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I. RESTATEMENT OF THE ISSUES

1. Appellant Bruce Blatchley contends that the trial court erred in vacating the property provisions of his dissolution decree pursuant to RCW 26.09.080, RCW 26.09.170(1), and Civil Rule 60(b)(11). Did the trial court manifestly abuse its discretion by vacating the property provisions of a dissolution decree which failed to identify, characterize, or award of any of the parties' community or separate property to either party and which would necessarily require extensive future litigation between the parties to determine their respective interests?

2. Blatchley contends that the trial court abused its discretion by awarding Respondent Sandra Petranek 75% of the property before the court for distribution. Did the court manifestly abuse its discretion by awarding Petranek 75% of the property before the court for distribution where the evidence established that the source of most, if not all, of the community assets was Petranek's inheritance?

3. Blatchley contends that the trial court erred in refusing to uphold an alleged property settlement between the parties. Did the court manifestly abuse its discretion by refusing to find and/or uphold an oral or written property agreement between the parties

which was not supported by substantial evidence, where neither party sought or obtained the independent advice of legal counsel, and where neither party had full knowledge of his or her legal rights?

4. The Decree of Dissolution of Marriage entered on December 22, 2010 required Blatchley to deliver a Quit Claim Deed to the real property awarded to Petranek ten days after entry of the Decree. Did the trial court's order violate Civil Rule 62?

II. RESTATEMENT OF THE CASE

A. Factual Background

Blatchley and Petranek were married on September 21, 1997. (RP 44) Six weeks later, Blatchley suffered a broken femur in a bicycle accident. (RP 46) He was bedridden for three and a half weeks (RP 48) and his recovery from the injuries took approximately four months. In March, 1998, the parties received a \$56,000 settlement from Blatchley's accident. (RP 50) Neither party could recall or presented evidence about whether the settlement was for lost wages, uninsured medical expenses, pain and suffering, or some combination thereof. (RP 51, 177, 287)

On June 19, 1998, the parties purchased an unimproved, five-acre parcel of property on Blossom Lane in Port Townsend for

\$33,000. (RP 52-53) The purchase price was paid using the settlement proceeds. (RP 52) They borrowed another \$23,000 on April 29, 1999 to make minor improvements to the property. (RP 57) For the next three years, the parties lived in a trailer on the property, but the living conditions were nevertheless rudimentary as the property lacked running water, electricity, septic, heat, or plumbing. The parties showered at a local marina and utilized an outhouse. (RP 65)

Petranek's father died on June 29, 2001. (RP 58) Petranek inherited a total of \$538,000 consisting of \$199,000 in cash disbursements over a two-year period (RP 62) and the transfer of \$339,000 in stocks in June, 2002. (RP 63)

The parties used the inherited funds and their joint labor to make substantial improvements to the largely unimproved Blossom Lane property. (RP 64-65) They installed electricity, septic, and running water. They also completed the main residence, as well as constructed outbuildings. (RP 64-66)

Until the death of Petranek's father, both parties were employed and earned income. (RP 70-71) After his death in 2001, however, both parties ceased working and neither earned significant income for several years thereafter. (RP 72) In 2000,

the parties reported gross income of \$25,736. (RP 72) In 2001, their reported income dropped to \$8,000. (RP 73) In 2002 and 2003, the only reported income was interest and dividend income from Petranek's inheritance. (RP 74-75) Blatchley finally resumed working as an instructor and boat builder in 2004, but never earned more than \$30,000 in any year of the parties' marriage. (RP 76-78) In fact, the tax returns introduced as evidence showed that during the last eight years of their nine and one-half-year marriage, the parties' average annual earnings were only \$13,000 (RP 79), in direct contradiction to Blatchley's assertion that he "worked for most of the marriage." (Brief of Appellant, p. 8)

In September, 2002, the parties purchased another parcel of unimproved property on Heron's Pond in Port Townsend. (RP 66) The purchase price of \$115,000 was paid with Petranek's inheritance. (RP 67) The parties never moved onto the Heron's Pond property, made only minor improvements to the property, and sold it two years later for \$139,000. (RP 87)

In the meantime, the parties sold the Blossom Lane property in March 2003, netting approximately \$139,000. (RP 82) They used the sale proceeds to purchase an older home in Everson, Washington for \$230,000. (RP 83) They also borrowed an

additional \$70,000 from Petranek's sister, Pam. (RP 84) Petranek later repaid the \$70,000 loan to her sister from her inherited funds. (RP 85-86).

The parties lived on the Everson property for the next two years, making substantial improvements. (RP 91) The improvements were paid for using the only source of funds they had – Petranek's inheritance. (RP 91) Both parties devoted significant personal effort to the remodel of the Everson home. (RP 92-93)

The Everson property was sold in November 2005 with the parties receiving \$431,000 in net sale proceeds. (RP 94) The parties used the sale proceeds to purchase property on Greenway in Port Townsend for \$588,000. (RP 102-03) They borrowed \$170,000 for the balance of the purchase price (RP 104) and subsequently borrowed an additional \$26,000 for improvements to the property. (RP 110)

Beginning early on in their marriage, the parties attempted to conceive a child, (RP 98) but experienced significant difficulty. Petranek used her inheritance for in vitro fertilization (RP 99-100), which was also unsuccessful. The parties ultimately decided to adopt a child. (RP 100) In August 2006, they traveled to New York

to pick up their soon-to-be adopted daughter, Pilar. (RP 111) The cost of the adoption was \$20,000, again paid for from Petranek's inheritance. (RP 114) Pilar, a four-year-old, exhibited significant emotional problems during the first year after her arrival in Port Townsend, resulting in stress on the parties' marriage. (RP 117)

In April 2007, the parties decided to put the Greenway property on the market because Bruce no longer wanted to work full-time and the mortgage payments were becoming unmanageable. (RP 119) At about the same time, they began the process to finalize Pilar's adoption.

The adoption was finalized on July 27, 2007, while the Greenway house was under contract to be sold. (RP 122) The sale closed on August 8, 2007. The parties netted approximately \$449,000 from the sale of the Greenway home. (RP 126) They used \$315,000 of the sale proceeds to purchase another property on South Edwards in Port Townsend. (RP 126) The remaining \$134,000 was placed in a joint checking account. (RP 127)

Title to the South Edwards property was taken in the names of Bruce Blatchley and Sandra Petranek, as husband and wife. (RP 128) The parties were still living together and neither had filed a petition for dissolution of marriage. (RP 129) A few days later,

Blatchley made two withdrawals from the parties' joint checking accounting totaling \$119,000. (RP 131) He placed the funds in an account in his name only (RP 132) and apparently used a portion of the funds to purchase property in Hawaii in November 2007. (RP 134)

B. Procedural History

On December 31, 2007, the parties filed a Petition for Dissolution of Marriage. Petranek was the Petitioner, but handwriting on the Petition is clearly that of Blatchley (RP 343) who joined in the Petition and waived notice of entry of the Decree. (CP 1-10) The Petition stated that the parties were not separated, but that they had "equitably divided mutual property," none of which was identified. (CP 3)

On April 11, 2008, Blatchley and Petranek appeared in court to enter the Decree of Dissolution, Findings of Fact and Conclusions of Law, Final Parenting Plan, Child Support Worksheet, and Order of Child Support. (RP 3-7) The Findings of Fact and Conclusions of Law indicated that the parties were still not separated, that there was no written separation contract or prenuptial agreement, that neither the husband nor the wife had separate property, and that the only community property was the

South Edwards property. (CP 24-33). Paragraph 3.2 of the Decree stated that “husband will retain 1/3 equity in property located at 357 South Edwards Road, P.T. WA 98368.” Paragraph 3.3 of the Decree stated that “wife will retain 2/3 equity in property located at 357 South Edwards Road, P.T. WA 98368.” The Decree did not reference or award any other real or personal property to either of the parties. (CP 34-41). The Parenting Plan was equally ambiguous stating only that “[a]ll parties reside together. Father has equal access.” (CP 13-23) It is undisputed that neither party sought or obtained the advice of counsel at any point in their dissolution proceedings and that Blatchley actively discouraged Petranek from consulting an attorney. (RP 258)

Less than a year later, on March 6, 2009, Petranek retained an attorney who sent a letter to Blatchley indicating that the Decree had failed to properly dispose of the parties’ assets and opening negotiations. When settlement negotiations failed six months later, Petranek filed a Motion and Declaration for an Order Vacating Paragraphs 3.2 through 3.5 of the Decree of Dissolution, citing RCW 26.09.070(1) and Civil Rule 60(b)(4) and (11). (CP 43-45) Petranek’s motion was heard and granted on October 16, 2009. (RP 10-16)

A trial was conducted on November 22-23, 2010, followed by issuance of the court's Memorandum Opinion After Trial on December 7, 2010. (CP 281-288). Findings of Fact and Conclusions of Law and a Decree of Dissolution of Marriage were entered on December 22, 2010. (CP 289-297).

III. ARGUMENT

A. The trial court did not manifestly abuse its discretion in granting Petranek's motion to vacate the property provisions of the Decree of Dissolution.

RCW 26.09.080 provides that in a proceeding for dissolution of marriage a court *shall* make such disposition of the parties' assets and liabilities, both separate and community, as shall appear just and equitable. RCW 26.09.170(1) provides, in relevant part, that "[t]he provisions as to property disposition may not be revoked or modified, *unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.*" (emphasis added) Finally, Civil Rule 60(b) provides, in relevant part:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

(11) Any other reason justifying relief from the operation of the judgment.

A trial court's decision to grant or deny relief under Civil Rule 60(b) is within its sound discretion and will not be disturbed on appeal absent a clear abuse of that discretion. ***Kennedy v. Sundown Speed Marine, Inc.***, 97 Wash.2d 544, 647 P.2d 30 (1982), *cert. denied*, 459 U.S. 1037, 103 S.Ct. 449, 74 L.Ed.2d 603 (1982); ***In re Marriage of Flannagan***, 42 Wash.App. 214, 222, 709 P.2d 1247 (1985); ***In re Marriage of Knies***, 96 Wash.App. 243, 248, 979 P.2d 482 (1999); ***In re Marriage of Curtis***, 106 Wash.App. 191, 196, 23 P.3d 13, *review denied*, 145 Wash.2d 1008, 37 P.3d 290 (2001).

A trial court abuses its discretion when its decision is based on untenable grounds or reasons. ***In re Marriage of Flannagan***, 42 Wash.App. at 223. The property provisions of a dissolution decree may be vacated "for extraordinary circumstances to overcome a manifest injustice." ***In re Marriage of Hammack***, 114 Wash.App. 805, 810, 60 P.3d 663 (2003). An ambiguous disposition of property can also form the basis for re-opening the property provisions of a dissolution decree under Civil Rule 60(b). ***In re Marriage of Jennings***, 138 Wash.2d 612, 622, 980 P.2d 1248 (1999). This case involves both an ambiguous disposition of

property, as well as extraordinary circumstances requiring relief to overcome a manifest injustice.

The only disposition of property effectuated by the dissolution decree entered on April 11, 2008 purported to award the husband "1/3 equity" in the South Edwards property and the wife "2/3 equity" in the same property. The decree did not award the property itself to either party, leaving the parties in a situation requiring further litigation not only with respect to the South Edwards property, but with respect to all of their property, including the Hawaii property.

The ambiguity resulting from reference to an award of "equity" in a dissolution decree was discussed in ***Stokes v. Polley***, 145 Wash.2d 341, 37 P.3d 1211 (2001). In that case, the Court was called up to interpret a dissolution decree which awarded "one-half the equity" in real property to the wife. The Court began its discussion as follows:

Parties to a dissolution action have the right to have their property interests definitively and finally determined in the decree. Thus courts have a duty to not award property to parties as tenants in common. To avoid this result and forced sale and partition actions, courts should award the property itself to one spouse and an offsetting monetary award to the other spouse.

Stokes v. Polley, 145 Wash.2d at 347-48. The Court then considered the meaning of the term “equity,” concluding that “this reference to equity does not purport to divide the real property itself or any interest thereof.” *Id.* at 349.

The same ambiguity was created by the reference to an award of “equity” in this case. Indeed, more questions were raised than answered. Which party was awarded the right to occupy the property? Which party was awarded the responsibility for taxes, for property insurance, for routine maintenance, or for major improvements? Did either or both parties have a right to force a sale of the property and, if so, on what terms? If the property were sold, did Petranek have a right to be reimbursed for the expenses she paid and the improvements she made?

The decree’s failure to identify the parties’ other properties, both real and personal, also resulted in “extraordinary circumstances” requiring court intervention to “overcome a manifest injustice.” The Hawaii property, for example, was purchased during the marriage using funds from the sale of community property. Because it was not identified nor awarded to either party in the Decree, the parties were thereby left as tenants in common. **Martin v. Martin**, 20 Wash.App. 686, 688, 581 P.2d 1085 (1978).

The fact that the property is held in the name of one of the parties is not dispositive of its characterization as community or separate. *In re Estate of Borghi*, 167 Wash.2d 480, 488, 219 P.3d 932 (2009). Instead, the character of property is determined by the character of funds used to purchase the property. *In re Marriage of Skarbek*, 100 Wash.App. 444, 451, 997 P.2d 447 (2000).

The same is true of all of the parties' personal property, including vehicles, horses, tools, boats, and financial accounts. Although Blatchley argues that these assets had already been divided, that assertion is false as the parties were still residing together on the South Edwards property on the day the dissolution decree was entered.

The trial court, moreover, made clear that it was not "modifying" the dissolution decree. (RP 266) Instead, the court was merely performing its duties under RCW 26.09.080 to make a just and equitable division of the community and separate property. In doing so, the trial court cited *Buchanan v. Buchanan*, 150 Wash.App. 730, 207 P.3d 478 (2009) for the proposition that a court has broad discretion in fashioning a post-divorce remedy for undisposed property. (RP 12-13)

Blatchley relies heavily on *In re Marriage of Tang*, 57 Wash.App. 648, 789 P.2d 118 (1990) as support for his position that the trial court abused its discretion by vacating the property provisions of the dissolution decree. That reliance, however, is misplaced. The *Tang* case involved a detailed, written property settlement agreement drafted by a lawyer under the terms of which the parties explicitly agreed that they would continue to jointly own all of their assets, stating “the parties agree that it is in their best interest to continue to have joint ownership of their property and their assets despite the dissolution of their marriage” *In re Marriage of Tang*, 57 Wash.App. at 652. The parties also warranted to each other that each had fully disclosed their assets and made provision for the disposition of any asset which either party failed to disclose. *Id.* The *Tang* case therefore presents a very different set of facts than those presented in this case. Here, the parties did not explicitly or implicitly agree to continue to own the South Edwards property as joint tenants and they did not dispose of any of their other assets. Indeed, the conduct of the parties subsequent to entry of the decree suggests that they did not intend to co-own the property. Blatchley does not dispute that Petranek has enjoyed exclusive possession of the property since

shortly after entry of the decree; that she has assumed complete responsibility for all expenses associated with the property; and that she has made all decisions with respect to the management of the property. (RP 158-59) These facts do not lend support to Blatchley's contention that the parties intended to own the property as joint tenants or that they had reached any meaningful agreement at all with respect to the property. If anything, the testimony of the parties at trial suggested that, at the time the Decree was entered, both were operating under the mistaken belief that Blatchley, Petranek, and their daughter would all continue to occupy and maintain the property and that any obligations related to the ownership of the property would be shared in some manner. (RP 313, 317) Instead, Blatchley quickly abandoned the property all together and abdicated any ownership obligations associated with the property, apparently believing that he would reap the benefits of "ownership" without assuming any of the accompanying responsibilities.

B. The trial court's award to Petranek of 75% of the property before the court for distribution was not a manifest abuse of the court's discretion.

Trial courts have broad discretion in the distribution of property and liabilities in marital dissolution proceedings. *In re*

Marriage of Konzen, 103 Wash.2d 470, 477-78, 693 P.2d 97 (1985). A trial court's decision regarding distribution of assets and liabilities will only be disturbed on appeal if there is a manifest abuse of discretion because as "[t]he trial court is in the best position to assess the assets and liabilities of the parties and determine what is 'fair, just and equitable under all the circumstances.'" **In re Marriage of Brewer**, 137 Wash.2d 756, 769, 976 P.2d 102 (1999). As stated in **In re Marriage of Landry**, 103 Wash.2d 807, 699 P.2d 214 (1985):

We once again repeat the rule that trial court decisions in a dissolution action will seldom be changed upon appeal. Such decisions are difficult at best. Appellate courts should not encourage appeals by tinkering with them. The emotional and financial interests affected by such decisions are best served by finality. The spouse who challenges such decisions bears the heavy burden of showing a manifest abuse of discretion on the part of the trial court. The trial court's decision will be affirmed unless no reasonable judge would have reached the same conclusion.

In re Marriage of Landry, 103 Wash.2d at 809-10; **In re Marriage of Williams**, 84 Wn.App. 263, 267, 927 P.2d 679 (1996) ("We begin by noting that trial court decisions in marital dissolution proceedings are rarely changed on appeal.")

RCW 26.09.080 directs the court to consider the nature and extent of the community property, the nature and extent of the

separate property, the duration of the marriage, and the economic circumstances of the parties, as well as all other relevant factors. In this case, the trial court considered not only the enumerated statutory factors, but also an equally relevant factor – the origin of the property. In *In re Marriage of Nuss*, 65 Wn.App. 334, 828 P.2d 627 (1992), the court stated:

We hold that the origin of community property as one party's separate property may still be considered in appropriate cases as a reason for awarding all or a disparate share thereof to that party.

In re Marriage of Nuss, 65 Wn.App. at 341.

Blatchley argues that the trial court misapplied the ruling in *Nuss* because (1) Petranek “utterly failed to prove the amount of her inheritance” and (2) Petranek could not trace her inheritance to the purchase of the South Edwards property. Both arguments fail. First, Petranek presented the uncontroverted testimony of both herself and her sister that she received \$538,000 in cash and stocks from her father's estate. (RP 34-35, 62-63) She also provided the court with the probate documents reflecting the extent of her father's estate. (RP 62) Finally, even Blatchley admitted that his contention that Petranek inherited \$338,000, rather than \$538,000, was necessarily false because the lesser amount

represented only her father's stock account and did not take into account the cash she received from the sale of her father's other assets. (RP 328-29) Therefore, it is difficult to understand Blatchley's statement that "[t]he evidence in this case clearly contradicts the Trial Court's finding" that Petranek inherited \$538,000. (Brief of Appellant, p. 23)

Second, while it is true that Petranek did not offer evidence specifically tracing the purchase of the South Edwards property to her inherited funds, tracing the funds to purchase the property was unnecessary as Petranek did not contend that the South Edwards property was her separate property and should be awarded to her on that basis. Instead, Petranek argued that during the course of the marriage the parties did not earn sufficient income to even support themselves, let alone amass \$447,420 in community assets. The only available source of funds during the marriage was Petranek's inheritance, without which the parties would not have been in a position to acquire any assets other than their initial purchase of the Blossom Lane property. Under these circumstances, the trial court was justified in concluding that the source of most, if not all, of the community property was Petranek's

inheritance. Blatchley, moreover, offered no evidence refuting this fact.

Blatchley also contends that the trial court misapplied the ruling in *In re Marriage of Brown*, 100 Wash.2d 729, 675 P.2d 1207 (1984), arguing that the proceeds from his personal injury settlement used to purchase Blossom Lane should have been characterized as his separate property. In the *Brown* case, the Court held that damages recovered for physical injury and pain and suffering are the injured party's separate property, but damages for lost wages and unreimbursed medical expenses are community property. *In re Marriage of Brown*, 100 Wash.2d at 738. Here, neither party had any recollection about what, if any, portion of the settlement proceeds represented compensation for "physical injury and pain and suffering." (RP 51-52) Blatchley himself testified that the bulk of the settlement was to reimburse him for a future hip replacement which he subsequently did undergo during the marriage. (RP 323)

Even if Blatchley's personal injury settlement were considered his separate property in its entirety, the trial court's distribution of the community property is still defensible on the following basis. During the parties' ten-year marriage, the

community did not earn sufficient income to meet their living expenses, let alone acquire assets. Assume for the sake of argument that Blatchley's \$56,000 personal injury settlement was his separate property. There is no dispute that Petranek's \$538,000 inheritance was her separate property. That means that the parties collectively contributed \$594,000 in separate property to fund the acquisition of assets and pay living expenses. Petranek's inheritance comprised 90% of the total separate property contributed, while Blatchley's comprised only 10%. Given that reality, the trial court's decision to award Blatchley 25% of the community property – rather than 10%, for example – could be characterized as a windfall to him.

Finally, Blatchley argues that “[a] disproportionate award of 75% of assets is a violation of settled case law.” In support of that erroneous statement of the law, Blatchley cites two cases– *Wills v. Wills*, 50 Wn.2d 439, 312 P.2d 661 (1957) and *Dickison v. Dickison*, 64 Wn.2d 585, 399 P.2d 5 (1965). Both of these cases were decided prior to the enactment in 1973 of the Dissolution of Marriage Act which, among other things, eliminated fault as a factor in distributing property. And, more interesting, neither of these two cases have ever been cited by a reviewing court for the proposition

that a 75%/25% distribution of community property is a per se abuse of a trial court's discretion. In fact, no appellate court has ever articulated a specific percentage award of property which would necessarily constitute an abuse of discretion. Instead, courts have consistently held that a trial court's division of property does not require "mathematical precision," but instead involves consideration of all the circumstances of the marriage. *In re Marriage of Crosetto*, 82 Wash.App. 545, 556, 918 P.2d 954 (1996); *In re Marriage of Rink*, 18 Wash.App. 549, 571 P.2d 210 (1977) ("Fairness is decided by the exercise of wise and sound discretion not by set or inflexible rules.")

This Court should decline Blachley's invitation to recognize or to adopt a "set or inflexible rule" establishing a per se bar on property divisions in which one of the parties is awarded 75% or more of the community property.

C. The trial court did not err by refusing to find and/or enforce an alleged property settlement between the parties where the existence and terms of the agreement were not supported by substantial evidence, neither party sought or obtained the advice of independent legal counsel, and neither party had full knowledge of his or her legal rights.

Blatchley contends that the parties had an oral agreement to equally divide the proceeds of the sale of the Greenway property

when it was sold in August 2007. This agreement, Blatchley alleges, was entered into during the marriage, prior to separation, and before the commencement of any dissolution proceedings. He acknowledges that the agreement was not reduced to writing. He nevertheless assigns error to the trial court's refusal to enforce this purported agreement.

The existence of an oral agreement must be proven by clear, cogent, and convincing evidence. *Dewberry v. George*, 115 Wash.App. 351, 361, 62 P.3d 525 (2003). The evidence presented at trial demonstrates that (1) a portion of the proceeds of the sale of the Greenway property were used to purchase the South Edwards property; (2) title to the South Edwards property was taken in the names of the parties as husband and wife, not as tenants in common; (3) the remaining sale proceeds were deposited in a joint checking account. These facts directly contradict Blatchley's assertion that the proceeds were divided equally between the parties and that the South Edwards property was purchased as tenants in common, with Petranek acquiring a two-third interest in the property and Blatchley acquiring a one-third interest. Both parties moved onto and occupied the property for eight or more months following its purchase. There is no evidence to support any

conclusion other than the parties purchased the property as a marital community using community funds.

The fact that Blatchley withdrew funds from the parties' joint account during the marriage hardly constitutes "clear, cogent and convincing evidence" that the parties agreed to create separate property. Every withdrawal from a joint account during marriage does not constitute evidence of an agreement to create separate property. If the parties had intended to acquire the property as tenants in common, rather than as a marital community, they could have easily done so.

Blatchley further argues that, even if the parties did not enter into an enforceable oral agreement in August 2007, they nevertheless entered into a binding settlement agreement when they signed the Decree of Dissolution of Marriage in April 2008. A review of the evidence, however, strongly supports the trial court's conclusion that any purported agreement reached by the parties at the time the dissolution decree was entered did not meet the requirements of an enforceable settlement agreement.¹

¹ Blatchley continues to assert that Petranek "drafted" the Petition, the Decree, the Findings, and the Parenting Plan. That assertion is false. A cursory review of those documents reflect the fact that most of the handwriting is that of Blatchley, not of Petranek, (RP 343-44) lending credence to her testimony that she felt "coerced." (RP 231, 238)

The tests applicable to a valid settlement agreement are: “(1) whether full disclosure has been made by respondent of the amount, character, and value of the property involved, and (2) whether the agreement was entered into fully and voluntarily on independent advice and with full knowledge of the spouse of her rights.” *In re Marriage of Cohn*, 18 Wash.App. 502, 506, 569 P.2d 79 (1977).

In this case, it is clear that any “agreement” reached by the parties was anything other than “fully and voluntarily” entered into. The dissolution decree does not recite the “full” agreement that Blatchley alleges the parties entered into, i.e., that he would be awarded the Hawaii property and the personal property had already been divided. The vacated decree references only one of the many assets owned by the parties and lacks specificity even with respect to that one asset. It is also clear that neither party had any idea what his or her rights were in connection with the dissolution of the marriage. The testimony of both parties suggested that both had somewhat murky notions of what would happen in the future. They had vague and changing discussions about Blatchley remaining on the property, building a cabin on an unidentified third of the property, co-parenting their daughter, and continuing to act as

though they were essentially married. This is further evidenced by the language in the final parenting plan which states: "All parties reside together. Father has equal access," as well as the language in the Decree indicating that the parties had not yet separated.

Blatchley nevertheless requests that this Court find that the parties entered into an agreement fully and voluntarily on independent advice and with full knowledge of both spouses of their rights. He offers the Court no explanation of why he abandoned the property, why he abdicated all financial responsibility for the property, how he was to receive "one-third equity" in the property, whether he continued to have the right to occupy the property, or which, if either, party had the right to sell, mortgage, or otherwise encumber the property. These omissions strongly support the conclusion that the parties had not reached a "full" agreement regarding the distribution of their assets and that no enforceable agreement had been entered into.

D. The trial court's order requiring Blatchley to deliver a Quit Claim Deed for property awarded to Petranek fifteen days after entry of the Decree did not violate Civil Rule 62.

Civil Rule 62(a) provides, in relevant part:

Except as to a judgment of a district court filed with the superior court pursuant to RCW 4.56.200, no execution

shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry.

At the hearing at which the final documents were presented to the court for entry, Petranek requested that the court include language requiring Blatchley to execute a Quit Claim Deed to the real property which had been awarded to her. Blatchley protested, citing Civil Rule 62. The trial court heeded Blatchley's protest and ordered him to deliver the deed at the expiration of the ten-day period mandated by Civil Rule 62. Blatchley now assigns error to the inclusion in the Decree of language commonly inserted in dissolution decrees without any legal authority for his position.

The trial court did not execute upon the judgment prior to expiration of the ten-day stay period, nor were proceedings taken to enforce the judgment. Nothing in the court's order deprived Blatchley of his right to file a motion for reconsideration, nor to appeal the court's decision and seek a stay pending appeal.

Dissolution decrees frequently include language implementing the property distribution mandated by the trial court. Provisions such as "Husband shall pay wife's attorney's fees within fourteen days of entry of this Decree," "Wife shall deliver the Corvette to the husband within three days of entry of the Decree,"

or “Husband shall pay the asset equalization award to the wife not later than thirty days from entry of the Decree” are commonly used. None of these provisions violate Civil Rule 62 and Blatchley has cited no authority suggesting that they do.

It is difficult, moreover, to understand exactly how Blatchley was aggrieved by the court’s order as he states in his Brief that “he intended to cooperate and deliver the documents upon the expiration of his time period to file a motion for reconsideration.” (Brief of Appellant, p. 40) The court’s order did no more than require him to do what he stated he intended to do.

IV. CONCLUSION

This Court should find that the trial court did not manifestly abuse its discretion by vacating the property provisions of the dissolution decree, by awarding the wife 75% of the community property because of her significant separate contributions, by refusing to find by clear, cogent and convincing evidence the existence of an oral settlement agreement, and for including language requiring the delivery of a deed after the expiration of the automatic ten-day stay period.

Respectfully submitted this 31st day of August, 2011.


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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY [Signature]
DEPUTY

NO. 41722-7-II

COURT OF APPEALS
STATE OF WASHINGTON
DIVISION II

BRUCE BLATCHLEY,
Appellant,

vs.

SANDRA PETRANEK,
Respondent.

CERTIFICATE OF SERVICE

The undersigned, under penalty of perjury, hereby declares
as follows:

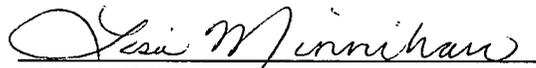
1. I am a Citizen of the United States and over the age of eighteen years and am not a party to the within cause.
2. I am employed by Peggy Ann Bierbaum, Attorney at Law. My mailing address is 800 B Polk Street, Port Townsend, WA 98368.
3. On August 30, 2011, I served the following documents:

BRIEF OF RESPONDENT

On the following at:

Office of Clerk Court of Appeals – Division II 950 Broadway, Suite 300 Tacoma, WA 98402	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Overnight Mail <input type="checkbox"/> Email
Shane Seaman KNAUSS & SEAMAN, PLLC 203 West Patison Street, Suite A Port Hadlock, WA 98339	<input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Email

DATED at Port Townsend, Washington this 30th day of August, 2011.


LISA MINNIHAN