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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
35

NO. 36577-8-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

MARIE LOUISE MANEAU,

Respondent,

vs.

MARCUS JAMES MANEAU,

Appellant

BRIEF IN REPLY OF APPELLANT MARCUS MANEAU

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A. ARGUMENT IN REPLY

As a distraction in responding to the substantive issues posed in this appeal, counsel for the respondent, MARIE LOUISE MANEAU, asserts that the appellant, MARCUS JAMES MANEAU, failed to preserve for review the five [5] issues raised in his opening brief.

Respondent's attorney is well aware that Mr. MANEAU suffered a stroke shortly before trial and his cognitive and communicative skills have been notably impaired as a result of this malady. It is unconscionable that Ms. MANEAU's counsel should attempt to profit from his condition by focusing on Mr. MANEAU's neurological shortcomings in the context of these proceedings. This is clearly an unjustified attempt to deprive the appellant of his substantive due process rights before this court.

Enough said, a review of Mr. MANEAU's numerous citations to the superior court record set forth in his assignments of error, corresponding issues, statement of facts and argument in his initial brief, dated July 3, 2019, establish beyond question that the substantive issues raised by him have been placed before the trial court and have, thus, been preserved for review by this court.

In furtherance of this same distraction, respondent's counsel has also chosen to disregard the relevant case law governing the proper application of RAP 2.5(a) in a unique setting such as this. The Washington Supreme Court has specifically held that this rule is not necessarily an absolute bar to review in all cases. State v. Ford, 137 Wn.2d 472, 477, 484-85, 973 P.2d 452 (1999).

Instead, the application of RAP 2.5 is discretionary rather than absolute in nature. In this sense, the rule should not be applied in an unfair, arbitrary or unjust fashion or setting. Id. The reasons underlying any alleged failure to preserve an issue should be considered in terms of RAP 2.5(a). Id.

More to the point, the substantive issues are now fully framed and briefed by both parties. This is notwithstanding the fact it took Ms. MANEAU roughly four [4] month to finally file her responsive brief on October 31, 2019. With the briefing done, Mr. MANEAU maintains that the substantive questions should now be the single focus of this court. Stated differently, the merits of the controversy should be the ultimate concern rather than the procedural jousting of the respondent so as to avoid the same. Accord, Beritich v Starlet Corp., 69 Wn.2d 454, 418

P.2d 762 (1966).

1. Contrary to the claim of the respondent, MARIE LOUISE MANEAU, there was no committed intimate relationship [CIR] established in this case prior to the parties' actual marriage in November 2000. [Issue no. 1 revisited].

On pages 13 through 22 of the "Brief of Respondent," MARIE LOUISE MANEAU goes on to erroneously contends that the evidence presented in this case supports the superior court's determination of a "committed intimate relationship" [CIR] and, therefore, the combined property of the parties was properly distributed by the court. In this regard, she claims that deference should be accorded this decision on appeal as well as the resulting property distribution.

However, such argument is totally at odds with the established principle that a trial court will have manifestly abused its discretion when it can be said the court acted on untenable grounds or for untenable reasons, or has erroneously interpreted, applied or chosen to ignore the governing law. See, Marriage of Griffon, 114 Wn.2d 772, 776, 791 P.2d 519 (1990); see also, Gordon v. Gordon, 44 Wn.2d 222, 226-27, 266 P.2d 786 (1954); State v. Robinson, 79 Wn.App. 902 P.2d 652 (1995); Marriage of Tang, 57 Wn.App. 648, 654, 789 P.2d 118 (1990). In other words, misapplication of the law constitutes a manifest abuse of discretion warranting reversal on appeal rather than granting any deference thereto. See, Marriage of Spreen, 107 Wn.App. 341, 346, 28 P.3d 769 (2001).

Once again, it should be noted that the “committed intimate relationship” [CIR] doctrine is a judicially created vehicle used to resolve property distribution issues that arise when unmarried people separate after living in a so-called marital-like relationship and have acquired what should have been community property had they in fact been lawfully married in the eyes of God. Vasquez v. Hawthorne, 145 Wn.2d 103, 109, 33 P.3d 735 (2001) (Alexander, C.J. concurring); In the Matter of Kelly and Moesslang, 170 Wn.App. 722, 732, 287 P.3d 12 (2012). In applying the doctrine, a three-prong analysis is employed when the court disposes of property and debt after a CIR terminates by way of divorce. Marriage of Pennington, 142 Wn.2d 592, 603-07, 14 P.3d 764 (2000); In the matter of Kelly and Moesslang, at 732; see also, Byerley v. Cail, 183 Wn.App.2d 677, 686, 334 P.3d 108 (2014).

The first prong is whether the CIR exists in the first place. Connell v. Francisco, 127 Wn.2d 339, 349, 898 P.2d 831 (2002); Matter of Kelly and Moesslang, at 732. A CIR is a “stable, marital-like relationship where both parties cohabit with knowledge that a lawful marriage between them does not exist.” Connell, at 346; In the matter of Kelly and Moesslang, at 732; see also, Marriage of Lindsey, 101 Wn.2d 299, 304, 678 P.2d 328 (1984). Whether a particular relationship is a committed intimate one depends on the facts of each case. Id. Typically, five [5] factors are considered in making the determination whether there is a CIR involved:

(1) continuous cohabitation, (2) duration of the relationship, (3) purpose of the relationship, (4) pooling of resources and services involving joint ventures, and (5) the intent of the parties. Id. However, these factors are neither exclusive nor hyper-technical, but instead simply provide a means to examine all relevant facts and evidence. Meretricious Relationship of Long, 158 Wn.App. 919, 925-26, 244 P.3d 26 (2010); see also, Marriage of Pennington, at 602.

Finally, if the trial court determines there is a CIR in a given case, the court then goes forward to the second and third levels of the CIR analysis. In this regard, the court determines the interest each party has in the property acquired during the relationship and then makes a “just and equitable division of such property.” Connell, at 349.

In light of these considerations, it is once again clear that the claim of the respondent, MARIE LOUISE MANEAU, of the existence of a “committed intimate relationship” [CIR] is unsupported by the operative facts and circumstances insofar as (a) the parties never pooled their resources for joint goals or projects, (b) the parties did not open any joint accounts or comingled their financial resources, (c) both parties understood and recognized they were not legally married until they in fact solemnized their relationship in November 2000, (d) the respondent was never a party to the initial September 1991 purchase of the subject residence situated at 4929 North Martin Street in Spokane, Washington,

nor was she ever added to the title or previous mortgage of the home belonging solely to the appellate, MARCUS JAMES MANEAU, [Trial RP 59, 156, 202] and (e) the parties never intended to create a family but simply undertook legal custody of Ms. MANEAU's grandson only by way of necessity given the child's special needs.

In comparison with the facts in this case, the superior court in Meretricious Relationship of Sutton v. Widner, 85 Wn.App. 487, 933 P.2d 1069 (1997), determined that a CIR existed insofar as the couple had not only lived together in a sexually intimate relationship for a number of years, but that each party had pooled their financial resources and, in this vein, regularly contributed to the cost of housing and the like. These same parties had also made contributions to various joint projects and purchases over the years which justified a determination of a CIR and, thus warranted an equitable distribution of property between these parties. Id.

As in the latter case, the court in the Pennington case determined that a CIR existed and ordered the equitable distribution of the parties' property. However, on appeal, the appellate court reversed concluding that, despite the fact the parties had cohabitated for several years and had engaged in several joint projects and had also pooled their resources, their relationship did not give rise to the level of a CIR requiring an equitable distribution of assets.

Thereafter, the Washington Supreme Court affirmed the underlying decision of court of appeals noting that “the parties maintained separate accounts, purchased no significant assets together, and did not significantly or substantially pool their time to justify the equitable division of property acquired during the course of their relationship.” Marriage of Pennington, at 607. Again, the case at bar closely parallels the pivotal circumstances outlined in Pennington. Disingenuously, the respondent refuses to acknowledge this indisputable fact. [See, “Brief of Respondent”, at 16-17].

In direct contrast, the facts of this case are quite unlike those set forth in Sutton. In this regard, while the MANEAUs cohabited for a number of years, they continually maintained their own assets and finances separately throughout their relationship including, but not limited to, the significant life insurance proceeds which Ms. MANEAU received after the death of her two [2] children. She kept those funds entirely to herself in her business account. [Trial RP 147]. Mr. MANEAU never received any benefit whatsoever from those assets.

The litigants likewise purchased no significant assets together including a motor vehicle. In this regard, the house at issue was purchased solely by Mr. MANEAU in September 1991 with his own assets and finances. Ms. MANEAU contributed none of her personal funds to this venture. [Trial RP 59, 156].

By the same measure, it was Mr. MANEAU who ultimately paid off the mortgage of the house with his retirement funds. [Id.]. Ms. MANEAU contributed not even a dime to this financial accomplishment of Mr. MANEAU. [Id.]. There was never any decision made to add Ms. MANEAU to the title of Mr. MANEAU's house.

Once again, it should be remembered that Ms. MANEAU chose to keep the roughly \$80,000.00 in life insurance payments for her children's death to herself without contributing any of these funds to the parties' combined expenses. This clearly establishes that their mutual intent not to "pool or share resources" or to create any significant joint assets over the course of their relationship. [Trial RP 56, 201-02].

As reflected in both Sutton and Pennington, the most common, determining factor associated with a CIR is the "pooling" or comingling of financial resources and property. Such is simply not the case here. [Id.].

While Ms. MANEAU attempts to overcome this aspect of the parties' non-committed relationship by ostensibly arguing that the upbringing of J.M. was something of a combined or common project, this was strictly a matter that was not voluntarily chosen by them. Under the circumstances, they had no choice but to adopt and oversee J.M.'s special needs care.

Furthermore, it should be remembered that a good part of the costs associated with his special needs care were covered by social security,

adoption benefits and 330 monthly hours of state provided care along with other similar public benefits. [Trial RP 66-67]. Ultimately, it is clear the parties never intended to start a family together even though they were young enough in 1976 to do so. J.M.'s care has no barring whatsoever on the CIR issue in this case.

Consequently, the adoption of J.M. is nothing more than a non-sequitur with respect to the issue of their wishing to create a family in terms of any CIR in this case. By the same measure, the simple fact Ms. MANEAU cooked meals for the appellant, cleaned house and assisted financially with certain living expenses [Trial RP 53-54] are insufficient justification for finding a CIR any recognizable pooling of resources and services. See, Marriage of Pennington, at 771.

Hence, the superior court clearly abused its discretion in charactering the parties' pre-marital relationship as a CIR as well as determining, thereupon, that the subject residence purchased by Mr. MANEAU was community rather than separate property. See, Marriage of Griffon, 114 Wn.2d 772, 766, 791 P.2d (1990); State v. Robinson, 79 Wn.App. 386, 902 P.2d 652 (1995); Marriage of Tang, 57 Wn.App. 648, 654, 789 P.2d 118 (1990). RCW 26.16.010 defines "separate property", in part, as property acquired before marriage which is the situation wherein Mr. MANEAU obtained this real estate. Furthermore, Mr. MANEAU alone paid the insurance, maintenance and real estate taxes on these

premises. [Trial RP 154-55].

Finally, while in some rare, insolated instances, a trial court may be justified in awarding a part of one spouse's separate property to the wife, such action is the marked exception. This dissolution does not present the unique and unusual circumstance necessary for such an award of Mr. MANEAU's separately purchased and maintained real property. See, Bodine v. Bodine, 34 Wn.2d 33, 35-37, 207 P.2d 1213 (1949); Moore v. Moore, 9 Wn.App. 951, 953, 515 P.2d 1309 (1973); see also, Holm v. Holm, 27 Wn.2d 456, 178 P.2d 725 (1947); McNary v. McNary, 8 Wn.2d 250, 111 P.2d 760 (1941).

Accordingly, Mr. MANEAU once again maintains that the appellate court should reverse and, on remand, instruct the lower court to consider and determine other available housing alternatives for Ms. MANEAU and J.M. RAP 12.2. In this vein, she readily acknowledged at trial that she "simply wanted the house," and had never bothered to price or determine the availability of other housing for her and her grandson in Spokane. [Trial RP 153].

In sum, the house should be awarded to the appellant as his individual, separate property and personal investment. The respondent herein, Ms. MANEAU, has not the slightest vestige of an interest in the same regardless of her emotional attachment to this dwelling. Id.

2. Contrary to the protestations of Ms. MANEAU, as contained in her responsive brief, the appellant, MARCUS JAMES MANEAU, was lawfully entitled in terms of any child support payments to an offset against monthly social security benefits received by J.M. as prescribed by the legislature under RCW 26.18.190(2), and should have also received credit for adoption proceeds in kind. [Issue no. 2 revisited].

Next, on pages 22 through 26 of the “Brief of Respondent”, Ms. MANEAU once again makes the wrongful claim that Mr. MANEAU was not entitled to any offset for the child support payments or social security benefits received by J.M. However, in accepting Ms. MANEAU’s position in this regard, the superior court once again manifestly abused its discretion. Instead, Mr. MANEAU should have been given credit towards the monthly child support payments order by the court in terms of the social security payments which were received on behalf of J.M.

As stated before, the trial court will be deemed to have abused its discretion when it can be said the court acted on untenable grounds or for untenable reasons, or has erroneously interpreted, applied or chosen to ignore the governing law. See, Marriage of Griffon, 114 Wn.2d 772, 776, 791 P.2d 519 (1990); see also, Gordon v. Gordon, 44 Wn.2d 222, 226-27, 266 P.2d 786 (1954); State v. Robinson, 79 Wn.App. 386, 902 P.2d 652

(1995); Marriage of Tang, 57 Wn.App. 648, 654, 789 P.2d 118 (1990).

In its enactment of RCW 26.18.190(2), the Washington legislature has made it clear that a father has a legal, unqualified right to offset social security disability payments against a child support obligation as in this particular case. Marriage of Briscoe, 134 Wn.2d 344, 347-49, 949 P.2d 1388 (1998); see also, Marriage of Hughes, 69 Wn.App. 778, 780, 850 P.2d 555 (1993). Thus, this refusal by the trial court to properly apply the law constitutes a manifest abuse of discretion and, once more, warrants reversal of the same on appeal. Marriage of Spreen, 107 Wn.App. 341, 346, 28 P.3d 769 (2001); RAP 12.2.

3. Contrary to the notions of the respondent, MARIE LOUISE MANEAU, the superior court likewise abused its discretion when setting and awarding spousal maintenance to the her without first considering the fact she (a) could receive income from the State of Washington in terms of acting as a health care provider for J.M. and (b) could also arguably work outside the home while J.M. was being cared for by his other health care providers who are employed at state assistance some 330 hours per month in terms of J.M.'s special needs care. [Issue no. 3 revisited].

On pages 26 through 29 of the "Brief of Respondent", Ms. MANEAU argues that she was entitled to an award of spousal support in the amount of \$800.00 per month notwithstanding the relevant additional

factors and considerations spelled out in appellant's opening brief. However, given the narrow focus of the superior court concerning spousal support, it is once more clear that the court abused its discretion when awarding \$800.00 per month throughout her or J.M.'s lifetime. In setting spousal support, the superior court should have considered whether Ms. MANEAU was capable herself of generating an income or receiving a salary from the State of Washington in terms of functioning as a health care provider for J.M. As conveniently overlooked by her attorney on this appeal, Ms. MANEAU readily admitted early on that she had both the training and skills to care for J.M. ever since his birth in February 18, 2006. [Trial RP 76-79].

Without question, the trial court chose to ignore the fact Ms. MANEAU could easily work outside the home while J.M. was being cared for by other state health care providers some 330 hours per month in terms of state funded medical and special needs care. [Trial RP 66-67]. Such evidence of the respondent's "ability to work" was highly relevant to the entry of a just, reasoned and fair award involving spousal support. In falling short in this regard, the trial court further added its ongoing abuse of discretion and disregard of Mr. MANEAU's rights. See, Marriage of

Griffon, 114 Wn.2d 772, 766, 791 P.2d (1990); see also, Gordon v. Gordon, 44 Wn.2d 222, 226-27, 266 P.2d 786 (1954); Marriage of Spreen, 107 Wn.App.341, 346, 28 P.3d 769 (2001); State v. Robinson, 79 Wn.App.386, 902 P.2d 652 (1995); Marriage of Tang, 57 Wn.App.648, 654, 789 P.2d 118 (1990). Again, reversal and remand to the lower court is fully mandated in this instance. RAP 12.2.

4. As stated before, the superior court misapplied the holding and rule in Marriage of Wallace, 111 Wn.App. 697, 710, 49 P.3d 1131 (2002) when awarding the respondent, MARIE LOUISE MANEAU, one-half [1/2] her attorney fees on the basis that Mr. MANEAU was supposedly “intransigent” while acting and representing himself pro se in these divorce proceedings notwithstanding his recent stroke and related health issues. [Issue no. 4 revisited].

On pages 29 through 30 of the “Brief of Respondent”, MARIE LOUISE MANEAU goes on to allege that the trial court’s award of attorney fees to her was wholly warranted and did not constitute an abuse of discretion. Again, this assert is not well taken in light of the operative facts and circumstances.

Initially, it should again be pointed out that there was no finding made by the trial court under RCW 26.09.140 in terms of its award of attorney fees to Ms. MANEAU. Instead, the court chose to misapply the

rule set forth in Marriage of Wallace, 111 Wn.App. 697, 710, 49 P.3d 1131 (2002), when awarding the respondent one-half [1/2] her attorney fees on the supposed basis that Mr. MANEAU had been “intransigent” throughout these proceedings.

As stated before, Mr. MANEAU was laboring under the effects of a recent stroke along with related health issues. [Trial RP 6, 18, 28-29]. In fact, the court readily recognized this malady early on when he was clearly having difficulty understanding and answering questions while on the witness stand. [Trial RP 18].

These neurological maladies associated with Mr. MANEAU’s stroke do not amount to “intransigence” in any reasonable sense. Rather, such misfeasance is typically found where a party engages voluntary and willful conduct, to wit: “litigious behavior, bringing excessive motions, or discovery abuses” as found in Wallace, at 710. See also, Marriage of Griffon, 114 Wn.2d 772, 791 P.2d 519 (1990); Marriage of Schumacher, 100 Wn.App. 208, 216, 997 P.2d 399 (2000); Marriage of Thomas, 63 Wn.App. 658, 660, 821 P.2d 1227 (1991); Eide v. Eide, 1 Wn.App. 440, 462 P.2d 562 (1969).

Consequently, “intransigence” requires a clear intent involving

obstructive behavior, deliberate misconduct or malfeasance on the part of the actor. Marriage of Greenlee, 65 Wn.App. 703, 708, 829 P.2d 1120 (1992). There was not such evidence shown in this case. The court's award of fees under Wallace constituted manifest abuse of discretion as those abuses identified before and warrants reversal on this appeal. RAP 12.2

5. Contrary to the respondent's self-serving asserts, the superior court ultimately abused its discretion when acknowledging on the record that its disposition of property and liabilities was patently "uneven", to wit: "unfair and inequitable" and was, thus, entered in derogation of the legislative factors set forth in RCW 26.09.080. [Issue no. 5 revisited].

Finally, on pages 31 through 32 of the "Brief of Respondent", MARIE LOUISE MANEAU claims without any factual or legal foundation that the trial court's distribution of property and liabilities between the parties was neither a derogation of the law, nor "unfair and inequitable". Once again, she is ignoring the cardinal principle requiring the superior court to be "just and equitable" towards the parties in its final distribution of property and debt as contemplated in RCW 26.09.080. See, Marriage of Doneen, 197 Wn.App. 941, 949, 391 P.3d 594 (2017).

Given the inescapable inequities associated with the distribution of MARCUS JAMES MANEAU's separate property, there can be no just or

viable claim of a CIR existing in this case, see Part A.1, above, it is clear the trial court should be reversed on this appeal and the remanded for a new redistribution property and debt. The law requires nothing less under the factors spelled out and contained in RCW 26.09.080(1) through (4).

B. CONCLUSION

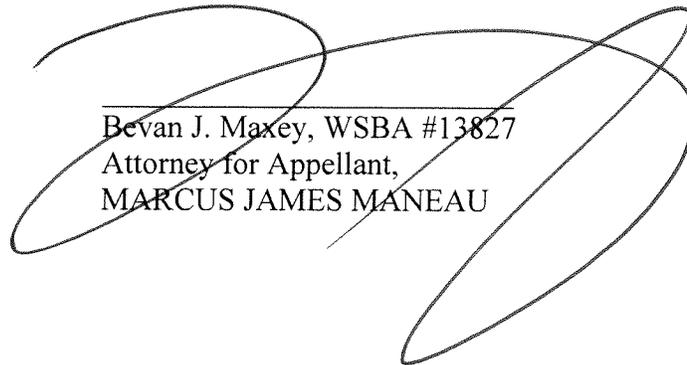
Based on the foregoing points and authorities, the appellant, MARCUS JAMES MANEAU, again respectfully requests that the challenged decisions of the superior court as spelled out in appellant's assignments of error be reversed for the reasons set forth in Part A.1, above, with instructions on remand that (1) there was not sufficient evidence to support that a CIR existed prior to the parties' actual marriage, (2) the subject real property and premises situated at 4929 North Martin Street in Spokane, Washington, be awarded to Mr. MANEAU as his separate property with no interest granted therein to Ms. MANEAU regarding the same, (3) the issue of Ms. MANEAU's ability to be employed including the possibility she could be paid by the state of Washington as a health care provider for J.M. be considered on the record by the trial court in setting any spousal maintenance on remand, (4) Mr. MANEAU to receive credit for (a) any and all social security payments received by J.M. as well as (b) any adoption benefits received from the

state when setting any ordered child support payments on remand, (5) any division of property on remand to be “fair and equitable” as mandated under RCW 26.09.090, and finally, (6) each party to be obligated and responsible for their own attorney fees, costs and expenses associated the within family law matter.

With respect to respondent’s present request for an award of attorney fees, contained in Part E of her responsive brief, at pages 33 through 34 of said brief, Ms. MANEAU has not established any right to such fees under either RAP 18.1 or RCW 26.09.140; nor has she filed in this court the required proof and current documentation to validate such unsubstantiated claim.

DATED this 27th day of November, 2019.

Respectfully submitted:



Bevan J. Maxey, WSBA #13827
Attorney for Appellant,
MARCUS JAMES MANEAU

FILED

NOV 27 2019

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

**IN SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE**

MARIE LOUISE MANEAU,)	COA: 365778-III
)	
Petitioner,)	
)	
vs.)	AFFIDAVIT OF
)	MAILING
MARCUS JAMES MANEAU,)	
)	
Respondent/Appellant.)	

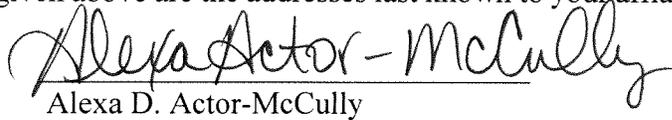
STATE OF WASHINGTON)
: ss.
County of Spokane)

ALEXA D. ACTOR-MCCULLY, being first duly sworn on oath, deposes and says: that she is a disinterested person, competent to be a witness, and past the age of 21 years; that on the 27th day of November, 2019, affiant caused true copies of the BRIEF IN REPLY OF APPELLANT MARCUS MANEAU to be served upon the individuals below by depositing a copy of said document in a United States Post Office Box in Spokane, Spokane County, Washington, by first class mail addressed to:

Marcus Maneau
8821 N. Hill-n-Dale St.
Spokane, WA 99218

Amy Rimov
Attorney at Law
505 W. Riverside, Ste 500
Spokane, WA 99201

That the addresses given above are the addresses last known to your affiant.


Alexa D. Actor-McCully

I certify that I know or have satisfactory evidence that Alexa D. Actor-McCully is the person who appeared before me, and said person acknowledged it to be her free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: November 27, 2019


NOTARY PUBLIC in and for Washington
Residing at Spokane.
My Commission Expires: 11/29/2022

