

NO. 43822-4-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

JAMES PARSONS,

Respondent,

v.

BOBETTE PARSONS,

Appellant.

BRIEF OF RESPONDENT

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INTRODUCTION

Bobette Parsons raises two highly-discretionary issues – the trial court’s maintenance and child-support awards. Her principal argument is that since the parties had a “long-term marriage,” the trial court was required to equalize their post-dissolution incomes. She thus claims that the maintenance award is insufficient, as it will leave James Parsons with the greater income.

Myriad cases contradict Bobette’s assertion. The duration of the marriage is one of many factors a dissolution court must consider. No one factor is controlling, and if any is more important, it is the parties’ post-dissolution economic circumstances, not the duration of their marriage. In any event, Bobette omits that she received most of the cash assets, while James received \$172,858 in debt and must make a \$185,797 transfer payment. The property and maintenance awards are just and equitable.

Bobette’s claim that the trial court omitted James’ bonus when calculating child support is false. And while she complains that the court omitted interest and dividends, she concedes that these were employer contributions directly into James’ IRA and 401(k). No abuse of discretion occurred.

This Court should affirm.

STATEMENT OF THE CASE AND PROCEDURE

A. Both parties have Master Degrees and both were steadily employed when the marriage ended.

Bobette and James Parsons divorced after a 30-year marriage. CP 472.¹ The parties have three children, ages 16, 22, and 25. CP 457. Both parties have Masters Degrees and were steadily employed when the marriage ended. RP 12-13, 100-01.

Although Bobette stayed home with the children for much of the marriage, in 2008 she began working as a soils conservationist for the US Department of Agriculture. RP 6,13-14, 90. At trial, she earned \$4,504 per month. CP 466. In 2011, James' gross monthly income was \$18,500. *Id.* His employer also made contributions into his IRA and 401(k). RP 70-71.

B. The trial court awarded Bobette \$450,000 and \$3,500 per month maintenance for 10 years, leaving James with an illiquid business interest, significant debt, a transfer payment, and a maintenance payment.

The total marital estate was about \$900,000. CP 437. By far the largest asset was the community interest in Troutlodge, James' employer, valued at \$695,457. CP 438. The family residence had only \$60,500 in equity, \$37,500 of which was

¹ This brief uses first names to avoid confusion. No disrespect is intended.

Bobette's separate property. *Id.* The parties had \$300,527 in retirement accounts, but also had \$172,858 in debt. CP 437.

The trial court divided the marital assets 50/50, awarding each party nearly \$450,000. CP 441. James received the business, the residence with \$23,000 in equity after the separate property offset, and \$41,431 in the retirement accounts. CP 437-48. The court allocated to James all of the community debt and \$22,207 in Bobette's separate debt, totaling \$172,858. CP 437. The court also ordered James to pay Bobette \$185,797 within five years, plus 4% interest. CP 478.²

Bobette received \$259,096 from the retirement accounts and the \$185,797 transfer payment. CP 437-38, 478. Both parties received personal property. *Id.*

The court also awarded Bobette \$3,500 per month maintenance until she is 66 years old, 10 years. CP 457, 480. Thus, Bobette's award includes \$185,797 in cash, payable over a five-year period, plus \$3,500 per month for 10 years. CP 478, 480.

² The asset distribution spreadsheet attached to the court's letter ruling indicates that the transfer payment would be \$284,093. CP 437. But this number was a "scrivener's error," reflecting the total difference between James' pre-transfer-payment award and Bobette's pre-transfer-payment award. *Compare* CP 437, with CP 440. Before the court entered the findings and decree, James moved for reconsideration to fix this error. CP 439-444. The result is that the court ordered James to make a \$185,797 transfer payment. CP 478.

If Bobette does not want to wait five years, she can elect to take the transfer payment sooner by requiring James to pay her from his Troutlodge IRA, which was included in the value of the business. RP 20-21; CP 481.

James' award is almost entirely an illiquid business interest. CP 437-38. From his monthly income, he will pay \$3,500 maintenance, \$3,421.73 transfer payment, and in the short term, \$1,154.34 child support, totaling \$8,076.07. CP 458, 478, 480. He will also have to find a way to pay off the parties' \$172,858 debts.

C. The court allocated all of the parties' debt to James, contrary to Bobette's claim.

Bobette does not assign error to the trial court's denial of her attorney fee request, or provide any argument or authority. BA 1-11. But she argues in her facts that the court's stated basis for denying her fees was that the court assigned James the parties' \$172,858 debt, but that the court really "divided the debt 50-50." BA 7 (citing CP 437). Bobette is incorrect – the trial court plainly assigned James the entire debt, including Bobette's \$22,207 Bank of America Card balance (CP 437):

	Gross Value	Debt/Offset	Net Value	To Husband	To Wife	Separate
DEBTS:						
American Express		(\$17,500)	(\$17,500)	(\$17,500)		
Bank of America Visa Joint		(\$9,610)	(\$9,610)	(\$9,610)		
Bank of America Visa Wife		(\$22,207)	(\$22,207)	(\$22,207)		
Officer Loan – TL (for acquisition)		(\$58,000)	(\$58,000)	(\$58,000)		
Parents Portion – FAFSA		(\$54,800)	(\$54,800)	(\$54,800)		
Guardian ad Litem		(\$5,591)	(\$5,591)	(\$5,591)		
Mediation		(\$3,200)	(\$3,200)	(\$3,200)		
NW School		(\$1,950)	(\$1,950)	(\$1,950)		

CP 437-38.³ The decree also plainly shows that the court allocated all of these debts to James, assigning Bobette only attorney fees and a personal loan. CP 479; RP 117.

ARGUMENT

A. This Court will affirm the asset distribution and maintenance award absent a manifest abuse of discretion.

The trial court has broad discretion to distribute marital assets and award maintenance, and this Court will reverse only

³ The headings appear only on the second page of the asset spreadsheet at CP 438.

upon a manifest abuse of discretion. *Marriage of Buchanan*, 150 Wn. App. 730, 735, 207 P.3d 478 (2009); *In re Marriage of Rockwell*, 141 Wn. App. 235, 242-43, 170 P.3d 572 (2007), *rev. denied*, 163 Wn.2d 1055 (2008); *In re Marriage of Bulicek*, 59 Wn. App. 630, 633, 800 P.2d 394 (1990). This Court also reviews child support decisions for a manifest abuse of discretion. *In re Marriage of Mattson*, 95 Wn. App. 592, 599, 976 P.2d 157 (1999). A trial court abuses its discretion if its decision is manifestly unreasonable, meaning that its decision is outside the range of acceptable choices, or is based upon untenable grounds. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). This Court “seldom” changes decisions in dissolution proceedings, where “[t]he emotional and financial interests affected by such decisions are best served by finality.” *In re Marriage of Landry*, 103 Wn.2d 807, 809, 699 P.2d 214 (1985).

B. This Court should disregard Bobette’s inadequately briefed arguments.

RAP 10.3(a)(6) requires the appellant to provide “argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record.” This Court may – and should – decline to consider inadequately

briefed issues. ***Matheson v. City of Hoquiam***, 170 Wn. App. 811, 825 n.19, 287 P.3d 619 (2012), *rev. denied*, 176 Wn.2d 1030 (2013).

Bobette's first "argument" is the single sentence that after the maintenance award, James' income still exceeds Bobette's income, followed by a request to reverse or recalculate maintenance under ***Rockwell*** and ***White***, *infra*. BA 9-10. There is literally no argument at all. This is plainly inadequate. ***Matheson***, 170 Wn. App. at 825 n.19.

Bobette's second argument is no better. BA 10. There, Bobette cites RCW 26.19.071, states that it requires the trial court to include certain items in the income calculation used to determine child support, and conclusively states that the trial court failed to do so. BA 10. She cites no cases and provides no discussion of relevant testimony. *Id.* This too is inadequate.

This Court should decline to consider these arguments and affirm.

C. The trial court is not required to use maintenance to equalize the parties' incomes.

Bobette's entire argument is that in dissolving a long term marriage, the trial court "must 'place the parties in roughly equal

financial positions for the rest of their lives.” BA 8-9 (citing **Rockwell**, 141 Wn. App. at 241-42; **In re Marriage of White**, 105 Wn. App. 545, 549, 20 P.3d 481 (2001)).⁴ In other words, Bobette argues that if parties have been married for 25-years or more when they divorce, then the duration of their marriage controls the maintenance award, and the trial court has no reasonable choice but to “roughly equal[ize]” the parties forever. BA 8-9. This would remove the trial court’s discretion over what Bobette acknowledges are highly discretionary decisions. BA 8. **Rockwell** does not compel such a result. This Court should affirm.

In **Rockwell**, the appellate court stated that when the trial court dissolves a long-term marriage – 25 years or more – the “court’s objective is to place the parties in roughly equal financial positions for the rest of their lives.” 141 Wn. App. at 243 (citing 2 WASH. STATE BAR ASS’N, FAMILY LAW DESKBOOK, § 32.3(3), at 32-17 (2d. ed. 2000) and **Sullivan v. Sullivan**, 52 Wash. 160, 164, 100 P. 321 (1909)). The court later stated: “As noted above, the trial court must put the parties in roughly equal financial positions for the rest

⁴ Bobette incorrectly claims that **Rockwell** cites **In re Marriage of White** for this proposition. BA 9. **Rockwell** cites **Marriage of White** for the proposition that “the court is not required to divide community property equally.” **Rockwell**, 141 Wn. App. at 243 (citing **Marriage of White**, 105 Wn. App. at 549.)

of their lives.” 141 Wn. App. at 248-49 (citing 2 WASHINGTON FAMILY LAW DESKBOOK § 32.3(3), at 32-17).

The Deskbook relies principally on Judge Robert Winsor’s 1982 Bar News article discussing maintenance awards in short, mid-term, and long-term marriages. DESKBOOK, *supra* (citing Winsor, *Guidelines for the Exercise of Judicial Discretion in Marriage Dissolutions (“Winsor”)*, WASH. ST. B. NEWS, Jan, 1982, at 14; 16). Judge Winsor’s article is an attempt to provide guidance for trial courts making highly discretionary decisions – not an effort to usurp trial court discretion by imposing rigid categories based solely on the duration of a marriage. *Winsor, supra* at 15, 19.

Sullivan says nothing about equalizing the parties’ post-dissolution standards of living “for the rest of their lives,” or even for a lengthy period, but states that in dissolving a long-term marriage “the ultimate duty of the court is to make a fair and equitable division under all the circumstances.” **Sullivan**, 52 Wash. at 164. “[U]nder all the circumstances” contradicts Bobette’s claim that the duration of the marriage becomes the ultimate trump card if the marriage is long term. *Compare id. with* BA 8-9.

In re Marriage of Olivares, also cited in Bobette’s brief, contradicts Bobette’s assertion. BA 8 (citing 69 Wn. App. 324, 329,

848 P.2d 12 (1993)(*disapproved on other grounds, In re Estate of Borghi*, 167 Wn.2d 480, 219 P.3d 932 (2009)). There, the appellate court held that “although no single factor must be given greater weight than any other factor as a matter of law, . . . the economic circumstances of each spouse upon dissolution is of ‘paramount concern.’” *Olivares*, 69 Wn. App. at 330 (citing *In re Marriage of Konzen*, 103 Wn.2d 470, 478, 693 P.2d 97, *cert. denied*, 473 U.S. 906 (1985); quoting *DeRuwe v. DeRuwe*, 72 Wn.2d 404, 408, 433 P.2d 209 (1967)). In other words, *Olivares* plainly provides that no factor is a trump card, and that the paramount concern is not the duration of the marriage, but the post-dissolution economic circumstances. *Olivares*, 69 Wn. App. at 330; *see also In re Marriage of Urbana*, 147 Wn. App. 1, 12, 195 P.3d 959 (2008).

In short, the trial court has broad discretion to distribute assets, based on a number of factors, none of which controls. This Court should reject Bobette’s claim that in a long-term marriage, the trial court has no discretion.

D. Contrary to Bobette's assertion, the trial court included James' bonus in calculating his income, and had discretion to omit payments James' employer made directly into retirement accounts.

In a two-paragraph argument, Bobette claims that in calculating child support, the trial court erroneously omitted James' bonuses, deferred compensation, dividends, and interest from his gross monthly income. BA 10. This is false.

To calculate child support, the court found that James had a gross monthly income of \$18,500 – \$222,000 per year. CP 466. This plainly includes James' 2011 salary, \$134,000, and bonus, \$88,000, totaling \$222,000. BA 4; RP 70. Bobette's claim that the trial court failed to include James' bonus is false. BA 10.

Bobette concedes that James' employer pays any dividends and interest "directly" into his 401(k) and IRAs. BA 4, 10; RP 70-71.⁵ There was no other testimony about these payments. Thus, it appears that these funds were properly excluded from the child-support income calculation under RCW 26.19.071(5)(c) & (g).

But in any event, Bobette failed to adequately preserve this argument, stating in one sentence that the court should "include all

⁵ There is no indication James received deferred compensation. Compare BA 10 with RP 20, 47, 71.

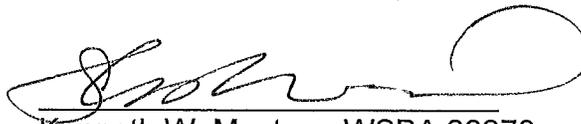
income” without any further explanation or authority. CP 452; RAP 2.5(a). Providing a slightly more detailed argument in a motion for reconsideration is too late, particularly where Bobette still failed to cite any authority. CP 487. And again, Bobette here provides no argument or authority that these funds, which James apparently has no right to receive directly, must be used to calculate child-support. BA 10.

CONCLUSION

For the reasons stated above, this Court should affirm.

RESPECTFULLY SUBMITTED this 28th day of May, 2013.

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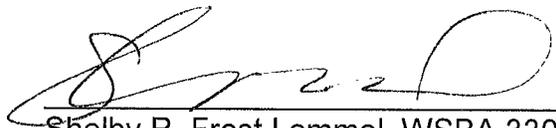
I certify that I caused to be mailed, a copy of the foregoing **BRIEF OF RESPONDENT** postage prepaid, via U.S. mail on the 27th day of May 2013, to the following counsel of record at the following addresses:

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