

NO. 48382-3-II

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

SANDRA RAMIREZ

Petitioner

v.

TOMAS RAMIREZ PENALOZA

Respondent/Appellant

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DIVISION II
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STATE OF WASHINGTON
DEPUTY
BY

OPENING BRIEF OF APPELLANT

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TABLE OF CONTENTS

I.	ASSIGNMENTS OF ERROR.....	1
	A. Assignments of Error.....	1
	B. Issues Pertaining to the Assignment of Error.....	1
II.	STATEMENT OF THE CASE	
	A. Statement of Facts.....	2-4
	B. Procedural History.....	4-5
III.	ARGUMENT	
	1. The award of virtually all financial accounts and liquid assets of the marital community to Sandra Ramirez was not an equitable division of the marital community estate as required by RCW 26.09.080.....	5-12
	2. The award of eleven years of spousal maintenance to Sandra Ramirez at \$10,000.00 per month (a total amount of \$1,320,000.00) constituted a gross abuse of judicial discretion when that award was made in total disregard to the consideration of how, exactly, those funds would be paid.....	12-15
	3. Appellant was entitled to relief from judgment on his motions for reconsideration where he conclusively demonstrated that the removal and distribution of \$667,213.46 to Mrs. Ramirez depleted the working capital of Ramirez Reforestation, Inc. to the point where that business was not able to generate income necessary to sustain his continuing spousal maintenance obligation.....	15-19
IV.	CONCLUSION.....	19-20

TABLE OF AUTHORITIES

Cases

<i>Baird v. Baird</i> 6 Wn. App. 587, 494, P.2d 1387 (1972).....	7-8
<i>In re the Matter of the Marriage of Brossman</i> 32 Wn. App. 851, 650, P.2d 246 (1982).....	16-17
<i>In re the Marriage of Crosetto</i> 82 Wn. App. 545, 556 (1996).....	6
<i>Stevenson v. Hazard</i> 152 Wash. 104, 227 P. 450 (1927).....	8
<i>In re the Marriage of Marzetta</i> 129 Wn. App. 607, 120 P.3d 75 (2005).....	15
<i>In re the Marriage of Marzetta</i> 157 Wn.2d 1009, 139 P.3d 349 (2006).....	15
<i>State v. Wehinger</i> 182 Wash. 360, 47 P.2d 35 (1935).....	8
<i>Urbana v. Urbana</i> 147 Wn. App. 1, 195 P.3d 959 (2008).....	6

Statutes

RCW 26.09.080.....	5-6
RCW 26.09.090(1)(a-f).....	13-15

Other Authorities

CR 2A.....	7-8
CR 52(b).....	1,5
CR 59(a)(9).....	16
CR 59(a)(4)(9).....	1,5

I. ASSIGNMENTS OF ERROR

A. Assignments of Error

1. The trial Court erred when it awarded nearly all of the liquid assets of the marital estate to Sandra Ramirez, while fully aware that this award of financial assets would severely eliminate the operating capital of Appellant's reforestation business.

2. The trial Court erred when it, with full knowledge that the Court's award of nearly all liquid assets of Ramirez Reforestation, Inc. to Sandra Ramirez would limit the ability of that business to continue operations, denied Appellant's motions to amend findings on judgment, new trial, reconsideration and amendment to final judgment pursuant to CR 52 (b)/CR 59 (a)(4)(9).

B. Issues Pertaining to Assignments of Error

1. Was the division of assets in this case equitable where that division left the Appellant without the financial ability to pay substantial continuing financial burdens placed upon him?

2. Was the award of a substantial monthly spousal maintenance payment to the wife properly based on facts establishing both the need for maintenance on the part of the wife and the continued ability to pay on the part of the Appellant?

3. Was the Appellant entitled to relief from judgment where he conclusively demonstrated that the division of marital property and the imposition of the substantial spousal maintenance obligation placed him in a position of bankruptcy?

II. STATEMENT OF THE CASE

A. Statement of Facts

Tomas Ramirez Penaloza (Appellant) and Sandra Ramirez were married on March 23, 1981, and were married for 33 years, having separated on March 16, 2014.

The Ramirez's had four children together. One child, Tulsa Ramirez, age 14, remains dependent.

Sandra Ramirez is 51 years of age. She married at the age of 18, and worked at jobs outside the home including housekeeping and cannery work.

In the early 1990's, she earned an Associate's Degree in medical office assistant studies from Centralia College. Upon graduation, she worked part-time at Centralia Providence Hospital.

Sandra Ramirez stopped working in 2003, and has not been employed since then. Neither has Sandra Ramirez sought or obtained further education or training.

Since having discontinued employment outside the home, Sandra Ramirez pursued a lifestyle of leisure, self-indulgence, recreation, and asset dissipation.

Appellant is 54 years of age. He was and continues to be the sole operator of Ramirez Reforestation, Inc., and has operated that business since it was founded in 1989. Appellant, a self-professed "workaholic", who devoted 50 to 60 hours per week to the development, maintenance, and improvement of Ramirez Reforestation, Inc. over the years of its existence, and continues to work long hours every day of the week. Verbatim Report of Proceedings (VRP) at 12. The testimony of Appellant at trial and the findings of the Court after trial confirmed these facts to be the case.

The efforts of Appellant facilitated the development of a very successful business, which provided this family with a good income to meet all of its needs. VRP at 11-12.

The Petition for Dissolution of Marriage for this case was filed by Sandra Ramirez on March 20, 2014. On May 9, 2014, Temporary Orders were entered which placed substantial financial obligations upon Appellant. These financial obligations included:

- \$11,500.00 per month (spousal maintenance)
- \$22,000.00 (temporary attorney's fees)

Clerk's Papers (CP) at 213-219.

The temporary orders placed upon Appellant, not only the substantial burden of a \$11,500.00 per month spousal maintenance and substantial child support, but also required him to pay for a multitude of other living expenses of Sandra Ramirez. This created a situation where Appellant found it repeatedly necessary to invade the operating capital of Ramirez Reforestation, Inc. to meet the financial obligations placed upon him.

During the course of the dissolution action, Appellant was repeatedly summoned into Court to defend motions for contempt on the basis of his having failed to meet one or the other of the financial burdens which had been placed upon him.

At each of these subsequent hearings, Appellant presented financial information demonstrating the difficulties that he was having meeting the substantial financial obligations that had been placed upon him.

The Court Commissioner of Lewis County Superior Court ignored each and every financial submission and repeatedly added more financial burdens to Appellant's already heavy load by way of attorney fee awards and other sanctions.

Shortly after the Petition for Dissolution was served on him, Appellant discovered that individuals had contacted his bank and were pretending to be him for purposes of withdrawing funds from his accounts at Wells Fargo Bank. Appellant withdrew substantial amounts from his bank accounts placing those funds into the form of cashier's checks which he kept in his possession for safekeeping. VRP at 46-47.

On October 3, 2014, funds were ordered to be placed in attorney trust account for safekeeping. CP at 220-223.

Throughout the time between the placement of heavy financial burdens on Appellant, and the date of trial, the operating capital necessary to support Ramirez Reforestation, Inc. operations was depleted by having to withdraw from those funds in order to meet the substantial financial transfer payments required by the Court. CP at 230-247.

By the time this case went to trial in June, 2015, the operating capital of Ramirez Reforestation, Inc. had been depleted to the point where the company was unable to sustain its previous level of operations and to generate its previous level of income.

B. Procedural History

On March 20, 2014, Sandra Ramirez filed a Petition to dissolve her marriage with Appellant under Lewis County Superior Court Cause No. 14-3-00123-3. CP at 1-2.

The trial of this dissolution case went forward on June 1-5 and 8-10, 2015. On June 12, 2015, the Court verbally announced its decision. On July 22, 2015 the Court entered Findings of Fact and Conclusions of Law and a Decree of Dissolution which awarded to Sandra Ramirez virtually all of the financial (liquid) assets of the marital community and of Ramirez Reforestation, Inc. CP at 23-33 and 34-44.

On August 3, 2015, Appellant filed his Motion to Amend Finding on Judgment, New Trial, Reconsideration and Amendment of Final Judgement CR 52(b)/CR 59(a)(4)(9). CP at 74-76.

On September 16, 2015, the trial Court heard arguments on the motions of Appellant for the amendment of findings on judgment, new trial, reconsideration and for the amendment of final judgment. Those motions were denied in their entirety. VRP at 70.

On November 13, 2015, the Court signed an order which denied Appellant's motions in their entirety. CP at 180-182.

On November 11, 2015, Appellant filed a Petition for Bankruptcy in United States Bankruptcy Court. CP at 248-256.

III. ARGUMENT

1. *The award of virtually all financial accounts and liquid assets of the marital community to Sandra Ramirez was not an equitable division of the marital community estate as required by RCW 26.09.080.*

RCW 26.09.080 governs the disposition of property and marital dissolution cases. That statute instructs trial Courts to make a "just and equitable" distribution of the parties' property. The statute's nonexclusive list of factors for consideration include the nature and extent of the community property, the nature and extent of the separate property, duration of the marriage, and the resulting economic circumstances of each spouse when the property is divided.

A fair and equitable division by a trial Court "does not require mathematical precision, but rather fairness, based upon a consideration of all the circumstances of the

marriage, both past and present, and an evaluation of the future needs of parties." *In re Marriage of Crosetto*, 82 Wn. App. 545, 556 (1996).

Appellant never claimed at trial that Sandra Ramirez was not entitled to a community interest in assets acquired by these parties during their marriage of thirty three years. However, Appellant should have reasonably expected to have been afforded equitable treatment by the Court when the Court divided these parties' marital assets.

When dividing marital property, a trial Court must consider statutory factors, which statutory factors are not strictly limited to those defined within RCW 26.09.080. The trial Court may consider other factors such as the health and ages of the parties, their prospects for future earnings, their education and employment histories, their necessities and financial abilities, their foreseeable future acquisitions and obligations, and whether the property to be divided should be attributed to the inheritance or efforts of one or both the spouses. *Urbana v. Urbana*, 147 Wn. App. 1, 195 P.3d 959 (2008).

RCW 26.09.080 further qualifies and focuses the way that a Court should divide marital property by setting out that "the Court shall, without regard to marital misconduct, make such disposition of the property and liabilities of the parties, either community or separate as shall appear just and equitable".

The words "just and equitable" which appear within the text of RCW 26.09.080 are not simply excess verbiage to be ignored by a trial Court when putting together a final decision to divide marital community assets. The words require that a final decision of the Court do substantial justice to both parties. That was not what was done here.

The final decision of this Court which awarded to Sandra Ramirez virtually all of the liquid assets of the marital community along with \$667, 213.46, greatly diminished the working capital of Ramirez Reforestation, Inc.

The division of assets by the Court did not include consideration of the amount by which the removal of \$667,213.46 from Ramirez Reforestation, Inc.'s balance sheet reduced the value of that company. No finding entered by the court in its Findings of Fact and Conclusions of Law addressed this issue in any way. When the Court divided the parties' interest in Ramirez Reforestation, Inc. after trial, the value used by the Court was one which had been stipulated to by the parties just prior to trial.

The problem with strictly following the stipulated value of Ramirez Reforestation, Inc. in dividing assets did not become evident until that division had been made by the court. As part of that division, the court not only removed \$667, 213.46 from the value of Ramirez Reforestation, Inc. but added a significant tax obligation to that company which would accompany transfer of these funds to Sandra Ramirez as a dividend.

Accordingly, the net result of these awards of property was to create a substantial decrease in the financial assets (working capital) of Ramirez Reforestation, Inc. while at the same time adding a significant financial liability in the form of the IRS tax obligation which accompanied the monetary transfer.

Division One of the Washington State Court of Appeals considered the issue of a binding property value stipulation in the case of *Baird v. Baird*, 6 Wn. App 587, 494 P.2d 1387 (1972). In that case, the court specifically addressed binding stipulations pursuant to CR 2A as follows:

A stipulation arrived at pursuant to CR 2A is generally binding on the parties; however, a trial court has discretion to relieve a party from the stipulation when it is shown that relief is necessary to prevent injustice and that granting the relief will not place the adverse party at a disadvantage.

Baird 6 Wn. App 587 at 587.

By reducing the actual value of Ramirez Reforestation, Inc. by removing \$667,213.46 from the asset side of the balance sheet and simultaneously placing a huge liability on the other side of the balance sheet, the equity value of that company was substantially reduced. The effect of these rulings had implications not only to the continued ability of Ramirez Reforestation, Inc. to pay its current operating expenses through working capital but also with respect to that company's ability to apply for and obtain credit based upon the company's actual value.

A trial court has discretion to relieve a party from a stipulation when it is shown that relief is necessary to prevent injustice and that the granting of that relief will not place the adverse party at a disadvantage by having acted in reliance upon the stipulation. *State v. Wehinger*, 182 Wash. 360, 47 P.2d 35 (1935); *Stevenson v. Hazard*, 152 Wash. 104,277 P.450 (1927).

The true effect of the Court insisting that it should rely upon the stipulated value of Ramirez Reforestation, Inc., while reducing both the equity ownership value of that company and its ability to continue to operate, would not have been known to Appellant until after the court made its decision on how it would divide marital estate assets.

Throughout pretrial proceedings, the Court was repeatedly made aware of the damaging and deleterious effect that the depletion of working capital of Ramirez Reforestation, Inc., was having upon the ability of that company to continue in operation.

The Court was made aware of these financial circumstances well before trial by way of an early declaration to the Court made by Jeffrey Robertson, EA, CFP, the company accountant for Ramirez Reforestation, Inc. The declaration of accountant Robertson (Robertson Decl.) signed on November 12, 2014, set out in detail the financial position of Ramirez Reforestation, Inc. with respect to that business' ability to continue operations. CP at 230-247. Further details on the working (operating) capital needs of Ramirez Reforestation, Inc. were specifically set forth within Exhibit 3 to the Robertson Decl. CP at 230-247.

Accountant Robertson summarized the financial position of Ramirez Reforestation, Inc. as follows:

The deposit of \$667,213.46, of Ramirez Reforestation, Inc. company money to a blocked trust account has created a significant problem with meeting the ongoing current working capital needs of Ramirez Reforestation, Inc. The amount necessary to be on deposit to meet working capital needs is over \$707,660.00 based upon the calculations which are set out in the working capital needs worksheet attached as Exhibit 3.

CP at 230-247.

The situation involving depletion of Ramirez Reforestation, Inc.'s working capital was placed squarely before the Court well in advance of the Court ultimately deciding to ignore all of those facts and move forward with a decision which eliminated the ability of Ramirez Reforestation, Inc. to continue in operation and to provide the funds necessary to sustain the award of maintenance ultimately made by the Court to Sandra Ramirez.

The Court's final decision on division of assets, and a substantial maintenance award to Sandra Ramirez was set forth within the Decree of Dissolution signed by the Court on July 22, 2015. CP at 34-44. As part of the property award to Sandra Ramirez, the trial Court awarded to her all of the \$667,213.46 of Ramirez Reforestation, Inc.

working capital which had been earlier frozen by the Court and place into a blocked account. CP at 34-44. In addition, the Court awarded to Sandra Ramirez all other funds which had been similarly seized and placed in a blocked account by the Court. CP at 34-44.

The Court further burdened Appellant by requiring that the transfer of funds awarded to Sandra Ramirez be treated as a dividend, thereby further making Appellant and Ramirez Reforestation, Inc. liable for substantial additional tax liabilities.

Ramirez Reforestation, Inc., at the time of trial in this case and for a period of over thirty years prior, had been the sole source of income to Sandra Ramirez, Appellant, and their marital estate. The Court, repeatedly in its oral rulings, commented on Appellant's success in having conducted this business to the benefit of both parties, the marital community, and their children over the period of that company's existence.

Ramirez Reforestation, Inc., was and is, the only source of income available to Appellant to meet his current and future financial obligations. No testimony or evidence was presented at any time in this case to establish otherwise.

Throughout pre-trial proceedings and continuing through trial of this case, the Court was fully aware of the fact that Ramirez Reforestation, Inc., required substantial amounts of working capital in order to sustain that company's operations. The clear warnings of impending financial disaster for Ramirez Reforestation, Inc., should depletion of its working capital continue, were clearly not considered by the Court prior to trial, during trial, or at post-trial hearings.

The Findings of Fact entered by the court on July 22, 2015, are silent with respect to a factual basis for the court to conclude that Appellant could afford to pay \$10,000.00

per month in spousal maintenance for a period of eleven years after the Court transferred \$667,213.46 to Sandra Ramirez from Ramirez Reforestation, Inc.'s operating capital. The Court had every opportunity to consider the financial circumstances in which both of these parties would be left upon division of their marital assets and chose not to do so, simply awarding all of these parties' funds to Sandra Ramirez and leaving Appellant without sufficient funds to continue operation of Ramirez Reforestation, Inc.

An equitable division of these parties' marital estate required that Appellant's economic circumstances be considered by the Court. The equitable division of these parties' marital estate requires more than simply jumping to a conclusion, without considering the effect this conclusion will have upon the person who is left burdened with a significant financial obligation over a significant period of time (eleven years). Such a decision, made in this way, clearly did not do substantial justice to the interests of Appellant.

The decisions of the trial Court appear to have had more to do with attributing fault to Appellant rather than a thoughtful review and analysis of the financial position in which the Court's decision would place Appellant and Ramirez Reforestation, Inc.

For instance, the remarks of the trial Court at the hearing during which the Appellant's motions for reconsideration were denied reveal much about the Court's predisposition to punish Appellant. The Court stated:

But I think Ms. Johnson is correct that Mr. Ramirez has dug in his heels and has just made up his mind that he doesn't like the division of property, he didn't like the fact that – quite frankly, it appears he didn't like the fact that his wife of 30 years got anything as a result of this dissolution of marriage.

VRP at 71-72.

The remarks of Judge Brosey are particularly instructive in light of the fact that there was absolutely no evidence whatsoever presented at any time in this legal proceeding to indicate that Appellant “didn’t like the fact that his wife of 30 years got anything as a result of this dissolution of marriage”. VRP at 71-72.

Instead of focusing on the required statutory factors to determine the financial circumstances of Appellant, the court instead based its decision on guaranteeing that Sandra Ramirez was going to get paid. VRP at 42. This decision of the court was not based on any finding to establish that Sandra Ramirez would not be paid should a different division of assets be made by the court.

This was an inappropriate basis upon which the Court made its decision to divide the marital assets. There was no showing that this was the only asset division available to the court to ensure that Sandra Ramirez would receive the assets to which the court felt she was entitled. In point of fact, there were two additional homes and parcels of real property which could have been awarded to Sandra Ramirez had the court decided to leave the \$667, 213.46 of operating capital at the disposal of Appellant in order to keep Ramirez Reforestation, Inc. in business.

At the initial stages of the dissolution proceedings, Appellant was burdened with financial obligations (as earlier discussed) which were clearly remarkable by way of their cumulative effect upon Appellant’s ability to even sustain his own expenses.

Appellant was repeatedly summoned back to the Court and even more repeatedly burdened with attorney fees awards and other expenses of litigation, none of which would have been necessary had the Court applied even minimal common sense in looking at

these parties, and their respective financial needs while the case proceeded along to a final disposition.

In the end, Appellant received a division of marital assets and a continuing burdensome spousal maintenance obligation which was basically more of the same treatment.

2. *The award of eleven years of spousal maintenance to Sandra Ramirez at \$10,000.00 per month (a total amount of \$1,320,000.00) constituted a gross abuse of judicial discretion when that award was made in total disregard to the consideration of how, exactly, those funds would be paid.*

The award of spousal maintenance by a trial Court requires a careful examination by the Court of multiple factors specifically prescribed by statute RCW 26.09.090 as follows:

- (1) In a proceeding for dissolution of marriage or domestic partnership, legal separation, declaration of invalidity, or in a proceeding for maintenance following dissolution of the marriage or domestic partnership by a Court which lacked personal jurisdiction over the absent spouse or absent domestic partner, the Court may grant a maintenance order for either spouse or either domestic partner. The maintenance order shall be in such amounts and for such periods of time as the Court deems just, without regard to misconduct, after considering all relevant factors including but not limited to:
 - (a) The financial resources of the party seeking maintenance, including separate or community property apportioned to him or her, and his or her ability to meet his or her needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party;
 - (b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his or her skill, interests, style of life, and other attendant circumstances;
 - (c) The standard of living established during the marriage or domestic partnership;
 - (d) The duration of the marriage or domestic partnership;
 - (e) The age, physical and emotional condition, and financial obligations of the spouse or domestic partner seeking maintenance; and

(f) The ability of the spouse or domestic partner from whom maintenance is sought to meet his or her needs and financial obligations while meeting those of the spouse or domestic partner seeking maintenance.

In order for this Court to have awarded to Sandra Ramirez spousal maintenance of \$10,000.00 per month for eleven years, it was necessary for the Court to have examined carefully the prospects of future earnings by Appellant which would allow him to pay this substantial monthly spousal maintenance award. That is clearly the mandate of RCW 26.09.090(1)(a-f) as set forth above.

An examination by the court of Appellant's prospects of future earnings would necessarily have included the determination as to whether or whether not Ramirez Reforestation, Inc. could expect to continue operations at its former level of output taking into consideration the removal of \$667, 213.46 from working capital.

This the Court did not do. The trial Court entered no finding of fact after the trial which specifically set out a factual basis for the Court to have concluded that Appellant would have the continued ability to pay \$10,000.00 per month after \$667,213.46 had been subtracted from the operating capital of Ramirez Reforestation. Inc., substantial additional financial accounts had been distributed to Sandra Ramirez and Appellant was then further burdened with an IRS obligation as a consequence of the \$667,213.46 having been transferred from Ramirez Reforestation, Inc., to Sandra Ramirez in the form of a dividend.

The findings of fact entered by the Court to support its award of maintenance of \$10,000.00 per month for eleven years are also devoid of a factual foundation to establish a need on the part of Sandra Ramirez for this period of time and amount for the financial obligations and the financial circumstances which would result from burdening Appellant

with this obligation. The reason for this lack of foundation is quite simple. There is not one.

The trial Court has discretion when awarding spousal maintenance, and the party who challenges a maintenance award or a property distribution must demonstrate that the trial Court “manifestly abused its discretion,” which occurs when it does not base its award upon a fair consideration of the statutory factors. *In re Marriage of Marzetta*, 129 Wn. App. 607, 120 P.3d 75 (2005), review denied 157 Wn.2d 1009, 139 P.3d 349 (2006).

The facts of this case clearly establish that the award of eleven years of spousal maintenance to Sandra Ramirez at \$10,000.00 per month was not based upon consideration of the statutory factors set out within RCW 26.09.00(1)(a-f). The Court made no finding that Ramirez Reforestation, Inc. could continue to operate into the future after \$667,213.46 had been removed from its operating capital funds. The Court made no findings to establish that it had taken into consideration the ability of Appellant to meet his needs and financial obligations, which still being required to pay \$10,000.00 per month in maintenance over a period of eleven years. The actions of the Court in making this spousal maintenance award without consideration of the ability of Appellant to meet those continuing maintenance obligation constituted a manifest abuse of discretion as cited within *In re Marriage of Marzetta*, 129 Wn. App. 607, 120 P.3d 75 (2005), review denied 157 Wn.2d 1009, 139 P.3d 349 (2006).

3. *Appellant was entitled to relief from judgment on his motions for reconsideration where he conclusively demonstrated that the removal and distribution of \$667,213.46 to Mrs. Ramirez depleted the working capital of Ramirez Reforestation,*

Inc. to the point where that business was not able to generate income necessary to sustain his continuing spousal maintenance obligation.

Appellant's motion to the Court on August 3, 2015, sought amendment of the court's Findings on Judgment, a New Trial, Reconsideration, and Amendment of the Final Judgment to arrive at a division of financial assets, which would make it possible for Ramirez Reforestation, Inc. to continue its operations to generate the kind of money necessary for Appellant to meet his financial obligations. CR 59(a)(9) sets out the right of Appellant to seek these remedies as follows:

(a) Grounds for New Trial or Reconsideration. On the motion of the party aggrieved, a verdict may be vacated and a new trial granted to all or any of the parties, and on all issues, or on some of the issues when such issues are clearly and fairly separable and distinct, or any other decision or order may be vacated and reconsideration granted. Such motion may be granted for any one of the following causes materially affecting the substantial rights of such parties:

(9) That substantial justice has not been done.

CR 59(a)(9)

The filing of motions by Appellant on August 3, 2015, constituted an open invitation to the Court to carefully review its findings, add any facts that might support those findings, and make rulings consistent with a careful consideration of the actual financial circumstances of the parties which would necessarily occur upon the Court's division of marital assets. The making of such an application to the court and the process by which such application should be considered by the court are illustrated within the case of *In re the Matter of the Marriage of Brossman*, 32 Wn. App. 851, 650 P.2d 246 (1982).

In *Brossman*, Division One of the Washington State Court of Appeals upheld a trial court decision distributing property between the parties where there were sufficient

findings made by the trial court to sustain that trial court's decision on divisions of assets and award of spousal maintenance. In that case, the Appellate Court concluded upon its review of the record, that the Court had sufficient factual information upon which to rely in making its division of assets and its award of maintenance and did not rely upon these facts as a foundation for the Court's decisions. *Brossman*, 32 Wn. App. at 854-857.

The *Brossman* court concluded that the trial court's final decisions could be sustained where those final decisions were supported by fact. The situation considered by the *Brossman* court stands in stark contrast to the situation presented by this case.

In the *Brossman* case, the Appellate Court reviewed final court decisions which were supported by extensive, comprehensive findings of fact which established a sustainable basis for those decisions to be upheld. The Findings of Fact entered by this court provided no similar or even vaguely similar set of facts to support the Court's decision.

The open invitation made to the court by the motions of Appellant was not accepted. Instead, no additional findings of fact were entered by the court after the hearing on September 16, 2015 to add any support to the court's final decision entered on July 22, 2015. At the September 16, 2015, motions hearing, counsel for Appellant once again directly addressed the issues of depletion of Ramirez Reforestation, Inc. operating capital and devaluation of the equity (ownership) interest in that company. VRP at 33-35, 37-38.

The Court declined to pay any attention whatsoever to the prejudicial effect that its ruling would have on the financial position of Appellant, choosing to simply summarily deny his motions. Instead of giving fair consideration to Appellant's reasons

for his requests for relief, the court seemed offended by Appellant's motions and rejected the idea that the Court could have been in error in any way citing back to the stipulated value of Ramirez Reforestation, Inc. as being the only value upon which the court was going to rely. VRP at 71.

In addressing the issue of the removal of working capital (\$667,213.46), the effect of that removal and award to Sandra Ramirez would have on the reforestation business, the court stated the following as a basis for addressing the award of those funds:

“That seems to me to be blatantly obvious going into the trial that that money was going to be a source of a division of assets, because for a number of reason including, as Ms. Johnson argued, as I remember, the reason you should do this, judge, is because this way we are guaranteed that my client is going to get paid, whereas if we rely on her now ex-husband to do the paying, it's going to be a long slow process, if ever.”

VRP at 42.

During argument on Appellant's Motions to Amend Findings on Judgment, New Trial, Reconsideration and Amendment of Trial Judgment on September 16, 2015, the Court refused to reexamine the valuation of Ramirez Reforestation, Inc. to address the concerns raised by Appellant's counsel as to the effect that removing \$667, 213.46 from that company's asset value and adding a substantial tax liability attached to the dividend distribution to Sandra Ramirez. Instead, the Court accepted the justification of counsel for Sandra Ramirez as set forth above including that awarding the \$667, 213.46 to Sandra Ramirez along with virtually all of the other financial accounts of these parties was the only way that Sandra Ramirez would be guaranteed in getting paid. The Court refused to reconsider its earlier conclusions, relying instead upon the idea that the final decision in awarding all of the money to Sandra Ramirez was going to guarantee that she got paid.

It is obvious from an examination of these statements by the trial court that there was not going to be any consideration given to the effect on the reforestation business from the removal of \$667, 213.46, but to that money immediately going to Sandra Ramirez to guarantee that Sandra Ramirez would get paid.

Again, these statements appear to be addressed at finding fault with Appellant rather than to a finding of fact that he could afford to pay the \$10,000.00 per month maintenance obligation even after the \$667,213.46 had been removed from Ramirez Reforestation, Inc.'s operating capital funds.

At the hearing on Appellant's motions to amend Findings on Judgment, a New Trial, Reconsideration, and Amendment of the Final Judgment, the Court was once again made aware of the effect that removal of operating capital was having upon the continued operations of Ramirez Reforestation, Inc. This information was provided within a declaration of accountant Robertson filed on August 3, 2015. CP at 107-177.

It is submitted that equity was not accorded to Appellant in the final decision of the Court in dividing marital assets and substantial justice was not served by the Court having made these decisions without consideration of the affect upon Appellant's financial position which would occur as a proximate result.

After having had made available all information necessary to show the effect upon Appellant's business of the Court's judgment as to division of financial accounts, the trial Court stubbornly refused to reconsider its decisions or to set out additional facts which would serve as a basis for its original findings. These actions on the part of the Court constitute abuse of judicial decision and did not result in substantial justice being rendered to Appellant.

IV. CONCLUSION

Appellant was entitled to an equitable division of marital assets, which division would have taken into consideration the operating capital needs of Ramirez Reforestation, Inc. and which would have included a return to Ramirez Reforestation, Inc. of the \$667, 213.46 worth of operating capital of that company.

Appellant was entitled to an equitable division of marital property based upon, among other things, the actual equity ownership value of Ramirez Reforestation, Inc. rather than the stipulated value of that company. There was no evidence introduced during the trial nor any finding by the Court after trial to indicate that any consideration whatsoever was given to the effect of removing a substantial amount of operating capital from Ramirez Reforestation, Inc. while a substantial tax liability was added to the other side of the balance sheet.

Even if the Court did not consider or was not made sufficiently aware of the likely effect of its decision on eliminating the working capital of Ramirez Reforestation, Inc. prior to or during trial, it was certainly made well aware of the force and effects of its decisions when Appellant filed with the Court on August 3, 2015, his Motion to Amend Finding on Judgment, New Trial, Reconsideration and Amendment of Final Judgment. The remedy requested by Appellant in his motions, was one which would have allowed the Court to craft a final judgment which would ensure that the business viability of Ramirez Reforestation, Inc. continued after final judgment.

Appellant requests that the Court set aside the Decree of Dissolution entered by Lewis County Superior Court on July 22, 2015, and remand this case back to Lewis County Superior Court for further proceedings to include an examination of the complete

financial picture of Ramirez Reforestation, Inc., upon which Appellant would be required to rely as a source of income for him to make monthly payments of \$10,000.00 spousal maintenance for eleven years, as well as the effect on equity valuation of removing operating capital of \$667,213.46, while, at the same time encumbering Ramirez Reforestation, Inc. with a substantial federal tax liability.

These are the remedies to which Appellant is entitled and these are the remedies he requests be granted.

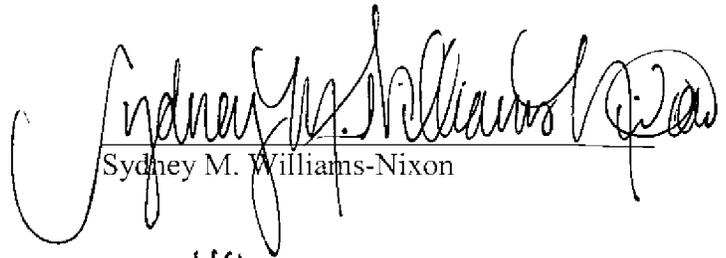
DATED this 18~~th~~ day of March, 2016.

DANA WILLIAMS LAW GROUP, P.S.
Attorneys for Tomas Ramirez Penaloza

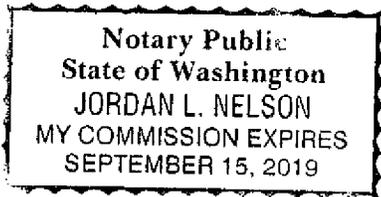


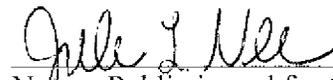
Dana L. Williams, WSBA No. 12519

accordance with the law of the State of Washington, I served the Washington State Court of Appeals Division II the original and one copy of Appellant's Opening Brief at 950 Broadway, Suite 300, Tacoma, WA 98402-4454 via U.S. Certified Mail and to the above named Petitioner's Counsel, Jennifer Bayer Johnson, Attorney at Law, a copy of Appellant's Opening Brief, by mailing via U.S. first class mail said documents to PO Box 238, Chehalis, WA 98532.


Sydney M. Williams-Nixon

SIGNED AND SWORN to before me this 18th day of March 2016, by Sydney M. Williams Nixon.




Notary Public in and for the
State of Washington, residing
at: MOSSYDOCK, WA
My commission expires: 09/15/2019