CN: 201703018170
SN: 330
PC: 4

FILED
AUG 12 2019
Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

SUPERIOR COURT OF WASHINGTON
COUNTY OF SPOKANE

In re the Marriage of: **SIRINYA SURINA** **Petitioner,** **And** **AARON MICHAEL SURINA** **Respondent.**	**No.** 17-3-01817-0 **TRIAL BRIEF RE:** **WASTE OF COMMUNITY PROPERTY**

COMES NOW the Petitioner, SIRINYA SURINA by and through her attorney of record, KEITH A. GLANZER and hereby submits the following Trial Brief regarding Respondent's waste of community property.

I. STATEMENT OF FACTS

The court entered a Temporary Order on September 27, 2017 ordering Respondent, Aaron Surina to pay family expenses including but not limited to the mortgage on the family residence. Respondent stopped making mortgage payments in approximately September 2018. Interest continue to accrue on the mortgage. A subsequent Contempt Order was entered for his failure to make these payments on May 7, 2019. A judgment was entered in favor of Petitioner in the amount of $14,199.21 for Respondent's failure to make timely mortgage payments.

KEITH A. GLANZER, P.S.
2024 W. Northwest Blvd.
Spokane, WA 99205
Telephone: 509-326-4526
Facsimile: 509-324-0405

The court ordered the sale of the residence on August 10, 2018 due to economic reasons. Several buyers made written offers under contract to purchase the residence. However, Respondent interfered with the closing of these several buyers until the court entered an order naming Petitioner as the sole representative of the community to sell the property. After the Petitioner only was appointed to sell the property, a sale was completed, which closed June 10, 2019. Interest on the mortgage continued to accrue during these forced delays from approximately February 4, 2019 to the date of closing. The Community lost approximately $6,410.75 due to paying additional interest. (Exhibit P-33, page 6 and 2)

The property was insured against loss during the pending sale. The final buyer entered a Purchase and Sale Agreement to purchase the property for $336,000, contingent upon an inspection of the roof. The inspection revealed the roof was in need of replacement. A claim was filed with the insurance company insuring the property. The insurance company's adjuster inspected the roof with a roofing contractor and agreed the roof was in need of replacement and that it was covered by the parties' insurance company. The total cost to the parties for the roof replacement was the insurance contract deductible of $1,000. The sale price net of the deductible would have been $325,000. Respondent refused to file an insurance claim. An adjusted compromise offer of $335,000 minus $15,000 for roof repair was accepted by the buyers. This compromise caused the buyers to borrow an additional $15,000 and reduced the final sale proceeds to the parties by $5,000. Respondent's refusal to file a legitimate insurance claim that had been adjusted by the insurance companies adjuster cost the buyers $15,000 and caused $5,000 in waste to the community.

III. ISSUES

A. Should the court assess the above noted community losses to the Respondent as community waste.

KEITH A. GLANZER, P.S.
2024 W. Northwest Blvd.
Spokane, WA 99205
Telephone: 509-326-4526
Facsimile: 509-324-0405

SHORT ANSWER

A. Yes, When exercising its discretion, a trial court is permitted to consider, as one relevant factor, a spouse's unusually significant **contributions to (or wasting of) the assets** on hand at trial." *In re Marriage of White,* 105 Wn. App. 545, 551, 20 P.3d 481(2001);

LEGAL ARGUMENT

1. **<u>The court has the discretion to consider a spouse's wasting of assets on had at trial.</u>** "[T]he '**marital misconduct**' which a court may not consider under RCW 26.09.080 refers to immoral or physically abusive conduct (n 8) within the marital relationship and **does not encompass gross fiscal improvidence, the squandering of marital assets or, as here, the deliberate and unnecessary delays in selling the residence which caused increased interest liability and a failure to file an insurance claim.** In shaping a fair and equitable apportionment of the parties' liabilities, the trial court was entitled to consider whose 'negatively productive conduct' resulted in the interest liabilities and failure to file an insurance claim at issue.

    In re Marriage of Urbana, 147 Wn. App. 1, 14, 195 P.3d 959 (2008);
    In re Marriage of Wallace, 111 Wn. App. 697, 708, 45 P.3d 1131 (2002), *review denied*, 148 Wn.2d 1011 (2003);
    In re Marriage of Steadman, 63 Wn. App. 523, 528, 821 P.2d 59 (1991)

2. The dissipation of marital property by recalcitrant behavior is a relevant inquiry for the court. For example, "[T]he fact that 'fault' is no longer a relevant query does not preclude consideration of all factors relevant to the attainment of a just and equitable distribution of marital property. The **dissipation of marital property is as relevant to its disposition in a dissolution proceeding as would be the services of a spouse tending to increase as opposed to**

KEITH A. GLANZER, P.S.
2024 W. Northwest Blvd.
Spokane, WA 99205
Telephone: 509-326-4526
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decrease those same assets. In the CLARK case, Mr. Clark's profligate life style was admitted and considered by the court not for the purpose of establishing 'fault,' but for the purpose of determining whose labor or negatively productive conduct was responsible for creating or dissipating certain marital assets. This was not error." *In re Marriage of Clark*, 13 Wn. App. 805, 808, 538 P.2d 145, *review denied*, 85 Wn.2d 1001 (1975). In the current case before the court Mr. Surina's conduct should not be considered for the purpose of establishing fault, but to hold him responsible for his behavior and compensate the community for his waste upon the community.

CONCLUSION

Respondent's delay in allowing the sale of the residence and stubborn refusal to file a legitimate insurance claim has cost the community several thousand dollars in wasted assets that could have been easily avoided.

The court should consider this waste when making its equitable property settlement and credit Petitioner's community part of the assets accordingly.

RESPECTFULLY SUBMITTED:

Dated: 8-9-2019

KEITH A. GLANZER, WSBA# 20424
Attorney for Petitioner

KEITH A. GLANZER, P.S.
2024 W. Northwest Blvd.
Spokane, WA 99205
Telephone: 509-326-4526
Facsimile: 509-324-0405