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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

Appellate Court No. 343146-III

**WASHINGTON STATE COURT OF APPEALS
DIVISION III**

TINA MEYETTE,

Appellant,

v.

DAN MEYETTE,

Respondent.

Appeal from the Washington Superior Court
County of Grant
Case No. 12-3-00502-8
The Honorable Judge David Estudillo

BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUES

- 1) The trial court's just and equitable division of the parties' property in this marriage dissolution was not a manifest abuse of its broad discretion under RCW 26.09.080.
- 2) The trial court's accommodations of appellant's hearing impairment satisfied her due process rights, negating her need for an interpreter under RCW 2.42.120(1).

STATEMENT OF THE CASE

The parties to this case were married on August 8, 1981, and separated on August 14, 2012. CP 4-5. This matter went to trial on November 19, 2015. CP 221. With the parties having no minor children, the few issues for the court at trial were the division of property and liabilities and whether appellant was entitled to maintenance. CP 5-6.

The day before trial both parties submitted trial briefs with spreadsheets attached listing the parties' assets and liabilities before the court for division as required by Grant County Superior Court LCR 16(B). CP 11-21, CP 137-148.

At the outset of trial the court noted that both spreadsheets were similar. CP 227, ln. 17-21. Both parties agreed to who would receive each item listed on the spreadsheets, and the parties' valuation of most items were the same or close to each other. CP 227, ln. 22-23, CP 237, ln. 2-4. The parties even stipulated to the division of several items of personal property with no value being awarded to them because they had previously agreed to

their division. CP 236-41. Included in this stipulation were guns awarded to respondent. CP 143, CP 236-41, CP 309. This left the valuation of property with disputed values and maintenance as the only issues before the court at trial. CP 227, ln. 221-23, CP 236-37. This was reiterated by the trial court several times throughout trial. CP 251, ln 19-22, CP 263-64, CP 265, ln. 1-4, CP 289, ln. 5-19, CP 400, ln. 20-23.

During trial, the court allowed testimony regarding some items not on either parties' spreadsheets, and it did not allow testimony on other items not on the spreadsheets. CP 251, CP 306, CP 392-95, CP 399-400. Regarding appellant's IRA, she did not even object to questioning about this property. CP 306. In its decision letter dated December 4, 2015, the trial court declined to include most of this property in its property division. CP 149-56. The one exception was appellant's IRA. CP 150.

Following the court's decision, appellant, untimely, filed a Motion for Reconsideration. CP 172, CP 190. In her memorandum in support of her motion, appellant raised issue with the trial court's decision regarding the property addressed at trial that was not included in the parties' spreadsheets and additional property that she did not include in her spreadsheet or raise at trial. CP 174-76. The trial court made its decision regarding appellant's motion for reconsideration in a letter dated February 12, 2016. CP 189-195. In its letter, the trial court addressed each of the alleged errors appellant believes

the trial court made in its property division and denied appellant's motion on these issues.¹ CP 191-92. Appellant now appeals these same issues to this court. Brief of Appellant, 1.

Additionally, appellant has raised her hearing impairment as an issue on appeal. Brief of Appellant, 1. She believes the court did not properly accommodate her hearing impairment by appointing an interpreter to her in violation of her due process rights. Brief of Appellant, 1.

At the outset of the trial, the court took note that appellant is "hard of hearing" and agreed to make a concerted effort to "speak up" and speak into the microphone as requested by appellant's trial attorney. CP 226, ln. 6-14. The trial court also instructed appellant to bring to the court's attention anytime she could not hear what was being said. CP 226, ln. 14-15, CP 227, ln. 2-3. She did so approximately 25 times, and each time what appellant did not hear was repeated to her. CP 238, ln. 5-9, CP 256, ln 14-23, CP 258-59, CP 261, ln. 20-22, CP 262, ln 1-3, CP 266, ln. 6-17, CP 268, ln. 12-21, CP 275, ln. 7-12, CP 278, ln. 4-9, CP 279, ln 15-21, CP 280, ln. 17-21, CP 283, ln. 4-14, CP 285, ln. 5-11, CP 287, ln. 7-10, CP 287, ln. 16-20, CP 289-90, CP 291-92, CP 292, ln. 4-13, CP 294, ln. 5-10, CP 296, ln 5-10, CP 297, ln. 1-7, CP 302-03, CP 328, ln 14-25, CP 329-30, CP 346, ln. 17-25, and CP 348-49. She then affirmed she heard, sat silent, or if it was while she

¹ The trial court granted appellant's motion on minor issues not related to the property division that are not before this court on appeal. CP 190-91.

was testifying she could answer the question that was repeated to her. CP 238, CP 258-59, CP 261, ln. 22-23, CP 262, ln. 3-5, CP 266, CP 268, ln. 20-23, CP 275, ln. 12-13, CP 278, CP 279, ln. 22, CP 280, ln. 21-22, CP 283, CP 285, CP 287, ln. 9-11, CP 287, ln. 19-23, CP 289-90, CP 291-92, CP 292, CP 294, ln. 7-18, CP 296, ln. 7-16, CP 297, CP 303, CP 329, CP 330, ln. 4, CP 346-47, and CP 349. Also, there were seven additional instances in which appellant made comments on the record, out of turn, and in open court regarding the testimony of respondent, argument from the attorneys, or questions from the court. CP 239, ln. 17-19, CP 240, ln. 6-7, CP 249, ln. 1, CP 257, ln. 20-21, CP 282, ln. 1-2, CP 298, ln. 7-8, CP 302, ln. 20-21. All before the court provided an amplification device to her. CP 352, ln. 5-7.

STANDARD OF REVIEW

The appointment of an interpreter is within the discretion of the trial court and will not be disturbed on appeal absent a showing of abuse. *State v. Mendez*, 56 Wn. App. 458, 463, 784 P.2d 168, (1989).

In a marriage dissolution, “the trial court has broad discretion in awarding property under RCW 26.09.080, and this court will reverse only upon appellant's showing of a manifest abuse of discretion.” *In re Marriage of Zier*, 136 Wn. App. 40, 45, 147 P.3d 624 (2006).

ARGUMENT

I. GIVEN THE WIDE DISCRETION GRANTED TO TRIAL COURTS WHEN DIVIDING PROPERTY IN A MARRIAGE DISSOLUTION UNDER RCW 26.09.080, THE TRIAL COURT JUSTLY AND EQUITABLY DIVIDED THE PARTIES' PROPERTY

For each of the errors that appellant alleges the trial court made in its property division, the trial court had sufficient grounds to rule as it did. Trial courts have broad discretion to divide property in a marriage dissolution. *Brewer v. Brewer*, 137 Wn.2d 756, 769, 976 P.2d 102, 110 (1999). This is so because trial courts are in the best position to determine the parties' assets and liabilities and to determine what is just and equitable under all the circumstances. *Id.* As such, a trial court's property division will only be reversed if it manifestly abused its discretion, which occurs when it is based on untenable grounds or made in an unreasonable manner. *Zier*, Wn. App. at 45, 147 P.3d 624. In this case, the trial court had proper grounds to divide the parties' property as it did, and it did so in a reasonable manner.

During trial and in her motion for reconsideration, appellant brought additional property to the trial court's attention that she wanted the trial court to include in the property division that she did not include in her spreadsheet of the parties' property and liabilities prior to trial. In both instances, the trial court declined to include any of this property in the property division. The court's reasoning for declining to include this property is as follows:

Proceeds from the 2005 sale of tractor-trailers: Appellant “made no reference to these tractor-trailers in her trial brief and offered no documentary evidence to support a theory that Respondent converted the proceeds from the sale of these trailers for his personal use.” CP 191. She also failed to offer any evidence with her motion for reconsideration for the court to even make a preliminary determination of the merits of her position. CP 191.

Firewood: The court allowed testimony about this item even though it was not included in appellant’s trial brief. CP 191. Appellant still did not offer evidence about the value of the firewood. CP 191. Further, she “did not offer evidence separating the value of the firewood from the appraised value of the land where the wood was located.” CP 191. Also, she did not offer evidence with her Motion for Reconsideration indicating the potential value of the firewood. CP 191.

Steel guard rail: Appellant did not raise this item as a potential asset in her trial brief or include it in her spreadsheet attached to her trial brief and she did not offer documentary evidence about the steel guard rail. CP 191. Further, she did not offer evidence with her Motion for Reconsideration that the steel guard rail had any real value. CP 191.

Guns: At the beginning of trial the parties stipulated that the guns had been previously divided by agreement of the parties.² CP 192.

Ammunition and corral panels: Appellant offered no evidence about these two items at trial. CP 192. Additionally, she offered no evidence with Motion for Reconsideration indicating these items had any real value.³ CP 192.

The court listed reasonable grounds for its rulings on each of the items listed immediately above. Thus, the court's decision to not include them in the property division was within its broad discretion when dividing property in a marriage dissolution.

In addition, the trial court was within its discretion to allow testimony regarding appellant's IRA and to include it in its property division because appellant did not object to questions posed to her about her IRA. And an objection to the admission of testimony will not be considered on appeal if it is not timely made in the trial court. *Ramsey v. Mading*, 36 Wn.2d 303, 311, 217 P.2d 1041 (1950). Further, unlike the property appellant wanted to be included in the property division, the trial court found "the testimony was clear and unequivocal about the value of the IRA." CP 192. Thus, the trial court's decision to include the IRA in the property division was within its

² This was also confirmed by the parties later in the trial. CP 309.

³ These items were not brought to the trial court's attention before or during trial. Appellant first raised issue with these items not being included in the property division in her Memorandum in Support of Reconsideration. CP 175.

broad discretion when dividing property in a marriage dissolution because it had reasonable grounds to do so.

II. THE TRIAL COURT PROPERLY ACCOMODATED APPELLANT'S HEARING IMPAIRMENT WHICH INSURED THAT HER DUE PROCESS RIGHTS WERE NOT VIOLATED.

The trial court's accommodation of appellant's hearing impairment assured she could fully participate in the trial without an interpreter.⁴ The trial court does not have an affirmative obligation to appoint an interpreter if a party's lack of fluency or facility are not made apparent to the court. *In re Marriage of Olson*, 69 Wn. App. 621, 624, 850 P.2d 527 (1993). It is within the courts discretion to appoint an interpreter under RCW 2.42.120(1). *Id.* In *Olson*, the court reasoned Mr. Olson was accommodating his hearing problem because he was silent after asking the witness to speak louder, he never indicated a need for additional help, and he did not state that he could not hear even though witnesses were speaking louder, negating the need to appoint an interpreter and remand for a new trial.

From the record in this case, it is clear that appellant's hearing difficulty did not hinder her participation in the trial. After each time appellant stated she could not hear what was being said, it was repeated to her. After each repeated statement or question appellant sat silent, or if it was during her examination she answered the question. This suggests that the modified voice

⁴ It is not even clear how providing an interpreter under RCW 2.42 would have helped appellant, as there is no indication she uses sign language.

levels allowed appellant to hear because she never stated she could not hear the repeated question or statement and she responded to some of them. These facts are strikingly similar to the facts in *Olson* in which the court reasoned an interpreter and remand for a new trial was not necessary.

Furthermore, there was seven other instances before the court provided an amplification device to appellant, in which appellant made comments on the record, in open court, and out of turn regarding respondent's testimony, argument from the attorneys, or questions from the court. This indicates she could hear what was being said during the trial because she could not have made these comments if she could not hear. Thus, the record clearly shows appellant participated in the entire trial, and her due process rights were not violated.

ATTORNEY FEES

Mr. Meyette seeks an award of his attorneys fees and costs incurred in responding to this appeal pursuant to RCW 4.84.185 (citations contained therein) and RAP 18.1(b). There is no reasonable basis for Ms. Meyette's appeal given the very broad discretion entrusted to the trial court to hear and consider testimony and divide property, which will not be disturbed or revised on appeal.

CONCLUSION

The court should affirm the trial court's decision and deny appellant's request for a new trial because the trial court accommodated appellant's hearing impairment which allowed her to fully participate in the trial in accordance with her due process rights, negating her need for an interpreter under RCW 2.42.120(1) and it made a just and equitable division of the parties' property within the broad discretion granted to it under RCW 26.09.080.

Respondent Dan Meyette requests an award of attorney's fees for having to respond to this appeal pursuant to RCW 4.84.185 and RAP 18. 1(b).

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