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COA No. 36605-7-III

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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In re the Marriage of:

SHANNON JONES,

Appellant/Cross-Respondent,

v.

ANTHONY JONES,

Respondent/Cross-Appellant.

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BRIEF OF APPELLANT

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## I. ASSIGNMENTS OF ERROR

A. The court erred by entering its Findings and Conclusions about a Marriage when it found the value of the adult family home business Sunshine Place/Arthur Arms was not proven at trial, but did not impact the court's allocation of assets and debts.

B. The court erred by entering the Final Divorce Order when it failed to (1) determine a value for the parties' adult family home business, (2) divide the community asset, and (3) order an equalization payment to Shannon Jones.

C. The court erred by entering the Order re: Motion for Reconsideration when it determined:

The business Arthur Arms/Sunshine Place Adult Family Home shall be given the value of the home used to run the business. The business is not found to have a separate value from the home, but instead is considered to be included in the value of the home.

D. The court erred by entering the Order re: Motion for Reconsideration when it denied Ms. Jones' motion for reconsideration as to the denial of any equalization payment.

### *Issues Pertaining to Assignments of Error*

1. In its findings and conclusions, did the court err by making finding of fact 9? It provides in relevant part:

The Court found that Sunshine Place/Arthur

Arms value was not proven at trial, but does not impact the court's allocation of assets and debts. (Assignment of Error A).

2. Did the court err by entering the Final Divorce Order when it failed to determine a value for the parties' adult family home business and order an equalization payment to Ms. Jones? (Assignment of Error B).

3. Did the court err by entering the Order re: Motion for Reconsideration when it determined the business Arthur Arms/Sunshine Place Adult Family Home should be given the value of the home used to run the business, which was found not to have a separate value from the home, but instead was considered to be included in the value of the home? (Assignment of Error C).

4. Did the court err by entering its Order re: Motion for Reconsideration when it denied Ms. Jones' motion for reconsideration as to the denial of any equalization payment? (Assignment of Error D).

## II. STATEMENT OF THE CASE

Shannon and Anthony Jones married on October 24, 1998, in Spokane. (CP 800). The marital community ended on July 19, 2017. (*Id.*). After trial, the court divided assets and debts between the parties. (CP 799, 806). The court's oral ruling was

incorporated by reference. (CP 803). The court found the value of the adult family home business was not proven at trial. (CP 802). In its oral ruling, the court gave values to the other community and separate property assets as well as attendant liabilities. (RP 395-411). With those values and liabilities, Mr. Jones received some \$570,000 in total assets with liabilities of \$246,131, leaving an approximate net worth of \$323,869. (*Id.*; CP 815). Ms. Jones received some \$183,346 in total assets with liabilities of \$55,000, leaving an approximate net worth of \$128,346. (*Id.*).

The court was cognizant that since Mr. Jones would receive the community business asset, Ms. Jones would not have the benefit of that community business. (RP 412). Mr. Jones was awarded the adult family home business, which made an annual profit. (Exhibits P-6 to 8, R-104 to 106). In its findings and conclusions, the court found the value of the adult family home business was not proven at trial and gave no value to it. (CP 802).

On reconsideration, the court determined the value of the business was the value of the home used to run it:

The business Arthur Arms/Sunshine Place Adult Family Home shall be given the value of the home used to run the business. The business is not found to have a separate value from the home, but instead

is considered to be included in the value of the home.  
(CP 835-36).

The court further denied any equalization payment to Ms. Jones on reconsideration. (*Id.*) She appealed. (RP 451; CP 837).

### III. ARGUMENT

A. The court erred by determining the value of the adult family home business was not proven at trial.

Arthur Arms/Sunshine Place Adult Family Home was a community business situated on 648 S. Arthur and 652 S. Arthur. (RP ). The 2013 joint tax return showed gross income of \$377,640 with a net of \$63,533. (RP 56-57, 181; Exhibit P-6). The 2014 joint tax return showed gross income of \$356,358 with a net of \$51,995. (RP 56-57, 181-82; Exhibit P-7). The 2016 joint tax return showed business income of \$83,654. (Exhibit R-105). In her 2017 separate tax return, Ms. Jones had her business income from Arthur Arms at \$32,000. (RP 59-60; Exhibit P-8). Mr. Jones confirmed that her community share of the business was \$32,601. (RP 245). Clearly, the business was profitable, aside from any value of the two homes themselves used for Arthur Arms/Sunshine Place.

At trial, Ms. Jones testified the business was not the

buildings. (RP 68). Arthur Arms/Sunshine Place had the same UBI number and the business was a sole proprietorship. (RP 71). In establishing a value for the business, Ms. Jones did an internet search for adult family homes for sale in Spokane and found a listing in housing and number of residents that was “comparable to what our homes are at [648 S. Arthur and 652 S. Arthur].” (RP 84). Mr. Jones did not give a value for the adult family home business since it had zero profit. (*Id.*, RP 250). As an owner of the business, she testified the business had a value of \$400,000. (*Id.*, RP 147-48). This value was for the business only, not the properties and the business. (RP 85).

Ms. Jones further testified the adult family homes made a lot of money and the profit depended on how much money they were spending. (RP 148). And the business was profitable. (*Id.*). She stated the adult family home business was transferable if the new owners met the criteria and had a license. (RP 152). It was her understanding that, in order to obtain a loan from a mortgage company, Mr. Jones was to get a commercial appraisal, including the business as well as the homes. (*Id.*). Mr. Jones said there was no business appraisal. (RP 248-49). He did concede the business had value, but it had zero profit so there was no value. (RP 250).

To the contrary, the tax returns documented net income and thus a profit from the adult family home business. Ms. Jones' testimony also provided evidence the business itself had value.

Mr. Jones testified the business had no value for the sole reason that it had zero profit. (RP 250). But the uncontroverted evidence was the adult family home business was profitable so the reason given by Mr. Jones is simply not supported by the record. Ms. Jones gave her opinion as to the business's value, the only evidence presented on that issue. The court erred when it failed to consider the undisputed evidence. *Fletcher v. Aberdeen*, 54 Wn.2d 174, 176, 338 P.2d 743 (1959). Its finding that the value of the business had not been proven is not binding because it ignores undisputed evidence. *State ex rel. Coyle-Reite v. Reite*, 46 Wn. App. 7, 11, 728 P.2d 625 (1983). Its finding cannot stand.

Furthermore, the opinion of the owner and operator of a business is admissible on its value, together with an explanation of the basis for the owner's opinion. *Worthington v. Worthington*, 73 Wn.2d 759, 762-63, 440 P.2d 478 (1968); *In re Marriage of Lindemann*, 92 Wn. App. 64, 71, 960 P.2d 966 (1998), *review denied*, 137 Wn.2d 1016 (1999). Ms. Jones' business evaluation may be accepted in lieu of an appraisal where the opposing party

did not offer an appraisal and failed to show her valuation was unjustified. *Lindemann, supra*. Mr. Jones' zero valuation based on zero profitability was belied by the parties' own tax returns. Normally, the finder of fact is free to believe or disbelieve testimony. *In re Marriage of Rich*, 80 Wn. App. 252, 259, 907 P.2d 1234, review denied, 129 Wn.2d 1030 (1996). But that is not the case here because the only evidence as to the business's value was presented by Ms. Jones and it cannot be ignored. The court erred by refusing to consider it. *Reite*, 46 Wn. App. at 11.

On reconsideration, the court gave a value to the business equal to the "value of the home used to run the business." (CP 835). It further said the business had "no separate value from the home, but instead is considered to be included in the value of the home." (*Id.*). The prime reason for the court's decision was that the adult family home business was not "sellable." (RP 406). The court, however, eventually did decide to give a value to the business that was not separable from the value of the home. (CP 835). It erred by making this decision on reconsideration because no evidence was presented to support its finding, which is thus not supported by substantial evidence. *In re Marriage of Raskob*, 183 Wn. App. 503, 510, 334 P.3d 30 (2014).

The standard of review on a trial court's decision on a motion for reconsideration is abuse of discretion. *Singleton v. Naegeli Reporting, Corp.*, 142 Wn. App. 598, 612, 175 P.3d 594 (2008). Likewise, the valuation of a business is also reviewed for abuse of discretion. *Suther v. Suther*, 28 Wn. App. 838, 839-40, 627 P.2d 110, *review denied*, 95 Wn.2d 1029 (1981). That discretion was abused because the trial court's determination of the business value was unsupported by substantial evidence and thus was made for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 482 P.2d 775 (1971). Ignoring Ms. Jones' business valuation was also a mistake in law and was an abuse of discretion in itself. *In re Marriage of Spreen*, 107 Wn. App. 341, 349-50, 28 P.3d 769 (2001); *Worthington, supra*. Accordingly, the court erred in its determination of the value of the business and reversal is the remedy.

B. The court erred by denying any equalization payment to Ms. Jones.

After finding the business's value was included in the value of the homes at 648 S. Arthur and 652 S. Arthur, the court then denied reconsideration of Ms. Jones' request for an equalization payment. (CP 836). After reconsideration, the property division thus

remained the same. Ms. Jones was awarded approximately 28% and Mr. Jones 72% of the property. The court's distribution of property is reviewed for an abuse of discretion. *In re Marriage of Brewer*, 137 Wn.2d 756, 769, 976 P.2d 102 (1999).

Although the distribution need not be equal, the division of property was nonetheless unfair, unjust, and inequitable. *In re Marriage of Hadley*, 88 Wn.2d 649, 656, 565 P.2d 790 (1977). If the court's decree results in a patent disparity between the parties' economic circumstances as here, a manifest abuse of discretion occurs. *In re Marriage of Rockwell*, 141 Wn. App. 235, 243, 170 P.3d 572 (2007), *review denied*, 163 Wn.2d 1055 (2008). By failing to give a value to the business separate from the homes, the court's division resulted in such a patent disparity between the parties' economic circumstances that an equalization payment must be made to Ms. Jones.

After this 19-year marriage where both parties contributed to the community business, Ms. Jones was left with no income-producing assets while Mr. Jones was awarded the adult family home business that was profitable. The disparity in the economic circumstances of the parties after the property division, where the business alone was erroneously valued at zero, calls for an

calls for an equalization payment. The court's denial of such a payment to Ms. Jones was clearly based on its valuation of the business being equal to the value of the home that was considered to be included in the value of the home. (CP 835). That valuation was erroneous resulting in a patently inequitable division of property. The court abused its discretion by so finding. *In re Marriage of Brewer*, 137 Wn.2d 756, 769, 976 P.2d 102 (1999). The denial of an equalization payment based on that mistaken premise must be reversed as well. *Kosanke v. Kosanke*, 30 Wn.2d 523, 535, 192 P.2d 337 (1948).

C. Ms. Jones should be awarded attorney fees on appeal under RCW 26.09.140 and RAP 18.1.

Ms. Jones is entitled to an award of attorney fees on appeal because she has the need and Mr. Jones certainly has the ability to pay. *In re Marriage of King*, 66 Wn. App. 134, 139, 831 P.2d 1094 (1992); RCW 26.09.140. As required by RAP 18.1(c), she will submit a declaration of financial need as required.

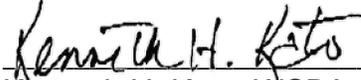
#### IV. CONCLUSION

Based on the foregoing facts and authorities, Ms. Jones urges this court (1) to reverse the trial court's decision giving no value to the business itself and denying an equalization payment to

her, (2) to award attorney fees on appeal and (3) remand for further proceedings.

DATED this 6<sup>th</sup> day of January, 2020.

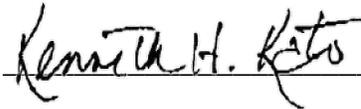
Respectfully submitted,



\_\_\_\_\_  
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#### CERTIFICATE OF SERVICE

I certify that on January 6, 2020, I served a copy of the Brief of Appellant through the eFiling portal on Heather Hoover at her email address.



**January 06, 2020 - 4:33 PM**

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