

SUPREME COURT OF WASHINGTON

In re the Marriage of Muhammad

153 Wash. 2d 795 (2005) · Decided March 24, 2005

SUMMARY

The Washington Supreme Court held that a dissolution court improperly considered marital fault when it treated the wife’s procurement of a domestic violence protection order as contributing to the husband’s unemployment and adjusted the property distribution accordingly. The court reversed the Court of Appeals, remanded for a new property division before a different judge, and directed reconsideration of assets acquired during the parties’ premarital meretricious relationship.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Owens, J.; Madsen, J.; Bridge, J.; Chambers, J.; Fairhurst, J.; Ireland, J. Pro Tem.
JURISDICTION	Washington
DECIDED	March 24, 2005
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Gilbert appealed the dissolution court's property distribution, and the Court of Appeals affirmed. The Washington Supreme Court granted review, reversed, and remanded for a new property-division trial before a new judge.
STANDARD OF REVIEW	A property division in a dissolution proceeding is reviewed for manifest abuse of discretion. A decision is an abuse of discretion if it is manifestly unreasonable or based on untenable grounds or untenable reasons.
PRECEDENTIAL VALUE	Published precedential Washington Supreme Court opinion
PARTIES	Cherry Gilbert, formerly known as Cherry Muhammad v. Dawud Muhammad

TOPICS

- equitable distribution
- domestic violence
- dissolution of marriage
- family law procedure
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the trial court improperly considered Gilbert's decision to obtain a domestic-violence protection order as marital fault in distributing the parties' property.
2. Whether the trial court properly considered pension benefits acquired during the parties' premarital meretricious relationship.
3. Whether Gilbert was entitled to attorney fees and costs under RCW 26.09.140.

HOLDINGS

1. A dissolution court may not hold one spouse's assertion of the legal right to obtain a protective order against that spouse in the property distribution, even when the order causes the other spouse to lose employment. The trial court's consideration of Gilbert's decision to obtain the order constituted an abuse of discretion.
2. On remand, the trial court must reconsider all assets acquired by both parties during the parties' meretricious relationship, including the approximately \$8,200 portion of Muhammad's pension.
3. Gilbert's request for appellate attorney fees and costs was left for consideration on remand. The parties could submit evidence concerning Muhammad's ability to pay, and the trial court could award fees if appropriate.

KEY QUOTATIONS

“a trial court cannot hold one spouse’s assertion of his or her legal right to a protective order against that spouse during the property distribution where the order results in the loss of employment for the other spouse.” (808)

FACTUAL BACKGROUND

Gilbert and Muhammad cohabited from December 1994 until their marriage in August 1996, separated in April 2001, and dissolved their marriage in April 2002. After an incident involving alleged threats with a firearm, Gilbert obtained a domestic-violence protection order that prohibited Muhammad from possessing firearms, resulting in the loss of his law-enforcement employment. In dividing the parties' property, the trial court awarded each party his or her own pension despite a substantial disparity, declined to divide approximately \$8,200 of Muhammad's pension earned during the premarital cohabitation, and assigned Gilbert responsibility for part of the mortgage deficiency while expressly discussing the consequences of her protection order.

PROCEDURAL HISTORY

The Pierce County Superior Court dissolved the parties' marriage and divided their assets and liabilities. Gilbert challenged the distribution, arguing that the trial court improperly considered her decision to obtain a domestic-violence protection order and failed to properly account for pension assets acquired during the parties' premarital meretricious relationship. Division Two affirmed, but the Washington Supreme Court held that marital fault had been considered and remanded for a new property-division proceeding.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Pierce County Superior Court must conduct a new trial on property division, reconsider all assets acquired during the parties' meretricious relationship, and assign the case to a new trial judge to avoid any appearance of unfairness or bias. The parties may submit evidence concerning Muhammad's ability to pay appellate attorney fees, and the trial court may award fees if appropriate.

CASES CITED

- In re Marriage of Muhammad, 119 Wn. App. 166, 167-68, 174, 79 P.3d 483 (2003)
- In re Marriage of Kraft, 119 Wn.2d 438, 450, 832 P.2d 871 (1992)
- In re Marriage of Littlefield, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997)
- In re Marriage of Steadman, 63 Wn. App. 523, 527-28, 821 P.2d 59 (1991)
- In re Marriage of Clark, 13 Wn. App. 805, 808-09, 538 P.2d 145 (1975)
- In re Marriage of Hall, 103 Wn.2d 236, 241-42, 692 P.2d 175 (1984)
- Connell v. Francisco, 127 Wn.2d 339, 347, 349, 898 P.2d 831 (1995)
- In re Marriage of Leslie, 90 Wn. App. 796, 807, 954 P.2d 330 (1998)
- In re Marriage of Foran, 67 Wn. App. 242, 258, 834 P.2d 1081 (1992)