

FILED

DEC 02 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 284891

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

JUDITH KAY TRIGGS, Respondent

v.

MICHAEL KEVIN TRIGGS, Appellant.

REPLY BRIEF OF APPELLANT

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ARGUMENT

I. Ms Triggs' assertions that specific findings are supported by the record are incorrect.

Ms Triggs attempts to provide citations to the record in support of various findings to which Mr. Triggs has pointed as having no support in the record. While some of such findings do enjoy the support of the record as Ms Triggs claims, crucial ones do not.

One such finding centers on valuation of the retirement accounts. At Amended Respondent's Brief (ARB), p.5, Ms Triggs cites to RP p. 165 as supporting the trial court's findings on the values of these accounts. RP 165 is devoid of any such evidence, as is the remainder of the record. The only information on these points come at RP 185, where counsel for Ms Triggs remarks about information Mr. Triggs passed on to him after receiving it via a phone call to the retirement plan administrator. Mr. Triggs is never asked if the information presented by counsel for his wife is correct or if he agrees with it. It is simply accepted by the trial court without any support from the evidence that was actually presented.

Ms Triggs also cites to Appendix A to Respondent's Brief and CP p. 107 as support for the finding concerning the value of the Vanguard account. ARB p. 7. Neither of these citations actually provides such support, however. Appendix A is the same as Exhibit 13, an exhibit admitted solely for illustrative purposes. CP p. 107 is the trial court's written ruling. The value used by the trial court for this asset is simply not in the record.

Ms Triggs also alleges that the trial court valued the various accounts as close to the date of trial as possible. ARB p. p. 19. This is incorrect. This point is well address in Mr. Triggs' opening brief and will not be reargued here. The apparent lack of any reasoned basis for selecting various valuation dates for these assets is an issue bearing directly on the trial court's distribution of assets and debts being neither fair nor reasonable.

Ms Triggs also asserts that she intended to retire at age 66. ARB p. 23. Again support for this assertion is not in the record. The only mention by Ms Triggs of her plans for retirement occurred at RP p. 123, where she states she does not plan to retire. This is an important lapse in the evidence as Ms Triggs argues that it was a factor the trial court took into account in making its allocation of property and debt and in awarding her maintenance in excess of the amount she was requesting.

II. Ms Triggs complaints of Mr. Triggs not having provided information to the trial court are without weight and are misleading.

At ARB p. 7 and 20 Ms Triggs asserts that Mr. Triggs was under an obligation to provide information to the trial court on the value of his retirement accounts and bank account. Such comments are quite misleading.

The issue presented in this appeal is one of the trial court's findings lacking support in the record. Mr. Triggs is entitled to object to findings that do not have such support irrespective of whether he presented evidence relating to them or not. The only time a party is required to present information is when it is requested in discovery, something that quite clearly occurred in this case and about which no complaint was raised by Ms Triggs. There were, in fact, questions raised by Ms Triggs about Mr. Triggs' financial records that he had already supplied to her during discovery. RP pp 25, 28, 37, 55, and 97. Some of these documents were later introduced into evidence. See Exs. 10 and 11. Others were not. None of these incidents relate to the trial court's finding not being supported by the evidence contained in the record.

III. Ms Triggs' assertion that the trial court's rulings placed the parties in roughly equal financial positions is incorrect.

Ms Triggs asserts that the trial court's ruling complied with the directives of *Marriage of Rockwell*, 141 Wn. App. 235, 170 P.3d 572 (2007). ARB p. 23. The opposite is true, however.

If the trial court's ruling is examined, it shows that Ms Triggs was awarded \$387,014.00 in assets (counting attorney fees) and Mr. Triggs \$321,584.50. This is a difference of \$65,429.50, more than 20% of the total awarded to Mr. Triggs.

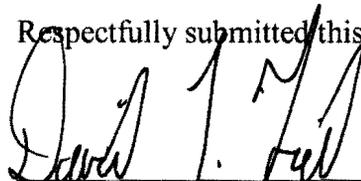
The trial court also awarded Ms. Triggs \$1,700.00 per month in maintenance, which is \$300 per month more than she had requested. It also directed Mr. Triggs to pay one-half of the difference between his social security payment and Ms Triggs' social security payment once he turned 66 years old.

The primary cause of this disparity in allocation of assets lies in the trial court determining that Ms Triggs had a \$75,900 separate interest in the family home, which was \$7,900 more than Ms Triggs asserted it to be. RP pp. 16, 164; Ex. 13; CP 107. The trial court made this allocation without regard for the impact it had on the relative financial situations in which the parties were left. It also appears to have not been considered at all when the trial court was examining the basis for its award of maintenance in an amount greater than Ms Triggs believed necessary.

CONCLUSION

Several of the arguments advanced by Ms Triggs do not support the trial court's ruling, but rather allow the problems therein to be more easily seen. As outlined in Appellant's Opening Brief, the trial court erred in several ways, its ruling should be reversed, and Mr. Triggs awarded fees on appeal.

Respectfully submitted this 1st day of December 2010



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COURT OF APPEALS DIVISION III OF THE STATE OF
WASHINGTON

Michael Kevin Triggs,

Appellant

No. 284891

Certificate of Service

Judith Kay Triggs,

Respondent

I declare under penalty of perjury under the laws of the State of Washington that the following is true and correct.

I am over the age of 18, competent to testify, and am not a party to this action.

On December 1, 2010, I mailed, postage pre-paid, and sent by Attorney Messenger Service, a copy of the Reply Brief of Appellant filed herein to W. James Kennedy, attorney for Petitioner, at 101 South 12th Ave, PO Box 1410, Yakima, WA 98907-1410.

Dated this 1st day of December 2010 at Yakima, WA.



MELINDA RAMOS