

FILED

JUL 22 2016

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 341453

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

RYAN GLOVER

Appellant/Petitioner

Vs.

CONNIE GLOVER

Respondent/Defendant

APPELLANT'S BRIEF

JOHN A. MAXWELL, JR., WSBA #17431
LUKE A. EATON, WSBA #49725
Meyer Fluegge & Tenney, P.S.
230 So. Second Street
P.O. Box 22680
Yakima, WA 98907
(509) 575-8500
Counsel for Appellant

TABLE OF CONTENTS

PAGE(S)

TABLE OF AUTHORITIES	iii-v
I. <u>INTRODUCTION</u>	1
II. <u>ASSIGNMENT OF ERROR</u>	2
1. The trial court erred in its determination that the appellant should be required to continue to pay spousal support	
2. The trial court erred in its property division and should have granted the appellant a disproportionate division to account for both the appellant’s significant disability and the respondent’s substantial separate property	
3. The trial court erred in granting a property judgment payment, and instead should have allowed an equalization property transfer amount to be made by via a Qualified Domestic Relations Order	
III. <u>STATEMENT OF CASE</u>	2
A. Background Facts	2
B. Procedural Facts	4
IV. <u>LEGAL ARGUMENT</u>	7
A. STANDARD OF REVIEW	

B.	THE TRIAL COURT ERRED IN ITS DETERMINATION THAT THE APPELLANT SHOULD BE REQUIRED TO CONTINUE TO PAY SPOUSAL SUPPORT.	
1.	The trial court erred by failing to factor the Respondent’s separate property resources in a manner that is consistent with the treatment of the Respondent’s post-separate earnings and disability payments.....	9
2.	The trial court erred by failing to adequately consider the impact of the disability suffered by the Appellant.....	12
C.	THE TRIAL COURT ERRED IN ITS PROPERTY DIVISION AND SHOULD HAVE GRANTED THE APPELLANT A DISPROPORTIONATE DIVISION TO ACCOUNT FOR BOTH THE APPELLANT’S SIGNIFICANT DISABILITY AND THE RESPONDENT’S SUBSTANTIAL SEPARATE PROPERTY.....	17
D.	THE TRIAL COURT ERRED IN GRANTING A PROPERTY JUDGMENT PAYMENT AND INSTEAD SHOULD HAVE ALLOWED AN EQUALIZATION PROPERTY TRANSFER AMOUNT TO BE MADE BY TRANSFERRING RETIREMENT ACCOUNTS PAYMENTS.....	20
V.	<u>CONCLUSION</u>	23

TABLE OF AUTHORITIES

	<u>PAGE(S)</u>
<u>CASES</u>	
<u>Brewer v. Brewer</u> 137 Wn. 2d 756, 976 P.2d 102 (1999)	11
<u>Bulicek v. Bulicek</u> 59 Wn. App. 630, 634, 800 P.2d 394 (1990)	14
<u>Bungay v. Bungay</u> 179 Wash. 219, 223–24, 36 P.2d 1058 (1934)	8
<u>Friedlander v. Friedlander</u> 80 Wn. 2d 293, 494 P.2d 208 (1972)	13, 18
<u>Koon v. United States</u> 518 U.S. 81, 100 (1996)	8
<u>Spreen v. Spreen</u> 107 Wn. App. 341, 28 P.3d 769 (2001)	13
<u>White v. White</u> 105 Wn. App. 545, 549, 20 P.3d 481 (2001)	18
<u>In re Estate of Borghi</u> 167 Wn.2d 480, 219 P.3d 932 (2009)	8
<u>In re Marriage of Anglin</u> 52 Wn. App. 317, 324, 759 P.2d 1224, 1229 (1988)	10
<u>In re Marriage of Clark</u> 13 Wn. App. 805, 810, 538 P.2d 145, <u>review denied</u> , 86 Wn. 2d 1001 (1975).	1, 22

<u>In re Marriage of Dessauer</u> 97 Wn. 2d 831, 839, 650 P.2d 1099 (1982)	1
<u>In re Marriage of Matthews</u> 70 Wn. App. 116, 123, 853 P.2d 462 (1993)	8, 12, 17
<u>In re Marriage of Morrow</u> 53 Wn. App. 579, 588, 770 P.2d 197 (1989)	13
<u>In re Marriage of Olivares</u> 69 Wn. App. 324, 848 P.2d 1281 (1993)	8, 18
<u>In re Marriage of Rockwell</u> 141 Wn. App. 235, 242, 170 P.3d 572, 576 (2007)	12, 20
<u>In re Marriage of Schweitzer</u> 81 Wn. App. 589, 915 P.2d 575 (1996)	19
<u>In re Marriage of Tower</u> 55 Wn. App. 697, 699, 780 P.2d 863 (1989)	17
<u>In re Marriage of Valente</u> 179 Wn. App. 817, 819, 320 P.3d 115 (2014)	14
<u>In re Marriage of Zahn</u> 138 Wn. 2d 213, 978 P.2d 498 (1999)	8

STATUTES

RCW 26.08.090(1) (f)	17
RCW 26.09.080	18, 21
RCW 26.09.080(2)	10
RCW 26.09.080(2) (4)	18

RCW 29.09.080(4)	21
RCW 26.09.090(1) (e)	13
RCW 26.16.140	10

I. INTRODUCTION

“The key to an equitable distribution of property is not mathematical preciseness, but fairness.” In re Marriage of Clark, 13 Wn. App. 805, 810, 538 P.2d 145, review denied, 86 Wn. 2d 1001 (1975). In making this equitable distribution, the court should consider the parties’ relative health, age, education and employability in determinations related to the division of marital property. In re Marriage of Dessauer, 97 Wn. 2d 831, 839, 650 P.2d 1099 (1982).

The issue before the Court is whether the trial court erred by failing to give adequate consideration to a range of factors, including the Appellant’s medical condition, and the Respondent’s substantial separate property when the trial court determined its distribution of marital property, and whether as a result of this error, the trial court’s distribution of property was inequitable.

The facts establish that the court below erred in entering its ruling, as the lower court’s decisions excessively and unreasonably favored the Respondent, there was no reasonable inference from the evidence to justify the decision, the decision is contrary to law, and

the rulings were based on an erroneous application of the law, resulting in a substantial injustice to the Appellant.

II. ASSIGNMENTS OF ERROR

Assignment of Error No. 1: The Trial Court erred in its determination that the Appellant should be required to continue to pay \$1,600 in monthly spousal support as this decision failed to factor in the Appellant's disabilities and the Respondent's separate property resources.

Assignment of Error No. 2: The trial court erred in its property division and should have granted the appellant a disproportionate division to account for both the appellant's significant disability and the respondent's substantial separate property

Assignment of Error No. 3: The trial court erred in granting a property judgment payment, and instead should have allowed an equalization property transfer amount to be made by transferring retirement accounts

III. STATEMENT OF THE CASE

A. Background Facts

The Appellant and Respondent were married on January 5, 1991. CP at 3. For the majority of their marriage, the couple resided in Selah, Washington, where the Respondent was employed as a math teacher at Selah High School, while the Appellant was employed as an oncological pharmacist at Yakima Valley Memorial Hospital ("YVMH"), in Yakima, Washington. CP at 10.

On December 5, 2010 the Appellant suffered from an embolic stroke. *Id.* As a result of this stroke, the Appellant missed approximately four months of work, during which time the Appellant underwent intensive physical, occupational, and speech therapy. RP at 35. Following this therapy, the Appellant returned to work at North Star Lodge, a cancer care clinic affiliated with YVMH. CP at 10. Although the Appellant did make a partial recovery, he continued to experience significant residual symptoms from the stroke, which are ongoing to this day. CP at 42. As a result, the Appellant

has been left with permanent disability and the cognitive difficulties are his greatest concern. He has probably reached his maximal medical improvement.

Id.

Despite the challenges faced by the Appellant, his Employer YVMH has made numerous extensive accommodations to assist the Appellant perform a modicum of his previous job duties as an oncological pharmacist. RP at 73-74. One of these accommodations is a reduction in hours. RP at 72. Due to the substantial accommodations the Appellant requires, as well due to changes in the pharmacological field job requirements (RP at 79), the Appellant

would unlikely to find any other employment if he was terminated, let go, or suffered from any other changes in his employment situation.¹.

B. Procedural Facts

Following Appellant's stroke, the parties remained married until the Appellant filed a Petition for Dissolution of Marriage on October 29, 2014. CP at 4. The parties separated on January 5, 2014, approximately four years after the Petitioner suffered his stroke. CP at 10.

At trial, Appellant presented extensive testimony regarding his medication condition, job accommodations and security, as well as his finances. Appellant's co-worker, Lori Warnick, who had worked with the Appellant for approximately eight years, provided testimony regarding the Appellant's diminished ability to perform his job duties, as well as the substantial accommodations that YVMH had provided to the petitioner. RP at 52-57. The Respondent did not challenge or question the testimony of Ms. Warnick. RP at 57.

¹ Appellant also provided testimony as to how the Appellant's overall quality of life, as well as his life expectancy, have substantially diminished as a result of his serious medical condition

At trial, the only competent medical evidence produced as to the Petitioner's condition was the Petitioner's testimony as a pharmacist and the reports of Jane Thompson PH.D., and John Roberts M.D. RP at 60. The Respondent did not object to these medical reports, which as they noted in their opening statement, included an "extensive physical and psychological evaluation of Mr. Glover." RP 16.

These reports all clearly indicated the ill health and medical needs of the Appellant. One of these reports, the neuropsychological report of Dr. Thompson included within the diagnosis and findings as AXIS IV, "Vocational Problems, Inability to Return to Full-Time Work" which specifically addressed how the Appellant's medical conditions would affect his job performance as a pharmacist (and therefore, his employability and future earning capacity). CP at 41.

The observations were included that:

Most alarmingly, on a test involving a rapid performance of very simple arithmetic problems he made nine errors, suggesting that his math processes have been adversely affected. Given the nature of his work as a hospital pharmacist and his need to do math in the course of his work, the presence of simple, inattentive errors like the ones he made are very alarming and could easily cause him to make mistakes at work that could injure a person...

...when he is compared both to the general population and to people with a high level of education like his own, his information processing speed is considerably slower, which puts him at a disadvantage in a workplace where rapid performance is necessary...

...Taking the sum of these problems together, Mr. Glover's slow processing speed, poor balance, dysarthric speech, and attentional lapses all point to a brain that is running very inefficiently.

CP at 41. The Report recognized the distinct disabilities and proposes a series of accommodations, including the conclusion that:

Given the high level of fatigue that Mr. Glover is experiencing, as was demonstrated in this office during the evaluations, this examiner does not feel that it is likely that he will be able to return to a full-time work schedule. In fact, he barely has time for his family as it is since he is sleeping most of the time that he is home, up to 13 hours a day.

CP at 41-42. The John Roberts, M.D. evaluation includes the findings:

Nevertheless, he has been left with permanent disability and the cognitive difficulties are his greatest concern. He has probably reached his maximum medical improvement.

CP at 42. Respondent provided no expert medical testimony to rebut these findings or to contest the Appellant's medical conditions.

On January 22, 2016, the trial court entered its Findings of Facts and Conclusions of Law and Decree of Dissolution. CP at 10.

The final Decree of Dissolution provided for a near equal division of the assets and liabilities of the community, and additionally ordered that the Appellant pay spousal support to the Respondent in the amount of \$1,600.00 per month. CP at 11-12. This decision was made despite extensive testimony from the Appellant regarding the severity of his medical condition and the effect of his stroke on his future job prospects, as well extensive testimony regarding the Respondent's significant separate property, which ultimately was not considered by the Court when it entered its order.

On January 29, 2016, Appellant moved the Court for reconsideration of the Findings of Facts and Conclusions of Law and Decree of Dissolution. CP at 36. This Motion for Reconsideration was denied, CP at 46, at which point Appellant filed his notice of Appeal to the Division III Court of Appeals. CP at 47.

IV. LEGAL ARGUMENT

A. STANDARD OF REVIEW

A trial court has broad discretion to distribute property and award maintenance during a dissolution proceeding. In re Marriage of

Olivares, 69 Wn. App. 324, 848 P.2d 1281 (1993), overruled on other grounds by In re Estate of Borghi, 167 Wn.2d 480, 219 P.3d 932 (2009)); In re Marriage of Zahm, 138 Wn. 2d 213, 978 P.2d 498 (1999). However, while a trial court has broad discretion, a court's determination regarding the division of property that does not take into account statutory factors and give these factors fair consideration constitutes an abuse of discretion, and therefore a reversal is appropriate. In re Marriage of Matthews, 70 Wn. App. 116, 123, 853 P.2d 462 (1993) ("We reverse the trial court's maintenance award...because it does not evidence a fair construction of the statutory factors and therefore constitutes an abuse of discretion.")

If the trial court fails to consider relevant factors, the court should reverse the decision and remand for a new determination. The failure to apply the law correctly in reaching a decision is always an abuse of discretion. Koon v. United States, 518 U.S. 81, 100 (1996) ("A district court by definition abuses its discretion when it makes an error of law.") Likewise, a court abuses its discretion by ordering maintenance that a spouse is not able to pay. Bungay v. Bungay, 179 Wash. 219, 223–24, 36 P.2d 1058 (1934).

Washington statutory authority and case law establish that the parties' relative health, age, education and employability are considered in the division of marital property, as well as that court's ultimate concern is the economic condition of the parties upon the dissolution decree. In re Marriage of Mathews, 70 Wn. App. at 121. An award that does not evidence a fair consideration of the statutory factors when it deems the award substantively irreconcilable with fair consideration of the factors, Id.

B. THE TRIAL COURT ERRED IN ITS DETERMINATION THAT THE APPELLANT SHOULD BE REQUIRED CONTINUE TO PAY MONTHLY SPOUSAL SUPPORT.

The final Decree of Dissolution ordered that the Appellant pay spousal support to the Respondent in the amount of \$1,600.00 per month. CP at 12. This ruling was inappropriate as the trial court failed to adequately factor a number of factors, including the \$120,000 in separate property that was awarded to the Respondent as well as the permanent disability and health care limitations of the Appellant.

- 1. The court's determination that the Appellant should be required to pay spousal support is manifestly unjust and should be overturned as it fails to consider the separate property of the Respondent.**

The final Decree of Dissolution ordered that the Appellant pay spousal support to the Respondent in the amount of \$1,600.00 per month. CP at 12. In this ruling, the trial court only factored in the Appellant's post-separate earnings and disability payments, as well as the respondent's earnings for working nine months out of the year, but failed to take into account the \$120,000 in separate property that was awarded to the Respondent, even though that separate property should have been observed and treated no differently than any other separate property. CP at 11.

One of the relevant factors that a Court should consider in a disposition of property and liabilities in a proceeding for a dissolution of marriage is the nature and extent of separate property. RCW 26.09.080(2). Earnings and accumulations of spouses living apart is considered separate property. RCW 26.16.140. Similarly, the Appellant's post-separate earnings and disability payments are similarly his separate property.

Disability payments which are based on a spouse's disability and are not pension or retirement payments are characterized as separate property. In re Marriage of Anglin, 52 Wn. App. 317, 324,

759 P.2d 1224, 1229 (1988) (because payment to husband was based solely on his disability rather than being in the nature of a retirement benefit it is characterized as a repayment for lost future wages and therefore is separate property.) Such disability payments are characterized a separate property even if the disability policy was purchased during the marriage. Brewer v. Brewer, 137 Wn. 2d 756, 976 P.2d 102 (1999). The Brewer Court definitively stated that after the dissolution of a marriage that

payment of monthly benefits which constitute future income, or compensation for pain and suffering, should be characterized as separate property even though the premium payments were made from community funds during the marriage

Brewer, 137 Wn. 2d at 768.

However, when the Court made its determination regarding spousal support, the Court looked only at the Appellant's post separate earnings and disability payments and the Petitioner's earnings accrued working nine months out of the year. It did not factor in the separate property of the Respondent in the amount of \$120,000 in its determination of spousal support, even though this separate property should have been observed and treated in the same manner as any

other separate property. The Court's failure to give these factors fair consideration constitutes an abuse of discretion, and therefore a reversal is appropriate. In re Marriage of Matthews, 70 Wn. App. at 123.

2. The court's determination that the Appellant should be required to pay spousal support is manifestly unjust and should be overturned as it fails to adequately consider the impact of petitioner's disability.

The final Decree of Dissolution was further unfounded as the trial court failed to adequately factor in the permanent disability and health care limitations the Appellant faces. This failure to adequately examine these factors was an abuse of discretion warranting reversal.

The trial court's distribution of property in a dissolution action is guided by statute, which requires it to consider multiple factors in reaching an equitable conclusion. In re Marriage of Rockwell, 141 Wn. App. 235, 242, 170 P.3d 572, 576 (2007). The Court's failure to adequately consider these factors constitutes an abuse of discretion as if "fails to evidence a fair consideration of the facts" in this matter. In re Matthews, 70 Wn. at 123.

The Court is required to consider the age, physical and emotional condition of the Petitioner in determining spousal support.

RCW 26.09.090(1)(e). A maintenance award constitutes an abuse of discretion when it fails to evidence a fair consideration of the facts and renders the paying spouse unable to meet his own needs as well as the obligations imposed by the court. In re Mathews, 70 Wn. App. at 123.

As the Washington Supreme Court noted in Friedlander v. Friedlander, 80 Wn. 2d 293, 494 P.2d 208 (1972), the Court should, “take into account the age of the parties, their health, physical condition” among the factors it considers when determining a division of property. Friedlander, 80 Wn. 2d at 305 (emphasis added). See also, Spreen v. Spreen, 107 Wn. App. 341, 28 P.3d 769 (2001) (holding that a former wife’s worsening depression constituted sufficient grounds for a change in spousal maintenance); see also In re Marriage of Morrow, 53 Wn. App. 579, 588, 770 P.2d 197 (1989) (holding that it was appropriate for the court’s to factor spouse’s physical disability that rendered the spouse occasionally legally blind and therefore limited her ability to function independently at work justified).

Likewise, the Court’s authority to factor the health of a spouse gives the court “wide discretion to fashion a dissolution order” that addresses the circumstances of the parties, including “ill health.” Bulicek v. Bulicek, 59 Wn. App. 630, 634, 800 P.2d 394 (1990); see also In re Marriage of Valente, 179 Wn. App. 817, 819, 320 P.3d 115 (2014) (holding that “A trial court has broad discretion to award maintenance to address the medical needs of a spouse...”).

At trial, the only medical evidence presented at the trial court clearly indicated that the Appellant remains significantly disabled and unable to work full time as a pharmacist. CP 41-42. This medical testimony also undisputedly showed that even if the Appellant was to be able to work part time, he would have required significant accommodations from any employer, as the Appellant would have been unable to perform all of the services expected of a pharmacist or even do duties limited to a “check pharmacist” without significant accommodations due to his work environment and limited time schedule. Id. The respondent presented no competent medical testimony or evidence to contest this.

Currently, the Appellant's medical condition only allows for the Appellant to have part-time-limited-task employment in a unique situation because the employer has continued to voluntarily provide substantial accommodations. It is unrealistic to expect that if the Appellant were to be terminated that he would be able to apply for and obtain a job which would provide the accommodations needed for his significant disability. However, despite this extensive testimony, the trial court concluded that

[r]egarding the issue of employability, it is difficult to assess [the Appellant's] opinions on the subject given the fact that he has been in the job market since 1993. I find it incredible that a pharmacist of his education and experience, even lacking a doctorate, would be a pariah as a job seeker

CP at 42. This conclusion was contrary to all medical evidence, as well as contrary to the testimony of the Appellant, and the testimony of the Appellant's co-workers. For the trial court to conclude that the Appellant had no impairment of future earnings or employment under the facts presented was completely unrealistic, and evidences a clear failure to adequately factor and give fair consideration to the facts of the case.

Likewise, the Court's abrupt dismissal of the Appellant's medical condition ignores the reality that the symptoms that the Appellant still suffers from are intimately tied with his ability to perform his job. Appellant is fortunate enough to have an employer that has provided him with significant accommodations, however it is undisputed that the Appellant cannot perform the services expected of a pharmacist, or even do duties limited to a "check pharmacist" without significant accommodations to his work environment and limited time schedule.

As a result, the Court's decision to ignore or discount the expert medical testimony, the testimony of the Appellant, as well as the testimony of his co-worker all mean that the Court ignored the Appellant's economic circumstances, as the Appellant's medical condition and his economic situation are intertwined. By failing to account for how the Appellant's disability and medical condition affects the Appellant's financial circumstances, the court likewise failed to consider "the ability of the spouse...from whom maintenance is sought to meet his or her financial obligations while meeting those

of the spouse or domestic partner seeking maintenance.” RCW 26.08.090(1)(f).

In summary, the Court’s failure to adequately consider these factors constitutes an abuse of discretion as if “fails to evidence a fair consideration of the facts” in this matter. In re Matthews, 70 Wn. App. at 123. As a result, the Court abused its discretion, and therefore a reversal is appropriate. Id.

C. THE COURT ERRED IN NOT RECONSIDERING THE PROPERTY DIVISION AND GRANTING THE APPELLANT A DISPROPORTIONATE DIVISION TO ACCOUNT FOR BOTH HIS SIGNIFICANT DISABILITY AND THE SUBSTANTIAL SEPARATE PROPERTY OF MRS. GLOVER

Similarly, the Court erred in its failure to reconsider the property division, and by not granting the Appellant a disproportionate division of property. A disproportionate division was appropriate on the basis both because of the Respondent’s significant separate property, as well as appropriate in consideration of the Respondent’s medical condition.

The Court has considerable discretion in determining an equitable distribution of the property and to give one spouse more or less than 50% of the community property. In re Marriage of Tower,

55 Wn. App. 697, 699, 780 P.2d 863 (1989). RCW 26.09.080, which governs the disposition of property, includes as the relevant factors that must be considered the “nature and extent of separate property” and the “economic circumstances of each spouse at the time the division of property is to become effective.” RCW 26.09.080(2)(4); White v. White, 105 Wn. App. 545, 549, 20 P.3d 481 (2001) (“According to RCW 26.09.080... ‘disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors[.]’”)

The Court first erred in reaching a just and equitable division of marital by property by failing to factor in the Respondent’s substantial separate property. The court should consider all property, both community and separate, in determining a fair and equitable division of property. Friedlander v. Friedlander, 80 Wn. 2d 293, 305, 494 P.2d 208 (1972); Matter of Marriage of Olivares, 69 Wn. App. 324, 328-29, 848 P.2d 1281 (1993). As the Court noted in its Findings of Fact and Conclusions of Law, the wife had separate property in the amount of \$120,000 from an inheritance in Alaska; and that

A separate payment of \$120,000 was received after this dissolution case had been filed and at or near the date of

separation. Those monies have been kept separate from the community assets and fully retain their separate character.

CP at 11. However, the trial court erred by ignoring \$120,000 in separate property of the Respondent and then awarding her half of all community property. Simply put, this result failed to take into consideration that \$120,000 was a separate property asset, as well as what this asset represented to her post-economic circumstances.

The trial court also erred by not granting the appellant a disproportionate share of the property by failing to consider this evidence or make appropriate findings as to the Appellant's disability, and how this might affect future economic and employment limitations. These factors also would support a disproportionate division of property in the Appellant's favor. There is no dispute that the Appellant is dealing with ill health. Furthermore, the Appellant is for all intents and purposes "semi-retired" as he is working substantially fewer hours and with less responsibility than he had prior to suffering his stroke. See In re Marriage of Schweitzer, 81 Wn. App. 589, 915 P.2d 575 (1996) (holding that where one spouse was, among other circumstances semi-retired and dealing with ill health, and the

other spouse was employable, the court properly ordered a disproportionate division of property); see also In re Marriage of Rockwell, 141 Wn. App. at 249 (upholding the trial court's 60/40 split of community property when the court factored in the parties age, health and employability, and therefore future earning capacity).

The medical evidence and testimony presented at trial established that the Appellant was unable to perform his job duties as a normal and competitive pharmacist, and can only perform on a limited and part time basis requiring substantial employer accommodations. As a result, an unequal division of assets in the Appellant's favor is clearly justified.

D. THE COURT ERRED IN GRANTING A PROPERTY JUDGMENT PAYMENT, AND INSTEAD SHOULD HAVE ALLOWED AN EQUALIZATION PROPERTY TRANSFER AMOUNT TO BE MADE BY TRANSFERRING RETIREMENT ACCOUNTS

Last, the trial court erred by granting a property judgment payment instead of allowing an equalization payment to be made through retirement account transfers. This decision was a result of the Court's failure to adequately examine the impact of the Appellant's

disabilities, and therefore was an abuse of discretion warranting reversal.

In a marriage dissolution proceeding, the trial court must “dispos[e] of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors.” RCW 26.09.080. Such factors include “[t]he economic circumstances of each spouse at the time the division of property is to become effective.” RCW 29.09.080(4).

The trial court initially held that “the final tally of assets and liabilities leaves the sum of \$124,281 owing from the [Appellant] to the Respondent,” CP at 12, however this amount was later corrected to \$53,630. CP at 53. The trial court opined that “[i]t would appear that Mr. Glover can fund this through either a sale or refinance of the house” that was awarded to him during the court’s division of assets and liabilities. CP 11. However, it was an abuse of discretion for the court to saddle the appellant with an additional approximately \$53,000 worth of payments when it could have given the wife that amount by shifting retirement accounts.

Under RCW 29.09.080,

[t]he key to an equitable distribution of property is not mathematical preciseness, but fairness. This is attained by considering all of the circumstances of the marriage, past and present, with an eye to the future needs of the persons involved. Fairness is decided by the exercise of wise and sound discretion not by set or inflexible rules.

In re Marriage of Clark, 13 Wn. App. at 810 (emphasis added).

The trial court's decision did not "consider[] all of the circumstances of the marriage...with an eye to the future needs of the persons involved." Id. Due to the Appellant's stroke, he will likely suffer from a shortened lifespan, and it is possible that he will not even be alive at a time when he able to access these retirement funds. However, there is no doubt that he will continue to need a residence. The court ignored these realities, and as a result of the trial court's decision, the appellant is now required to produce \$50,000 he does not have to pay a judgment, or to try and refinance his home, resulting in an increased monthly debt load.²

The trial court's decision was an abuse of discretion, as it should have considered the post economic circumstances of the

² It should also be noted that the Respondent was amenable to a equalization payment using the Parties retirement accounts and liquid assets. When Counsel asked "what do you think the Court should do with the disproportionate numbers there." Respondent replied that "I'm more than willing to do it through the accounts and stuff." RP at 171.

parties, which would have made it more fair and equitable to balance the property division with the retirement accounts.

V. CONCLUSION

The trial Court's rulings excessively and unreasonably favor the Respondent, there was no reasonable inference from the evidence to justify the decision, the decision is contrary to law, and the rulings were based on an erroneous application of the law, resulting in a substantial injustice. For the foregoing reasons, Appellant respectfully asks this Court to reverse and remand the trial Court's ruling regarding the division of property.

Respectfully submitted this 20th day of July, 2016.



JOHN A. MAXWELL, WSBA #17431
Meyer Fluegge & Tenney, P.S.
Attorneys for Ryan Glover, Appellant



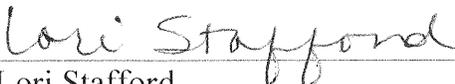
LUKE A. EATON, WSBA #49725
Meyer Fluegge & Tenney, P.S.
Attorneys for Ryan Glover, Appellant

CERTIFICATE OF TRANSMITTAL

I certify under penalty of perjury under the laws of the state of Washington that the undersigned sent to the attorneys of record a copy of this document addressed to the following:

For Respondent Connie Glover: Robert G. Velikanje 205 N. 40th Ave., Ste. 104 Yakima, WA 98908	<input type="checkbox"/> via U.S. Mail <input type="checkbox"/> via fax <input checked="" type="checkbox"/> via e-mail <input type="checkbox"/> via hand delivery <input checked="" type="checkbox"/> via AMS (7/21/16)
--	---

Executed this 20th day of July, 2016, at Yakima, Washington.



Lori Stafford