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COURT OF APPEALS
DIVISION II

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COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON
BY SW
DEPUTY

MICHELE LYNN SNYDER, now WALPOLE, *Appellant*,

v.

MITCHELL HUGH SNYDER, *Respondent*.

APPELLANT'S REPLY BRIEF

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ORIGINAL

TABLE OF CONTENTS

I. ASSIGNMENTS OF ERROR & ISSUES
ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

A. Assignments of Error1

B. Issues Pertaining to Assignments of Error2

II. STATEMENT OF THE CASE1

III. ARGUMENT2

A. The Separation Agreement is ambiguous
no matter how it is read2

1. This is a property division disguised
incorrectly as “Spousal Maintenance”2

2. Two forms of maintenance indicate intent
to treat Section 1(a) as spousal maintenance
and Section 1(b) as property division3

3. The payments sets forth in Section 1(b)
Have the characteristics of property division4

4. The termination provisions of the Settlement
Agreement and Decree of Dissolution support a
Determination that the payments are property
division6

5. The tax benefits can only be enjoyed by Ms.
Walpole as a matter of law regardless of the
Provisions of the Settlement Agreement6

6. *Thompson* Analogy7

B. Ambiguity requires inquiry into the intent
of the parties through examination of parol evidence9

C. If the Settlement Agreement is unambiguous Ms. Walpole's construction is the only reasonable and probable interpretation 10

1. Ms. Walpole's Construction 10

2. Mr. Snyder's Construction..... 11

3. Reasonableness and Probability 13

4. Attorney Fees and Costs 13

IV. CONCLUSION..... 14

TABLE OF AUTHORITIES

Table of Cases

Green River Valley Foundation, Inc. v. Foster
78 Wn.2d 245, 473 P.2d 844 (1970) 10

In Re Marriage of Hadley,
88 Wn.2d 649, 565 P.2d 790 (1977)..... 2, 9

Thompson v. Thompson,
82 Wn.2d 352, 510 P.2d 827 (1973)..... 2, 7, 8, 9

Statutes

26 U.S.C. § 163(h)(1) 7

26 U.S.C. § 163(h)(2)(D)..... 7

26 U.S.C. § 163(h)(4)(A)(i)..... 7

I. ASSIGNMENTS OF ERROR &
ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

A. Assignments of Error

The Appellant, Michele Walpole, relies on the Assignments of Error set forth in her Opening Brief.

B. Issues Pertaining to Assignments of Error

The Appellant, Michele Walpole, relies on the Issues Pertaining to Assignments of Error set forth in her Opening Brief.

II. STATEMENT OF THE CASE

In addition to the Statement of the Case set forth in Appellant's Opening Brief, Michele Walpole sets forth the following statement of facts:

1. The Settlement Agreement states, "The parties desire to separate, to effectuate an amicable division of their property and liabilities, and to settle the other issues addressed herein." CP 26.
2. The Settlement Agreement states, "Each of the parties agrees that he or she understands the nature and extent of the parties' property and liabilities, that this agreement fairly describes the property and liabilities of the parties, and that the distribution of property and liabilities in this agreement are fair and equitable." CP 26.

III. ARGUMENT

A. The Separation Agreement is ambiguous no matter how it is read.

1. This is a property division disguised incorrectly as “Spousal Maintenance.”

Mr. Snyder argues the Settlement Agreement is unambiguous on its face. He first relies on the notion that the disputed language is designated in the Settlement Agreement as “Spousal Maintenance.” *Respondent’s Brief*, at 9. He continues to rely on this argument throughout his brief. *Respondent’s Brief*, at 9, 14, 15, 16. Mr. Snyder completely ignores the well established rule that an ambiguity exists if the future payments designated in an agreement are designated spousal maintenance but have the character of a property division. *Thompson v. Thompson*, 82 Wn.2d 352, 357, 510 P.2d 827 (1973). Despite Mr. Snyder’s reliance on the contrary, there is no magic in the use of terms such as alimony, maintenance, or property award. *In Re Marriage of Hadley*, 88 Wn.2d 649,658, 565 P.2d 790 (1977).

The Trial Court, too, ignored these principles embedded in the law. The Trial Court stated, “...[o]n one hand the payments have the character of a property division and on the other hand they are designated as ‘maintenance’...” CP 143. Under *Thompson* and

Marriage of Hadley, the conclusion is that an ambiguity exists, not that an ambiguity “arguably exists” as stated by the Trial Court. In fact, there are multiple ambiguities in and throughout the Separation Agreement. These ambiguities are not reconciled by reading the Separation Agreement as a whole. If anything, reading the document as a whole creates greater ambiguity. The trial court erred in determining that the ambiguity reconciled itself on its face.

2. Two forms of maintenance indicate intent to treat Section 1(a) as spousal maintenance and Section 1(b) as property division.

The more one reviews the Settlement Agreement as a whole, the more ambiguous the payment provisions become. Mr. Snyder refers to Section 1(a) as being an “award of spousal maintenance” and Section 1(b) as “[t]he second form of maintenance...”

Respondent’s Brief, at 10-11. This creates an ambiguity in that the law does not provide for different types or “forms” of maintenance. In fact, it is this “second form of maintenance” that is actually part of the property division. *Respondent’s Brief*, at 11. If the parties had intended for the provisions of Section 1(b) to be spousal maintenance, there would have been no need to bifurcate it from the “traditional” spousal maintenance as Mr. Snyder refers to it. CP 60.

3. The payments sets forth in Section 1(b) have the characteristics of property division.

It is undisputed that the provisions of Section 1(b) are directly tied to the payment of the second mortgage on the family home. CP 27-28. The family home was awarded to Ms. Walpole in the dissolution. CP 29. It is undisputed that the second mortgage was incurred in large part to purchase investment real property. CP 77. The investment real property was technically unencumbered and awarded to Mr. Snyder in the dissolution. CP 77. It is undisputed that Mr. Snyder was awarded his entire LEOFF pension, the investment real property, and his entire deferred compensation account, save \$12,000 awarded to Ms. Walpole. CP 77. It is undisputed that the family home had no equity at the time the dissolution decree was entered.¹ CP 76. It is undisputed that Ms. Walpole was awarded \$12,000 from Mr. Snyder's deferred compensation account, a car, and the family home with a "negligible" value. *Respondent's Brief*, at 12. It is undisputed that the exact monthly payment amount set forth in Section 1(b) was derived from the amortization payment schedule on the second mortgage. CP 39. It is undisputed that Mr. Snyder, in his sole

¹ It is acknowledged that Ms. Walpole later received a total profit of \$11,975 from the sale of the home because she sold it by owner. CP 78.

discretion, could terminate maintenance upon the payment of a lump sum equal to the balance remaining on the second mortgage. CP 28. It is undisputed that, in his sole discretion, Mr. Snyder could make this lump sum payment either to Ms. Walpole or the lender. CP 28. It is undisputed that the provisions of Section 1(b) were “non-modifiable”. CP 28. It is undisputed that all liabilities associated with the family home were distributed to Ms. Walpole, “except for the second mortgage liability distributed to Mitchell Snyder below.” CP 32-33.

What is in dispute is whether the second mortgage was distributed to Mr. Snyder. Despite the Settlement Agreement referencing “the second mortgage liability distributed to Mitchell Snyder” and expressly relieving Ms. Walpole from the second mortgage liability, Mr. Snyder asserts he “was never specifically given the debt as a property distribution under the terms of the Separation Agreement...” and that this alleged omission is proof of “the parties’ intent that this payment was not intended to be a property distribution.” *Respondent’s Brief*, at 11. Despite his assertion, the Settlement Agreement specifically and expressly relieves Ms. Walpole from the debt and distributes the liability to Mr. Snyder. CP 32, 33. Within the Settlement Agreement, he is

given the option to pay it in one lump sum directly to Ms. Walpole or the lender in lieu of further maintenance. CP 28. The option was his and his alone without any regard for Ms. Walpole's current or future need or future mortgages. CP 28. Such an arrangement clearing indicates this was a property division mislabeled as "spousal maintenance," which is not fatal.

4. The termination provisions of the Settlement Agreement and Decree of Dissolution support a determination that the payments are property division.

Ms. Walpole does not dispute that if the provisions set forth in Section 1(b) were actually an award of spousal maintenance it would terminate at her remarriage by operation of law. However, the provisions of Section 1(b) are part of the property division, which, by operation of law, does not terminate. "Mitchell Snyder shall hold harmless and indemnify Michele Snyder for all liabilities distributed to him." CP 34. Those liabilities distributed to him include the second mortgage on the family home, which is associated with the investment real property. CP 32, 33.

5. The tax benefits can only be enjoyed by Ms. Walpole as a matter of law regardless of the provisions of the Settlement Agreement.

Mr. Snyder cites no authority for his assertion that he would have been able to claim the tax benefits for having to pay the

second mortgage on the property. His assertion is contrary to law. “In the case of a taxpayer other than a corporation, no deduction shall be allowed under this chapter for personal interest paid or accrued during the year.” 26 U.S.C. §163(h)(1). The term “personal interest” means any interest allowable as a deduction other than interest paid with respect to a qualified residence. 26 U.S.C. §163(h)(2)(D). To be a qualified residence, thus allowing for the interest deduction, it must be the principal residence of the taxpayer or 1 other residence used by the taxpayer as a residence. 26 U.S.C. §163(h)(4)(A)(i). Therefore, Michele Walpole is the only taxpayer who could have claimed the interest deduction for the family home after the final decree was entered. It would have been a lost deduction had she not claimed it, but the language in the Settlement Agreement is gratuitous at best, as it states the status of the federal law. The tax provisions set forth in the Settlement Agreement are not in any way indicative of whether the Section 1(b) payments were intended to be a maintenance award or property distribution.

6. Thompson Analogy

Mr. Snyder alleges that *Thompson* is distinguishable from the present case. He tries to distinguish the two cases by again relying

on the “spousal maintenance” label given to the provisions of Section 1(b). “Alimony” was the label given by the parties to what the *Thompson* Court ultimately determined was a property division. *Thompson*, at 353. There is no true distinction.

Mr. Snyder also tried to distinguish *Thompson* by asserting there are not stipulated facts in the present case. However, Mr. Snyder fails to cite the entire excerpt set forth in *Thompson*, which causes the quote to lose context. Regarding the stipulated facts, the *Thompson* Court stated:

The case is before the court upon stipulated facts which tend to show that the parties understood and agreed, before the property settlement was signed, that the provision for support of the respondent was apart of the division of the property and that the term ‘alimony’ was used solely for tax purposes. Not only was this referred to in the negotiations conducted between counsel for the parties, but the agreement itself declares

it is intended herein to fully, completely and irrevocably settle the property rights of the parties.

and

[i]t is intended that this property settlement agreement shall equally divide all community property.

Thompson, at 354-355. Similar recitations are present in the Settlement Agreement as issue herein, including the following:

1. The parties desire to separate, to effectuate an amicable division of their property and liabilities, and to settle the other issues addressed herein.

2. Each of the parties agrees that he or she understands the nature and extent of the parties' property and liabilities, that this agreement fairly describes the property and liabilities of the parties, and that the distribution of property and liabilities in this agreement are fair and equitable.

CP 26. These provisions are quite similar to the provisions set forth in *Thompson* and manifest the intent of the parties to distribute all property and liabilities through the execution of the Settlement Agreement. *Thompson* is not easily distinguished and, in fact, supports Ms. Walpole's position that Section 1(b) is a property division provision and not a spousal maintenance provision.

B. Ambiguity requires inquiry into the intent of the parties through the examination of parol evidence.

When an ambiguity exists on the face of the agreement, whether an award is a property division or support depends on the circumstances and the intent of the parties. *Thompson v. Thompson*, 82 Wn.2d 352, 356, 510 P.2d 827 (1973) (other citations omitted). The intent of the parties is clearly indicated in their declarations. Mr. Snyder declared under penalty of perjury on February 3, 2005:

Michele received two different types of spousal maintenance. I still pay her spousal maintenance under our settlement but this money is related to a property and debt division issue not child support. The spousal maintenance which I paid to her as “traditional” spousal maintenance expired in December of 2004.

CP 60. That same day, Ms. Walpole referenced the Section 1(b) payments to her as “property distribution (which was also defined as spousal maintenance).” CP 77. The intent of the parties is clear. They intended it to be a property division, which is not terminable or modifiable under the law.

C. If the Settlement Agreement is unambiguous Ms. Walpole’s construction is the only reasonable and probable interpretation.

If the Settlement Agreement is unambiguous, as Mr. Snyder suggests, and there are two equally consistent constructions, the court must adopt the interpretation which makes the contract reasonable and probable. *Green River Valley Foundation, Inc. v. Foster*, 78 Wn.2d 245, 249, 473 P.2d 844 (1970). There are two ways to construe the Settlement Agreement.

1. Ms. Walpole’s Construction

Under the construction offered by Ms. Walpole, Section 1(b) is a property division which directs Mr. Snyder to pay the second mortgage pursuant to the provisions and options of Section 1(b) and provides Ms. Walpole reimbursement for a

debt she paid on Mr. Snyder's behalf when she sold the home. All the assets and debts are distributed pursuant to the Settlement Agreement and Decree of Dissolution. The property division awards Ms. Walpole \$12,000 in deferred compensation, a home with a negligible value, a car, and a cash offset and debt relief from Mr. Snyder equal to the debt incurred to purchase the investment property awarded to him payable at an affordable rate based on the amortization schedule for the debt.

Mr. Snyder is awarded investment real property clear of encumbrances, his entire LEOFF firefighter retirement account, all of his deferred compensation, save the \$12,000 awarded to Ms. Walpole. Mr. Snyder's windfall is tempered by the requirement that he pay the second mortgage. The property and debt distribution is fair and equitable. No one is aggrieved. Mr. Snyder owes Ms. Walpole the payments set forth in Section 1(b) part of the property distribution, which is non-modifiable and non-terminable under the law.

2. Mr. Snyder's Construction

Under Mr. Snyder's construction, Section 1(b) of the Settlement Agreement is maintenance that terminated when

Ms. Walpole remarried. Ms. Walpole is awarded \$12,000 in deferred compensation, a home with a negligible value, and a car. Ms. Walpole is not responsible for the second mortgage liability because she was expressly relieved from paying on the face of the unambiguous Settlement Agreement. Her home is encumbered by a debt she does not owe but will have to pay or risk foreclosure. Ms. Walpole's total property award is \$33,975, if you include the \$11,975 profit she realized on the sale of the family home after paying off the first and second mortgages.

Mr. Snyder is awarded investment real property clear of encumbrances, his entire LEOFF firefighter retirement account, and all of his deferred compensation, save the \$12,000 awarded to Ms. Walpole. Mr. Snyder is not obligated to pay the second mortgage, even though it is expressly referenced as being distributed to his and is "associated with the investment real property distributed to him, including any mortgages..." CP 33. Mr. Snyder has to make maintenance payments to Ms. Walpole in the exact amount of the second mortgage monthly payment only until she remarries, he dies, or he chooses to pay the debt off in a lump sum to either the lender or Ms. Walpole

at his choosing. If he dies, he pays nothing. If she remarries, he has expended \$55,347 toward the loan taken out to purchase the property he was awarded free and clear. Either way, the property and debt distribution is patently unfair, inequitable and does not address the second mortgage, which necessitates a new action in Superior Court to distribute the debt post-decree. Ms. Walpole is aggrieved. Mr. Snyder is not. Both parties must go back to court to determine who pays the second mortgage.

3. Reasonableness and Probability

Ms. Walpole's interpretation provides for a fair and equitable distribution of all the assets and debts pursuant to the intent of the parties set forth in the preamble of the Settlement Agreement. CP 26. Mr. Snyder's interpretation at the very least amplifies the ambiguities that exist with respect to the second mortgage liability and Section 1(b) or, even worse, requires the parties commence a new action to distribute the second mortgage liability between the parties. Ms. Walpole's interpretation is more plausible, reasonable, and probable.

D. Attorney Fees and Costs

Ms. Walpole should be awarded all of her fees and costs incurred in defending this action at the appellate and trial levels for the reasons and on the bases set forth in the Opening Brief.

IV. CONCLUSION

The payments set forth in Section 1(b) of the Separation Agreement constitute a debt distribution final upon entry of the decree and non-modifiable and non-terminable by the court. The payments set forth in Section 1(b) are not future maintenance payments.

Respectfully submitted this 20th day of June 2008.


Jennifer B. Johnson
WSBA #28227
Attorney for Appellant

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DIVISION II

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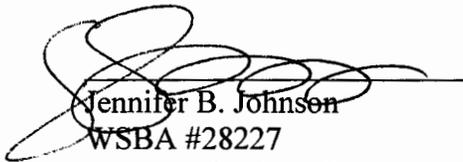
In re the Marriage of:)
MICHELE LYNN SNYDER,)
)
Appellant,)
vs.)
MITCHELL HUGH SNYDER,)
)
Respondent.)

No.: 37271-1-II

DECLARATION OF
SERVICE

I, Jennifer B. Johnson, hereby declare under penalty of perjury under the laws of the State of Washington that on June 20, 2008, I caused to be hand-delivered a true and correct copy of the Appellant's Reply Brief to Mitchell Snyder's attorney of record, Stephen A. Foster's office located at 701 Evergreen Plaza, 711 South Capitol Way, Olympia, Washington 98501. A copy of the Transcript of Court Proceeding was also delivered to Mr. Foster with the brief.

Signed this 20th day of June 2008, at Chehalis, Washington.


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ORIGINAL.