

FILED

SEP 26 2016

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

Appellate Court No. 343146-III

COURT OF APPEALS OF THE STATE OF WASHINGTON

Division III

TINA MEYETTE,

Appellant

v.

DAN MEYETTE,

Respondent

BRIEF OF APPELLANT

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WSBA# 30511

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A. ASSIGNMENTS OF ERROR

1. The court failed to consider all property of the marriage, pursuant to RCW 26.09.080.

2. The court refused to allow Ms. Meyette to testify of additional property not on the property list submitted to the court at the beginning of trial, but permitted Mr. Meyette to testify about property which was not on the list.

3. The court did not make a reasonable accommodation for Ms. Meyette's hearing impairment until the second half of the trial, which resulted in errors in the first half which effected the remainder of the trial.

B. STATEMENT OF THE CASE

The parties in this case were married on August 8, 1981, and separated on August 14, 2012. With no minor children of the marriage, the few issues for the court's determination were the division of property and maintenance. The matter went to trial on November 19, 2015.

At trial, the respondent submitted a list of property to the court. The court refused to allow testimony of any of the property other than that which was on that property list.

A letter decision was issued by the court which remedied some of the issues brought in the reconsideration, but continued to err on the issues of the community property excluded from testimony and the inequitable inclusion of property which benefited the husband while continuing to deny the same relief to the wife.

C. ARGUMENT

1. Community Property was excluded from testimony at trial

The court took the position at trial that any property not included in a previously-submitted property list would not be considered by the court. See, e.g., CP 251 (lines 18-24), CP 254 (lines 14-20), CP 262 (lines 20-24), 289 (lines 5-19), CP 290 (line 3), CP 400 (lines 12-23). At some point in the trial, without a CR2A stipulation, the court determined that it would consider only property which was on a list proposed by the husband, and admitted as Exhibit 3 at trial. CP 253.

The court in *In re Marriage of Farmer*, 172 Wn.2d 616, 625, 259 P.3d 256 (2011), stated, "At the time of dissolution, all property is brought before the court for a 'just and equitable' distribution." RCW 26.09.080." Because the trial court refused to accept evidence of any property not on that list, the court should remand this case to re-open testimony and hear evidence on that matter. Specific property which was excluded from testimony involved:

- The proceeds of approximately \$20,000 from sale of two tractor-trailers (CP 251)
- Approximately \$2,500 worth of firewood (CP 392)¹
- Approximately \$2,500 worth of steel guard rail (CP 400)
- Approximately \$600 worth of guns (CP 409)
- Approximately \$420 worth of ammunition²

¹ This appeared to not have been specifically excluded from consideration, but was not addressed in the court's decision.

- Approximately \$2,500 worth of corral panels³

Other items of property would have been discussed but were not even brought up due to the consistent denial of its admission. The petitioner should have been permitted to testify to these values, and the court should have made a valuation and distribution.

Upon petitioner's motion for reconsideration (CP 172), the court addressed these issues in its written decision on February 12, 2016. CP 189-195. In that decision, the court reasoned primarily that Grant County Local Rule 16B requires that property lists be submitted, and further stated:

At the beginning of trial, the parties identified and agreed to the distribution of property between Petitioner and Respondent. They also identified that the only issues involved at trial were (1) the valuation of certain items listed on the respective parties' property distribution lists and (2) the alleged maintenance payment. Neither party indicated they planned on presenting evidence about additional items not listed in their property distribution lists nor was there any documentary evidence offered or sought to be offered about items not listed in the property distribution lists.

CP 191. The closes that such an "agreement" was made on the record was prior to the beginning trial when the court states:

Okay, so I've looked at what's been provided in particular the proposed

² Was not able to be testified to because the guns were excluded.

³ Not testified to because it became clear that it would not be permitted.

division of community and uh, community assets and liabilities. And I see that there's a lot of agreement quite frankly. There seems to be a lot of agreement and really just comes down to valuations of certain items. And I guess the one question I had before we begin with testimony is I see numbers for certain items and is there a further guidance that's gonna be provided on which one is more correct? Because I don't see any type of property valuation like for tools for example. There's a twenty-thousand dollar number versus a three-thousand dollar number.

CP 227-228. There was no clear affirmative to the court question of whether that was the agreement, but the court proceeded as if there was.

This would only be appropriate if there was CR2A stipulation on record, which as not referenced, was not clearly assented to by the attorneys and parties, and even if it had been, Ms. Meyette's hearing impairment would likely make it invalid.

The policy and law of the court's responsibility to divide all assets and debts (not only those identified on lists at the beginning of trial) should have been heeded, and the court should have heard all evidence concerning their property. Due to the manner in which the trial proceeded, the best remedy would be a new trial.

2 Wife's IRA should not have been included if other testimony not previously submitted in property lists were excluded

If the court holds to its position that it would only include that items of property submitted on a property list (section 3, above), then the IRA account should have not been credited as received by the wife. This apparent double-standard was brought to the court's attention in appellant's motion for reconsideration. The transcript, which was submitted to the court with that motion for reconsideration, provided:

Ms. Black questioned Ms. Meyette as follows:

Q. That's why I'm asking you Ms. Meyette. Did you list that you had an IRA, an I-R-A for five-thousand dollars?

A. No I did not.

Q. You never had an IRA for five-thousand dollars?

A. I do.

Q. You have one now?

A. I do.

Q. It's not on your property list anywhere?

A. No.

Q. Why not?

A. There's a lot of things not on the property list that was equalized out and my husband uh, never disputed that in the past that's never come up any time before now in the past three years.

The court permitted the distribution of the IRA on its erroneous recollection that Ms. Meyette had voluntarily brought the issue up ("opened the door"), but the transcript clearly shows that that was not the case. It should be excluded from the property list unless all property is brought before the court.

2 Wife's Impaired Hearing was Not Accommodated Sufficient to Meet the Requirements of Due Process

The petitioner is hearing impaired, and this was made clear to the court early in the trial. CP 446. Ms. Meyette stated approximately 23 times on the record that she could not hear.

RCW 2.42.120(1) provides in relevant part:

(1) If a hearing impaired person is a party or witness at any stage of a judicial ... proceeding ... the appointing authority shall appoint and pay for a qualified interpreter to interpret the proceedings.

An amplification device was brought to Ms. Meyette well into the second half of the trial (CP 351), which appeared to help. There was not an issue again through the trial concerning Ms. Meyette's ability to hear.

While the court did ultimately make an accommodation for Ms. Meyette's disability, the accommodation came long after a vast majority of the testimony and evidence was presented to the court, which is another reason this court should remand for a new trial.

D. CONCLUSION

The court should remedy these issues by re-opening testimony and permitting the petitioner to supplement the record to address these issues. This, combined with the issues she had with understanding the trial testimony due to her hearing loss, would be remedied by such action.

Respectfully submitted this 22nd day of September, 2016.



NATHAN P. ALBRIGHT, WSBA# 30511
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**COURT OF APPEALS, DIVISION THREE
IN AND FOR THE STATE OF WASHINGTON**

In re the Marriage of:

TINA MEYETTE,

Appellant,

v.

DAN MEYETTE,

Respondent.

Appeal No. 343146-III

Certificate of Service

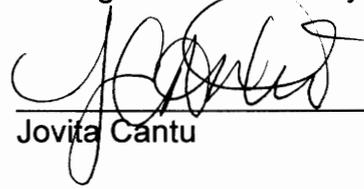
CERTIFICATE OF SERVICE

I, Jovita Cantu, certify that on the 22nd day of September, 2016, I caused a true and correct copy of this **Brief of Appellant** to be served on the following via US Mail (First Class) on this date:

Barbara Black
Attorney for Respondent
1010 S Pioneer Way # D
Moses Lake, WA 98837

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

SIGNED at Moses Lake, Washington this 22nd day of September, 2016.



Jovita Cantu