

IN THE SUPREME COURT OF THE STATE OF IDAHO

GARY A. WILSON,

Docket No. 46991-2019

Petitioner/Appellant,

Nez Perce County District Court

v.

CV2017-475

JENNIFER A. WILSON, N/K/A JENNIFER  
A. KINSEY

Respondent.

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RESPONDENT'S BRIEF

Appeal from the District Court of the Second Judicial District for Nez Perce County.

Honorable Jeff M. Brudie, presiding.

Robert J. Van Idour, Attorney for Petitioner- Appellant

Residing at Lewiston, Idaho

Sarah A. McDowell- Lamont, Attorney for Respondent

Residing at Lewiston, Idaho

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COMES NOW, Respondent, Jennifer A. Wilson, now known as Jennifer A. Kinsey, by and through their attorney of record, Sarah A. McDowell-Lamont, and respectfully submits the *Respondent's Reply Brief*.

I.

STATEMENT OF THE CASE

Petitioner/ Appellant, Gary A. Wilson, hereinafter referred to as “Mr. Wilson,” argues in his Brief of Petitioner that he should prevail in his appeal. Respondent, Jennifer A. Kinsey, hereinafter to as “Ms. Kinsey,” argues in this Reply that the magistrate court did not error in its division of property.

In the Fall of 2013, Mr. Wilson came across a home for sale at 1110 8<sup>th</sup> Avenue, Lewiston Idaho. Mr. Wilson then showed the home to Ms. Kinsey, who was taken with the house. Ms. Kinsey decided to purchase the home under her name only. Mr. Wilson sought to assist Ms. Kinsey with the purchase of the home and provided her with just under \$35,000.00 for the down payment. The purchase of the home occurred in January 2, 2014. The lender, Mann Mortgage, insisted that the Petitioner sign a gift letter, which was admitted as Respondent's Exhibit 506. The parties were then married on June 8, 2014. In March 2015, Ms. Kinsey re-financed the home. The quitclaim deed admitted as Respondent's Exhibit 502 stated Ms. Kinsey was dealing with her sole and separate property as a married woman.

Mr. Wilson was employed before and after the marriage with Clearwater Paper Corporation and had both a 401K Retirement Plan and Pension Plan with that company. Mr. Wilson subsequently borrowed money from his 401K Retirement Account during the marriage and Ms. Kinsey incurred student loan debt in the amount of \$22,000.00 while the parties were married.

After a court trial on October 17, 2017, the magistrate court ultimately held that Mr. Wilson's Clearwater 401K Retirement Account was community property, that the down payment given by Mr. Wilson to Ms. Kinsey was Ms. Kinsey's separate property and ordered an unequal division of property in favor of Mr. Wilson. Mr. Wilson appealed the decision to the district court, which affirmed the magistrate decision. Mr. Wilson now appeals the district court's decision.

## II.

### ISSUES PRESENTED

- A. Did the magistrate court error in the valuation of Mr. Wilson's Clearwater 401K Retirement Account?
- B. Did the magistrate court error in finding the \$35,000.00 gift from Mr. Wilson to Ms. Kinsey for the purchase of the property located 1110 8<sup>th</sup> Avenue, Lewiston, Idaho was not an asset of the party's marriage.
- C. Is Ms. Kinsey entitled to attorney fees and costs for defending against this appeal?

## III.

### RESPONSE TO PETITIONER/ APPELLANT'S ARGUMENT

- A. The magistrate court did not error in the valuation of the Mr. Wilson's Clearwater 401K Retirement Account as the Petitioner failed to present evidence of its separate value prior to marriage.**

During the court trial, Mr. Wilson failed to provide any exhibits in the form of documentation or statements to the community and separate property values of his Clearwater 401K Retirement Account. The only documentation or statements of Mr. Wilson's retirement account were provided by Ms. Kinsey as Exhibit 512. (Tr., p. 33-35). It has been well established that property acquired during the marriage is community property and the party asserting separate property has the burden by clear and convincing evidence that the property is, in fact, separate. *Barton v. Barton*, 132 Idaho 394, 396, 973 P.2d 746, 748 (1999). While there is no dispute the Clearwater 401K Retirement Account existed prior to marriage, Mr. Wilson did not present any evidence to its separate value besides his own testimony that he contributed \$128.00 every two (2) weeks to the account during the marriage. (Tr. p. 39-41). This testimony was vague and asked the court to speculate on the community and separate values of the account. Thus, the court did not error in characterizing and valuing the retirement account in the Property Value and Debt Distribution Summary as Mr. Wilson failed to present evidence of its separate nature.

Secondly, the Idaho Supreme Court applies the abuse of discretion to a magistrate court's division of property in a divorce proceeding. *Koontz v. Koontz*, 101 Idaho 51, 52, 607 P.2d 1325, 1326 (1980). Under the abuse of discretion standard, an appellate inquiry is multi-tiered:

- (1) whether the lower court rightly perceived the issue as one of discretion;
- (2) whether the court acted within the outer boundaries of such discretion and consistently with any rules applicable to specific choices; and
- (3) whether the court made its decision by an exercise of reason.

*Hentges v. Hentges*, 115 Idaho 192, 195, 765 P.2d 1094, 1097 (Ct. App. 1988).

Here, the magistrate court appears to have rightly perceived the issue of nature and value of the Clearwater 401K Retirement Account as a community property asset. As to the standard of review, the Idaho Supreme Court held that determination of the nature and value of property in a divorce proceeding are left to the discretion of a magistrate. See *Dunagan v. Dunagan*, 147 Idaho 599, 601, 213 P.3d 384, 386 (2009); *Worzala v. Worzala*, 128 Idaho 408, 411, 913 P.2d 1178, 1181 (1996); and *Kawamura v. Kawamura*, 159 Idaho 1, 4, 355 P. 3d 630, 633 (2015). Additionally, “a trial court's findings of fact, which are based upon substantial and competent, although conflicting, evidence will not be disturbed on appeal; which is to say the findings of fact will not be set aside unless clearly erroneous.” *DeChambeau v. Estate of Smith*, 132 Idaho 568, 571, 976 P.2d 922, 925 (1999). The magistrate court, in this case, acted within its discretion, and within reason, by holding that Mr. Wilson’s Clearwater 401K Retirement Account is a community property rather than separate property. Ms. Kinsey was the only party who provided the value of the account and Mr. Wilson only gave vague testimony was provided as to his bi-weekly contribution to the account. (Tr. p. 39-41). Thus, the magistrate court rightly valued the Clearwater 401K Retirement Account at \$47,428.62 because Mr. Wilson did not present the value of the account at the time of marriage at the court trial, which was easily obtainable by contacting the account’s plan administrator or offering an account statement produced near the time of the marriage as an exhibit.

Finally, the magistrate court did, in fact, award the Clearwater 401K Retirement Account to Mr. Wilson in an unequal division of property in his favor. In that unequal division, the court also considered the \$35,000.00 contribution Mr. Wilson made to Ms. Kinsey’s 1110 8th Avenue, Lewiston, Idaho home in that division, despite the court’s holding that \$35,000.00 was Ms. Kinsey’s separate property due to being acquired prior to marriage and given to her as a gift. (Findings of Fact and Conclusions of Law, p. 3-7). Thus, the \$47,428.62 value of the 401K Retirement Account and \$35,000.00 contribution were both included in the Property Value and Debt Distribution Summary, leaving a net asset of \$21,814.34 to Mr. Wilson and only \$12,456.94 to Ms. Kinsey. If the court had valued the 401K Retirement Account at \$4,608.00 but did not

include the \$35,000.00 contribution in the above-described Summary, Mr. Wilson would have received \$21,006.29 of debt to Ms. Kinsey's \$22,543.07 of debt. Further, the court held that the Clearwater 401K Retirement Account was a community debt, which will be paid by Mr. Wilson back to himself after the divorce, and it also awarded Mr. Wilson the Clearwater Pension Plan, without assigning it a value, or considering it in the overall division of property. (Findings of Fact and Conclusions of Law, p. 6)

Because Mr. Wilson failed to produce evidence to his separate property interest, the magistrate order ordered an unequal division of property in favor of Mr. Wilson and considered the 401K debt as a community debt, the court did not abuse its discretion in placing a value of the 401K Retirement Account.

**B. The magistrate court did not error in finding the \$35,000.00 gift from Mr. Wilson to Ms. Kinsey for the purchase of the property located 1110 8<sup>th</sup> Avenue, Lewiston, Idaho was not an asset of the party's marriage.**

In his Appellant brief, Mr. Wilson claims that the court erred in not awarding him in an equitable lien upon Ms. Kinsey's home at 1110 8th Avenue home. Mr. Wilson cites *Countrywide Loans v. Sheets and Bank of America*, 160 Idaho 268, 371 P.3d 322 (2016) as authority that he is entitled to such a lien as Ms. Kinsey received \$35,000.00 for the down payment of her home. (Brief of Appellant. p. 5). *Country Wide Loans* concerned a wrongly recorded full reconveyance of the deed of trust. *Id.* 160 Idaho 268, 371 P.3d at 324-28 (2016). That case is factually dissimilar to this case at hand where a divorce court determined that property acquired prior to a marriage was separate property.

Mr. Wilson also argues that the Idaho Supreme Court allows a magistrate court to consider language beyond the language of a deed or document. In this case, the magistrate court considered parole evidence and overruled Ms. Kinsey's objection to Mr. Wilson's testimony about the events surrounding the signing of the a quitclaim deed, admitted as Exhibit 502 a warranty deed, admitted as Exhibit 507, and a gift letter, admitted as Exhibit 506, for the \$35,000.00. (Tr. p. 20-26). It is also clear from the court's Findings of Fact and Conclusions of Law that the Court consider the testimony of Mr. Wilson who said he looked to purchase real estate, came across the 1110 8<sup>th</sup> Avenue property and sought to help Ms. Kinsey to purchase the property with money just under

\$35,000.00. (Findings of Fact and Conclusions of Law, p. 2- 3). The court further found that Mr. Wilson did not have the credit to purchase the property, so Ms. Kinsey bought the property in her name only, but used the \$35,000.00 as a down payment. (Findings of Fact and Conclusions of Law, p. 2-3).

After considering Mr. Wilson's testimony, the court found that there was no evidence to suggest that the gift letter, which was admitted as Exhibit 506, was signed under force, inducement or undue influence. (Findings of Fact and Conclusions of Law, p. 2). The court further found the language of Exhibit 506 gift letter was unambiguous. (Findings of Fact and Conclusions of Law, p. 4). More importantly, the court held the \$35,000.00 was received by Ms. Kinsey from Mr. Wilson prior to the marriage based upon Idaho Code Sections 32- 903 and 32-906, and that it did not have jurisdiction to make a characterization of the \$35,000.00 as the money and house were not an asset of a divorce. (Findings of Fact and Conclusions of Law, p. 4).

Idaho Code Section 32-903 provides,

SEPARATE PROPERTY OF HUSBAND AND WIFE. All property of either the husband or the wife owned by him or her before marriage, and that acquired afterward by either by gift, bequest, devise or descent, or that which either he or she shall acquire with the proceeds of his or her separate property, by way of moneys or other property, shall remain his or her sole and separate property.

Idaho Code Section 32-906 provides,

COMMUNITY PROPERTY — INCOME FROM SEPARATE AND COMMUNITY PROPERTY — CONVEYANCE BETWEEN SPOUSES.

(1) All other property acquired after marriage by either husband or wife is community property. The income, including the rents, issues and profits, of all property, separate or community, is community property unless the conveyance by which it is acquired provides or both spouses, by written agreement specifically so providing, declare that all or specifically designated property and the income, including the rents, issues and profits, from all or the specifically designated property shall be the separate property of one of the spouses or the income, including the rents, issues and profits, from all or specifically designated separate property be the separate property of the spouse to whom the property belongs. Such property shall be subject to the management of the spouse owning the property and shall not be liable for the debts of the other member of the community.

(2) Property conveyed by one spouse to the other shall be presumed to be the sole and separate estate of the grantee and only the grantor spouse need execute and acknowledge the deed or other instrument of conveyance notwithstanding the provisions of section 32-912, Idaho Code; provided, however, that the income, including the rents, issues and profits, from such property shall not be the separate property of the grantee spouse unless this fact is specifically stated in the instrument of conveyance.

Further, Idaho Code Section 32-712 provides,

**COMMUNITY PROPERTY AND HOMESTEAD — DISPOSITION.** In case of divorce by the decree of a court of competent jurisdiction, **the community property and the homestead** must be assigned as follows:

1. The community property must be assigned by the court in such proportions as the court, from all the facts of the case and the condition of the parties, deems just, with due consideration of the following factors:

- (a) Unless there are compelling reasons otherwise, there shall be a substantially equal division in value, considering debts, between the spouses.
- (b) Factors which may bear upon whether a division shall be equal, or the manner of division, include, but are not limited to:
  - (1) Duration of the marriage;
  - (2) Any antenuptial agreement of the parties; provided, however, that the court shall have no authority to amend or rescind any such agreement;
  - (3) The age, health, occupation, amount and source of income, vocational skills, employability, and liabilities of each spouse;
  - (4) The needs of each spouse;
  - (5) Whether the apportionment is in lieu of or in addition to maintenance;
  - (6) The present and potential earning capability of each party; and
  - (7) Retirement benefits, including, but not limited to, social security, civil service, military and railroad retirement benefits. **Emphasis Added.**

Because the magistrate court characterized the \$35,000.00 as separate property, an abuse of discretion standard is also applied. See *Dunagan*, 147 Idaho at 601, 213 P.3d at 386 (2009); *Worzala*, 128 Idaho at 411, 913 P.2d at 1181, *Kawamura*, 159 Idaho at 4, 355 P. 3d at 633. Viewed on that standard, the court did not error in holding that the property was separate property and, thus, outside the jurisdiction of a divorce court, as Idaho Code Sections 32- 903, 32-906 and 32-712 clearly indicate that separate property belongs to the party who acquired it prior to marriage absent proof of transmutation. Further, the Idaho Supreme Court and Idaho Court of Appeals have both clearly held that a divorce court’s jurisdiction does not extend to separate property and a court neither award the separate property of one spouse to another spouse nor compel one spouse to sell his or her separate property to the other spouse as part of a decree of divorce . *Schneider v. Schneider*, 151 Idaho 415, 426, 258 P. 3d 350, 361 (2011), *Pringle v. Pringle*, 109 Idaho 1026, 1028-29, 712 P.2d 727, 729-30 (Ct. App. 1985). Here, Ms. Kinsey acquired the home and property at 1100 8<sup>th</sup> Avenue on January 2, 2014, prior to the parties’ marriage on June 8, 2014, and Mr. Wilson signed two (2) deeds affirming Ms. Kinsey’s sole interest in the property (Tr. p. 7, 14, 27-30, 48-47). Additionally, here was no evidence offered at trial to show transmutation of the



home. The home has always been her separate property and she cannot be forced under Idaho law to give Mr. Wilson an interest in the home, even some kind of equitable lien.

Finally, the magistrate court held that it did not have jurisdiction because the amount in controversy was also over \$10,000.00. Rule 5(C)(1) of Idaho Court Administrative Rules states, “Additional cases may be assigned to magistrates pursuant to Idaho Code Section 1-2210 when approved by the administrative district judge of a judicial district. The additional cases assigned to magistrates may include: 1. Civil actions regardless of the nature of the action, where the amount of damages or value of the property claimed does not exceed \$10,000.” I.C.A.R. 5(C)(1). Mr. Wilson sought a \$35,000.00 equitable lien for transaction that occurred prior to marriage. This equitable lien well exceeds \$10,000.00 and therefore belongs in district court.

Therefore, the magistrates’ decision is within the boundaries of the Idaho Code, Idaho Supreme Court Case law, and the Idaho Court Administrative Rules as the \$35,000.00 and property at 1110 8<sup>th</sup> Avenue are outside its jurisdiction.

**C. Ms. Kinsey is entitled to attorney fees and costs for defending this appeal.**

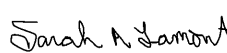
Ms. Kinsey is entitled to attorney's fees and costs under Idaho Code Sections 12-107, 12-120 and 12-121, and I.A.R. 35(b)(5), and I.A.R. 41. If Ms. Kinsey prevails in this appeal, this Court should award her, her attorney's fees and costs, because Mr. Wilson failed to meet the appropriate legal standard in this case.

IV.

CONCLUSION

For the reasons set forth above, Ms. Kinsey respectfully requests that Mr. Wilson’s appeal be denied, and she be awarded attorney fees.

DATED this 15th day of October 2019.

 Digitally signed by Sarah A.  
McDowell-Lamont  
Date: 2019.10.15 14:43:41 -07'00'

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Sarah A. McDowell-Lamont  
Attorney for Respondent

# CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of October 2019, I caused to be served a copy/ copies of the foregoing by the method indicated below and addressed to the following:

Robert Van Idour  
Attorney at Law  
P.O. Box 1814  
Lewiston, Idaho 83501

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☒ E-File
- ☐ E-Mail@lawerbobv@gmail.com

 Digitally signed by Sarah A.  
McDowell-Lamont  
Date: 2019.10.15 14:43:54 -07'00'

Sarah A. McDowell-Lamont  
Attorney for Respondent