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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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REPLY BRIEF OF APPELLANT AND BRIEF OF CROSS-  
RESPONDENT

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Kenneth H. Kato, WSBA # 6400  
Attorney for Shannon Jones  
1020 N. Washington St.  
Spokane, WA 99201  
(509) 220-2237

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## I. REPLY TO BRIEF OF RESPONDENT

### A. STATEMENT OF THE CASE

Appellant Shannon Jones incorporates the facts in her Statement of the Case in the opening brief. Further facts may be referred to as the discussion necessitates.

### B. ARGUMENT IN REPLY

Respondent Anthony Jones claims Ms. Jones was not a credible witness. But the trial court determines credibility, not this Court. *Quinn v. Cherry Lane Auto Plaza, Inc.*, 153 Wn. App. 710, 717, 275 P.3d 266 (2009). The appellate court reviews the trial court's factual determinations for sufficiency instead of making its own credibility determinations. *Id.*

The record shows Arthur Arms/Sunshine Place Adult Family Home was indisputably a sole proprietorship and community business at 648 S. Arthur and 652 S. Arthur in Spokane. (RP 71). The 2013 joint tax return reflected net income of \$63,533. (RP 56-57; Exh. P-6). The 2014 joint tax return reflected net income of \$51,995. (RP 56-57; Exh. P-7). The 2016 joint tax return reflected net income of \$83,654. (RP 181-82; Exh. R-105). Ms. Jones's 2017 separate return reflected her business income was \$32,601. (RP 59-60; Exh. P-8). Mr. Jones himself confirmed her community

share of the business was \$32,601. (RP 245). These undisputed facts show the community business was indeed profitable with net income separate and apart from the value of the homes making up Arthur Arms/Sunshine Place. (Exhs. P-6 to 8, R-104-106).

The crux of Mr. Jones' argument that the adult family home had no value is "the business could not generate a profit until *after* [Ms. Jones] and [he] are paid a wage." (Respondents' brief at 12). This premise is wrong. In a sole proprietorship, the owners' draw is not a business expense and is taken from net profit, for which they pay personal income tax. Cam Merritt, "What Is an Owner's Drawing in Accounting?", Small Business - Chron.com (1/31/19). Those profits during 2013 to 2016 ranged from \$51,995 to \$83,654. And Mr. Jones confirmed that in 2017, Ms. Jones' share of the net business income from the adult family home was \$32,601. (RP 245). There can be no dispute that Arthur Arms/Sunshine Place was profitable and produced net income as a business with its own value, separate from the value of the real estate itself.

Mr. Jones testified he did not give a value for the adult family home business since it had zero profit. (RP 84, 250). But the tax returns reflect net income and thus value as a business. The trial court abused its discretion by adopting Mr. Jones' reasoning

because it was based on the erroneous legal principle that a business cannot generate profit until after the parties were paid a wage. *In re Marriage of Spreen*, 107 Wn. App. 341, 349-50, 28 P.3d 769 (2001).

Moreover, substantial evidence does not support his testimony as the tax returns belie his claim of zero value and zero profit for the business. *Thorndike v. Hesperian Orchards, Inc.*, 54 Wn.2d 570, 575, 343 P.2d 183 (1959). To conclude substantial evidence supports factual findings, there must be a sufficient quantity of evidence in the record to persuade a reasonable person the declared premise is true. *Wenatchee Sportsmen's Ass'n v. Chelan County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000). Mr. Jones' zero valuation was based on the false premise that an owners' draw was an expense and not taken from profits. This is not substantial evidence. In any event, the tax returns reflected the business had net income and it thus had value.

But the trial court found the adult family home had no value as a business. This valuation is not within the scope of the evidence presented and was premised on Mr. Jones' mistaken assumption that an owners' draw was not taken from profits. *In re Marriage of Matthews*, 70 Wn. App. 116, 122, 853 P.2d 462, review

*denied*, 122 Wn.2d 1021 (1993). The court erred. Since the business had value in itself, the court also erred by denying Ms. Jones an equalization payment taking into account the value of Arthur Arms/Sunshine Place Adult Family Home, which was awarded to Mr. Jones. The case should be remanded for the court to make that valuation of the business so it can then consider the amount of an equalization payment.

As for her attorney fees request, Ms. Jones has the need and Mr. Jones has the ability to pay. RCW 26.09.140; RAP 18.1.

With respect to the remainder of Mr. Jones' responses, Ms. Jones rests on the arguments made in her opening brief.

## II. BRIEF OF CROSS-RESPONDENT

### A. STATEMENT OF THE CASE

Cross-respondent Ms. Jones incorporates the facts in her Statement of the Case in the opening brief. Further facts may be referred to as the discussion necessitates.

### B. THE TRIAL COURT PROPERLY CHARACTERIZED 648 S. ARTHUR (SUNSHINE PLACE) AS COMMUNITY PROPERTY.

The trial court's characterization of property as community or separate is reviewed *de novo*. *In re Marriage of Chumbley*, 150 Wn.2d 1, 5, 74 P.3d 129 (2003). The character of property is

determined at the date of acquisition. *In re Estate of Borghi*, 167 Wn.2d 480, 219 P.3d 932 (2009). Mr. Jones argues the 648 S. Arthur home was a gift just to him from his mother as his was the only name on the quitclaim deed. (CP 67-71, 313). But the fact that title has been taken in the name of only one of the parties does not, in itself, rebut the presumption of common property and ownership. See *In re Marriage of Lindsey*. 101 Wn.2d 299, 306-07, 678 P.2d 328 (1984). The name on a deed or title does not determine the separate or community character of the property, or even provide much evidence. *In re Marriage of Borghi*, 167 Wn.2d at 488. But that is all Mr. Jones relies on and it is not dispositive.

In exercising its broad discretion, the trial court characterizes each asset as separate or community property. *In re Marriage of Brewer*, 137 Wn.2d 756, 766, 976 P.2d 102 (1999). A court abuses its discretion if its decision is manifestly unreasonable or is based on untenable grounds or reasons. *In re Marriage of Kovacs*, 121 Wn.2d 795, 801, 854 P.2d 629 (1993).

The trial court found the presumption of community property was not rebutted by Mr. Jones. Ms. Jones testified the 648 S. Arthur property was to be used by both her and Mr. Jones as collateral to buy 652 S. Arthur. (RP 155-56). The property at 643

S. Arthur, 648 S. Arthur, and 652 S. all comprised the family community property business. (8/25/17 RP 8, 14-15). In these circumstances, the court properly found Mr. Jones had not rebutted the presumption of community property by merely relying on title in his name through the quitclaim deed. *In re Marriage of Borghi, supra*. There was substantial evidence supporting the court's decision that 648 S. Arthur was community property and it neither made an error in law nor abused its discretion in so finding. *In re Marriage of Brewer, supra*.

C. THE TRIAL COURT PROPERLY AWARDED  
MAINTENANCE TO MS. JONES.

The trial court's decision on spousal maintenance is reviewed for an abuse of discretion. *In re Marriage of Zahm*, 138 Wn.2d 213, 226-27, 978 P.2d 498 (1999). Some factors the court must consider are the post-dissolution financial resources of the parties ; their abilities to independently meet their needs; the time necessary for the party seeking maintenance to find employment; duration of the marriage; the standard of living during the marriage; the age, physical, and emotional condition, and financial obligations of the spouse seeking maintenance; and the ability of the spouse from whom maintenance is sought to meet his needs and financial

obligations. RCW 26.09.090(a)-(f). The only limitation on the maintenance award is that the amount and duration be just in light of all the relevant factors. *In re Marriage of Washburn*, 101 Wn.2d 168, 178, 677 P.2d 152 (1984).

Ms. Jones had been working two jobs since the parties' separation and still did not have enough money to meet her needs. (Trial RP 45-65; Ex. P-2). When they were living together, she did not have to worry about a budget. (Trial RP 62-63). Mr. Jones had been paying \$2000/month maintenance since September 2017 pursuant to temporary orders entered by the court. (*Id.*; CP 296). Her financial circumstances not getting better, she asked for the \$2000/month maintenance to continue for three years. (Trial RP 64-65). It bears repeating that Ms. Jones received no income-producing assets in the division of community property and Mr. Jones received all of them.

Taking her circumstances into account, the court awarded Ms. Jones \$2000/month maintenance for two years. (CP 809). She testified she needed maintenance and the court found she had the need. Considering the factors in RCW 26.09.090, the award of maintenance was supported by the record. The court did not abuse

its discretion by ordering Mr. Jones to pay two years of maintenance at \$2000/month. *In re Marriage of Zahm, supra.*

D. THE TRIAL COURT PROPERLY DENIED A DEVIATION IN CHILD SUPPORT.

Mr. Jones in essence argues maintenance and child support should be combined to show Ms. Jones makes the same amount of money as he does so the court should have granted him a deviation. But maintenance is for the former spouse; child support is for the children. Although RCW 26.19.075 gives the court discretion to deviate from the basic child support obligation as calculated by the schedule and worksheet, there were no reasons to support a deviation.

Mr. Jones' brief acknowledges the court meaningfully considered his request and made the only finding needed:

However, the court found there was no basis to deviate from the standard calculation and ordered Mr. Jones to pay the full amount of child support. (Respondent/ Cross-Appellant's Brief at 26).

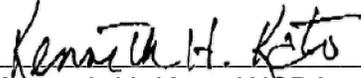
The court need not enter "negative" findings. *General Indus. v. Eriksson*, 2 Wn. App. 228, 229, 467 P.2d 321 (1970). Mr. Jones nonetheless claims the court abused its discretion when the ordered child support resulted in "insufficient funds to Mr. Jones'

Mr. Jones' home for the children and an extreme excess of funds to Ms. Jones' home." (*Id.*). The record does not support that contention. The court's order requiring Mr. Jones to pay full child support according to the schedule and worksheets was within its sound discretion. *In re Marriage of Bell*, 101 Wn. App. 366, 4 P.3d 849 (2000). The court did not err.

## II. CONCLUSION

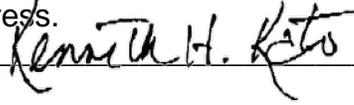
Based on the foregoing facts and authorities, Ms. Jones respectfully urges this Court to (1) reverse the trial court's decision giving no value to the business itself and denying an equalization payment to her, (2) award her attorney fees on appeal, and (3) remand for further proceedings in her appeal. She asks this Court to affirm the trial court's decisions finding 648 S. Arthur was community property, awarding maintenance, and denying a deviation in child support in the cross-appeal.

DATED this 7<sup>th</sup> day of June, 2020.

  
Kenneth H. Kato, WSBA # 6400  
Attorney for App./Cross-Resp.  
1020 N. Washington St.  
Spokane, WA 99201  
(509) 220-2237

CERTIFICATE OF SERVICE

I certify that on June 7, 2020, I served the reply brief of appellant and response brief of cross-respondent through the eFiling portal on Heather Hoover at her email address.

A handwritten signature in black ink, reading "Kenneth H. Kato", is written over a horizontal line.

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