

FILED  
Court of Appeals  
Division III  
State of Washington  
9/17/2018 11:52 AM

No. 358364

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

---

In re the Marriage of:

WESLEY S. PRUITT,

Petitioner/Appellant,

and

JENNIFER L. PRUITT,

Respondent/Appellee.

---

APPELLANT'S BRIEF

---

Robert R. Cossey  
WSBA No. 16481  
902 North Monroe St.  
Spokane, WA 99201  
(509) 327-5563  
Attorney for Appellant

**TABLE OF CONTENTS**

A. ASSIGNMENT OF ERROR.....2

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR.....2

C. STATEMENT OF THE CASE.....3

D. ARGUMENT.....9

    a. This Court should reverse the trial court’s decision regarding the parenting plan and adopt a parenting plan that contains appropriately tailored restrictions with regard to Mr. Pruitt’s contact with his children. ....9

        i. The trial court erred by entering a final parenting plan that includes restrictions against Mr. Pruitt that are not tailored to the particular facts of the present case, and the harm the restraints under RCW 26.09.191 were intended to prevent. ....10

        ii. The trial court erred in adopting a final parenting plan that essentially eliminates Mr. Pruitt’s residential time with his children without a sufficient basis, and with no findings that doing so is necessary to protect the children’s best interests. ....13

        iii. The trial court erred by adopting a final parenting plan that not only invites, but requires future litigation regarding the parenting plan, but without making clear that the residential provision constitute only an interim parenting plan by which Mr. Pruitt can return to court to have the matter litigated under the standards to adopt an initial final parenting plan. ....15

    b. This Court should reverse the trial court’s decision with regard to the equalization payment, and ensure that all growth on Mr. Pruitt’s pre-marital contributions toward his 401(k) account were considered before making a final determination as to the division of assets. ....17

E. CONCLUSION.....21

## TABLE OF AUTHORITIES

### Cases

<i>In re Marriage of Katare</i> , 125 Wn. App. 813, 105 P.3d 44 (Div. 1, 2004) .....	10, 15
<i>In re Marriage of Possinger</i> , 105 Wn. App. 326, 19 P.3d 1109 (Div. 1, 2001) .....	16
<i>In re Marriage of Schwarz</i> , 192 Wn. App. 180, 368 P.3d 173 (Div. 3, 2016) .....	19
<i>In re Marriage of Shannon</i> , 55 Wn.App. 137, 777 P.2d 8 (Div. 1, 1989) .....	20
<i>In re Marriage of Underwood</i> , 181 Wn. App. 608, 326 P.3d 793 (Div. 2, 2014).....	13, 14
<i>In re Marriage of White</i> , 105 Wn. App. 545, 20 P.3d 481 (Div. 2, 2001) .....	19
<i>In re Parentage of J.H.</i> , 112 Wn. App. 486, 49 P.3d 154 (Div. 2, 2002) .....	10

### Statutes

RCW 26.09.002 .....	10, 14
RCW 26.09.184 .....	16
RCW 26.09.187 .....	10, 14, 17
RCW 26.09.191 .....	10, 11

### **A. ASSIGNMENT OF ERROR**

The trial court erred by failing to tailor restrictions in a final parenting plan to suit the specific circumstances in that case, resulting in an unreasonably restrictive parenting plan that is not warranted by the record and is not in the children's best interests.

The trial court further erred in failing to properly consider the growth on pre-marital contributions to the Appellant's, Mr. Wesley Pruitt, 401(k) account prior to making a decision as to the allocation of assets and determining an appropriate equalization payment to the Appellee, Mrs. Jennifer Pruitt.

### **B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR**

Did the trial court abuse its discretion in imposing restrictions against Mr. Pruitt that prevent him from ever having overnight contact with his children, without ensuring that the restrictions were reasonably calculated to prevent the potential harm recognized by the Court?

Did the trial court err in ordering an equalization payment in favor of Mrs. Pruitt without evaluating or even acknowledging the growth on pre-marital contributions to Mr. Pruitt's 401(k) retirement account?

### C. STATEMENT OF THE CASE

The parties here, Mr. and Mrs. Pruitt married on August 8, 2008. RP. 138; ln. 25. Two children were born of the marriage, Keagen in 2011 and Haley in 2014. RP. 138; ln. 18-22. On June 1, 2016 Mrs. Pruitt initiated a separation between the parties by filing a Petition for Order for Protection. On that date, Mr. Pruitt came home from work to find that his wife and children were gone, although he did not know why. RP. 360, ln. 23 – RP. 361, ln. 1. Worried about his family, Mr. Pruitt contacted local law enforcement in Spokane, Washington. *Id.* At that time, Mr. Pruitt first became aware that Mrs. Pruitt had filed a Petition for Order for Protection against him. RP. 361, ln. 21-22

Prior to June 1, 2016 there was no existing history with child protective services (CPS) between the parties. RP. 31. Mrs. Pruitt had also never made any prior reports to law enforcement in regard to Mr. Pruitt. RP. 46, ln. 20 – RP. 47, ln. 1. Ultimately, Mrs. Pruitt's for Order for Protection Petition was granted a few short weeks after it was filed. RP. 362, ln. 13-14.

After obtaining an Order for Protection on June 14, 2016, Mrs. Pruitt made reports to law enforcement alleging that Mr. Pruitt had committed acts of abuse against the children. RP. 31, ln.

24-25. She further claimed that Mr. Pruitt had committed acts of child abuse against the parties' son, Keagen, and that she had the behavior on video. *Id.* No allegations of abuse against Haley were made at that time. RP. 366, ln. 20-22.

Mrs. Pruitt's allegations resulted in an investigation being initiated by CPS. RP. 366, ln. 10-16. The allegations also resulted in Mr. Pruitt being criminally charged in July 2016. RP. 364, ln. 21-24. Due to the pending criminal case, all contact between Mr. Pruitt and his children was suspended until further order of the court. Ultimately, the criminal charges were dismissed in their entirety on September 9, 2016. RP. 365, ln. 5-10.

In the dissolution case, a guardian ad litem (GAL), Mary Ronnestad, was appointed by the mutual agreement of the parties on September 26, 2016. RP. 28, ln. 23.

On September 12, 2016, immediately after Mr. Pruitt's criminal case was dismissed, Mrs. Pruitt filed a motion in the Spokane Superior Court asking the court to restrict communication and visitation between Mr. Pruitt and his children to only therapeutic contact. CP. #44 &45. Mr. Pruitt responded, requesting that unsupervised contact be re-established or alternatively supervised contact with his parents as the supervisors

be allowed. CP. #56. However, on September 22, 2016 Commissioner Anderson signed an Order for Mr. Pruitt to have therapeutic contact with the children. CP. #67. The therapy appointments subsequently began in December of 2016. RP. 59, ln. 25 – RP. 60, ln. 1.

During the same time frame in which therapeutic contact was occurring, Mr. Pruitt took active steps to ensure that he addressed any safety concerns that the Court may have. Mr. Pruitt enrolled in an extensive parenting class called the “Circle of Security.” RP. 376. This was an 8-week program that Mr. Pruitt completed on March 14, 2017. Ex. P-7.

In addition, Mr. Pruitt obtained a domestic violence assessment by Ginger Johnson at Abuse Recovery Ministry and Services (“ARMS”). Ex. P-6. ARMS is a Washington State certified and licensed domestic violence program. *Id.* In the course of her evaluation, Ms. Johnson met with and obtained information directly from Mr. Pruitt at an appointment on December 6, 2016, and also reviewed numerous documents related to the case between the parties. *Id.* The documents reviewed included numerous declarations filed by Mrs. Pruitt, in which she alleged domestic violence; a transcript of the earlier protection

order hearing; filings from the criminal case against Mr. Pruitt; the divorce case history between the parties; and even the transcript of the deposition of Mrs. Pruitt. *Id.* After meeting with Mr. Pruitt and reviewing exhaustive collateral information as provided, Ms. Johnson determined that Mr. Pruitt may have behaved in ways that could have been considered abusive, but that there was not a pattern of power and control, and that Mr. Pruitt did not require further treatment. *Id.* Ms. Johnson's report was dated January 7, 2017. *Id.*

While the divorce case was ongoing, Mrs. Pruitt filed a Petition to Renew Protection Order in early June 2017. RP. 362, ln. 21-22. Mr. Pruitt opposed this Petition, and Mrs. Pruitt's request to renew the Order for Protection was ultimately denied on July 10, 2017. RP. 363, ln. 10-13; RP. 364, ln. 1.

After several months of therapeutic visits, on July 28, 2017 Mr. Pruitt's residential time was expanded to continue the therapeutic visits, but also to add 3 Saturdays per month. RP. 70, ln. 21-23. The visits were monitored by at least one of Mr. Pruitt's parents, but were not required to be supervised. RP. 71, ln. 4-6.

Unlike the parenting plan, financial matters between the parties involved minimal litigation prior to the trial. On July 14,

2016, the parties entered an agreed order that allowed each party to remove funds from their joint savings account to pay for legal fees. That same order provided that Mr. Pruitt would continue to deposit his check into the parties' joint checking account, and that both parties would pay their usual household bills from that joint checking account. This Order was not modified – or requested to be modified – at any time prior to the trial.

With regard to a temporary parenting plan, at the time the parties proceeded to trial on October 2, 2017, the Order of July 28, 2017, still controlled Mr. Pruitt's contact with the children.

During the trial, both parties testified at some length regarding Mrs. Pruitt's allegations of domestic violence and child abuse. The court heard testimony from Mr. Pruitt, Mrs. Pruitt, the GAL, Melissa Pruitt, Morman Pruitt, Ginger Johnson, and Amy Grafa. CP. #177. Mrs. Pruitt did not present any witnesses to testify regarding concerns about Mr. Pruitt and his interactions with the children, but relied solely on her own testimony and that of the GAL.

With respect to the parties' finances, during trial a significant issue relating to Mr. Pruitt's pre-marital property arose as pertains to his 401(k) account. RP. 190-191. Mr. Pruitt testified

regarding his premarital contributions to that account, and presented evidence that in 2007 – prior to the parties marriage – his 401(k) had a value of approximately \$78,000. RP. 191, ln. 8-10. He further testified that the value of his 401(k) account dropped sharply in 2008 due solely to a crash in the stock market. RP. 191, ln. 14-17. Mr. Pruitt’s position was that he should be credited for his premarital contributions as of 2007, in light of the fact that the decrease in value in 2008 was not due to any action on his part but solely on the stock market, which later rebounded. *See id.*

When Mrs. Pruitt testified regarding Mr. Pruitt’s 401(k) account, she did not refute Mr. Pruitt’s claim of the value of his 401(k) account as of 2007. *See* RP. 557-58. Mrs. Pruitt also did not deny the accuracy of Mr. Pruitt’s testimony that the sole reason for the decline in the account’s value from 2007-2008 was a major crash in the stock market. *See id.* Instead, Mrs. Pruitt simply testified that she was asking that the Court adopt a pre-marital value of \$15,391 for Mr. Pruitt’s 401(k) account. RP. 558, ln. 2-6.

On October 25, 2017, the Honorable Judge Harold Clarke III issued a written memorandum decision. CP. #180. Judge Clarke ruled, among other things, that Mr. Pruitt’s residential time would remain as ordered on July 28, 2017, but that Mr. Pruitt

could seek unmonitored daytime contact with the children upon completion of three months' of domestic violence treatment. *Id.* Nothing in either Judge Clarke's written decision, or in the final parenting plan, attempted to tailor the harsh restrictions against Mr. Pruitt to the particular circumstances of this case. *See id.* The sole basis for denying Mr. Pruitt any expansion of his residential time, including any possibility to have overnight residential time, was a domestic violence restriction. *See generally id.* Judge Clarke did not explain in his memorandum decision why he was declining to enter into a tiered parenting plan, or why he was not granting Mr. Pruitt even the expanded time recommended by the GAL. Rather, the decision merely read: "the Court is not ready to step to a 'traditional' plan at this time." *Id.* There were no findings at all with regard to credibility. *See generally id.*

As to the parties' financial situation, Judge Clarke's ruling required that Mr. Pruitt make an equalization payment to Mrs. Pruitt in the amount of \$177,249.97. *Id.* The ruling did not allow Mr. Pruitt credit for the significant growth on his pre-marital contributions to his retirement account. *Id.* Indeed, the ruling failed even to acknowledge the growth shown in the account, or

that at least some of that growth was directly the result of Mr. Pruitt's pre-marital contributions.

Mr. Pruitt makes this appeal from the decision of Judge Clarke imposing severe restrictions against him in the final parenting plan, which are not tailored to the circumstances of this case, have not established a stable and long-term parenting plan, and which do not allow for him to have any overnight contact with his children. Mr. Pruitt further appeals Judge Clark's ruling which afforded Mrs. Pruitt an unreasonable windfall in the equalization payment, without sufficient consideration for Mr. Pruitt's substantial pre-marital contributions to his retirement account, and the growth thereon.

#### D. ARGUMENT

- a. **This Court should reverse the trial court's decision regarding the parenting plan and adopt a parenting plan that contains appropriately tailored restrictions with regard to Mr. Pruitt's contact with his children.**

When reaching a determination as to a final parenting plan, the trial court must be guided by and make its decision based upon the best interests of the children involved. RCW 26.09.002. In reaching its decision, the court should generally ensure that the relationship between each parent and the children is fostered. *See*

*id.* The court also must consider all factors set forth in RCW 26.09.187(3) before entering a final parenting plan. On appeal, this Court reviews the trial court's decision as to a final parenting plan for abuse of discretion. *In re Parentage of J.H.*, 112 Wn. App. 486, 492, 49 P.3d 154 (Div. 2, 2002). An abuse of discretion occurs if the trial court's decision is manifestly unreasonable, or is "based on untenable grounds." *Id.*

- i. **The trial court erred by entering a final parenting plan that includes restrictions against Mr. Pruitt that are not tailored to the particular facts of the present case, and the harm the restraints under RCW 26.09.191 were intended to prevent.**

When considering restrictions pursuant to RCW 26.09.191, the trial court's analysis may not stop at simply finding that restrictions are appropriate. The court next must ensure that the specific restriction imposed is reasonably calculated to prevent the harm identified under the statute. *In re Marriage of Katare*, 125 Wn. App. 813, 826, 105 P.3d 44 (Div. 1, 2004).

In the present case, the final parenting plan adopted by Judge Clarke flies in the face of established precedent in this state. It makes no attempt to tailor the restraints against Mr. Pruitt to the particular facts of this case. The restraints imposed are not

“reasonably calculated” to address the potential for harm that was identified by the trial court under RCW 26.09.191. To the contrary, Judge Clarke simply made the choice to adopt a “default” position and maintain the temporary orders until Mr. Pruitt took further steps toward treatment.

In his ruling, Judge Clarke did not provide any rationale for why attending 3 months of a domestic violence perpetrator’s program would have any impact on whether Mr. Pruitt should have monitored or unmonitored contact with his children. Judge Clarke also did not identify any threat or potential harm to the children if Mr. Pruitt were permitted to have overnight, rather than daytime contact with the children. The only explicit findings in Judge Clarke’s memorandum decision regarding the parenting plan were: (1) “domestic violence has occurred in the past by Mr. Pruitt against Ms. Pruitt and the children,” thus a restriction under RCW 26.09.191 was appropriate; and (2) that Mr. Pruitt had complied with therapeutic visitation throughout the previous year.

The trial court’s decision is simply lacking in any explanation whatsoever to connect the specific restrictions ordered to the court’s findings. Although certainly enrollment in a domestic violence treatment program is naturally connected to a

finding of domestic violence, the extreme penalty of restricting Mr. Pruitt's contact with his children to only therapy sessions and 3 weekly monitored visits is not linked here.

The GAL testified at trial that there had been no new reports of alleged abuse by Mr. Pruitt since the case between the parties was initiated. RP. 40, 21-23. On the contrary, the evidence showed that Mrs. Pruitt had engaged in inappropriately interviewing and questioning Keagen after the dissolution case had begun. RP. 43, ln. 14-15 & RP. 44, ln. 1-7. The GAL also testified about feedback she received from other professionals, including Dr. Hille, Keagen's individual counselor, that indicated a possible concern about Mrs. Pruitt communicating with the children about the allegations and litigation between the parties. *See* RP. 56, ln.24 – RP. 57, ln. 16.

Although neither Dr. Hille nor the GAL specifically stated that Mrs. Pruitt was coaching Keagen, the concern remained that he was making statements that were not typical for a child of his age. *Id.* The counselor seeing Mr. Pruitt with the children, Jason Raugust, also expressed the same concerns. RP. 63, ln. 10 – RP. 64, ln. 14. Mr. Raugust provided the GAL with specific examples of statements Keagen made during therapy sessions that caused

Mr. Raugust concern – such as a statement that if he smiled while he was with Mr. Pruitt then Keagen could not live with his mother. RP. 64, ln. 9-14.

The GAL testified at trial that Keagen’s individual counselor – Dr. Hille – expressed no concerns about Mr. Pruitt. RP. 57, ln. 17-18. In fact, Dr. Hille was in favor of Mr. Pruitt having expanded time with Keagen. RP. 58, ln. 1-4. The GAL herself testified that Mr. Pruitt had already taken significant strides, and that the *only* additional recommendation she would make would be for him to complete a new domestic violence evaluation. RP. 67, ln. 23 – RP. 68, ln. 8.

ii. **The trial court erred in adopting a final parenting plan that essentially eliminates Mr. Pruitt’s residential time with his children without a sufficient basis, and with no findings that doing so is necessary to protect the children’s best interests.**

In light of the testimony at trial, and the lack of specific findings by Judge Clarke to justify such a heavily restrictive schedule, minimizing Mr. Pruitt’s contact with the children to the point that he essentially has no residential time is not appropriate. A trial court generally should not entertain a final parenting plan that will effectively eliminate a parent’s residential time with their

child. *In re Marriage of Underwood*, 181 Wn. App. 608, 612, 326 P.3d 793 (Div. 2, 2014). Doing so is an extreme measure in direct opposition to a parent’s fundamental liberty interest in raising his children. *Id.*

Furthermore, essentially eliminating residential time of a parent opposes the stated statutory policy of RCW 26.09.002, which explicitly states “[t]he state recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and that the relationship between the child and each parent should be fostered unless inconsistent with the child’s best interests.” *See also* RCW 26.09.187(3) (stating, *inter alia*, “The court shall make residential provisions for each child which encourage each parent to maintain a loving, stable, and nurturing relationship with the child, consistent with the child’s developmental level and the family’s social and economic circumstances.”).

In the present case, no specific findings were made by Judge Clarke to indicate that Mr. Pruitt having expanded and meaningful residential time was contrary to the children’s best interests. If anything, Judge Clarke’s ruling actually indicates the opposite by recognizing that Mr. Pruitt’s continued progress in the

form of participating in a domestic violence treatment program for three months, then Mr. Pruitt could come back to the Court to seek unmonitored contact with the children. CP. #180. Indeed, even when finding that Mr. Pruitt could seek unmonitored “daytime” contact with the children after commencing treatment, Judge Clarke provided no explanation or justification for why contact could not then proceed to begin overnight residential time.

The trial court simply cannot impose such restrictions against a parent without making express findings related to the same. *In re Marriage of Katare*, 125 Wn. App. 813, 826, 105 P.3d 44 (Div. 1, 2004). Although restrictions are mandatory under the statute upon a finding of domestic violence, this does not alleviate the trial court’s responsibility to *tailor the particular restrictions* imposed to the facts of the case at hand. This is the step which Judge Clarke wrongfully skipped, causing him to abuse his discretion when he effectively eliminated all residential time between Mr. Pruitt and his children.

- iii. **The trial court erred by adopting a final parenting plan that not only invites, but requires future litigation regarding the parenting plan, but without making clear that the residential provision constitute only an interim parenting plan by which Mr. Pruitt can return to court to**

**have the matter litigated under the standards to adopt an initial final parenting plan.**

Also problematic is the inherently temporary nature of the parenting plan adopted by Judge Clarke. When entering a final parenting plan, one of the court's objectives must be to "[p]rovide for the child's changing needs as the child grows and matures, in a way that minimizes the need for future modifications to the permanent parenting plan." RCW 26.09.184(1)(c). In appropriate cases, the court may implement a final parenting plan that consists of an "interim residential schedule." *In re Marriage of Possinger*, 105 Wn. App. 326, 337, 19 P.3d 1109 (Div. 1, 2001). Such a schedule may reserve certain parenting issues until an anticipated change actually occurs, rather than making a final decision prior to that anticipated event. *See id.* In that instance, the initial standards for determining a final parenting plan would apply when the anticipated event occurs, rather than the modification standards. *See id.*

In the present case, Judge Clarke adopted a final parenting plan that does not serve the purpose of ensuring stability and finality for the children. On the contrary, it not only creates the possibility of future litigation – it directly invites and requires

future litigation. Despite this fact, Judge Clarke did not explicitly make this an interim parenting plan. Aside from the concerns stated above with regard to the final parenting plan entered by the trial court, this issue alone is more than sufficient reason to remand this matter back to the trial court for clarification: either to confirm that the residential schedule ordered is merely an interim schedule, allowing Mr. Pruitt to file in the superior court under the standards of RCW 26.09.187 upon completing 3 months of domestic violence treatment; or to enter an appropriate final parenting plan that properly considers the issues of stability, recognizes the importance of the parent-child relationship between Mr. Pruitt and the children, and which only contains restrictions that are reasonably calculated to the specific facts of this case.

- b. This Court should reverse the trial court's decision with regard to the equalization payment, and ensure that all growth on Mr. Pruitt's pre-marital contributions toward his 401(k) account were considered before making a final determination as to the division of assets.**

At the time of trial, Judge Clarke erred by failing to properly consider the growth on the substantial contributions Mr. Pruitt made to his 401(k) prior to the parties marriage. Mr. Pruitt began working for Burlington Northern Santa Fe in 2000. RP. 140, ln. 4. Prior to the parties' marriage in 2008, Mr. Pruitt

contributed substantially to the 401(k) account he had through his employer. The un-contradicted testimony at trial showed that Mr. Pruitt's 401(k) account had a value of approximately \$78,000. RP. 191, ln. 8-10. In 2008, prior to the parties' marriage, the stock market crashed. RP. 191, ln. 17. This caused Mr. Pruitt's 401(k) account to temporarily plummet in value to only \$15,391.85 – about 1/5 of its prior value. RP. 191, ln. 13.

Throughout the marriage, Mr. Pruitt continued to work for the same employer. RP. 140, ln. 4. During this time, it is undisputed that Mr. Pruitt continued to contribute to his 401(k) account. At the time of the parties' separation, Mr. Pruitt's 401(k) had a total value – including both pre-marital contributions and those contributions made during the marriage – of \$282,609.60. RP. 190, ln. 8. Based on the fluctuations in the stock market that caused the temporary reduction in the 401(k)'s value immediately prior to the marriage, Mr. Pruitt asked that the pre-marital contributions to the account be valued at the \$78,000 figure clearly established by the statements provided at trial. RP. 191, ln. 23-25.

Mrs. Pruitt provided no basis or explanation in testimony for why she disputed Mr. Pruitt's valuation of his pre-marital contributions to the 401(k) account. RP. 558, ln. 2-6. Indeed,

Mrs. Pruitt's testimony as to the 401(k) account was exceptionally brief, and limited almost exclusively to stating what she wished the court to value the account at. *See* RP. 557-58. At no time did Mrs. Pruitt dispute Mr. Pruitt's testimony regarding the stock market crash impacting the 2008 account statement, and leading to a vastly misleading figure once the stock market rebounded. *See generally id.*

An asset is generally considered to be separate property if it is acquired prior to the marriage. *In re Marriage of White*, 105 Wn. App. 545, 550, 20 P.3d 481 (Div. 2, 2001). The mere increase in value of an item of property during the marriage does not change the characterization of that property. *Id.* at 551. Such is the case here, where Mr. Pruitt had contributed substantial funds to his 401(k) account prior to marriage, which subsequently grew in value not only to match their value as of 2007, but continued to grow in value from the time of the parties' marriage in 2008 to the time of their separation on June 1, 2016.

In general, the trial court has broad discretion when determining the appropriate distribution of property in a dissolution case. *Id.* at 449. However, the characterization of property prior to determining the appropriate distribution of

property is treated differently. On appeal, this Court reviews the ultimate characterization of property as community or separate *de novo*. *In re Marriage of Schwarz*, 192 Wn. App. 180, 368 P.3d 173 (Div. 3, 2016). If the trial court mischaracterizes property, then this Court may remand the case if either the trial court's findings indicate the division was significantly impacted by how property was characterized; or if it is not clear whether the court would have divided property the same way if it had been properly characterized. *In re Marriage of Shannon*, 55 Wn.App. 137, 142, 777 P.2d 8 (Div. 1, 1989).

In the present case, the trial court correctly recognized that Mr. Pruitt's 401(k) account was a mix of community and separate property. However, in his analysis, Judge Clarke's ruling failed to consider the value of the growth on Mr. Pruitt's pre-marital contributions to this account. Instead, Judge Clarke simply utilized the dollar value of the account as of the time of the marriage, and assumed that was the full value of all of Mr. Pruitt's pre-marital contributions. CP. 180. No attempt was made to evaluate the various 401(k) statements provided at trial, which showed not only the dollar value of the 401(k) account, but also detailed documentation of what funds are invested in, how much is invested

in each fund, and whether and to what extent that fund was contributed to during that investment period. In fact, the 401(k) statements detailed the precise number of shares of each fund were owned at the time each statement was issued. Extrapolating present values of the pre-marital contributions would therefore just be a matter of completing the necessary math. While it does require analysis, this certainly would have enabled Judge Clarke to determine the value of the growth on Mr. Pruitt's pre-marital 401(k) contributions.

Mr. Pruitt asks that this Court remand this case to the trial court for further proceedings with regard to the value of pre-marital contributions to Mr. Pruitt's 401(k), to appropriately value Mr. Pruitt's separate property interest in that account, and to make findings as to the appropriate categorization of this account. The trial court should be further instructed to calculate any division of property and equalization payment in light of the corrected valuation and categorization of Mr. Pruitt's 401(k).

#### **E. CONCLUSION**

This case involves a father who was removed from his children's lives, on no notice, due to a protection order filing from his wife. At the time of trial, despite taking numerous steps, and

despite the recommendation of every professional involved throughout the litigation, the trial court imposed severe restrictions against Mr. Pruitt without any attempt to tailor those restrictions to the facts of the case. The trial judge failed entirely to make specific findings to connect the severe restrictions to the harm the court was intending to protect against. The trial judge further imposed such severe restrictions as to effectively eliminate meaningful residential time for Mr. Pruitt to have with his children. To impose such severe restraints, without specific findings to explain and connect them to the instant case, is contrary to this state's well established precedent and policy.

Finally, the trial judge all but ensured future litigation by imposing what he titled not an "interim" parenting plan, but a "final" parenting plan – despite the fact that the parenting plan itself instructs Mr. Pruitt to return to court upon meeting certain, predictable milestones. To do so contradicts not only long-standing case law, but also goes against the stated objectives of our parenting plan statutes.

As to the parenting plan, this Court should reverse the trial court's decision as to the restrictions against Mr. Pruitt, and remand the matter to the trial court to establish an appropriate

parenting plan which tailors any restrictions to the specific facts of this case and the potential harm that the restraints are intended to prevent. Furthermore, this Court should instruct the trial court to clarify the intent of the parenting plan provision which instructs Mr. Pruitt to return to court after completing 3 months of domestic violence treatment. Specifically, should such a provision remain in effect, it should properly be considered an interim parenting plan, which allows Mr. Pruitt to return this matter to the trial court under the standards to establish an initial final parenting plan, rather than a modification of a parenting plan.

With respect to the allocation of assets and debts, the trial judge failed to consider or value the growth on Mr. Pruitt's pre-marital contributions to his 401(k) account. Indeed, rather than evaluating the statements provided, and Mr. Pruitt's uncontradicted testimony regarding the short-term and sudden decrease in that account's value, the trial court simply accepted on face value Mrs. Pruitt's proposed valuation of Mr. Pruitt's separate property interest.

As to the allocation of assets, and the appropriate valuation and characterization of Mr. Pruitt's 401(k) account, this Court should remand the matter to the trial court. The trial court should

engage in further proceedings to appropriately value Mr. Pruitt's pre-marital contributions, including any growth thereon, and to determine the appropriate allocation of assets based on an accurate valuation and designation of the 401(k) account.

Respectfully submitted this 17th day of September, 2018.



---

Robert R. Cossey, WSBA #16481  
Attorney for Appellant  
902 North Monroe  
Spokane, WA 99201  
(509) 327-5563

**AFFIDAVIT OF SERVICE**

I, BRIANA M. GIERI, upon penalty of perjury under the laws of the State of Washington, declare that on the 17<sup>th</sup> day of September, 2018, I served by messenger and by email a copy of the Appellant's Brief to the following persons at the included addresses:

Jennifer Hasty, Appellee  
C/O Jason Nelson  
Attorney at Law  
925 W. Montgomery Ave.  
Spokane, WA 99205

Wesley Pruitt, Appellant  
5015 S. Regal St., Apt. B2011  
Spokane, WA 99223

DATED this 17<sup>th</sup> day of September, 2018.



BRIANA M. GIERI  
Licensed Legal Intern, No. 9642968

**ROBERT COSSEY & ASSOCIATES**

**September 17, 2018 - 11:52 AM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 35836-4  
**Appellate Court Case Title:** In re the Marriage of: Wesley S. Pruitt and Jennifer L. Pruitt  
**Superior Court Case Number:** 16-3-01315-3

**The following documents have been uploaded:**

- 358364\_Briefs\_20180917115059D3048959\_3436.pdf  
This File Contains:  
Briefs - Appellants  
*The Original File Name was Original Appellant Brief to be filed COA.pdf*

**A copy of the uploaded files will be sent to:**

- Jasonrnelsonlaw@gmail.com
- bgieri@robertcossey.com

**Comments:**

---

Sender Name: Robert Cossey - Email: rcossey@robertcossey.com

Address:

902 N MONROE ST  
SPOKANE, WA, 99201-2112  
Phone: 509-327-5563

**Note: The Filing Id is 20180917115059D3048959**