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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 300781

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STEVE KETCHUM, Appellant,

v.

MICKELA MILLER, Respondent

BRIEF OF APPELLANT

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INTRODUCTION

Steve Ketchum and Mickela Miller engaged in a 38 month relationship. During the relationship Ms. Miller worked for Mr. Ketchum's business. The last 10 months of the relationship, the parties lived on land owned by Ms. Miller and improved the land by finishing one building and building another. Approximately \$60,000 of improvements were added to the land. The entirety of the improvements were financed by debt added to Mr. Ketchum's business.

After Mr. Ketchum left the relationship, he left his belongings and business assets at Ms. Miller's place. When it was clear there would be no reconciliation, Mr. Ketchum went to Ms. Miller's to retrieve his belongings, both business and personal. Ms. Miller took exception to him taking his property, kicked him off the land and obtained a protection order keeping him from getting his property. During the pendency of the protection order, several valuable items owned by Mr. Ketchum and his business went missing and have never been returned to Mr. Ketchum; other items of personalty were eventually placed into a storage shed for Mr. Ketchum to retrieve.

The parties were unable to agree on a division of any of the assets and debts incurred by them during their relationship and Mr. Ketchum petitioned the court for such a division and distribution.

After a two day trial, the trial court issued a written decision dividing up the property and debts. Significant portions of assets and debts were ignored by the court in that decision and no assignment was given one way or the other. Finding that the assets and debts should be divided equally, the court first divided up a small list of personalty (leaving much of the contested assets off the list to avoid an "illusory" award of property). The trial judge made a finding that the improvements to the land and the debt running therewith belonged to the meretricious community, but failed to distribute the assets; thereby enriching Ms. Miller with \$60,000 in assets secured by \$30,000 in debt (owed to Mr. Ketchum and secured by a lien interest against her land¹), and

¹ This property had been conveyed by Ms. Mickela Miller to her mother Mrs. Helen Miller, on December 9, 2009; two days before the filing of the complaint by Mr. Ketchum. In the Property Division Decision, the trial court judge noted that Mrs. Helen Miller took the property with knowledge of the claims of Mr. Ketchum and therefore subject to the claims. The court further found that the transfer of property to Mrs. Helen Miller was in violation of the Uniform Fraudulent Transfer Act and was therefore voidable or subject to lien and granted the lien. Mrs. Helen Miller moved this Court for an Order granting intervention

impoverishing Mr. Ketchum with \$30,000 in debt (the assets having been given to Ms. Miller).

An incomplete distribution of assets and debts, current debt secured by a future asset, and impoverishment of Mr. Ketchum with unjust enrichment of Ms. Miller is the basis for this appeal.

ASSIGNMENTS OF ERROR

1. The trial court erred in failing to divide the parties' interest in the improvements to Ms. Miller's real estate.

2. The trial court erred in failing to account for and award Mr. Ketchum his separate assets which had been in possession of Ms. Miller.

3. The trial court erred in failing to account for and equitably divide the debt incurred by the parties.

ISSUES PRESENTED FOR REVIEW

1. When a court does not evaluate and divide all the main asset in a case, is that an abuse of discretion? (Assignment

rights so she may appeal this portion of the decision. Although the Commissioner granted the motion to intervene, Mr. Ketchum has sought modification of the Commissioner's ruling.

of Error 1)

2. Does a court abuse its discretion when it seeks not to divide property that was acknowledged to be separate property of one party but was lost, given away or stolen while in the sole control of the other party? (Assignment of Error 2)

3. Does a court abuse its discretion when it fails to evaluate and divide the debt accumulated during a relationship? (Assignment of Error 3)

STATEMENT OF THE CASE AND FACTS

Petitioner, Steve Ketchum, and Respondent, Mickela Miler, were involved in a relationship that began on or about May 2006 and continued until March 2009 (CP 202) (though they separated and maintained their own residences after November 2008, they continued to see one another and the relationship didn't terminate until March, 2009) (RP14, II 17-20; RP16, II 23-25). During the course of the parties' relationship they improved real property owned by Ms. Miller by finishing one structure (the shop) (RP22, II 9-16) and building another (the pole barn) (RP107, 17-22). The property is located at 484 Snyder Lane, Asotin, WA. (RP22, II 6-8.)

Ms. Miller assisted Mr. Ketchum in the operation of his manufacturing business, Ketchum Manufacturing, for approximately 38 months during the time they were cohabitating. (RP77, II 2-10.) After the dissolution of the relationship, Mr. Ketchum moved from the shared residence and was denied reentry to acquire his sole and separate property. (RP 18, II 22-25; 19, II 1-9.))

On or about January 24, 2011, Mr. Ketchum filed a Second Amended Complaint against Ms. Miller seeking division of the debts and assets accumulated during the course of the relationship, to recover the economic value of items he was not allowed to recover after moving from the home, and for restitution in the amount owed for the building of the shop on the property, sought to avoid a the transfer of the Snyder Lane property from Ms. Miller to her mother as violative of the Uniform Fraudulent Transfer Act, among other claims for relief. (CP 178 - 184.)

This matter went to trial on February 17-18, 2011, and on February 28, 2011, the judge issued a Property Division Decision. (CP200 - 206.) Although the judge addressed the division of certain

personal property and divided some of the debt, he “sought not” to address numerous assets, and several other issues. (CP204-06.) In the final analysis, the judge awarded a division of \$60,000 of debt with \$30,000 to be paid by each party, and a division of a list of personal property. The \$30,000 of debt awarded to Ms. Miller was secured by a lien against the Snyder Lane property, which Mr. Ketchum could foreclose on after 3 years. The \$60,000 of improvements to the Snyder Lane property was not divided. Property owned by Ketchum Manufacturing that went missing while in the possession of Ms. Miller was neither awarded to Mr. Ketchum, nor was its value awarded to him. (CP204-06.)

Petitioner now appeals to this court.

SUMMARY OF ARGUMENT

The division of property following the dissolution of a meretricious relationship must be just and equitable to avoid unjustly enriching one party and impoverishing the other. Division of property includes a right to reimbursement when one party's separate property is used to improve the other party's separate

property. Further, it is an abuse of discretion to fail to evaluate and divide property.

ARGUMENT

Washington Courts have established a three-prong test for the division of property at the conclusion of a meretricious relationship. 1) Determine whether there existed a meretricious relationship. 2) Evaluate the interest each party has in the property acquired during the relationship. 3) Make a just and equitable distribution. (See: *Connell v. Francisco*, 127 Wn. 2d 339, 898 P.2d 831 (Wash. 1995); *In re marriage of Pennington*, 142 Wn.2d 592, 14 P.3d 764 (Wash. 2000).)

Despite the wide discretion given to trial courts, when a manifest abuse of such discretion is shown the trial court's decision must be overturned. *Baker v. Baker*, 80 Wash.2d 736, 747 (1972). When a trial court fails to evaluate all of the property, or the interest of parties in such property, a clearly manifested abuse of discretion exists. *In re Marriage of Lindsey*, 678 P.2d 328, 332 (Wash. 1984).

In the instant case, the parties both claimed that there was a meretricious relationship; therefore, there was no need for the

trial court to make such a determination. However, the trial court did need to satisfy the next two prongs.

In evaluating each parties' interest in the property we have been given guidance from prior courts:

[I]n both *Connell* and *Peffley-Warner*, we stated that "property acquired during the relationship should be before the trial court so that one party is not unjustly enriched at the end of such a relationship. [citations omitted.]

Pennington, at 602 (emphasis added).

Connell further teaches that the traditional definitions of separate and community property should apply, noting that

when the fund or services owned by both parties are used to increase the equity or to maintain or increase the value of property that would have been separate property had the couple been married, there may arise a right of reimbursement in the "community."

Connell, at 351.

A. Division of Assets and Debt

a. *Improvements at Snyder Lane*

In the instant case, the court found that "community-like" property had been acquired; that the parties incurred "\$70,000 plus" in debt; and the parties made improvements to the Snyder Lane property. (CP 201)

It is undisputed that the Snyder Lane property was property owned by Ms. Miller prior to her relationship with Mr. Ketchum (CP 202); just as he owned Ketchum Manufacturing prior to the relationship with Ms. Miller.

The parties agree that by using Ketchum Manufacturing funds (RP 108, ll 23-25, p. 109, ll 1-7), they completed one building (“the shop”) on the Snyder Lane property (RP 24, ll.13-16) and constructed another (the “pole building”) (RP 107, ll 17-20; see *also*: CP 202). The court found that the value of the improvements to the property was “around \$59,000 dollars” (CP 205).

Despite finding that “[t]he property should be split 50/50 and the debt should be split the same”, the Court did not divide the improvements to the Snyder Lane property.

Given that the improvements were made to Ms. Miller’s separate property, the “community” has a right to reimbursement for the asset. Given that the improvements were paid for by debt loaded onto Mr. Ketchum’s sole and separate property, the “community” also has a concurrent duty of contribution. The trial court properly recognized the duty of contribution and divided the debt which was incurred for the improvement 50/50; however by

leaving the asset undivided, the trial court enriched Ms. Miller with a \$60,000 asset. Failure to divide the most significant asset of this couple constitutes a manifest abuse of discretion. Therefore, this Court should remand this case with instructions to the trial court to properly divide this asset.

b. Lost, Hidden, and Given

Throughout the trial, the parties admitted and agreed that Ms. Miller obtained a protection order against Mr. Ketchum which prohibited him from going to the Snyder Lane property and recovering his belongings. (RP 18, II 22-25; 297, II 11-15.) While the protection order was in place, a number of assets belonging to Mr. Ketchum went missing. Those assets included: Harley Davidson motorcycle and parts; welders; jet pumps; impellers; Minn Kota bow mount tracking motor. (Ex R12; RP45-53) Ms. Miller advanced the “implausible story” (CP204) about “Wildman Jay” stealing the property.

It is uncontested that the items were the sole and separate property of Steve Ketchum. It is uncontested that the items were at the Snyder Lane property in the custody of Ms. Miller when they

supposedly went missing. Since she had affirmatively excluded him from being able to secure his belongings, she had a duty to protect and preserve them for him. She did not. She should either be required to return the items or their value to Mr. Ketchum.

Ms. Miller presented evidence as to their value, or at least to the value of certain of the items, as follows:

- a) Harley Davidson and parts: though she initially claimed it was stolen by "Wildman Jay", she later testified that she traded it for \$350 worth of parts (RP47, l. 12 - p. 48, l. 19).
- b) 2 brand new Welders: \$2300 ea, total \$4600 (Ex R12; RP45)
- c) Impellers for 3 Stage Kodiak: no value given
- d) Minn Kota bow mount tracking motor: no value given
- e) Sports jet motor and pump: \$1200 (Ex R12)
- f) OMC Jet pump package: no value given

All told, there is in excess of \$6000 worth of assets which are acknowledged to be the sole and separate property of Mr. Ketchum, which went missing while Ms. Miller had them which weren't accounted for. When the trial court fails to assign values

to these items and divide them or their value, it is an abuse of discretion; therefore, this case should be remanded with instructions to the trial court to properly address these items.

c. Additional Debt

The court found that the parties had incurred “\$70,000 plus” in debt. Although the judge evaluated and divided \$60,000, there is debt which was not evaluated or divided. The trial court’s failure to evaluate or divide the debt of which it had evidence is an abuse of discretion.

Lia Gutgsell, the CPA for Mr. Ketchum provided important testimony relating to this debt. Ms. Gutgsell produced Exhibits P5 (relating to the debt incurred for the improvements to the Snyder Lane property); P6 (relating to “Personal Living Expenses” taken out of the business by Ms. Miller); and P14 (debts for Ketchum Manufacturing from 12/21/04 - 3/31/09).

According to P14 (admitted without objection, RP393, II 3-7), the debt incurred was \$87,849.69 (3/31/09 debt minus 12/31/04 debt, which was existing when the relationship began). The court left \$27,849.69 unevaluated and undivided; as a result, this court

must remand the case with instructions to properly address this debt.

CONCLUSION

For the reasons stated above, this Court should remand this case to the trial court with instructions to properly evaluate and divide the assets and debts discussed above.

Respectfully submitted this 7th day of March, 2012.

A handwritten signature in black ink, appearing to read 'Todd S. Richardson', is written over a horizontal line.

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