IN THE SUPREME COURT OF GUAM

VINCENT E. DAVIS,
Plaintiff-Appellant,

v.

LOLITA S. DAVIS,
Defendant-Appellee.

Supreme Court Case No.: CVA13-011
Superior Court Case No.: DM0143-09

OPINION

Cite as: 2014 Guam 4

Appeal from the Superior Court of Guam
Argued and submitted on October 23, 2013
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; ROBERT J. TORRES, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.[1]

CARBULLIDO, C.J.:

[1] Plaintiff-Appellant Vincent E. Davis ("Vincent") appeals from an Interlocutory Judgment of Divorce and a Final Decree of Divorce dissolving the marriage between Vincent and Lolita S. Davis ("Lolita"). Vincent argues that the trial court committed reversible error in denying him reimbursement for the payments he made on community debts after the parties' separation. He also assigns error to the trial court's finding that Lolita is entitled to reimbursement for her share of Vincent's military pension since the parties' separation. Finally, he argues that the trial court erred in not making an equitable distribution of the parties' Individual Retirement Accounts ("IRA").

[2] For the reasons set forth below, we affirm in part, reverse in part, and remand for further proceedings.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] Vincent and Lolita were married in Valparaiso, Florida on October 10, 1990. They separated after almost eighteen years of marriage. A year after separation, Vincent filed a Complaint for Divorce in the Superior Court of Guam, citing irreconcilable differences and grievous mental suffering. In his Complaint, Vincent asserted that he "has paid most of the community debts since separation, but has not made any gift to the community. He deserves to receive 'Epstein credits' for all debts paid by him."[2] Record on Appeal ("RA"), tab 3 at 4

[1] The signatures in this opinion reflect the titles of the Justices at the time this matter was considered and determined.

[2] "Epstein credits" refers to the rule espoused in *In re Marriage of Epstein*, 592 P.2d 1165 (Cal. 1979), and adopted by this court in *Babauta v. Babauta*, 2011 Guam 15, that generally, "a spouse who, after separation of the

(Compl. for Divorce, Mar. 9, 2009). Lolita filed an Answer and Counterclaim, wherein she, too, sought a divorce on the grounds of irreconcilable differences and extreme cruelty.

[4] After a bench trial, the trial court issued its Findings of Fact and Conclusions of Law, granting the parties a divorce on the grounds of irreconcilable differences. The trial court found that the parties' community debts consisted of:

1. Mortgage at First Hawaiian Bank [for Barrigada residence]: at date of separation, the mortgage principal balance was $175,000 and $166,834.63 at the time of trial. Equity in the property at trial was approximately $78,000.00.
2. Mortgage at USAA Federal Savings Bank [for Jasper, Indiana residence]: at date of separation, the mortgage principal balance was $101,330.00 and $96,313.94 at time of trial. Equity in the property at trial was approximately $43,687.00.
3. U.S.A.A. Bank Mastercard: $1,800.00.
4. Eglin Federal Credit Union loan [for Ford Focus]: $3,353.00 at the time of trial.
5. Total community debt at time of trial: $268,301.57.

RA, tab 184 at 2-3 (Finds. Fact & Concl. L., Oct. 11, 2012). The trial court found that the parties owned the following community property[3]:

6. Hawthorne Pacific 401K Account: $3,300.
7. Eglin Federal Credit Union Regular Share Account under [Vincent]'s name: $43.86.
8. Eglin Federal Credit Union Money Market Account: $15,000.00.
9. Eglin Federal Credit Union Checking Account under [Vincent]'s name: $7,317.41.

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parties, uses his or her separate funds to pay preexisting community obligations should be reimbursed upon divorce." *Babauta*, 2011 Guam 15 ¶ 32.

[3] The trial court did not indicate in its Findings of Fact and Conclusions of Law whether its list of community property represents the value of the community assets at the time of separation or at the time of trial. However, from a review of the evidence presented at trial as well as counsels' representations at oral argument, it is apparent these values represent the state of the parties' assets at or around the time of separation, with the exception of item 8, the parties' Eglin Federal Credit Union Money Market Account. The trial court found that at the time of separation, the account held approximately $80,000.00. However, the court determined that approximately $65,000.00 of that amount was attributable to the sale of Vincent's separate property acquired prior to the marriage. Thus, at the time of separation, the community share of this account was $15,000.00.

10. Eglin Federal Credit Union Regular Share Account under [Lolita]'s name: $43.86.
11. Eglin Federal Credit Union Checking Account under [Lolita]'s name: $112.01.
12. Pentagon Federal Credit Union Account: $29,600.00.
13. Springs Valley Bank Account: $2,000.
14. T. Rowe Price I.R.A. under [Vincent]'s name: $28,000.
15. T. Rowe Price I.R.A. under [Lolita]'s name: $31,381.78.
16. Scudder I.R.A. under [Vincent]'s name: $19,000.
17. United States Savings Bonds: $17,000 face value.
18. Army and Air Force Exchange Service Retirement Savings Account under [Lolita]'s name: $7,562.65.
19. First Hawaiian Bank Checking Account: $2,000.
20. D.W.S. Investments: $12,000.
21. Vehicles:
    a. Ford F150: $5,000.
    b. Ford Focus: $6,000.
22. Military Pension: $2,305.10 per month.[4]
23. Total value of the community assets: $185,361.57, exclusive of monthly military pension distributions.

Id. at 3-4.

[5] The trial court found that the parties' separate property consisted of their respective interests in: the Jasper, Indiana residence, which the trial court determined was held by the parties in a manner akin to a joint tenancy and had an estimated value of $140,000.00 at the time of trial, a vacant lot in Jasper, which, too, was found to be held in a manner akin to a joint tenancy and had an estimated value of $29,300.00 at the time of trial, and the Barrigada residence, which was held by the parties as joint tenants and had an estimated value of

[4] The trial court found that Vincent received $3,115.00 per month in military pension, with the community share being 74% of this amount, i.e., $2,305.10 per month.

$245,000.00 at the time of trial. The trial court also found that Vincent had a 26% separate property interest in his monthly military pension, amounting to $809.90 per month.

[6] The trial court denied Vincent's request for reimbursement for mortgage payments and improvements he made toward the parties' Jasper and Barrigada homes during the parties' separation. While recognizing this court's holding in *Babauta v. Babauta*, 2011 Guam 15 ("*Babauta I*"), that generally, a spouse who uses his or her separate funds to pay preexisting community obligations after separation should be reimbursed upon divorce, the trial court determined that there was no evidence to support a finding that Vincent had in fact used his separate funds for these purposes. Citing to the presumption that family expenses are paid from community rather than separate funds, the trial court found that Vincent had failed to rebut the presumption and that at all times, community funds were sufficient to pay for the mortgages on and improvements to the homes.

[7] The trial court also found that Lolita was entitled to a 37% share of Vincent's monthly military pension payments as her half of the community portion of those payments. The court ordered Vincent to reimburse Lolita for her share of the payments received by Vincent since the parties' separation.

[8] The trial court then proceeded to divide the parties' community property and community debts. Finding that the community debts exceeded the community property, the court ordered the sale of the parties' vacant lot in Jasper and the application of the proceeds toward the community debts. In the event the proceeds from the sale are insufficient to satisfy the community debts, the trial court ordered that both the Jasper residence and the Barrigada residence be sold. Should the proceeds from these sales prove insufficient to satisfy the community debts, the court further ordered that the remainder of the community property be sold

or expended for these purposes, in the following order: Ford F-150; Ford Focus; household items; savings accounts; and retirement accounts.

[9] Contingent upon the satisfaction of the community debts, the trial court awarded Lolita her T. Rowe Price IRA, valued at $31,381.78, and Vincent his T. Rowe Price IRA, valued at $28,000.00. Vincent was also awarded "his Scudder I.R.A., the value of which will be divided in half and offset by an equivalent value to be distributed to [Lolita] from remaining community funds." The Scudder IRA was valued at $19,000.00.

[10] The trial court issued an Interlocutory Judgment of Divorce on March 13, 2013, incorporating the October 11, 2012 Findings of Fact and Conclusions of Law. The court issued a Final Decree of Divorce the same day. Both the interlocutory judgment and the final decree were entered on the docket the following day. Vincent timely filed his Notice of Appeal.

II. JURISDICTION

[11] This court has jurisdiction over an appeal from a final decree of divorce pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw current through Pub. L. 113-74 (2014)) and 7 GCA §§ 3107 and 3108(a) (2005).

III. STANDARD OF REVIEW

[12] "The trial court's findings of fact after a bench trial are reviewed for clear error while its conclusions of law are reviewed *de novo*." *Babauta I*, 2011 Guam 15 ¶ 19 (citing *Mendiola v. Bell*, 2009 Guam 15 ¶ 11). A finding of fact is clearly erroneous "where it is not supported by substantial evidence, and this court is left with a definite and firm conviction that a mistake has been made." *Babauta v. Babauta*, 2013 Guam 17 ¶ 17 ("*Babauta II*") (citing *In re Guardianships of Moylan*, 2011 Guam 16 ¶ 12).

IV. ANALYSIS

A. Whether the Trial Court Erred in Denying Vincent Reimbursement for His Post-Separation Payments on Community Debts.

[13] Vincent argues that the trial court committed reversible error in denying him reimbursement for the payments he made on community debts after the parties' separation. Appellant's Br. at 1 (July 1, 2013). Vincent contends that after the parties' separation, the only income generated by the community was the $2,305.10 community portion of his monthly military pension. *Id.* at 5. Vincent cites to his trial testimony that after the parties' separation, he made monthly payments of $3,181.00 toward the community debts, including the mortgages on the Jasper and Barrigada properties and the loans on the parties' three vehicles. *Id.* at 3 (citing Transcripts ("Tr.") at 76-80 (Bench Trial, Jan. 30, 2012)). Vincent contends that the remaining monthly balance of $876.00 of community debt after application of the community share of his pension was paid out of his separate funds, and, thus, under *Babauta I*, he is entitled to reimbursement for these expenditures. *Id.* at 5-7.

[14] The trial court acknowledged our holding in *Babauta I* that generally, a spouse who, after separation of the parties, uses his or her separate funds to pay preexisting community obligations is entitled to reimbursement upon divorce.[5] RA, tab 184 at 7 (Finds. Fact & Concl. L.) (citing *Babauta I*, 2011 Guam 15 ¶ 32). However, the court found:

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[5] In *Babauta I*, we noted some exceptions to this general rule, recognizing that in some situations, reimbursement for post-separation payments toward community debt out of separate funds may be inappropriate, such as:

> where there was an agreement between the parties that the payment would not be reimbursed; where the paying spouse truly intended the payment to constitute a gift; where the payment was made on account of a debt for an asset which the paying spouse was using and the amount paid was not substantially in excess of the value of the use; or where the payment constituted in reality a discharge of the paying spouse's duty to support the other spouse or a dependent child of the parties.

> [T]here is no evidence presented which would lead the Court to find that [Vincent]'s separate funds were, in fact, expended for these purposes. [Vincent] was the spouse primarily responsible for the management and control of the community finances and assets in addition to his own separate funds. "It is presumed the expenses of the family are paid from community funds rather than separate funds. In the absence of contrary evidence, the community earnings are chargeable with these expenses." At all times, community funds were sufficient to pay for the improvements and mortgage payments. No evidence was given which would show community funds were exhausted when the payments were made. [Vincent] did not rebut the presumption and so the community is charged with these expenses. Therefore, the Court finds that [Vincent] is not entitled to reimbursement.

Id. (quoting *In re Marriage of Frick*, 226 Cal. Rptr. 776, 778 n.11 (Ct. App. 1986)).[6]

[15] Lolita argues that the trial court's ruling should be upheld because there was no evidence that Vincent expended his separate funds to make these post-separation payments on the community debts. Appellee's Br. at 5, 7 (July 30, 2013). Lolita contends that the trial court correctly applied the "family expense presumption," and that Vincent failed to rebut this presumption by producing evidence that all of the community funds—$174,361.57 in 15 different accounts—had been exhausted. *Id.* at 6-7. Finally, Lolita argues that at trial, Vincent never claimed that the post-separation payments were made from his separate funds, his testimony on the issue being merely that he, rather than Lolita, made the payments. *Id.* at 7.

[16] Lolita's contention that Vincent never claimed that he expended his separate funds to make the post-separation community debt payments is not accurate. On the second day of trial, Vincent expressly testified on cross-examination that he had to resort to his separate funds in order to make these post-separation payments. The following exchange took place between Vincent and Lolita's counsel:

2011 Guam 15 ¶ 33 (citing *In re Marriage of Epstein*, 592 P.2d 1165, 1170 (Cal. 1979), *superseded by statute*, Cal. Civ. Code § 4800.2 (now Cal. Fam. Code § 2640 (West 2004))). In the instant case, Lolita does not allege—and the trial court did not find—that any of the exceptions apply.

[6] See *Beam v. Bank of America*, 490 P.2d 257, 263 (Cal. 1971), for a list of the long line of California decisions invoking the "family expense presumption."

Q . . . . Okay. So we agree that at the time of separation, you had about $80,000 in the Elgin [sic] Federal Credit account, right?

A Yes.

Q Okay. Now arguably you used 40, $50,000 for the down payment on a house, and that's correct, too?

A Yes.

Q Okay. So that leaves $30,000 left, and your position is you shouldn't have to share any of that with Lolita; is that correct?

A No. My position is that that was community property, *but that's all been expended already. That was used to pay community debt.*

Q So, okay. I just want to make sure I understand that. So when you paid off all of this community debt --

A Uh-huh?

Q -- you were using community property?

A Until it was expired, *and then I began using my own pay.*

Q So the answer to my question is, you don't think the court should order you to give any portion of that money that was in the Elgin [sic] Federal Credit Union, on the date of -- on the date of your separation?

A *Not based on the evidence that I've presented, that I've made payments on community debt above and beyond what was available as community property at the time of separation.*

Q Okay. And so the answer is no. And the $27,000 that was in the Pentagon Federal Credit Union account on the date of separation, you don't think she's entitled to any of that?

A No, sir.

. . . .

Q Okay. . . . About $47,000 in [your two IRAs]. You're asking the court to also give you all of that?

A Well, what I'm asking for is that the community property that is determined, that it be divided equally. So whatever cash she had in the bank, whatever her 401k, whatever her two IRA's [sic], all of that is divided up, and then it is balanced, based on what I've paid since then.

Q Okay. And so the answer to my question is what?

A *Well, based on my calculations and what I understand from my case I'm presenting, is that I have made payments above and beyond what was available as community property.*

. . . .

> Q Well, let me make sure I understand it this way. So what should we add up? What is it that we're going to add up, that the court's going to divide, before it starts giving you credit for any payments you've made?
>
> A It's going to add up everything that was in the -- that was in the banks. Her banks, my banks, the IRA's [sic].

Tr. at 6-8 (Cont'd Bench Trial Day 2, Jan. 31, 2012) (emphases added).

[17] Given the aforementioned testimony of Vincent, it is clear that Vincent's position at trial was that he used his separate funds to make at least a portion of the post-separation payments on community debt. The question which remains is whether he actually presented evidence to support this position. Reimbursement for post-separation payments on community debts cannot be sustained in the absence of any showing that such payments were made with separate funds. *See In re Marriage of Smith*, 145 Cal. Rptr. 205, 213, 216 (Ct. App. 1978) (reversing order for reimbursement where husband made no showing that post-separation payments toward community debts were made with his separate funds, but remanded case in recognition of probability that some of the funds paid came from husband's earnings after separation).

[18] Vincent argues that he sufficiently proved the use of his separate funds because the evidence shows that he made payments on community debt which exceeded the community property actually expended. At trial, Vincent testified that he pays $1,175.80 per month toward the mortgage on the Barrigada residence. Tr. at 62 (Bench Trial). Vincent also testified that from the time of the parties' separation in March 2008 and the date of trial in January 2012, he paid $42,827.28 toward the mortgage on the Jasper residence, *id.* at 68, which amounts to a payment of roughly $911.22 per month. Finally, Vincent testified that he made the monthly payments of $499.00, $283.00, and $329.00 on the parties' vehicle loans. *Id.* at 78-79. Thus,

from his testimony at trial, Vincent paid approximately $3,198.02[7] per month on the parties' community debts during separation.

[19] Vincent argues that in the 55 months between the parties' separation in March 2008 and the trial court's entry of its Findings of Fact and Conclusions of Law in October 2012, his total payments toward the community debts amounted to approximately $175,000.00, Reply Br. at 1 (Aug. 13, 2013), roughly the same amount of the community's assets at separation.[8] Vincent contends that the fact that certain community assets, such as the parties' retirement accounts and savings bonds, still existed at the time of divorce—in other words, had not been exhausted to pay the community debts—proves by implication that Vincent tapped into his separate funds in order to make the post-separation payments on the community debts. *Id.* at 1-3.

[20] It appears from the record that Vincent's argument has merit, for the parties' retirement accounts were still available at the time of trial and, indeed, were distributed by the trial court. *See* RA, tab 184 at 3, 11 (Finds. Fact & Concl. L.). However, it is unclear exactly how much of the community assets remained in the parties' various bank accounts at the time of trial. The evidence was focused on the amounts at the time of separation, and the trial court did not make a finding as to the amounts remaining in the accounts at the time of trial.[9] Given this lack of evidence, it is difficult for us to determine whether and to what extent the actual liquid assets of

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[7] In his briefs, Vincent puts his monthly payments at $3,181.00. Appellant's Br. at 3. Because the issue will be remanded, as further discussed below, we will leave it to the trial court to make a finding as to the exact amount of community debt paid by Vincent during the parties' separation.

[8] The trial court found that the total value of the community assets was $185,361.57, exclusive of the military pension payments. RA, tab 184 at 4 (Finds. Fact & Concl. L.).

[9] The fact that the trial court did not distribute any of the parties' bank accounts, other than placing these accounts low on the priority list to satisfy the remaining community debt and not otherwise distributing the remainder of the accounts after satisfaction of all community debts (and the parties' silence as to this seeming oversight), perhaps suggests that the trial court believed Vincent's testimony that the community portions of the accounts had been depleted for the purpose of Vincent's payments toward the community debts during separation. *See* Tr. at 6-8 (Cont'd Bench Trial Day 2).

the parties during the time of separation were insufficient to cover the community debts during this period.

[21] Adding further confusion to the issue is the ambiguity in the trial court's treatment of the community share of Vincent's military pension during the period of separation. Arguably, even discounting the community assets that were maintained during the separation, the community property was sufficient to cover the post-separation payments on community debt if the military pension is taken into account. Assuming Vincent did preserve all of the non-liquid community assets he claims to have maintained, such as the parties' various retirement accounts and savings bonds, throughout the period of separation, *see* Reply Br. at 1-2, and further assuming that Vincent did not have access to bank accounts under Lolita's name, as well as excluding the value of the parties' vehicles, Vincent had at his disposal the following community funds:

- Eglin Federal Credit Union Regular Share Account under Vincent's name: $43.86.
- Eglin Federal Credit Union Money Market Account: $15,000.00.
- Eglin Federal Credit Union Checking Account under Vincent's name: $7,317.41.
- Pentagon Federal Credit Union Account: $29,600.00.
- Springs Valley Bank Account: $2,000.
- First Hawaiian Bank Checking Account: $2,000.
- D.W.S. Investments: $12,000.
- Community share of military pension: $2,305.10 per month x 55 months[10] = $126,780.50.

This amounts to $194,741.77 in community property from which Vincent could have made the approximately $175,000.00 worth of payments on community debts. Thus, the community funds exceeded Vincent's payments toward community debt by about $20,000.00.

[10] This represents the period between the parties' separation in March 2008 and the trial court's entry of its Findings of Fact and Conclusions of Law in October 2012. *See* Reply Br. at 1.

[22] Therefore, in this respect, the trial court was correct in holding that the community property was sufficient to pay for the community debts during separation. However, this holding cannot be reconciled with the trial court's simultaneous holding that Lolita is entitled to reimbursement for her half of the community property interest in Vincent's military pension during the separation period. Clearly, without the monthly community share of $2,305.10 (i.e., $126,780.50 during the 55 months between separation and entry of the trial court's findings), the community funds would not have been adequate to cover all of the community debts during separation.

[23] In *Babauta I*, we held that under Guam law, the community property to be divided upon dissolution of marriage is the residue which remains after the discharge of the community obligations. 2011 Guam 15 ¶¶ 36, 38. Specifically, we held:

> [B]efore a disposition of community property can be made under 19 GCA § 8411, the nature of any debts must be definitely ascertained. Should there be any community debts, those debts shall be deducted from the gross value of any community property before such property is divided between the parties.

Id. ¶ 38. While the trial court here did list all of the community property and community debts at the time of separation, the court's shortcomings were in its final tally and its assessment of Vincent's post-separation payments on community debt.

[24] Given the ambiguity in the trial court's findings, including the trial court's silence as to how much of the various community assets remained at the time of trial, the court's silence as to the division of several of these assets, and the issues surrounding the court's treatment of the military pension, we believe the best course of action would be to remand to the trial court to make clear and complete findings on these matters. On remand, the trial court is directed to definitely ascertain as of the time of trial the value of the community property after offset of Vincent's post-separation payments toward community debt. The value of the remaining

community debts should then be deducted from the value of the remaining community property after this offset. Any distribution of the community assets should be from whatever amount remains after accounting for these debts. Should the debt exceed the community property, its satisfaction shall be ordered according to 19 GCA § 6104.[11]

B. Whether the Trial Court Erred in Awarding Lolita Reimbursement for Her Share of Vincent's Military Pension Since the Parties' Separation.

[25] Vincent does not dispute the trial court's finding that Lolita had a 37% interest in the military pension payments during separation. He argues, however, that he used the entire 74% community share of the military pension—and then some—to pay community debt during the time of separation. Appellant's Br. at 6-8. He maintains that by denying him reimbursement for his payments toward community debt on the basis that such debt was paid out of community funds, and at the same time awarding Lolita her half of the community portion of the military pension during separation, the trial court essentially gave Lolita a double award of this asset. *Id.* at 8.

[26] Assuming the trial court's valuation on remand of the assets at the time of trial shows that Vincent must have had to exhaust the entire community share of his military pension in order to make the payments on the community debts during separation, then Vincent is correct that Lolita should not be reimbursed for her share of the pension during this period, as both parties were equally liable for the community debt. Should that prove to be the case, the trial court shall

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[11] Title 19 GCA § 6104(a) provides:

> Community debts shall be satisfied first from all community property and all property in which the spouses own an undivided equal interest as joint tenants or tenants in common, excluding the residence of the spouses. Should such property be insufficient, community debts shall then be satisfied from the residence of the spouses. Should such property be insufficient, only the separate property of the spouse who contracted or incurred the debt shall be liable for its satisfaction. If both spouses contracted or incurred the debt, the separate property of both spouses is jointly and severally liable for its satisfaction.

19 GCA § 6104(a) (2005).

vacate its award to Lolita of her half of the community share of the pension during the time of separation and adjust its award of this asset, if any, based on its calculations.

C. Whether the Trial Court Failed to Equitably Distribute the Parties' IRAs.

[27] Finally, Vincent argues that the trial court erred in not making an equal distribution of the parties' IRAs. Appellant's Br. at 8. Guam law provides that in a divorce rendered on any ground other than adultery or extreme cruelty, "the community property shall be *equally divided* between the parties." 19 GCA § 8411(b) (2005) (emphasis added). In *Sinlao v. Sinlao*, this court declined to adopt a hard and fast rule that would require mathematical equality in order to achieve "equal division" under section 8411(b). 2005 Guam 24 ¶ 24. Instead, the court stated:

> [W]e believe that trial courts must have reasonable discretion in determining how the equal division of property should be accomplished, on a case-by-case basis. *Cf. In re Marriage of Gowan*, 62 Cal. Rptr. 2d 453, 457 (Ct. App. 1997) ("[T]he disposition of marital property is within the trial court's discretion, by whatever method or formula will 'achieve substantial justice between the parties.'" (citation omitted)). We recognize that mathematical equality is desirable as a goal to ensure that each party receives an equal division of property; however, more often than not, mathematical equality is difficult to achieve. Rather, we believe the trial court should examine each case's particular circumstances and consider the overall equality of the award, and revision on appeal will only occur when the division is manifestly unfair.

Id.

[28] Vincent contends that "the court did not make an equal distribution of the parties [sic] property as required by law when it awarded [Lolita] her entire T. Rowe Price IRA and required [Vincent to] divide his T. Rowe Price IRA and his Scutter IRA in half with [Lolita]." Appellant's Br. at 8.

[29] Lolita maintains that this court must look to the overall distribution of all of the assets and debts (i.e., the more than 23 items of community property and 5 items of community debts), rather than just the distribution of the three IRAs, in order to determine whether the trial court's

division was equitable. Appellee's Br. at 9-10. Such an extensive review of the trial court's distribution is unnecessary, however, in light of Vincent's clear misreading of the trial court's decision. The actual language from the trial court's Findings of Fact and Conclusions of Law reads: "Upon satisfaction of the community debts, [Vincent] is awarded the following: his T. Rowe Price I.R.A.; *his Scudder I.R.A., the value of which will be divided in half and offset by an equivalent value to be distributed to [Lolita] from remaining community funds*; and the Ford F150." RA, tab 184 at 11 (Finds. Fact & Concl. L.) (emphasis added). From the placement of the semi-colons, it is clear that the trial court awarded Vincent the full amount of his T. Rowe Price IRA, rather than half as he contends on appeal; Lolita was credited with half the value of the Scudder IRA only.

[30] During oral argument of this case, when confronted with this misreading of the trial court's award, Vincent's counsel conceded his error and agreed that if the semi-colon meant that Vincent was to split only his Scudder IRA with Lolita, then the division was not inequitable. Oral Argument at 10:41-10:44 (Oct. 23, 2013). Lolita's counsel expressed no objection to opposing counsel's new position. *Id.* at 10:44-10:47. The parties having essentially stipulated that this is a non-issue, we will not otherwise address the propriety of the trial court's award of the parties' IRAs.

V. CONCLUSION

[31] For the foregoing reasons, the case is remanded to the trial court to make definitive findings as to the value of the community property at the time of trial, including the amount which remained, if any, after Vincent's post-separation payments toward the community debts. Where appropriate, the court should not charge as being available to Vincent to make the payments those assets which arguably were not available, assuming they were in fact maintained

throughout separation, such as the parties' retirement accounts and savings bonds. The court should also include the community share of Vincent's military pension when making these valuations. Distribution of this or any other community assets should only be done after offsetting the remaining community debts from the remaining community property.

[32] During oral argument, counsels for both parties essentially stipulated that there is no issue with the trial court's distribution of the parties' IRA accounts. Thus, we affirm the trial court's judgment as to this award.

[33] For the foregoing reasons, we **AFFIRM** in part, **REVERSE** in part, and **REMAND** for further proceedings not inconsistent with this opinion.

Original Signed By: Robert J. Torres
ROBERT J. TORRES
Associate Justice

Original Signed By: Katherine A. Maraman
KATHERINE A. MARAMAN
Associate Justice

Original Signed By: F. Philip Carbullido
F. PHILIP CARBULLIDO
Chief Justice

I do hereby certify that the foregoing is a full true and correct copy of the original on file in the office of the clerk of the Supreme Court of Guam

MAR 24 2014

By: IMELDA B. DUENAS
Assistant Clerk of Court
Supreme Court of Guam