

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,

Respondent.

APPELLANT'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

Sara M. McDowell-Lamont, Attorney for Respondent

Residing at Lewiston, Idaho

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GARY A. WILSON, by and through his undersigned attorney of record, submits his appellate brief as follows:

STATEMENT OF THE CASE

Gary Wilson filed for divorce against his former spouse, Jennifer Kinsey, on March 3, 2017 in Nez Perce County, Idaho. Both parties were Idaho residents and lived in Nez Perce County at that time. The Respondent, Jennifer Kinsey, filed a Response and Counterclaim on March 15, 2017. Their case was assigned to Magistrate Kent J. Merica. The parties engaged in discovery and pre-trial hearings ultimately settling on a trial date of October 17, 2017. The trial in their case was held on October 17, 2017. After receiving evidence and testimony Magistrate Merica took the case under advisement and issued his Findings of Fact and Conclusions of Law in open court on November 30, 2017. Written Findings of Fact and Conclusions of Law memorializing the oral Findings and Conclusions were filed on March 6, 2018. A Decree of Divorce was filed. On April 17, 2018 a Notice of Appeal was filed by the Petitioner. The case was assigned to District Judge Jeff M. Brudie. A transcript of the trial was prepared and filed. A Scheduling Order was entered on September 17, 2018. Oral argument was heard on December 13, 2018 before District Judge Brudie. On December 13, 2018 Judge Brudie took the case under advisement. A written decision denying Petitioner-Appellant's appeal was issued. Notice of Appeal was timely filed from that decision.

FACTS OF CASE

The parties were married on June 8, 2014. (Tr. p.5) No children were born of the marriage. (Tr. p. 6) The Petitioner had accrued retirement benefits prior to the parties' marriage and was fully vested in the pension program prior to the parties' marriage. (Tr. p.16) The Respondent incurred student loans during the marriage in her successful pursuit of a master's degree in social work. (Tr. pp. 58-59)The Petitioner was employed by the Clearwater Paper Corporation before his marriage

to Respondent and remains employed there. (Tr. p. 14) The Respondent began working for the State of Idaho Department of Health and Welfare as a social worker and continues her employment there. At the time of the divorce she was not vested in PERSI, based on her lack of five (5) years employment with DHW.

A core asset in this case is the home purchased in January of 2014, prior to the parties' marriage and occupied by the parties until their separation. (Tr. p. 7) The Respondent remained in the home after the parties separated. Its purchase was accomplished in a somewhat odd and circular manner.

The Petitioner had difficult credit issues prior to the marriage. (Tr. p. 10) Although they were partially addressed they remained a fiscal impediment during the marriage. (Tr. p. 20) The Petitioner had a civil judgment against him, for which his wages were being garnished. (Tr. p. 63)

Into this mix was injected a decision to try and purchase what is now the Respondent's home. As noted above, the Petitioner had credit issues at the time the home was purchased. The Petitioner made it clear to the mortgage company that this was in all reality, a joint purchase. (Tr. p.20) The Petitioner contributed roughly \$35,000.00 from his separate funds as a down payment on the home purchase. (Tr. p. 20) The Respondent and the mortgage company proffered a "gift letter" for the Petitioner's signature essentially giving all of any interest Petitioner might have in the home at the time of purchase to Respondent, citing the credit issues as a basis for the demand. (Tr. p.20) Petitioner also signed a quitclaim deed in favor of Respondent. (Tr. p. 27) Petitioner testified that it was never his intention to make a gift of the \$35,000.00 down payment to Respondent. (Tr. pp.20, 25) After living together in the home both before marriage and after, the parties ultimately separated. The issues of debt division and property allocation were addressed in the lower Court's Findings of Fact and Conclusions of Law, as reflected in the March 6th filing with the Court.

ISSUES PRESENTED

1. Did the lower court commit error by not awarding Petitioner an equitable lien on the real property owned by the Respondent and purchased with separate funds of the Petitioner?
2. Did the lower court commit error in classifying the entirety of the \$47,428.62 value of Petitioner's 401K account as having accrued after Petitioner's marriage to Respondent?

ARGUMENT

As noted above Appellant is seeking an equitable lien on the real property awarded to Respondent in the lower court. The key basis for this is the \$35,000.00 down payment contributed to the home purchase by Petitioner. However in order to fully evaluate this issue the Court must examine the primary financial factors in this case. This will enable the Court to consider the ultimate effect of the lower Court's decision in allocating both property and debt.

Petitioner was awarded his Clearwater 401K account, citing a value of \$47,428.62. The specific language used was "Petitioner's Clearwater 401K Retirement (since marriage). The Court's distribution classifies the post-marriage contributions as community property. However, the value awarded in the Property Value and Debt Distribution Summary (herein Property Summary) does not specify how much that contribution was, so there is no way to determine from the Property Summary what value was allocated as community property. This makes it untenable to analyze the equity of the distribution. Petitioner's contributions to the 401K account were \$128.00 every two weeks. (Tr. pp. 39-40) This continued after the marriage date of June 8, 2014. (Tr. p.40) Per Conclusion of Law 11 the divorce was granted as of November 30, 2017. This caps the community contribution to the

401K at \$4,608.00 [\$128.00 X 36 = \$4,608] The import of this calculation is that the lower Court classified all of the 401K amount as essentially a post-marital contribution, thereby overstating the community value that was ultimately divided. This was a post-marital or community contribution of roughly only 10% of the value of the account. This resulted in a disproportionate award of property in a non-fault based divorce. Whatever the parties' differences Idaho law heavily favors equal division of assets. Idaho Code §32-712(1)(a); *Josephson v. Josephson*, 115 Idaho 1142, 772 P.2d 1276 (1989)

The reality is that the issue of the effect of the Appellant's \$35,000 contribution to the post marital home is the main turning point in this case. This was a de facto joint purchase by the parties. The Appellant testified to this effect. He lived there with Respondent and her children during the time they were a married couple, and before. This was not just a kind hearted purchase of an incidental asset. The testimony of the Appellant is clear. Both the evidence presented by the Appellant is clear that he intended this as a contribution to a marital residence, not a freewheeling unconditional gift. The testimony makes this clear when we examine it closely.

The parties both spoke dealt with the realtor. (Tr. p.17) The house was jointly selected by the parties. (Tr.p.17-18) The parties jointly made repairs to the home. (Tr. pp. 18-19) Again, as noted above the parties lived together in the home before and after marriage and prior to separation. The question comes down to what is the equitable thing to do with the \$35,000.00 down payment that Petitioner made?

We begin with the standards of divorce courts. Divorce courts are traditionally regarded as courts of equity. "...equity will consider the conduct of the adversary, the requirements of public policy, and the relation of the misconduct to the subject matter of the suit and to defendant." *Howay v. Howay*, 74 Idaho 492,

497, 264 P.2d 691 (1953) (citing 30 C.J.S. Equity §98) It is this philosophy of the role of a court of equity that allows a court to look deeper into a transaction than is traditionally allowed, even to explore beyond the four corners rule regarding documentation. This is what occurred in *Barrett v. Barrett*, 149 Idaho 21,24, 232 P.2d 800 (Idaho 2010) In that case a dispute arose as to the nature of real property. The Idaho Supreme Court held that in a disputed case evidence of intent of the parties was not constrained to language of a deed, but could be determined by also examining parol evidence of intent and that the language of a deed was not in and of itself dispositive of intent in a divorce case. *Barrett* at 149 Idaho 24 This follows closely on the reasoning of the appellate court in *Winn v. Winn*, 105 Idaho 811, 673 P.2d 411 (1983) in which the Idaho Supreme Court examined multiple factors and did not limit itself to the language of the deed.

All of the foregoing brings the analysis to the key question in this case, which is what is to be done to recognize the equity of providing Appellant with equitable compensation for his separate property contribution to the real estate now classified as separate property? The answer is to impose an equitable lien on the home for all or part of the \$35,000.00 down payment.

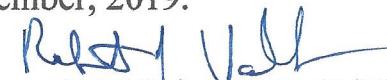
An equitable lien is a court ordered tool for enforcing the doctrine of unjust enrichment. That doctrine was recently stated in *Countrywide Loans v. Sheets and Bank of America*, 160 Idaho 268, 371 P.2d 322 (Idaho 2016) as “unjust enrichment occurs when a defendant receives a benefit which would be inequitable to retain without compensating the plaintiff to the extent that retention is unjust.” In this case an equitable lien is the only realistic remedy for Petitioner to receive any compensation for his \$35,000.00 expenditure.

CONCLUSION

Appellant’s \$35,000.00 contribution to the purchase of what he viewed as the family home was never intended as an unconditional gift. He made the

payment as part of what was supposed to be a mutually beneficial way to obtain a family residence for both himself and the Respondent. It is manifestly unfair to allow the Respondent to keep all of the benefits of Appellant's separate funds payment. Appellant asks that this Court grant an equitable lien on the Respondent's real property to enforce his claim of unjust enrichment.

Respectfully submitted this 11th day of September, 2019.



Robert J. Van Idour
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on September 15th, 2019 a true copy of this document was served on the following counsel in the manner noted below:

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