

FILED

No. 308286-III

NOV 13 2012

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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JESUS CISNEROS,

Appellant

v.

PERLA CISNEROS,

Respondent

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BRIEF OF RESPONDENT

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Jeremy S. Huberdeau  
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Moses Lake, WA 98837  
WSBA# 35428

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## I. TABLE OF CONTENTS

I. TABLE OF CONTENTS .....	2
II. TABLE OF AUTHORITIES.....	3
Table of Cases .....	3
Statutes .....	3
Other Authorities .....	3
A. Statement of the Case.....	4
B. Summary of Argument.....	5
C. Argument.....	5
1. Standard of Review .....	5
2. Equitable and Just distribution.....	5
D. Conclusion.....	9

## II. TABLE OF AUTHORITIES

### Table of Cases

<i>Coggle v. Snow</i> , 56 Wash. App. 499, 780 P.2d 863 .....	5
<i>Matter of Marriage of Crosetto</i> , 82 Wash. App. 545, 918 P.2d 954, 959 (1996) .....	7
<i>In re Marriage of Davison</i> , 112 Wn. App. 251, 48 P.3d 358 (2002) .....	6
<i>In re Marriage of Dessauer</i> , 97 Wn.2d 831, 650 P.2d 1099 (1982). .....	6
<i>In re Marriage of Mathews</i> , 70 Wn. App. 116, 853 P.2d 462 (1993), .....	6
<i>In re Marriage of Nicholson</i> , 17 Wn. App. 110, 117, 561 P.2d 1116 (1977) .....	6
<i>In re Marriage of Rockwell</i> , 141 Wn. App. 235, 170 P.3d 572 (2007). .....	7
<i>In re Marriage of Tower</i> , 55 Wn. App. 697, 780 P.2d 863 (1989). .....	<i>passim</i>
<i>In re Marriage of Washburn</i> , 101 Wn.2d 168, 677 P.2d 152 (1984). .....	7

### Statutes

RCW 26.09.080.....	6
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### Other Authority

Kenneth W. Weber, 20 Washington Practice, Family and Community Property Law §32.8.3 (1997).....	6
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### **A. Statement of the Case.**

Jesus Cisneros and Perla Cisneros were married on June 13, 1996 and separated on December 17, 2009. RP 61, lines 22 thru 24. Together, Jesus and Perla have five dependent children, whose ages are 14, 12, 10, 5, and 3, respectfully, at the time of trial. RP 14, lines 17 & 18. Perla has been the sole provider of the children since she and Jesus separated, save for \$250.00 in child support received from Jesus. RP 55, lines 9 thru 11. Perla derives her income solely from her full-time employment at McCain Foods USA, Inc, where she was been employed since May 3, 2000. RP 37, lines 3 thru 7. Jesus is a “farmer by trade, and had worked for Washington Fruit in Othello.” Brief of Appellant, page 5. A restraining order that existed at the time of trial was extinguished as a result the distribution of property by the court. RP 65, lines 15 thru 19.

The parties stipulated to the list of community assets along with the values assigned for each item. RP 7, lines 12 thru 15. One parcel of real property contains the family home located at 2130 Yeisley Road, containing four bedrooms and two bathrooms. RP 36, line 24 thru RP 37, line 2. The family home at 2130 Yeisley Road property also contains an irrigated circle for farming. RP 25,

lines 2 thru 4. The second parcel of property is located on Bench Road, which contains a double-wide mobile home with three bedrooms and two bathrooms. RP 36, lines 19 & 20. The Bench Road parcel was awarded to Jesus Cisneros. RP 64, lines 3 & 4. There is a third parcel of real property located on Yiesley Road and near the family homestead that Jesus and Perla stipulated to hold title as joint tenants. RP 64, lines 4 thru 13.

## **B. Summary of Argument**

The trial court did not abuse its discretion in making a disproportionate property award and no equalization payment.

## **C. Argument**

### **1. Standard of Review**

The trial court has broad discretion in awarding property in an action for dissolution of marriage and will only be reversed upon a showing of manifest abuse.<sup>1</sup> “The proper standard is whether discretion is exercised on untenable grounds or for untenable reasons, considering the purposes of the trial court's discretion.”<sup>2</sup>

### **2. Equitable and Just distribution**

The relevant statute addressing the just and equitable award of property in a dissolution action is RCW 26.09.080, which

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<sup>1</sup> *In re the Marriage of Tower*, 55 Wash.App. 697, 700, 780 P.2d 863 (1989)

<sup>2</sup> *Coggle v. Snow*, 56 Wash. App. 499, 507, 784 P.2d 554, 559 (1990).

provides the following non-exclusive factors for disposition of property and liabilities of the parties:

(1) The nature and extent of the community property; (2) The nature and extent of the separate property; (3) The duration of the marriage or domestic partnership; and (4) The economic circumstances of each spouse or domestic partner at the time the division of property is to become effective, including the desirability of **awarding the family home** or the right to live therein for reasonable periods to a spouse or domestic partner **with whom the children reside the majority of the time.**<sup>3</sup>

Property distributions need not be equal to be just and equitable.<sup>4</sup> “A paramount concern is the economic condition in which the decree will leave the parties.”<sup>5</sup> Disproportionate awards of community property, even 75/25, are within the court’s discretion.<sup>6</sup> “An equitable division of property does not require mathematical precision, but rather fairness, based upon a

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<sup>3</sup> RCW 26.09.080 (2011) (emphasis added)

<sup>4</sup> *In re Marriage of Tower*, 55 Wn. App. 697, 780 P.2d 863 (1989), *review denied*, 114 Wn.2d 1002 (1990); *In re Marriage of Nicholson*, 17 Wn. App. 110, 117, 561 P.2d 1116 (1977).

<sup>5</sup> *Tower*, 55 Wash. App. at 700, 780 P.2d at 865 (quoting *In re Marriage of Dessauer*, 97 Wash.2d 831, 839, 650 P.2d 1099 (1982), *overruled on other grounds*)

<sup>6</sup> *In re Marriage of Davison*, 112 Wn. App. 251, 258-59, 48 P.3d 358 (2002); *In re Marriage of Mathews*, 70 Wn. App. 116, 853 P.2d 462, *review denied*, 122 Wn.2d 1021 (1993); *In re Marriage of Dessauer*, 97 Wn.2d 831, 650 P.2d 1099 (1982); Kenneth W. Weber, 20 Washington Practice, Family and Community Property Law §32.8.3 (1997)

consideration of all the circumstances of the marriage, both past and present, and an evaluation of the future needs of parties.”<sup>7</sup>

The longer the marriage, the more likely a court will make a disproportionate distribution of the community property.<sup>8</sup>

In *Tower*, relied upon by Appellant, a disproportionate award of property was made wherein the husband received 63 percent of the property and the wife received 37 percent.<sup>9</sup> Alternatives to the disproportionate award that were considered by the Court were found to not be just and equitable.<sup>10</sup> The Court reasoned the disproportionate award was appropriate where balanced by long term maintenance.<sup>11</sup>

Appellant contends the trial judge made the disproportionate award without justification.<sup>12</sup> However, the trial judge did in fact consider all the statutory factors along with other relevant factors in making a just and equitable award. The parties stipulated as to the extent and nature of the community and separate property.<sup>13</sup> The

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<sup>7</sup> *Matter of Marriage of Crosetto*, 82 Wash. App. 545, 556, 918 P.2d 954, 959 (1996) (citations omitted)

<sup>8</sup> *In re Marriage of Rockwell*, 141 Wash. App. 235, 243, 170 P.3d 572, 576 (2007)

<sup>9</sup> *Tower*, 55 Wash. App. at 701, 780 P.2d at 866.

<sup>10</sup> *Id.* at 700-01, 780 P.2d at 866.

<sup>11</sup> *Id.* at 701, 780 P.2d at 866 (citing *In re Marriage of Washburn*, 101 Wash.2d 168, 178, 677 P.2d 152 (1984)).

<sup>12</sup> Brief of Appellant, page 11.

<sup>13</sup> RP 7, lines 12 thru 15.

parties were married nearly 15 years.<sup>14</sup> The trial judge also considered the needs of the children and the economic circumstances of the spouse with whom the children reside the majority of the time.<sup>15</sup> No spousal maintenance was awarded in the decree of dissolution as an offset for the disproportionate award.<sup>16</sup> Finally, the trial judge considered moving each of the homes to the other property, rejecting the proposal on the basis of efficiency.<sup>17</sup>

Appellant also contends that an equitable setoff should have been ordered.<sup>18</sup> The trial judge considered awarding the Yeisley property to Jesus, and accepting an equalization payment; which was ultimately rejected.<sup>19</sup> Appellant further contends that Perla lacks the farming knowledge and experience to operate the farm.<sup>20</sup> Testimony was provided by Perla of assistance available in order to operate the farm.<sup>21</sup> The trial judge concluded the farm would allow Perla the ability to earn some extra income.<sup>22</sup> The court did award Appellant all of the farm equipment and tools which would allow

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<sup>14</sup> RP 61, lines 22 thru 25.

<sup>15</sup> RP 63, lines 10 thru 18; RP 62, line 22 thru RP 63 line 4.

<sup>16</sup> *Cf. Tower*, 55 Wash. App. at 701, 780 P.2d at 866 (citing *In re Marriage of Washburn*, 101 Wash.2d 168, 178, 677 P.2d 152 (1984)).

<sup>17</sup> RP 63, lines 4 thru 9.

<sup>18</sup> Brief of Appellant, page 11.

<sup>19</sup> RP 62, lines 16 thru 22.

<sup>20</sup> Brief of Appellant, pages 10 thru 11.

<sup>21</sup> RP 48, lines 13 thru 23.

<sup>22</sup> RP 65, lines 10 thru 12.

Appellant to locate other farm ground in order to continue farming.<sup>23</sup>

**D. Conclusion**

Appellant has not met the burden of proof to show abuse of discretion. The trial court did not err in awarding the disproportionate award of community property. Each of the statutory factors were considered in the trial court's decision. Furthermore, the trial court addressed each of the Appellants arguments advanced and considered the economic factors involved. The trial court also did not err by not awarding an equalization payment to Appellant. The decision of the trial court should be affirmed.

Respectfully submitted this 7th day of November, 2012.

  
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<sup>23</sup> RP