

No. 71830-4-I

COURT OF APPEALS
Division I
OF THE STATE OF WASHINGTON

JENIFER L. BLACKMON,

Respondent,

v.

JOHN BLACKMON,

Appellant,

APPELLANT'S REPLY BRIEF

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P.O. Box 769
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FILED
COURT OF APPEALS DIV. I
STATE OF WASHINGTON
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RAP 9.10	3, 13,
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A. ARGUMENT IN REPLY TO WIFE'S RESPONSE

1. **The trial court did err in considering the Wife the sole supporter of their children for division of the marital assets.**

The Husband's position is simply the trial court entered in the dissolution decree the child support order for over \$1100.00 dollars per month, and stated the Husband's disability continue with payments to the Wife for support of their children until an age of majority of each child is reached.

However, the trial court minutes later entered the findings of facts during the determination for division of the maritally held assets that due to the Wife being the sole supporter of the couple's three children the trial court would grant disproportionate division of the assets.

Therefore, the trial court's own dissolution decree order is substantial in disproving the "finding of fact" relied on by the trial court for making the disproportionate division of assets, where the trial court's order provided conflicting "finding of facts" in the record. Support for their children is provided by the Husband until each child reaches the age of majority, at which time this support obligation terminates, per the record of the court.

"Manifest abuse of discretion occurs when the discretion is exercised on untenable grounds" In Re Marriage of Muhammad, 153 Wn.2d 795, 108 P.3d 779 (2005). Herein, the trial court's decree order established conflicting "findings of facts" relied on for the disproportionate division of assets, which amounts to untenable grounds, creating the manifest abuse of discretion that normally is reversed on review.

The Husband respectfully requests this court's review of the trial court's conflicting findings of facts in the record, which establish the Husband providing their children substantial child support by court's order and the Wife not the sole supporter for their children as relied on for disproportionate division of their marital assets. The trial court finding the Wife as the sole or independent supporter of their children should be reversed, as the substantial evidence established the Husband's support before the trial court, making disproportionate division a manifest abuse of the trial court's discretion in this instance.

2. **The trial court did abuse discretion in the division of assets owned by the parties when the trial court failed to make a reasonable minimal inquiry regarding ownership at time the assets are divided.**

"Abuse of Discretion means the trial court exercised court's discretionary authority on untenable grounds or for untenable reasons, or that the discretionary act was manifestly unreasonable!" Coggle V. Snow, 56 Wn. App. 499, 507, 784 P.2d 554 (1990).

The Wife's attorney appears to suggest to this court that his client should be allowed to secret relevant information from the trial court at the time relevant to division of the assets, which caused the trial court's division of assets not to be based upon the necessary information to ensure quality in the division.

This position would create a very interesting rule, in that the parties withholding information regarding storage fees that have not been paid, or property no longer under control of the marital community would be awarded by the trial court, allowing one party to maintain more of the actual available assets.

RAP 9.10 and RAP 9.11 authorizes this court to review the substantial evidence which tends to establish the trial court's division of assets is based on untenable grounds, and no person of reasonable intelligence would have awarded property that the person has not determined is still part of the marital property before the trial court for division at the time of entry of the dissolution decree, especially wasted or loss in wife's custody.

The Wife's attorney has presented no substantial evidence that would tend to disprove the evidence presented, merely asks the reviewing court ignore evidence presented by the Husband to show the bee keeping business equipment and Florida storage unit was no longer part of the marital assets at the time of a trial court's division of the marital property.

The mere bare assertion that the items were still owned by the parties at the time of the trial court's order should not be held as substantial evidence of the fact, as the records given before this court herein establish the Wife's failure to keep a current storage fee obligation paid in Florida, and that their abandonment of the bee keeping equipment caused the loss of the asset before dissolution decree order was entered.

The trial court's failure to ensure in the record that the items were still owned at the time of division is abuse of this trial court's discretion, and the Wife should not be allowed to withhold the information to obtain other assets awarded, as had the trial court knowing the information involving the Wife's own failure to maintain the storage fees during the proceedings, the trial court would have awarded the Husband other vehicles and/or

assets from the marital community property that the Wife obtained through withholding relevant information from the court.

The reviewing court should consider any factual evidence it is presented that tends to establish the facts at the time trial court entered the dissolution decree. This is especially true in this instance, whereby due to the Husbands incarceration he did not obtain knowledge of the storage fee issue until after entry of the dissolution decree and trial.

The matter should result in reversal on appeal, where the facts show that one party withheld relevant information to gain a advantage over the other party, involving false pretense unknowing to the trial court at the time of the entry of the orders.

3. The trial court did abuse discretion in the determination of the value of assets based upon the evidence at trial.

"Where substantial evidence in the record does not support findings from which a trial court draws a conclusion, the court has abused discretion!" In Re Marriage of Fahey, 164 Wn. App. 42, 262 P.3d 128 (2011), review denied 173 Wn.2d 1019, 272 P.3d 850 (2012). The Husband claims the trial court was presented this substantial evidence from an appraiser McMillian Brothers, whom is licensed to auction firearms in the State of Washington, and claimed to have recently sold identical firearms at auction for a sum substantially greater than the value used by the court in division of the assets here, assets preserved by mil.spec., rusting.

The Wife did not offer any evidence that supported lesser or different values for the firearms at the time of trial, merely a

bare assertions that the value should be less than appraised by the licensed expert appraiser's determined values of assets.

"[t]rial court determines disputed facts by weighing the credibility of testimony" In Re Welfare of Seago, 82 Wn.2d 736, 513 P.2d 831 (1973). The Husband's claim of error rests with a trial court holding the Wife's bare assertion more credible in division of the assets than the expert appraiser whom testified during the trial proceedings regarding the actual values of the assets, and or restricted access till agent's interest diminished.

The question is one of reasonableness, would the fair-minded person find the Wife's bare assertions as to the value of assets to be more credible than an expert licensed to appraise assets in the State of Washington.

The trial court based the value on the Wife's testimony of the value, ignoring the expert hired by the Husband to appraise the assets, and whom testified before the trial court to those appraised values at the trial.

The only actual evidence of the actual value of assets is the testimony of the expert appraiser from McMillian Brother in the record before the trial court, which is ignored without the trial court providing a remote reason for ignoring the evidence.

"Evidence is substantial if it would convince a fair-minded person of the findings truth" In Re Marriage of Fahey, 164 Wn. App. at 55, 262 P.3d 128 (2011) review denied 172 Wn.2d 1019 272 P.3d 850 (2012). There simply is no fair-minded person who would take a base assertion over expert testimony, therefore an abuse of discretion occurred and should be corrected.

4. The trial court did abuse discretion in ordering the Husband to repay funds used as his daily living expenses during the dissolution proceeding.

The Wife's attorney openly admits the funds were in their accounts of the marital community property of both parties, and then goes on to claim these funds created a debt owed by this Husband to the marital community upon his use.

The question before the reviewing court is one of trial court's equality in the distribution of marital assets, where the record established the Husband treated unequal to the Wife regarding use of marital assets for daily living expenses.

The trial court allowed the Wife to use approximately a sum of \$15,000.00 dollars of the marital community assets for her daily living expenses during the proceedings, which she is not later required to repay from her awarded portion of cash assets at the time of the division. However, the Husband is found to have used approximately \$6,000.00 dollars of marital community assets for his daily living expenses during court's proceedings, and must repay the marital community from those awarded portion of his cash assets as a debt by the court.

The Statutory provisions of RCW 26.09.080 requires that the trial court make "just and equitable" division of assets, which does not occur when the trial court treats the parties differently. The trial court's ordering the Husband to repay funds he used for his daily living expenses, while allowing a substantial amount spent for the same purpose by the Wife is sufficient to establish inequality in trial court's rulings,

wherefore the trial court fails to direct the Wife repay those funds she spent from the marital community during proceedings.

"In a marriage of 25 years or more, the trial court's objective is to place the parties roughly in equal financial positions for the rest of their lives!" Washington Family Law Deskbook § 32.3(3) at 17 (2d ed. 2000); Sullivan V. Sullivan, 52 Wash 60, 164, 100 P.321 (1909).

"Although a trial court need not divide community property equally, the court also fails the manifest abuse of discretion standard if the property division creates a patent disparity in the parties economic circumstances!" In Re Marriage of Byerley, 183 Wn. App. 677, 334 P.3d 108 (2014)(citing In Re Marriage of Urbana, 147 Wn. App. at 10, 195 P.3d 959 (2008)). Herein, this repayment from the Husbands awarded funds caused such economic disparity, whereby the Husband is incarcerated for 15 years as knowing to the trial court, and without means of employment for those years, therefore solely relying on the funds awarded him in the dissolution division of assets, unlike the wife.

The trial court could simply have order the cash assets of record used to repay the expenses of the Husband before court's division of those substantial cash assets, had court found the children's account must be repaid. However, since the court's ruling created as a debt the daily living expenses of Husband to be repaid solely from his share of the awarded cash assets, the court's ruling resulted in an abuse of discretion.

There simply again is no fair-minded person whom would of ruled the Husband and not the Wife must repay the marital assets

the sum of their daily living expenses during the disolutions proceedings.

Those cash assets spent by either party during the action proceedings before actual trial simply are not before the court at the time of the division of assets for the trial court to be ruling on, as they simply no longer existed as marital assets on the day of the division, having already been disposed of by the parties prior.

"Because those assets no longer existed at the time of the trial, the court has no duty to distribute them!" In Re Marriage of Griswold, 142 Wn. App. 333, 48 P.3d 1018 (2002)(citing In Re Marriage of White, 105 Wn. App. 545, 549, 20 P.3d 481 (2001).

The trial court's order directing the Husband repay accounts held by the Wife approximately \$6,000.00 dollars the Husband used as daily living expenses, in addition to her 67% division award of their assets is a disparity creating abuse of discretion, as those funds no longer existed before the trial court for court's distribution at time of the trial.

5. The trial court did abuse discretion in the division of assets and parenting plan on the basis of Husband's mental illness.

The Wife's attorney appears to assert that the trial court's rulings are not based on the Husband's mental illness. This bare assertion is not supported by evidence in the record, however it is found in the record that the trial court considered Husband's mental health status and disability during trial proceedings.

The Husband will stand on his opening briefing regarding the use of the mental illness and accept review of this issue.

6. The trial court did abuse discretion in the finding for no contact with non-victims in ruling under RCW 26.09.191 statute.

Wife's attorney cited RCW 26.09.191 as basis for the trial court ordering "no contact" with their children for the remainder of the children's minority lives.

The question before this reviewing court is whether statute allows such absolute bar to all contact, when it states that the residential time shall be limited only.

The Husband does not dispute the statute applies in this action, nor does the Husband seek to establish residential time with the children.

The Husband would agree that the trial court appropriately restricted contact with the child that is the alleged victim, as the criminal court imposed no contact restrictions with her.

The statute allows the trial court to restrict residential time with the children, which does not extend to the absolute bar on all contact imposed by the trial court here.

Trial court stating: "Husband should have no contact with the children by any means during the remainder of their minority," goes beyond restricting the residential time allowed under RCW 26.09.191 statute provisions.

The husband should have been permitted contact by phone and/or letters with his two children during the remainder of their minority lives.

The trial court exceeded the authority given in statute, and when the law is not followed by the trial court, an abuse of the court's discretion occurs, which should be reversed on review.

7. The trial court abused discretion appointing the Wife's attorney to assist with removing Husband's awarded property.

Wife's attorney suggests that the fact he failed to make a reasonable effort to assist in the removal of property should be ignored on review of the trial court's order.

The trial court should have appointed the Husband's counsel to make the arrangements with the Wife for removal of Husband's awarded property from the residence awarded to the Wife.

The Wife's attorney is required to act on his client's own behalf, and in her best interest throughout the procedures, and the Wife being able to maintain custody and control of all the assets awarded to the Husband benefits the Wife.

Herein, the Husband was informed by the Wife's attorney the property would be stored at the Husband's expense, creating duty on the attorney to follow through with what he stated would then be done with the property of the Husband. The Husband relied on the attorney's statements to the Husband, and waited for attorney to provide the storage company information, being denied representation.

The Husband had his agents contact the attorney multiple time to arrange removal of the property prior to the attorney's claim the property would be placed in storage, however there is clear showings the attorney for the Wife never returned calls, refused to make necessary arrangements for removal and acted in detriment to the Husband's removal of the property, lacking mutuality.

The trial court should not have appointed the opposing side attorney in the first place, where the trial court knew that the attorney would work for the benefit of the Wife solely.

The trial court's err caused the loss of all awarded items of the Husband, as after the 90 days had past the attorney's only comment on property storage was the 90 days past, you are entitled to nothing, and said deadline imposed was deficient Final Order.

Husband understands that the attorney would like to hide the evidence of his conduct on review, and asks that evidence in the exhibits of the Husband not be considered on review of the issue, however this court should review the record to see if the attorney created the duty to the Husband by stating the awarded property would be moved to storage at the Husband's expenses. The Husband waited for contact from the attorney on what storage the property was placed in, and what fees he owes for the storage, which was never provided by the Wife's attorney to the Husband, except in attorney letter over 2 times invoice.

The Wife's attorney presents the issue is whether the trial court provided the Husband a reasonable opportunity for removing the awarded property, which must be answered no in light of the Wife's attorneys conduct and deceptions, which resulted in the complete loss of all awarded property after the 90 days expired.

8. The trial court did abuse discretion in giving 90 days for property removal, when it refused Husband's transport to court for the hearing.

The trial court records establish the Husband's attempts to be present in the court for the proceedings, and that court did not enter the sufficient orders to have him present, therefore a closed court was held without the party present.

The matter is properly before the reviewing court, where it is established the Husband sought to be transported, and court's

failure left the Husband without sufficient opportunity to have the 90 days properly objected to at trial.

The Husband's attorney did not know of the need to object, or that the Husband's agents had to make arrangements from out of state for transportation of the property to Florida were all the Husband's family resides.

The trial court was aware that the Husband's family did not reside in Washington State, and that the Husband was held under a criminal conviction in the Washington State prison system, and therefore the 90 days established a hardship, which the court's appointing the Wife's attorney custodian of the Husband's assets until removal from the Wife's property only compounded.

Abuse of discretion occurs when no reasonable person would adopt the position adopted by the trial court, and that is the basis being addressed by the Husband. Under the facts knowing to the trial court at the time of the order, no reasonable person would have limited removal to 90 days. Therefore this reviewing court should provide the Husband opportunity for the recovery of his awarded assets from the Wife's current possession, based on the reasonable person standards.

B. ATTORNEY FEES

"The primary consideration for awarding attorney fees on appeal in a dissolution proceedings is if it would be equitable!" In Re Marriage of Van Camp, 82 Wn. App. 339, 918 P.2d 504, rev. denied 130 Wn.2d 1019, 928 P.2d 416 (1996). Herein, the Wife's maintaining control of the Husband's awarded assets provided the compensation for any possible attorney fees she might incur.

The Wife abandoned the two awarded vehicles in public in Lake Stevens Washington, which Husband lost to avoid impound fees, and all cash assets awarded Husband were seized civilly in a claims for damages action, and other lost assets as well.

The Husband is in prison in the Washington State Department of Corrections, is disabled, and without financial resources at his disposal of any kind. Therefore, this reviewing court should not determine it would be equitable to provide attorney fees for the Wife in this instance.

Here, both parties are in a position to pay their own fees for attorneys. Therefore, the Wife's request should be denied.

C. CONCLUSIONS

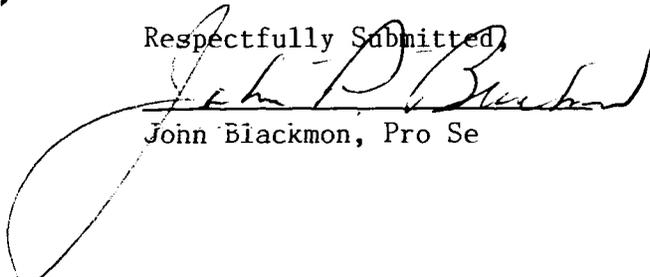
The arguments are not beyond the scope of this court, as the Wife's attorney would suggest in light of RAP 9.10 and RAP 9.11.

The Husband has established the trial court did abuse its discretionary authority in these proceedings, and did act beyond legislative authority creating absolute bar to child contact in compliance with RCW 26.09.191 statute allowing limitations under the residential time only.

The reviewing court should reach the merits presented, and provide sufficient relief for the Husband.

DATED This 06th day of May, 2015.

Respectfully Submitted,


John Blackmon, Pro Se

DECLARATION OF MAILING

GR 3.1

I, JOHN P. BLACKMON on the below date, placed in the U.S. Mail, postage prepaid, 3 envelope(s) addressed to the below listed individual(s):

Richard D. Johnson, Clerk
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2015 MAY 11 AM 9:15

I am a prisoner confined in the Washington Department of Corrections ("DOC"), housed at the Coyote Ridge Correctional Complex ("CRCC"), 1301 N. Ephrata Avenue, Post Office Box 769, Connell, WA 99326-0769, where I mailed said envelope(s) in accordance with DOC and CRCC Policies 450.100 and 590.500. The said mailing was witnessed by one or more staff and contained the below-listed documents.

1. Declaration of Service
2. Appellant's Reply Brief
3. _____
4. _____
5. _____
6. _____

I hereby invoke the "Mail Box Rule" set forth in General Rule ("GR") 3.1, and hereby declare under penalty of perjury under the laws of the State of Washington that the forgoing is true and correct.

DATED this 06th day of May, 20 15, at Connell WA.

Signature

John P. Blackmon