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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
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NO. 36577-8-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

MARIE LOUISE MANEAU,

Respondent,

vs.

MARCUS JAMES MANEAU,

Appellant

BRIEF OF APPELLANT MARCUS MANEAU

Bevan J. Maxey, WSBA #13827

1835 West Broadway Avenue
Spokane, WA 99201
(509) 326-0338

Attorney for Appellant,
MARCUS MANEAU

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A. ASSIGNMENTS OF ERROR

1. The superior court of Spokane County, State of Washington, in cause no. 17-3-01168-0, erred on November 1, 2018, when entering its oral decision wherein the court mischaracterized the house situated at 4929 North Martin Street, Spokane, Washington 99207, as having been jointly purchased by the parties rather than the appellant, MARCUS JAMES MANEAU, having purchased the same as his own separate property. [November 1 RP 3-4, 8-9; CP 143-44, 148-49].

2. The superior court of Spokane County, State of Washington, in cause no. 17-3-01168-0, erred on November 1, 2018, when entering its oral decision wherein the court erroneously ruled that the parties had, prior to marriage, been involved in a so-called committed intimate relationship [CIR] and thereupon began dividing the property, including Mr. MANEAU home, solely in favor of the respondent, MARIE LOUISE MANEAU, with Mr. MANEAU being given no interest in the same, as constituting a so-called fair and equitable division of property as contemplated under the provisions of RCW 26.09.080. [November 1 RP 8-9, 10, 19-20; CP 148-49, 150, 159-60].

3. The superior court of Spokane County, State of Washington, in cause no. 17-3-01168-0, erred on November 1, 2018, when entering its oral decision wherein the court erroneously neglected, refused and declined to follow the legislative mandate of RCW 26.18.190(2) requiring

a grant to Mr. MANEAU in terms of a credit towards monthly child support payments with respect to the monthly \$1,008.00 social security received by J.M., as well as a similar credit of \$650 a month pertaining to monthly adoption benefits under RCW 74.13A.020. [November 1 RP 10, 12, 14; CP 150, 152, 154].

4. The superior court of Spokane County, State of Washington, in cause no. 17-3-01168-0, further erred on November 1, 2018, when entering its oral decision wherein the court improperly awarded Ms. MANEAU spousal maintenance of \$800.00 per month so long as J.M., a special needs child, is alive, without the court taking into account the undisputed fact the state of Washington already pays for 330 hours per month towards his care and wellbeing inside the home, and further Ms. MANEAU could herself easily train and qualify as a state-sponsored caregiver for J.M. or could also be employed outside the home will others are attending to him. [November 1 RP 14-15, 18-19; CP 154-55, 158-59].

5. The superior court of Spokane County, State of Washington, in cause no. 17-3-01168-0, further erred on November 1, 2018, when misapplying the holding and rule in Marriage of Wallace, 111 Wn.App. 697, 710, 49 P.3d 1131 (2002) and then entering its oral decision wherein the court improperly awarded Ms. MANEAU one-half [1/2] her attorney fees on the misguided basis that Mr. MANEAU was supposedly “intransigent” in acting and representing himself pro se in these divorce

proceedings. [November 1 RP 16-17; CP 156-57].

6. The superior court of Spokane County, State of Washington, in cause no. 17-3-01168-0, erred on January 11, 2019, when entering its “Child Support Order,” at paragraph 10 regarding “monthly child support amount (transfer payment),” wherein the court set and obligated the appellant, MARCUS JAMES MANEAU, to pay monthly child support to the respondent, MARIE LOUISE MANEAU, in the amount of \$1,007.00 for the child, J.M.. [CP 181].

7. In this regard, the superior court of Spokane County, State of Washington, in cause no. 17-3-01168-0, further erred on January 11, 2019, when entering its “Child Support Order,” at paragraph 24, concerning “other orders,” wherein the court failed and refused to abide by the legislative directive and command of RCW 26.18.190(2) that a credit “shall issue” under these circumstances, but instead ordered that “Marcus Maneau will not receive credit in reduced child support transfer for J.M.’s social security payments” of \$1,008. [Emphasis added.]. [CP 186, 195].

8. In addition, the superior court of Spokane County, State of Washington, in cause no. 17-3-01168-0, similarly erred on January 11, 2019, when failing to enter in its “Child Support Order,” at paragraph 24, concerning “other orders,” wherein the court failed and refused to give the appellant, Mr. MANEAU, a further credit in the amount of

\$650.00 regarding monthly adoption benefits and support concerning the child, J.M. [CP 186, 195].

9. In turn, the superior court of Spokane County, State of Washington, in cause no. 17-3-01168-0, similarly erred on January 11, 2019, when failing to enter in its ‘‘Findings and Conclusions about a Marriage,’’ at paragraph 8, concerning ‘‘real property,’’ wherein the court mischaracterized the real property ‘‘4929 N. Martin, Spokane WA 9907, valued at \$206,000; Tax Parcel 36333.0812,’’ as being ‘‘community property,’’ when in fact it is the ‘‘petitioner [MARCUS MANEAU’s] separate property,’’ and the respondent, Ms. MANEAU has absolutely no valid, lawful vestige, claim or interest in the same, nor is ‘‘[t]he division of real property described in the final order . . . fair [just and equitable]’’ under the factors set forth in RCW 26.09.080. [CP 190].

10. The superior court of Spokane County, State of Washington, in cause no. 17-3-01168-0, similarly erred on January 11, 2019, when failing to enter in its ‘‘Findings and Conclusions about a Marriage,’’ at paragraph 13, concerning ‘‘spousal support,’’ wherein the court improvidently remarked that ‘‘it just and equitable to order’’ the appellant, Mr. MANEAU, to pay ‘‘spousal support’’ to the respondent, Ms. MANEAU, ‘‘in the amount of \$800/month . . . during the life time of J.M.,’’ (a) when the state of Washington provides 330 hours of assistance and care of said ‘‘special needs’’ child per month; and while Ms. MANEAU could, in turn,

train and qualify herself to work by way of state financing to act as the child's professional caregiver, or (b) she could otherwise be employed outside the home while others, who again are already paid 330 hours per month by the state of Washington, to care for J.M. as a "special needs child." [CP 192].

11. In addition, the superior court of Spokane County, State of Washington, in cause no. 17-3-01168-0, erred on January 11, 2019, when entering its "Findings and Conclusions about a Marriage," at paragraph 22, concerning "other findings and conclusions (if any)," wherein the court erroneously stated, at sub-paragraph 7, that the parties "bought a house together in Spokane at 4929 North Marin [sic] Street." [CP 194].

12. By the same token, the superior court of Spokane County, State of Washington, in cause no. 17-3-01168-0, erred on January 11, 2019, when entering its "Findings and Conclusions about a Marriage," at paragraph 22, concerning "other findings and conclusions (if any)," wherein the court erroneously stated in part, at sub-paragraph 12, that "[d]uring the course of the cohabitation and marriage, the couple purchased the home where Marie and J.M. reside" [CP 194].

13. Furthermore, the superior court of Spokane County, State of Washington, in cause no. 17-3-01168-0, erred on January 11, 2019, when entering in its "Findings and Conclusions about a Marriage," at paragraph 22, concerning "other findings and conclusions (if any),"

wherein the court erroneously concluded, in sub-paragraph 13, that the “five non-exclusive factors” associated with a so-called “committed intimate relationship [CIR] . . . had been met; . . . the “court’s oral ruling incorporated.” [CP 195].

14. Also, the superior court of Spokane County, State of Washington, in cause no. 17-3-01168-0, erred on January 11, 2019, when entering in its “Findings and Conclusions about a Marriage,” at paragraph 22, concerning “other findings and conclusions (if any),” wherein the court erroneously represented, in sub-paragraph 14, that the “[t]hese parties held themselves out as married since 1977 forward.” [CP 195].

15. By the same measure, the superior court of Spokane County, State of Washington, in cause no. 17-3-01168-0, erred on January 11, 2019, when entering in its “Findings and Conclusions about a Marriage,” at paragraph 22, concerning “other findings and conclusions (if any),” wherein the court erroneously opined, in sub-paragraph 17, that the “[t]he purpose of the relationship was to be living as if they were married, to be together and to adopt and accept the responsibilities of that relationship to one another, even without the benefit of marriage.” [CP 195].

16. In kind, the superior court of Spokane County, State of Washington, in cause no. 17-3-01168-0, erred on January 11, 2019, when entering in its “Findings and Conclusions about a Marriage,” at

paragraph 22, concerning “other findings and conclusions (if any),” wherein the court erroneously stated as being true, in sub-paragraph 18, that the “[t]hey pooled their recourses . . . [and], . . . ‘pooled their work benefits, services, and resources, in raising the children and grandson, J.M. and purchasing and working around and in the house.’” [CP 195].

17. In turn, the superior court of Spokane County, State of Washington, in cause no. 17-3-01168-0, erred on January 11, 2019, when entering in its “Findings and Conclusions about a Marriage,” at paragraph 22, concerning “other findings and conclusions (if any),” wherein the court improvidently concluded as also being true, in sub-paragraph 19, that “[t]his was a committed intimate relationship [CIR] and the property from 1977 forward is characterized in that light. [CP 195].

18. In turn, the superior court of Spokane County, State of Washington, in cause no. 17-3-01168-0, erred on January 11, 2019, when entering in its “Findings and Conclusions about a Marriage,” at paragraph 22, concerning “other findings and conclusions (if any),” wherein the court, in sub-paragraph 21, improperly choose to totally ignore the legislative law as set forth in RCW 26.18.190(2), wherein the court wrongfully determined that Mr. MANEAU will not received credit for the \$1,008.00 social security payment to J.M. with respect to his being required to pay child support. [CP 195].

19. In this same vein, the superior court of Spokane County, State of Washington, in cause no. 17-3-01168-0, erred on January 11, 2019, when entering in its "Findings and Conclusions about a Marriage," at paragraph 22, concerning "other findings and conclusions (if any)," wherein the court improperly choose, in sub-paragraph 22, not to grant Mr. MANEAU a credit for the monthly \$650.00 "adoption support" payment and benefit to J.M. with respect once again to his being required to pay child support. [CP 195].

20. Similarly, the superior court of Spokane County, State of Washington, in cause no. 17-3-01168-0, erred on January 11, 2019, when entering in its "Findings and Conclusions about a Marriage," at paragraph 22, concerning "other findings and conclusions (if any)," wherein the court misrepresented, in sub-paragraph 25, that in terms of "it is not possible [for MARIE LOUISE MANEAU] to retrain or go back to work." [CP 196].

21. Similarly, the superior court of Spokane County, State of Washington, in cause no. 17-3-01168-0, erred on January 11, 2019, when entering in its "Findings and Conclusions about a Marriage," at paragraph 22, concerning "other findings and conclusions (if any)," wherein the court engaged in a non-sequitur for its deliberate failure in sub-paragraphs 21 and 22, to follow the law and grant Mr. MANEAU these justified credits towards his child support obligation. [CP 196].

22. In like vein, the superior court of Spokane County, State of Washington, in cause no. 17-3-01168-0, erred on January 11, 2019, when entering in its "Final Divorce Order," at paragraph 1. Money Judgment Summary, relating to MANEAU in the amount of \$5,798.00. [CP 200].

23. By the same measure, the superior court of Spokane County, State of Washington, in cause no. 17-3-01168-0, erred on January 11, 2019, when entering in its "Final Divorce Order," at paragraph 6. Money Judgment, once again relating to an improper award of "fees and costs" to Ms. MANEAU in the amount of \$5,798.00. [CP 201].

24. In like vein, the superior court of Spokane County, State of Washington, in cause no. 17-3-01168-0, erred on January 11, 2019, when entering in its "Final Divorce Order," at paragraph 7. Real Property, wherein the court wrongfully gave to the petitioner, Ms. MANEAU, all interest and stake in Mr. MANEAU's real property situated at 4929 N. Martin, Spokane, WA 99207, tax parcel number 36333.0812. [CP 201].

25. In like vein, the superior court of Spokane County, State of Washington, in cause no. 17-3-01168-0, erred on January 11, 2019, when entering in its "Final Divorce Order," at paragraph 13 Spousal Support (maintenance/alimony), wherein the court wrongfully and unfairly awarded the petitioner, Ms. MANEAU, \$800.0 per month spousal support without contemplating or determining whether she is capable of earning income on her own, and without financial assistance from Mr. MANEAU.

[CP 203].

26. Finally, the superior court of Spokane County, State of Washington, in cause no. 17-3-01168-0, erred on January 11, 2019, when entering in its "Final Divorce Order," at paragraph 19 Child Support, wherein the court wrongfully and incredulously awarded the petitioner, Ms. MANEAU, child support payments without granting him credit for the forgoing, referred social security and adoption credits against said child support. [CP 205].

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether the claim of the respondent, MARIE LOUISE MANEAU, regarding the alleged existence of a "committed intimate relationship" [CIR] between the parties was neither warranted or supported 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 comingle their finances, (c) both parties understood and recognized they were not legally married until they solemnized their relationship in November 2000, (d) the respondent was never a party to the initial 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 appellant, MARCUS JAMES MANEAU, and (e)

the parties never intended to create a family but simply undertook custody of Ms. MANEAU's grandson only by way of necessity given the child's special medical needs? [Assignment of Error Nos. 1 and 2, 9, 11 through 17].

2. Whether, contrary to the refusal of the superior court to follow the law, the appellant, MARCUS JAMES MANEAU, was 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 also received credit for adoption proceeds in kind? [Assignments of Error Nos. 3, 6 through 8, 18 and 19. 21, 26].

3. Whether, the superior court improperly determined and awarded spousal maintenance to the respondent, MARIE LOUISE MANAEU, without considering the fact she could be paid income from the state of Washington in terms of acting as a health care provider for J.M. and the fact she could arguably work outside the home while J.M. was being cared for by other health care providers who provided again at state assistance some 330 hours per month in terms of care for this special needs child? [Assignments of Error Nos. 4, 10, 20, 25].

4. Whether 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 misguided and false basis that Mr. MANEAU was

supposedly ‘intransigent’ in acting and representing himself pro se in these divorce proceedings notwithstanding his recent stroke and related health issues? [Assignments of Error Nos. 5, 22 and 23].

5. Finally, whether the superior court manifestly abused its discretion when it readily acknowledged that its disposition of property and liabilities was patently not fair and equitable and entered in direct violation of the legislative factors set forth in RCW 26.09.080? [Assignments of Error Nos. 1, 2, 9, 11, 12, 24].

C. STATEMENT OF THE CASE

Unless otherwise indicated the operative facts and background are taken from the undisputed factual findings of the superior court as set forth in paragraph 22 of the court’s January 11, 2019, ‘Findings and Conclusions of a Marriage.’ [CP 194-96].

1. Factual Background. The parties first became acquainted in the state of Louisiana in 1976 and later decided to live together in February 1977. [Trial RP 47-48]. MARIE LOUISE MANEAU had two children from a prior relationship: a son named Frank, than age 5, and a daughter Delia then age six. [Trial RP 48]. The children along with their mother lived together in New Orleans with MARCUS JAMES MANEAU during this time. [Trial RP 48; CP 194].

Before this time, Mr. MANEAU had actively served in the United

States Army in the early 1970 through 1973 and later became employed as a restaurant employee when the parties started their relationship. [Trial RP 25]. Later on, he started work as an employee of Kaiser Aluminum Company in Louisiana, and around 1987 transferred his employment with this business for a position with the same company in Spokane, Washington. [Trial RP 49-50].

Initially, Ms. MANEAU did not immediately follow Mr. MANEAU to Spokane. However, a year later in 1988 decided to move to Spokane with her children. [Trial RP 49-50, 56-57; CP 196].

Subsequently, around September 1991, Mr. MANEAU purchased a house situated 4929 North Martin Street in Spokane, Washington, with his own separate, personal assets. [Trial RP 59, 156]. Later on, after he retired from Kaiser, he utilized some of his retirement benefits of this employment to pay off the mortgage on this separate property. [Trial RP 59].

In February 18, 2006, Ms. MANEAU's daughter, Delia, gave birth to a special needs child, J.M.. [Trial RP 76-77, 80-81]. When the mother later died, Ms. MANEAU and Mr. MANEAU decided to adopt the child on April 30, 2010. [Trial RP 79-80]. At her passing, Delia had been covered by a \$40,00.00 life insurance policy purchased alone by her mother from the latter's own separate, personal assets. [CP 196]. Later on, in March 2017, Ms. MANEAU'S SON, Frank, committed suicide.

[Trial RP 147]. As in the earlier case of her daughter's demise, she received roughly \$44,000.00 in insurance proceeds. [Id.].

During their cohabitation together, Ms. MANEAU claimed that Mr. MANEAU began abusing alcohol in the form of high potency alcohol Colt 800 beer. [Trial RP 63, 68-69]. In November 2000, the couple solemnized their relationship and were married. [Trial RP 52]. Prior to the commencement of these proceedings, Mr. MANEAU suffered a stroke in 2016 which resulted causing him to have slurred speak and well as his ability to communicate, memory problems and understand situations in which he was confronted. [Trial RP 18, 28, 31-32, 75, 136]. Later on, Ms. MANEAU claimed he then began further engaging in this form of alcohol abuse. [Trial RP 63, 69].

2. Procedural History. On May 25, 2017, Ms. MANEAU filed a summons and petition for dissolution of marriage in the superior court of Spokane County, State of Washington, under cause no. 17-3-01168-0. [CP 1-8]. Sometime prior to this time, Mr. MANEAU suffered a stroke affecting his ability to think and articulate. [Trial RP].

On June 26 and 27, 2018, the matter was tried by bench trial before Timothy B. Fennessy, judge of the Spokane County superior court, State of Washington. [Trial RP 5, et seq.]. Mr. MANEAU represented himself. Not surprisingly, because of his resent stroke he had difficulty communication, and clearly was confused and did not understand the trial

procedure. [Trial RP]. Curiously enough, there is nothing in the record to suggest the court at any time undertook to recommend to the respondent that he should obtain counsel. Nor, did the court in any fashion require standby counsel to assist Mr. MANEAU in these divorce proceedings.

Following trial, the court took the matter under advisement. Therein, the court initially ruled that the parties had, prior to marriage, be involved in a committed intimate relationship [CIR] and thereon characterized the house situated at 4929 North Martin Street, Spokane, Washington 99207, as having been jointly purchased by the parties rather than the appellant, MARCUS JAMES MANEAU, having acquired the same as his own separate property. [November 1 RP 3-4, 8-9; CP 143-44, 148-49]. Based upon this same determination of a CIR, the court later on began dividing the property, including Mr. MANEAU home, solely in favor of the respondent, MARIE LOUISE MANEAU, with Mr. MANEAU being given no interest whatsoever in the same. [November 1 RP 8-9, 10, 19-20; CP 148-49, 150, 159-60]. During this phase of its oral ruling, the court candidly acknowledged that this division of property and debt was an “uneven distribution” rather than constituting a “fair and equitable” settlement of property and debt as contemplated under RCW 26.09.080. [November 1 RP 8-9, 10, 19-20; CP 148-49, 150, 159-60].

The superior court then went on to award custody of J.M. as well

as child support payment to Ms. MANEAU. However, the superior court then refused to follow the legislative mandate of RCW 26.18.190(2) requiring a credit to Mr. MANEAU towards such support with respect to the monthly \$1,008.00 social security received by J.M., as well as a similar credit of \$650 a month pertaining to monthly adoption benefits contemplated under RCW 74.13A.020. [November 1 RP 10, 12, 14; CP 150, 152, 154].

By the same measure, the court also awarded Ms. MANEAU spousal maintenance of \$800.00 per month so long as J.M., a special needs child, remains alive. However, the court neglected to take into account the undisputed fact the state of Washington already pays for 330 hours per month towards his care and wellbeing inside the home and, further, Ms. MANEAU could herself easily train and qualify as a state-sponsored caregiver for J.M. or could otherwise be gainfully employed outside the home will others paid by the state of Washington are attending to him and his needs. [November 1 RP 14-15, 18-19; CP 154-55, 158-59].

Lastly, the court in its oral decision the court invoked the holding in Marriage of Wallace, 111 Wn.App. 697, 710, 49 P.3d 1131 (2002) wherein Ms. MANEAU was awarded one-half [1/2] her attorney fees against Mr. MANEAU. This was based upon the court's determination that he had ostensibly been -"intransigent" in acting and representing himself in these divorce proceedings, notwithstanding his result stroke and

resulting medical conditions. [November 1 RP 16-17; CP 156-57].

Thereafter, the superior court memorialized its decision in this case by entering its final parenting plan [CP 165-72], final order of support [CP 179-88], findings of fact and conclusions of law [CP 189-99], decree of dissolution [CP 200-06] and cost bill [CP 207-08], on November 11, 2019. This appeal follows. [CP 209; spindle]. Additional facts and circumstance are set forth below as they pertain to a particular issue or argument presented on this appeal.

D. STANDARD OF REVIEW

Errors of law including the court's characterization of property as separate or community are reviewed de novo. Marriage of Skarbek, 100 Wn.App.444, 447, 997 P.2d 447 (2000) see also, State v. Horrace, 144 Wn.2d 386, 392, 28 P.3d 753 (2001); State v. Cauthron, 120 Wn.2d 879, 887, 846 P.2d 502 (1993); State v. Dunn, 125 Wn.App.582, 690, 105 P.3d 1022 (2005).

In terms of review associated with the exercise of discretion by the trial court, the governing standard is whether there has been a manifest abuse of discretion committed by said court. The trial court will be deemed to have so 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. 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); 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 other words, misapplication of the law constitutes a manifest abuse of discretion warranting reversal on appeal. Marriage of Spreen, 107 Wn.App.341, 346, 28 P.3d 769 (2001).

E. ARGUMENT

1. Prior to the parties' marriage in November 2000, and contrary to the improvident determination of the superior court, there was no committed intimate relationship [CIR] in this case. [Issue no. 1].

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 disposing of property after a CIR terminates. 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, then the court 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 clear 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 commingle 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 appellant, 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 of 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 Pennington 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 decision of the court of appeals noting "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.

Suffice it to say, the present case on appeal parallels the pivotal circumstances set forth in Pennington. 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 the life insurance proceeds on her two [2] deceased children which Ms. MANEAU kept entirely for herself in her business account. [Trial RP 147].

They likewise purchased no significant assets together including motor vehicle. For example, the house was purchased solely by the appellant in September 1991 with his own finances, and Ms. MANEAU contributed none of her personal funds. [Trial RP 59, 156].

By the same measure, it was Mr. MANEAU who eventually paid off the mortgage with his retirement funds. [Id.]. Ms. MANEAU contributed not even a dime to this financial accomplishment of Mr. MANEAU. [Id.]. Suffice it to say, there was no decision to add Ms. MANEAU to the title to the house. Once again, 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 their combined expenses.

This clearly establishes that the parties' 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 may attempt to overcome aspect of the parties' non-committed relationship by arguing that the upbringing of J.M. was something of a "combined project," this was strictly a matter that not voluntarily chosen by them. Under the circumstances, they had no choice

but to adopt and oversee J.M.'s special needs care.

Furthermore, a good part of the costs associated with his special needs care were financial covered by social security payment, adoption benefits and 330 monthly hours of state provided care as other similar benefits. [Trial RP 66-67]. Once again, it is obvious the parties never intended to start a family together even though they were young enough in 1976 to do so.

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 financial 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 characterizing 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 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, isolated 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. Suffice it to say, 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 maintains to this appellate court that, on remand, the lower court should be instructed to consider and determine other available housing alternatives for Ms. MANEAU and J.M.. RAP 12.2. The petitioner 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 enjoyment. Simply put, 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. At a minimum, he should share in some fashion in the equity.

2. Contrary to the superior court decision not to follow the law, the appellant, MARCUS JAMES MANEAU, was 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 also received credit for adoption proceeds in kind. [Issue no. 2].

Also, it is abundantly clear in this case that the superior court manifestly abused its discretion when refusing to award the appellant, MARCUS JAMES MANEAU credit towards the order month child support payments in this case in social security payments which are received on behalf of J.M.. Once again, the court will be deemed to have so 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. 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); 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).

Here, the Washington legislature in terms of its enactment under

RCW 26.18.190(2) 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). In other words, this misapplication of the law by the superior court constitutes a manifest abuse of discretion warranting reversal by this court on appeal. Marriage of Spreen, 107 Wn.App. 341, 346, 28 P.3d 769 (2001); RAP 12.2.

3. In turn, the superior court once more abused its discretion when setting and awarding spousal maintenance to the respondent, MARIE LOUISE MANAEU, without first considering the fact she could be paid income from the state of Washington in terms of acting as a health care provider for J.M. and the fact she could arguably work outside the home while J.M. was being cared for by other health care providers who provided again at state assistance some 330 hours per month in terms of care for this special needs child. [Issue no. 3].

Similarly, the superior court abused its discretion when awarding \$800.00 per month throughout her or J.M.'s lifetime, without first considering whether she could receive income or a salary from the state of Washington in terms of acting as a health care provider for J.M.. She readily acknowledged that she has had the training and skills to care for J.M. ever since his birth in February 18, 2006. [Trial RP 76-79].

Furthermore, the court likewise chose to ignore the fact she could arguably work outside the home while J.M. was being cared for by other health care providers some 330 hours per month through state assistance in terms of medical for a special needs child. Simply put, ignoring these critical facts in terms of Ms. MANEAU ability to be gainfully employed, the court's decision amounts once again to a manifest abuse of discretion when setting any spousal support in this case. 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). Thus, once again, reversal of the lower court is mandated. RAP 12.2.

4. 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 misguided and false basis that Mr. MANEAU was supposedly "intransigent" in acting and representing himself pro se in these divorce proceedings notwithstanding his recent stroke and related health issues. [Issue no. 4].

In a similar vein, the superior court chose to misapply the 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 supposed basis that Mr. MANEAU had been ‘‘intransigent’’ in these proceedings. Again, Mr. MANEAU was laboring under the effects of a recent stroke and related health issues. [Trial RP 6, 18, 28-29]. In fact, the court readily acknowledged early on that the respondent was having difficulty understanding and answering questions while on the witness stand. [Trial RP 18]. Simply put, Mr. MANEAU afflictions associated with the stroke does not amount to ‘‘intransigence’’ in any sense. Rather, such is typically defined when a party engaging in ‘‘litigious behavior, bringing excessive motions, or discovery abuses’’ as 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). Thus, ‘‘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).

5. Finally, 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 total derogation of the legislative factors set forth in RCW 26.09.080. [Issue no. 5].

Finally, and in light of the judiciary’s cardinal objective in this case to be ‘just and equitable’ in the 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); and given the inescapable unfairness associated with the distribution of MARCUS JAMES MANEAU’s separate property in this case in terms of their being no viable claim of a CIR in this case, see Part E.1, above, it is clear the lower court must once more be reversed on appeal and the remanded for a new redistribution property and debt. The law requires nothing less under the factors set forth in RCW 26.09.080(1) through (4).

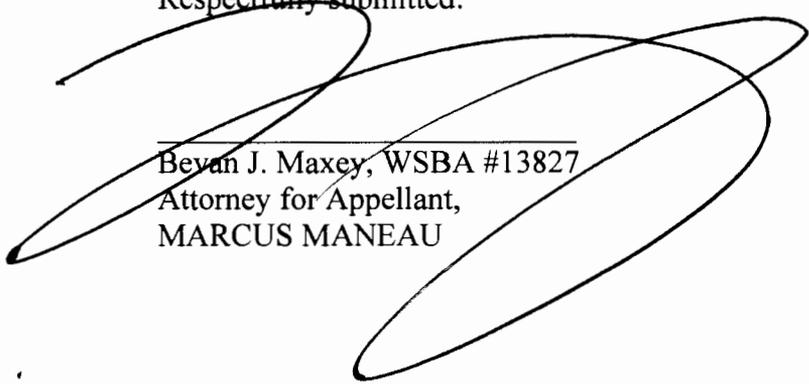
F. CONCLUSION

Based upon the foregoing points and authorities, the appellant, MARCUS JAMES MANEAU, 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 E, above, with instructions on remand that (1) 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, (2) 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, (3) 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, (4) any division of property on remand to be "fair and equitable" as mandated under RCW 26.09.090, and finally, (5) each party to be obligated and responsible for their own attorney fees, costs and expenses associated the within family law matter.

DATED this 3rd day of July, 2019.

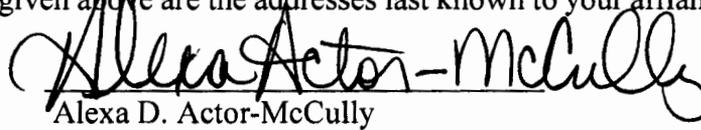
Respectfully submitted:



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

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: July 3, 2019



NOTARY PUBLIC in and for Washington

Residing at Spokane.

My Commission Expires: 11-29-2022

