

**FILED**

SEP 08 2020

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

NO. 371956

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

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MICHAEL S. HODGES,

Appellant,

v.

LINDA HODGES,

Respondent.

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**RESPONDENT'S BRIEF**

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LINDA HODGES  
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## **I. INTRODUCTION**

Appellant Michael Hodges has not met his burden to establish that the trial court erred in entering the following final orders: the Findings of Fact & Conclusions of Law. He has not shown how the court manifestly abused its discretion or entered findings on unreasonable or untenable grounds, nor is the legal authority he cites relevant to his argument. Credible testimony and substantial evidence support the trial court's findings. Based on this evidence, the trial court exercised proper discretion in entering the final orders.

## **II. COUNTER STATEMENT OF THE CASE**

This case is an appeal from orders entered after trial in the dissolution of marriage of Michael S. Hodges and Linda A. Hodges. CP 15-25. The parties were married on June 23, 2004 in Goldendale, WA, and had been married for 15 years at time of trial. CP 16; RP 48. The court did not issue an oral ruling at trial. RP 79-81. The court issued final orders on November 7, 2019. CP 15-25.

The court directed Mr. Hodges to supplement his Financial Declaration with financial information, including bank statements and tax information, before the June 14, 2018 Temporary Family Law Order hearing and at that hearing. RP 7, 28-30. At trial, Mr. Hodges provided testimony that he had bank accounts, but did not file the requested

financial information with the court while the dissolution was pending. RP 77. Mr. Hodges also provided testimony that he made about \$510 a month and then indicated he had recently been paid \$724, and could give Ms. Hodges \$250. RP 9. Ms. Hodges asked for spousal support for seven years and at trial, she had received one year of spousal support. RP 47-48. The court ordered Mr. Hodges to pay Ms. Hodges \$250 a month in spousal support. RP 21; CP 9-14.

The parties had several personal vehicles considered as community property. RP 55-63. Ms. Hodges requested that the court award her one of the operable vehicles. RP 60. At the hearing for temporary orders on June 14, 2018, Ms. Hodges requested possession of the 1993 Jeep Cherokee. RP 6. The court directed Mr. Hodges to cover the expenses of making the Jeep Cherokee operable, either by fixing it himself for arranging to have it fixed. RP 23. Mr. Hodges did not make the repairs to the Jeep by the time of trial on October 31, 2019. RP 60-61.

At trial, the court determined Mr. Hodges retained about \$13,000 in value of community property, including several personal vehicles and heavy equipment, and that the 1999 Toyota Tacoma was worth about \$2,000. RP 46-66. Further, Mr. Hodges's real property appreciated by \$12,000 during the parties' marriage. RP 71. At trial, the trial court and Mr. Hodges acknowledged that it would take too long for Mr. Hodges to

attempt to sell the community property in order to award a just and equitable cash distribution to Ms. Hodges. RP 66. The court recognized that if Ms. Hodges were awarded the 1999 Toyota Tacoma, valued at roughly \$2,000, Mr. Hodges would retain \$25,000 worth of community property. RP 60-73.

### III. ARGUMENT

#### A. *The Trial Court's Findings Are Binding on Appeal Because Appellant Mr. Hodges Did Not Properly Challenge Them.*

This court should defer to the trial court's findings of fact and affirm its decisions because Mr. Hodges has not met his burden of showing how the trial court erred. His failure to meet his burden stems from his failure to submit a brief that complies with the Rules of Appellate Procedure (RAP) 10.3. His brief a) does not specify which findings of fact he contests, b) does not adequately argue the assignments of error with proper citation to authority and the trial record, and c) it contains many self-serving statements that are not supported by the record. The fact that Mr. Hodges is pro se does not excuse him from compliance with these rules. *In re Marriage of Olson*, 69 Wn.App. 621, 626, 850 P.2d 527 (1993).

1. **Mr. Hodges Does Not Assign Error To Any Specific Finding of Fact.**

Mr. Hodge's brief takes issue with two findings by the trial court, the award of spousal maintenance and possession of the 1999 Toyota Tacoma to Ms. Hodges, but does not specifically state any assignments of error with reference to the finding number. This does not comply with RAP 10.3(g):

A separate assignment of error for each finding of fact a party contends was improperly made must be included with reference to the finding number. The appellate court will only review a claimed error which is included in an assignment of error or clearly disclosed in the associated issue pertaining thereto.

RAP 10.3(g).

Mr. Hodges failure to assign error to specific findings of facts, without separate assignments of error for each contested finding, results in the trial court's findings becoming the established facts of the case. *Olivo v. Rasmussen*, 48 Wash. App. 318, 319, 738 P.2d 333, 333, 335 n.1 (1987) (citing *In re Santore*, 28 Wash.App. 319, 323, 623 P.2d 702 (1981)). As a result, appellate review is limited to determining whether the findings of fact support the trial court's conclusions of law and judgment. *Application of Santore*, 28 Wash. App. 319, 323, 623 P.2d 702, 706 (1981) (citing *In re Bennett*, 24 Wash.App. 398, 400-01, 600 P.2d 1308 (1979)).

Even if Ms. Hodges and this Court were to assume Mr. Hodges's disagreements with the trial court's findings are assignments of error, he still failed to reference the trial court's findings of fact with specificity. Ms. Hodges and this Court can reasonably conclude that Mr. Hodges is objecting to Findings 9, 10, and 13, relating to community and separate property, and spousal support. However, Ms. Hodges and this Court also must review the entire record to speculate as to which findings of fact Mr. Hodges objects. This is impractical and inefficient. The purpose of RAP 10.3 and related rules "is to enable the court and opposing counsel efficiently and expeditiously to review the accuracy of the factual statements made in the briefs and efficiently and expeditiously to review the relevant legal authority." *State v. Cox*, 109 Wn.App. 937, 943, 38 P.3d 371 (2002) (citing *Hurlbert v. Gordon*, 64 Wash.App. 386, 400, 824 P.2d 1238 (1992)). Because Mr. Hodges has not complied with this rule, all of the trial court's findings must become established facts of the case, and this court should only determine whether those findings support the conclusions of law and orders. *Santore*, 28 Wn.App. at 323.

2. **Mr. Hodges's Brief Contains Self-Serving Statements Not Included in or Supported by the Record.**

According to RAP 10.3(a)(5), all factual statements must include a reference to the record. Appellate courts do not consider self-serving

statements that are not supported by the record. *Housing Authority of Grant Co. v. Newbigging*, 105 Wn.App. 178, 184-185, 19 P.3d 1081 (2001). *See also State v. Falling*, 50 Wash.App. 47, 52, 747 P.2d 1119, 56 n.3 (1987) (appellate court will disregard matters not made part of record). Furthermore, the appellate court may refuse to review any claim of error that was not raised in the trial court. RAP 2.5(a).

Mr. Hodges argues that the court was “argumentative, rude and disrespectful, interrupting me constantly, ignoring my testimony.” The Report of Proceedings shows that Mr. Hodges was given several opportunities to supplement his pleadings, and many opportunities to provide testimony at the hearing on the Temporary Family Law Orders, and at trial. This includes the court’s consideration of Mr. Hodges representation of the value of the property at issue and his testimonial narrative at trial. RP 54-79.

Mr. Hodges alleges that the trial court did not follow up Mr. Hodges argues that the court did not “follow up” on whether or not Ms. Hodges served him with a Response to his Petition for Dissolution. These statements are not supported by the record nor were they raised at trial. Mr. Hodges also argues that Ms. Hodges committed perjury, deliberately misleading the court. The record does not support these statements. Mr. Hodge’s brief, and this appeal as a whole, does not comply with RAP 10.3

and Ms. Hodges requests this court disregard his brief and affirm the trial court's findings of fact as facts of the case.

***B. The Court Exercised Proper Discretion When It Entered The Final Dissolution Orders.***

A trial court has broad discretion in distributing the marital property, and its decision will be reversed only if there is a manifest abuse of discretion. *In re Marriage of Kraft*, 119 Wash.2d 438, 450, 832 P.2d 871 (1992). Likewise, the amount and duration of maintenance is for the trial court's discretion to be reversed on appeal only for manifest abuse. *Brossman v. Brossman*, 32 Wash. App. 851, 854, 650 P.2d 246, 248 (1982). A trial court only abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). A court's decision is manifestly unreasonable if it is outside the range of acceptable choices. *Id.* at 47.

Factual findings upon which the court's characterization is based may be reversed only if they are not supported by substantial evidence. *Id.* "Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise." *Bering v. SHARE*, 106 Wash.2d 212, 220,

721 P.2d 918 (1986), *cert. dismissed*, 479 U.S. 1050, 107 S.Ct. 940, 93 L.Ed.2d 990 (1987).

1. **Substantial Evidence Supported The Just and Equitable Distribution of Property pursuant to RCW 26.09.080.**

All of the parties' property, both community and separate, is before the court for distribution. *In re Marriage of Olivares*, 69 Wash.App. 324, 328, 848 P.2d 1281, *review denied*, 122 Wash.2d 1009, 863 P.2d 72 (1993). The status of the property as community or separate is not controlling. *Worthington v. Worthington*, 73 Wash.2d 759, 768, 440 P.2d 478 (1968). Rather, the trial court must ensure that the final division of the property is a “just and equitable” distribution of the marital property. RCW 26.09.080; *see Worthington*, 73 Wash.2d at 768, 440 P.2d 478.

The trial court determined Mr. Hodges retained about \$13,000 in value of community property, including several personal vehicles and heavy equipment, and that the 1999 Toyota Tacoma was worth about \$2,000, based upon the testimony of Mr. Hodges. RP 46-66. The court and Mr. Hodges acknowledged it would probably take Mr. Hodges a long time to try to sell some of the community property in order to give Ms. Hodges her fair share of it. RP 66. Further, Mr. Hodges agreed with the court that

despite the sentimental value of the Toyota Tacoma, if the court were to award it to Ms. Hodges. RP 66. Further, the court calculated that Mr. Hodges real property appreciated by \$12,000 during the parties' marriage, and Mr. Hodges agreed. RP 71. The court recognized that if Ms. Hodges were awarded the 1999 Toyota Tacoma, valued at roughly \$2,000, Mr. Hodges would retain \$25,000 worth of community property. RP 60-73.

The trial court's rulings regarding the Dissolution in this case are reasonable and firmly within the court's discretion. At the hearing on the Temporary Family Law Order, the trial court gave Mr. Hodges the opportunity to repair the parties' 1993 Jeep Cherokee for Ms. Hodges's use. CP 12. Mr. Hodges ignored the trial court's order and did not make the repairs, leaving Ms. Hodges without an operable vehicle. Substantial evidence supports the trial court's decision to award Ms. Hodges the 1999 Toyota Tacoma. After reviewing the record and hearing testimony from both parties, the trial court's finding granting Ms. Hodges's request that she gain possession of the 1999 Toyota Tacoma, valued at \$2,000 and one of the parties' operable vehicles, was fair, just, and equitable. The record shows that it would be difficult for Mr. Hodges to convert this property into cash in a timely manner and Mr. Hodges would retain \$25,000 worth of community property.

2. **The Trial Court's Spousal Support Finding is Not an Abuse of Discretion.**

The amount and duration of maintenance is for the trial court's discretion to be reversed on appeal only for manifest abuse. *Brossman v. Brossman*, 32 Wash. App. 851, 854, 650 P.2d 246, 248 (1982).

The trial court acknowledged that the parties were married for fifteen years and together for fourteen of those years with Mr. Hodges. RP 48. Mr. Hodges repeatedly failed to provide the court with supplemental documents requested to support his Financial Declaration and varying claims of income alleged in pleadings and testimony to the trial court. RP 7, 9, 28-30, 77. After reviewing the record and hearing testimony from both parties, the trial court appropriately considered the evidence in making its decision to award Ms. Hodges \$250 in spousal support for seven years, beginning from the date of the Temporary Family Law Order in June 2018.

The trial court found that: the bulk of the assets are being retained by Mr. Hodges; Ms. Hodges is in need of assistance to transition to a situation in which she can support herself independently; Ms. Hodges's age, physical condition, unemployment and lack of independent resources make an award of spousal maintenance proper; and although not easy, Mr. Hodges is in a position to meet his own financial needs and pay support.

RP 21. The spousal support award cannot be considered an abuse of discretion.

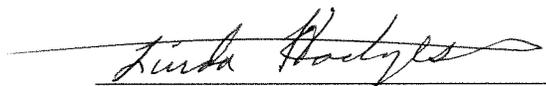
#### **IV. CONCLUSION**

Substantial evidence and credible testimony support the trial court's findings that Ms. Hodges gain possession of the 1999 Toyota Tacoma and receive \$250 a month in spousal support for seven years. The trial court exercised proper discretion in its entry of the Final Dissolution Decree and Findings of Fact and Conclusions of Law, supported by substantial evidence and credible testimony.

At every stage of this civil case, Mr. Hodges was provided a meaningful opportunity to be heard. Despite having his day in court, Mr. Hodges continues to force Ms. Hodges to fight him at various levels of the legal system, rehashing the same unfounded arguments against her. Mr. Hodges failed to meet his burden on appeal to show that the trial court clearly abused its discretion—that no reasonable judge would have ruled the same way—on any one of these issues. He cites little legal authority and, for the most part, repeats the same arguments he made throughout the trial court process. Clearly, he disagrees with the trial court findings, but he makes no arguments and cites no legal authority to support his position that the trial court orders should be overturned. Therefore, the trial court's findings, judgments, and orders should be upheld and affirmed.

DATE: September 2, 2020

Respectfully submitted,

  
Linda Hodges, Appellant<sup>1</sup>

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<sup>1</sup> Pursuant to GR 33 (accommodation for persons with disabilities), the respondent had the assistance of an attorney Jennifer Hill-Hart, WSBA# 55734 of the Northwest Justice Project in preparing this brief.

**FILED**

SEP <sup>04</sup> 23 2020

COURT OF APPEALS  
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By \_\_\_\_\_

**COURT OF APPEALS  
OF THE STATE OF WASHINGTON, DIVISION III**

**MICHAEL S. HODGES,**

**No. 371956**

**Appellant,**

**Certificate of Mailing or  
Personal Delivery**

**vs.**

**LINDA A. HODGES,**

**Respondent.**

I, Linda Hodges, hereby certify that I served a copy of the Respondent's Brief on the date set forth below, in the following manner:

Via first class U.S. Mail, postage prepaid; to  
Michael Hodges  
35 Mercy Lane  
Goldendale, WA 98620-2828

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Date: September 23 2020

Linda Hodges  
Printed Name

Linda Hodges  
Signature