.

Respectfully submitted:



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Attorney for Appellant
Dean Jacob Frazier

FILED

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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By

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

In re:

DEAN FRAZIER

Appellant,

and

JULIA (IOULIA) FRAZIER
(aka ULIA SOKOLOVA)

Appellee.

No. 285995

AFFIDAVIT OF MAILING

I, Chris Jury, under penalty of perjury under the laws of the State of Washington, declare that on December 16, 2011, I deposited in the United States Mail, first class postage affixed, by regular mail the following document to the individual listed in this Affidavit at the below last known addresses: BRIEF OF APPELLANT DEAN JACOB FRAZIER

JULIA FRAZIER
PO BOX 8391
SPOKANE WA 99203

Dated this 16th day of December, 2011, at Spokane, Washington.


CHRIS JURY