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COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

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No. 46706-2-II

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COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

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SAMUEL VALDEZ,

Appellant,

vs.

ELIZABETH ROBBINS,

Respondents.

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**APPELLANTS' OPENING BRIEF**

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I. INTRODUCTION.

This appeal raises two questions. First, should property subject to a Purchase and Sale Agreement be valued based upon the sale price in the sales contract, or based on the fair market value of the property. Second, did the court divide the community property in a fair and equitable manner where the Appellant owed over 17% of the value of the community property in an offset payment.

The Appellant requests the court partially reverse the trial court to determine that the property subject to the sales contract should be valued at the sale's contract price and not its fair market value. The Appellant further requests the court remand this case with directions to divide the community property in a fair and equitable manner, minimizing any offset payment.

II. ASSIGNMENTS OF ERROR.

Appellant makes the following assignments of error:

1. From 1.2.c. of the Decree of Dissolution entered on September 8, 2014<sup>1</sup> (attached to this Brief), in that the offset payment of \$111,645.00 did not reflect a fair and equitable distribution of the community property.

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<sup>1</sup> CP 124.

2. From 3.15.a. of the Decree of Dissolution dated September 8, 2014, to the extent it incorporates the court's ruling that the value of 1554 Altoona Pillar Rock Road, Rosburg, Washington is based on the property value and not the sales price in the Purchase and Sale Agreement.

3. From the conclusion in Exhibit 1 of the Decree of Dissolution dated September 8, 2014,<sup>2</sup> to the extent the distribution does not reflect a fair and equitable distribution of the community property.

4. From Exhibit 1 of the Decree of Dissolution dated September 8, 2014,<sup>3</sup> to the extent the value of 1554 Altoona Pillar Rock Road, Rosburg, Washington is based on the property value and not the amount remaining on the Purchase and Sale Agreement.

III. ISSUE PERTAINING TO ASSIGNMENT OF ERROR.

1. Did the court err in determining the value of 1554 Altoona Pillar Rock Road based on the property value rather than the amount stated in the fully executed enforceable Purchase and Sale Agreement?

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<sup>2</sup> CP 124.

<sup>3</sup> CP 124.

2. Did the court fail to divide the community property in a just and equitable manner, as required by RCW 26.09.080, where the Appellant owed the Respondent an equalizing payment of \$111,645.00 representing over 17% of the value of the community property?

IV. STATEMENT OF THE CASE.

The Appellant, Samuel Valdez, and the Respondent, Elizabeth Robbins, were married on June 22, 2002. The parties separated approximately ten years later, in October 2012. The trial in this matter was heard over three days on June 24, 25 and 26, 2014.

One item of community property addressed at trial was the Purchase and Sale Agreement for 1554 Altoona Pillar Rock Road, Rosburg, Washington. At trial, it was also referred to as the Brunneau Property or the Hall Property. On September 19, 2010, the parties entered into a Purchase and Sale Agreement for the sale of this property to Tom and Marianna Brunneau.<sup>4</sup> The purchase price was \$250,000.00, with \$5,000.00 down, and interest only payments for five years.

At trial, the Respondent claimed that the value of the

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<sup>4</sup> CP 37-39.

property was only \$130,000.00.

“Q. (By Ms. Foster, continuing) We are starting at page one of my Exhibit 1, just to be able to follow, and 1554 Altoona Pillar Rock Road. This is under community real property, Ms. Robbins. Do you see that?”

A. I do.

Q. Okay. And can you tell if – there’s a note that says land only, and then a value of \$130,000 that you’re asking the court to put in your column.

First of all, can you tell us a little bit about the 1554 Altoona Rock Road purchase?

A. It’s five acres on the Columbia. We bought it in the mid 2000’s, and it was only \$40,000. Sam built a road into it, I put a well in, power. So we put a little money on it and sold it subsequently to – we entered into a contract for sale, I should say, with the Bruneaus – Tom and Maryanne Bruneau – and they have since – the sale price that they agreed to was \$250,000 for the bare land. They have subsequently built their home there and shop.

They’re highly – they’re wonderful people. She works in the schools, he’s in construction. He’s

working already – I only say this – it'd be a shame for the community to lose them, and I feel like they can't afford to buy it anymore at \$250,000, so I would like to sell it to them for that price. That's all.

The court: For what price?

The witness: The land value of the assessment. The current assessment is 130,000.”<sup>5</sup>

The Appellant disagreed as to the value of the property.

“Q. Now, Ms. Robbins indicated that the property really wasn't worth over \$100,000 as far as she was concerned – or \$130,000; is that right?

A. She – she's dreaming. That is one of the – probably the most stellar pieces of property along that whole road.

Q. Did you do something to have the assessed valuation reduced?

A. Isn't that the American way?

Q. Did you or did you not?

A. I did. Absolutely. I worked with Bill Coons to try to keep that valuation as low as possible.

Q. And the assessed valuation currently is how

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5 RP 160:19 – 161:20.

much?

A. Well, I really don't have those figures in front of me, but I – I think I've heard \$130,000 on the land value."<sup>6</sup>

Appellant testified the property was worth \$250,000.00.

"Q. How much do you think the property is worth?

A. I think the property is worth \$250,000.

Q. Are you willing to put it in your column, then, for that amount?

A. Sure."<sup>7</sup>

In its Memorandum Decision, the court adopted a value of \$130,000.00.

"17. 1554 Altoona Pillar Rock Road. This land was sold to Hall/Brunneau for \$250,000.00. Valdez obtained a revaluation to \$130,000.00 as to the land and argued for the \$130,000.00 to be adopted by the court. The court awards this property value to Robbins."<sup>8</sup>

As set forth below, the court could not distribute the property at 1554 Altoona Pillar Rock Road, but only the

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6 RP 395:21 – 396-8.

7 RP 451:11 – 14.

8 CP 110.

purchase agreement. The value of the Purchase Agreement was set at \$250,000.00. The proper value for this asset is \$245,000.00, the amount of principal remaining after the down payment.

After allocating the community property, the Appellant was required to pay the Respondent an equalizing payment of \$111,645.00. This amount is over 17% of the value of the community property. The community property distributed by the court, other than in-kind or ordered sold and divided, is as follows:

1554 Altoona Pillar Rock Road	\$130,000.00
Tidelands	\$ 6,100.00
1767 State Route 4	\$111,000.00
1198 Altoona Pillar Rock Road	\$110,000.00
Piper Super Cub	\$ 85,000.00
Sailboat	\$ 47,500.00
Craigslist Property	\$
SSA Equipment	\$ 50,000.00
Shop Tools	\$ 20,000.00
Loan to Beth's Son	\$ 26,000.00
2004 Honda Civic	\$ 2,946.00
GMC Truck	\$ 8,535.00
611 32 <sup>nd</sup> Ave., Longview	\$ 7,000.00
Menlo, WA	\$ 6,800.00
Hama Hama Cabin	<u>\$ 30,000.00</u>
	\$640,981.00

The equalizing payment of \$111,645.00 is over 17% of the total community property. This places a significant financial burden on the Respondent, and violates RCW 26.09.080, requiring that the allocation be fair and equitable.

V. ARGUMENT.

A. The Court Erred by Relying on Property Value Rather Than the Sale Price in the Purchase and Sale Agreement to Value 1554 Altoona Pillar Rock Road, Rosburg, Washington.

The court's Memorandum Decision, Spreadsheet and the Decree of Dissolution show that the court relied upon the property value to value the Purchase and Sale Agreement for 1554 Altoona Pillar Rock Road, Rosburg, Washington. The court states, "Valdez obtained a revaluation to \$130,000.00 as to the land and argued for the \$130,000.00 value to be adopted by the court. The court awards this property value to Robbins" (Emphasis added).<sup>9</sup> On the attached spreadsheet, the court adopted the following explanation:

"Per revised 2013 tax assessed value, tax year 2014."

The court's error is that it was not awarding the property, but the Purchase and Sale Agreement for the property. The property was, at the time of trial, occupied, used and improved by the Brunneaus. The community asset was the Purchase Agreement where

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9 CP 110.

\$245,000.00 was left owing at the time of trial. This was an arm-length transaction with the Brunneaus entered into at least two years prior to the parties' separation.

The contract under which the Brunneaus have been making payments to Robbins and Valdez is akin to a Real Estate Contract. Washington has held that the vendor's interest in a real estate contract is personal property.

“Washington case law supports the conclusion that the right to receive payments under a contract for the sale of property is personal property.”<sup>10</sup>

The value of the contract was the \$245,000.00 in principal left owing on the contract. The court erred when it valued the property because the property value had no relevance to the value of the purchase contract. As personal property the court should have valued the asset at \$245,000.00.

B. The Court Erred in Failing to Make a Fair and Equitable Division of Property Where the Respondent Owed the Petitioner an Offset Payment Totaling Over 17% of the Community Property Value.

In the Decree of Dissolution, the total value of

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<sup>10</sup> In Re: Freeborn, Jr., 94 Wash.2d 336, 340, 617 P.2d 424 (1980).

the community property was \$640,981.00.<sup>11</sup> Of that amount, the court awarded \$432,136.00 to the Appellant, and \$208,847.00 to the Respondent.<sup>12</sup> This left the Appellant owing an offset payment of \$111,645.00, representing over 17% of the value of the community property.

The Appellant's counsel anticipated the need to award property to the Respondent to equalize the distribution.

“...if the court should determine that there is additional property that should be given to Ms. Robbins, we would suggest that the court consider giving property to her on the following order:

One, the SR4 property; two, the airport property; and three, Mr. Valdez' airplane, the Super Cub.”<sup>13</sup>

Neither the Memorandum Decision, nor the final decree indicates that the court considered the distribution as a whole to determine if it was fair and equitable.

Washington law, at RCW 26.09.080, requires that the division of property be just and equitable after considering relevant statutory factors, including the

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11 CP 148.

12 CP 148.

13 RP 525:19-24.

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 each spouse at the time of the division. In making the division, “the 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.”<sup>14</sup> If the decree results in a patent disparity in the parties’ economic circumstances, a manifest abuse of discretion has occurred.”<sup>15</sup> Further, Washington courts have held that, “The trial court’s decision will be affirmed unless no reasonable judge would have reached the same conclusion.”<sup>16</sup>

The error in this case is that the judge never considered the overall distribution. The record reflects that trial court placed a value on the community property and then made a distribution based upon the spouse with the most connection to the property. Thus, the boat, equipment and tools

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14 In Re: Marriage of Rockwell, 141 Wash. App. 235, 242, 170 P.3d 572 (2007).

15 In Re: Marriage of Rockwell, *supra*, 141 Wash. App. at 243.

16 In Re: Marriage of Landry, 103 Wash.2d 807, 809-810, 699 P.2d 214 (1985).

went to the Appellant and the Brunneau contract (erroneously awarded as property) went to the Respondent. The court then ordered a crushing equalizing payment from Appellant of \$111,645.00. There was no effort to make the overall distribution fair by adjusting the property awarded to minimize the offset payment.

Appellant's counsel, anticipating an uneven distribution, gave the trial court a blue print to equalize the property by suggesting the Respondent receive the SR4 property, the airport property (determined to be Petitioner's separate property) and Appellant's airplane. If either the SR4 property or the Piper Super Cub were given to Respondent, the amount of the offset payment would be significantly reduced.<sup>17</sup>

There was property available to accomplish an equitable distribution. The court's manifest abuse of discretion is that the court did not use any discretion to review the entire distribution. In the absence of such review, the Court of Appeals should remand this case to the trial judge to review the entire distribution

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<sup>17</sup> If the Piper Super Cub were awarded to Petitioner, the offset payment would be \$26,644.00. If the SR4 property were awarded to Petitioner, the offset payment would be \$644.00.

to determine if it meets the fair and equitable standards under RCW 26.09.080.

VI. CONCLUSION

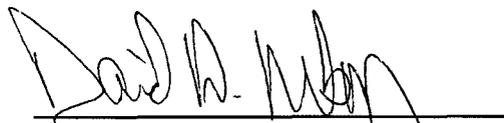
The trial court erred in using the fair market value to value property already sold under a Purchase and Sale Agreement. The Court of Appeal should reverse the trial court and require the remaining purchase price of \$245,000.00 to be used to value the property.

The trial court further erred by failing to review the distribution of community property to determine if it was fair and equitable under RCW 26.09.080. This case should be remanded to the trial court with directions to make a just and equitable distribution.

DATED this 9<sup>th</sup> day of April,

2015.

NELSON LAW FIRM, PLLC



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Attorney for Appellants

**DECLARATION OF SERVICE**

I declare under penalty of perjury of the laws of the State of Washington that on the date given below, I caused to be served in the manner indicated a true and accurate copy of the foregoing, upon the following, via UPS overnight mail:

Appellants Opening Brief

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