IN THE SUPREME COURT OF GUAM

JUNKO NAVARRO,
Plaintiff-Appellee,

vs.

RUBEN Y. NAVARRO,
Defendant-Appellant.

OPINION

Filed: December 22, 2000

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Supreme Court Case No.: CVA99-028
Superior Court Case No.: DM0089-98

Appeal from the Superior Court of Guam
Argued and submitted on October 26, 2000
Hagåtña, Guam

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BEFORE: BENJAMIN J.F. CRUZ, Chief Justice; PETER C. SIGUENZA, JR., Associate Justice; and JOHN A. MANGLONA, Designated Justice.

CRUZ, C.J.:

[1] Defendant-Appellant, Ruben Y. Navarro, appeals from the trial court's judgment with regard to the division of community property and debt in this divorce action. He alleges that the trial court improperly ascertained the value of community property and debt and did not make an equal division as required in a divorce granted for irreconcilable differences. We find that the trial court improperly assigned community tax liability to Defendant without adequate evidence of its value. We reverse this matter solely for reconsideration of community tax liability and the unresolved and undivided foreign and corporate community property assets. We affirm the trial court's division of all other community property and debt.

I.

[2] On January 23, 1998, Plaintiff-Appellee, Junko Navarro ("Junko"), filed a Petition for Protection from Abuse and Complaint for Divorce. In the Complaint, Junko sought dissolution of her marriage from Defendant-Appellant, Ruben Y. Navarro ("Ruben") and division of the community property. On April 1, 1998, Ruben filed an Answer to Complaint and Counterclaim for Divorce which sought the same remedies.

[3] Trial was held on April 13, 14, 15,16, and 22, 1999 and on June 1, 1999. Ruben had been represented by counsel up until April 22, 1999 when, at trial, he dismissed his attorney. The court continued the trial until June 1, 1999 in order for Ruben to find new counsel. On that date, Ruben failed to appear and the court rendered judgment granting divorce on the ground of irreconcilable differences and

dividing the community property and debt. On June 14, 1999, the trial court filed both an Interlocutory Judgment of Divorce and a Final Judgment of Divorce *nunc pro tunc* to June 1, 1999. The trial court reserved judgment on the division of unproven corporate community property assets in Guam and found that it lacked jurisdiction over unproven community property in New Zealand.

[4] On appeal, Ruben contends that the trial court erred in distributing the community property and debt without adequate evidence of the tax debt and in not considering in its division, money allegedly taken by Junko from the sale of New Zealand properties for her use only. Ruben also contends that the trial court erred in its valuation of the certain community property, namely the seventeen investment diamonds purchased during the marriage.

II.

[5] This court has jurisdiction over this appeal from a final judgment. Title 7 GCA § 3107, (1994).

[6] The trial court's division of community property is reviewed for abuse of discretion. *Rinehart v. Rinehart*, 2000 Guam14, ¶ 7 (reviewing the trial court's decision to compel husband to reimburse the community for payment of his student loan obtained prior to the marriage for an abuse of discretion); *In re Marriage of Quay*, 18 Cal.App.4th 961, 966, 22 Cal.Rptr.2d 537, 540 (Cal. Ct. App. 1993). Abuse of discretion occurs when a trial court's decision is based on an erroneous conclusion of law or where the record contains no evidence upon which a court could have rationally based its decision." *Lujan v. Lujan*, 2000 Guam 21, ¶ 8; *Midsea Industrial, Inc. v. HK Engineering, LTD.*, 1998 Guam 14, ¶ 4 (citation omitted).

III.

[7] Pursuant to Guam's divorce laws, community property in a divorce granted for irreconcilable differences must be divided equally. Specifically, the law provides:

> Disposition of Community Property.
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> In case of the dissolution of marriage by the decree of a court of competent jurisdiction, the community property, and the homestead, shall be assigned as follows:
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> (a) If the decree be rendered on the ground of adultery or extreme cruelty, the community property shall be assigned to respective parties in such proportions as the court, from all the facts in the case, and the condition of the parties, may deem just.
>
> (b) **If the decree be rendered on any other ground than that of adultery or extreme cruelty, the community property shall be equally divided between the parties**.
> . . . .

Title 19 GCA § 8411, (1994) (emphasis added). Thus, because the divorce in the instance case was not granted on the ground of extreme cruelty, the trial court was required to make an equal division of the community property.

[8] In a divorce action, a trial court has broad discretion to divide community assets in any fashion which complies with the provisions of the applicable statute. *See In re Marriage of Bergman*, 168 Cal.App.3d 742, 749, 214 Cal.Rptr. 661 (Cal. Ct. App. 1985) (citations omitted). On appeal, the division of community property should not be disturbed unless there is an "obvious unfairness" in the trial court's division. *Muther v. Muther*, 212 Cal. App.2d 778, 783, 28 Cal.Rptr. 200, 203 (Cal. Dist. Ct. App. 1963).

[9] At the heart of Ruben's appeal is the allegation that the trial court did not properly ascertain the value of the community property and debt. However, it is not the burden of the trial court to prove valuation. This burden lies with the party who seeks the division of community property. *Baker v. Baker*, 98 Cal.App.2d 424, 425, 220 P.2d 576, 577 (Cal. Dist. Ct. App. 1950). In this case, both Ruben and Junko filed claims for divorce and in each claim they asked the court to divide the community property. Therefore, each had the burden of proving the value of the community property and debt.

[10] The record before this court shows that trial in this matter extended over a period of six days. Careful review of the transcripts shows that much of the testimony offered by each party concerned the community property. However, it is clear from the record that for some of the community property items, only one party offered any estimation of valuation and for other items neither party gave any estimate. In *Zar v. Zar*, 154 Cal.App.2d 681, 316 P.2d 685 (Cal. Dist. Ct. App. 1957), a wife was dissatisfied with the trial court's division of community property in her divorce action. She alleged on appeal that there was no evidence of value of the property and thus no adequate basis for distribution by the court. *Id.* 154 Cal.App.2d at 683, 316 P.2d at 686. The appellate court denied her request to modify the division of property because she failed to introduce evidence of value and failed to object to the decision without reported evidence of value. *Id.* 154 Cal.App.2d at 684, 316 P.2d at 687. The court determined that the wife had affirmatively agreed that the matter be decided upon the record as presented at trial, that is without evidence of value of the community property at issue. *Id.*154 Cal.App.2d at 684-685, 316 P.2d at 687.

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The court opined:

> [O]ne may not raise a question on appeal where he has assented to or recognized the validity of the matter or proceeding in the court below, unless fundamental error is involved. . . . An appellant cannot assert as error a procedure to which he assented at trial. . . . It is apparent that the error here alleged could have been readily and promptly cured at the trial if any objection had there been raised. Fairness to trial court and counsel, respect for the need for finality, and distaste for procedures which would enable a party to accept desired results while avoiding adverse decisions, all suggest that appellant should have made her position known to the trial court.

Id. (citations omitted). Likewise, Ruben bore the burden of establishing the value of community property at trial. Where he failed to provide or contest valuation, the trial court was well within its discretion to accept the values provided by Junko.

[11] However, with regard to the tax liability, both parties indicated in their claims for divorce that the government placed liens on their assets. From the transcripts, it is evident that the liens were placed because of taxes owed. Transcript, Vol. III, p. 49 (Jury Trial, Apr. 15, 1999). Junko testified that she sent $3000 per month to Ruben's then attorney towards the satisfaction of the tax debt. *Id.* at 50. However, no other substantive testimony on the tax liability was offered by either party. Thus, the trial court had no evidence of the actual value of the tax liability as indicated in its Interlocutory Judgment of Divorce which assigned all "income tax liability of either party, **if any**," to Ruben. *Navarro v. Navarro*, DM0089-98 (Super. Ct. Guam, June 14, 1999) (emphasis added). With no evidence whatsoever of the value of the tax liability, there was no rational basis for the trial court's decision. *See Lujan*, 2000 Guam 21 at ¶ 8; *Midsea*, 1998 Guam 14 at ¶ 4. We hold, therefore, that the trial court abused its discretion when it assigned the tax liability to Ruben.

[12] As for the value of the investment diamonds, Ruben argues that the trial court erred in using the insurance appraisals of the diamonds to value the diamonds. in the property division. He points out that during the trial the court said it would take the middle ground of the values submitted by both parties. Transcript, Vol. VI, p. 30 (Jury Trial, June 1, 1999). Ruben asserts that the middle ground should be between the purchase value of the diamonds ($250,000) and the insurance replacement value of the diamonds ($367,549).

[13] However, the mere fact that the trial court said it would take the middle value in its oral pronouncement yet used the appraised value is not dispositive. The evidence offered by Ruben on the value of the diamonds consisted of his testimony that he paid between $200,000 to $250,000 for the diamonds. He offered no documentation to corroborate his testimony. Conversely, Junko's evidence consisting of the actual insurance appraisal documents setting the replacement value of the diamonds at $367,549. To contest the appraisal values, Ruben testified that the actual market value of the diamonds was between ten and twenty-five percent of the replacement value. However, aside from his verbal testimony, Ruben failed to substantiate this statement. Ruben argues that if the court used the middle ground value of the diamonds, his total value of community property would be significantly less than the value of community property received by Junko. However, the trial court applied the appraised value of the diamonds which, Ruben admits, resulted in his receipt of considerably more community property value than that received by Junko. Thus, we cannot say that the trial court erred in using the appraisals instead of the middle value. The appraisals offered a rational basis for the trial court's decision and we hold that there was no abuse in discretion. *See Lujan*, 2000 Guam 21 at ¶ 8; *Midsea*, 1998 Guam 14 at ¶ 4.

[14] Ruben contends that Junko received substantial amounts of money from the sale of the New Zealand properties and that the evidence at trial showed that she had bank accounts with significant balances. He argues that the trial court did not consider these assets in its division of community property.

[15] The record shows that both parties offered testimony on the sales of real and personal property and the transfer of funds from those sales into Junko's accounts. There was also testimony that Junko spent substantial sums of money on the family's living expenses and Ruben's legal fees from cases unrelated to the instant case. Transcript, Vol. III, p.64 (Jury Trial, Apr. 15, 1999). Junko also testified that large amounts of money were spent on Ruben's admitted drug habit. *Id.* pp. 65 and 69. This evidence was before the court when it divided the community property. Given that both parties provided testimony on this issue and the broad discretion trial courts possess in the division of community assets, we cannot say that the court had no rational basis upon which to make its decision. *See Lujan*, 2000 Guam 21 at ¶ 8; *Midsea*, 1998 Guam 14 at ¶ 4.

[16] Moreover, this court recently held that absent proof of the enhancement of a spouse's separate property, there should be no reimbursement to the community. *Rinehart*, 2000 Guam 14, at ¶¶ 19-20. In the present case, there is no evidence in the record that Junko used these funds to enhance identifiable separate property. Thus, there was no abuse of discretion by the trial court in not requiring Junko to reimburse the community or in not accounting for these funds in the division of the community property.

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IV.

[17] The assignment of community tax debt to one party without any evidence of value was an abuse of discretion. This case is **REMANDED** solely for reconsideration of the community tax liability and for proper assignment thereof. The trial court's division of all other community property and debts is **AFFIRMED**. We note with dismay that the trial court left unresolved corporate assets and foreign real property assets that the parties failed to prove were community property and for which the parties failed to provide any valuation. Upon remand, the trial court should resolve these issues.

PETER C. SIGUENZA, JR.
Associate Justice

JOHN A. MANGLONA
Designated Justice

BENJAMIN J. F. CRUZ
Chief Justice