

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

In the Matter of the Marriage of
THIDA CHEA,

Appellant,

and

SOPHAL LONG,

Respondent.

No. 85399-6-I

PUBLISHED IN PART OPINION

BOWMAN, A.C.J. — In 2023, Thida Chea and Sophal Long dissolved their 16-year marriage after a 4-day dissolution trial. Chea appeals the trial court's residential schedule and distribution of assets and argues the court erred by entering supplemental findings under CR 60(a). We vacate the trial court's supplemental findings and reverse and remand for further proceedings consistent with this opinion. We also award Chea attorney fees and costs on appeal.

FACTS

In 2004, Chea and Long had an arranged marriage ceremony in Cambodia. The following year, they married in Washington, and later had three children.¹ In August 2021, Chea petitioned for divorce. In March 2023, the case proceeded to a four-day trial.

In April 2023, the trial court entered its final orders, largely adopting Long's proposed orders. The court ordered a 50/50 residential schedule with joint

¹ At the time of the dissolution trial, all three children were minors.

decision making and no RCW 26.09.191 restrictions. The court also adopted Long's proposed property distribution. It found the parties had two real property assets—a house in Washington and a house in Cambodia. It found the market value of the Washington house was \$720,000, offset by a \$224,928 mortgage. It ordered the parties to sell the house, pay any outstanding community debt, and split the remaining proceeds. As for the house in Cambodia, it awarded the property to Chea at a fair market value of \$115,000.

The court also divided the parties' retirement and investment accounts. Long had five accounts in his name at a community value of \$302,903.² And Chea had one account in her name valued at \$29,908. The community's accounts totaled \$332,811. The court awarded Chea her account and half of Long's Boeing "Pension Value Plan" for a total market value of \$61,840. It awarded the remaining \$270,971 in retirement and investment accounts to Long. After distributing the community's assets and debts, it awarded Long a gross total of \$533,449 and Chea a gross total of \$421,996. Then, the court ordered Long to make an equalization payment to Chea in the amount of \$55,727, resulting in final community property awards of \$477,723 to each party.

The trial court also ordered child support. It determined Long's net monthly income is \$8,273 and Chea's is \$3,412, resulting in a standard child support calculation transfer of \$1,917 per month from Long to Chea. But the court deviated from the standard calculation based on the significant time the

² The total market value of Long's accounts was \$313,518. But the trial court characterized \$10,615 of Long's Boeing Company 401(K) as his separate property.

children spend with Long and ordered that Long pay Chea \$503 in child support each month. It explained in its oral findings:

There is reason to deviate. Taking the total child support number, dividing it by 2, then subtracting out — and this is the same formula I have seen several times on these proposals — subtracting out the petitioner’s portion, I am adopting the number. I think it works out to \$50[3] will be the new transfer payment.^[3]

The court denied Chea’s request for spousal maintenance. It explained that

there does not appear to be a reason or basis for maintenance as the wife’s income is unclear due to large amounts of money transfers into her accounts. These create similar incomes between the parties, they have similar educations, and while wife has a lower paying job, she is not without means.

Chea moved for reconsideration, asking the court to reconsider (1) whether it should impose RCW 26.09.191 restrictions, (2) the calculation of her income, (3) the general child support calculations, (4) the downward deviation from the standard child support calculations, (5) the improper characterization of some assets and debts as community property, including the Cambodia house, which Chea argued belongs to her mother, (6) the distribution of community assets, and (7) its refusal to award spousal maintenance. The court denied her motion, reasoning it “made specific findings at trial related to all findings,” there is

³ We note that under RCW 26.19.075(1)(d), the court may not deviate from the standard calculation based on the residential schedule if it results in “insufficient funds in the household receiving the support to meet the basic needs of the child.” If the court decides to deviate, it must consider evidence of

the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent and . . . the decreased expenses, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment.

RCW 26.19.075(1)(d).

“ample evidence to support the various findings,” and there “does not appear to be any error.”

Long also moved for reconsideration and clarification of the court’s final orders. The court granted Long’s motion. In doing so, it determined it used incorrect income figures to determine the standard calculations for child support, so it entered an amended order. The amended child support order determined Long’s net monthly income is \$9,048 and Chea’s is \$2,995. And it found the standard child support calculation resulted in a \$2,067 transfer from Long to Chea. The court again deviated from the standard calculation based on the children spending significant time with Long and ordered Long to pay Chea \$642 in child support each month.

In May 2023, Chea appealed the trial court’s final orders to this court. She argued the trial court improperly applied a presumption of equal residential time, considered extrajudicial information, and failed to consider the necessary statutory factors when deciding the residential schedule. And she argued the court erred by distributing her mother’s home in Cambodia and by inequitably distributing the assets as a whole.

After Chea filed her opening brief, Long moved this court to stay the appeal “while he seeks supplemental findings of fact in the trial court” under CR 60(a) and RAP 7.2(e). He argued that additional findings would “offer permissible clarification of the trial court’s rulings” and “address the purported shortcomings identified by . . . Chea on appeal.” Chea opposed the motion, arguing, “CR 60(a) only remedies purely clerical errors,” which she did not raise

on appeal. A commissioner from our court granted Long's motion, ruling, "I allow a stay that is limited in scope to facilitate the resolution of the issues on appeal. To the extent CR 60(a) does not apply, the Court may allow a stay to ensure effective and equitable review. [See] RAP 8.3."

Long then moved the trial court for supplemental findings under CR 60(a). He argued that "[b]esides providing the written findings that . . . Chea claims are missing, this Court also may clarify its reasoning and its decisions, as long as it doesn't modify its decree." Chea objected, again arguing the court lacked authority to enter supplemental findings because there are no clerical errors at issue, and it cannot correct judicial errors under CR 60(a). Chea urged that entering the proposed supplemental findings would amount to an " 'upside-down' approach," in which the court made its decision first and then entered findings "tailored to fit the decision."

In May 2024, the trial court granted Long's motion and entered his proposed supplemental findings. As for the residential schedule, the court said it previously "considered the statutory factors set out in RCW 26.09.187(3)" and it "hereby makes the following findings on each factor." It then made findings of fact under each RCW 26.09.187(3)(a) factor, considering the children's relationship with each parent, the parties' parenting functions, their employment schedules, and more. And it found that even if it improperly applied a presumption or considered extrajudicial information when it determined the residential schedule, it would have adopted the same residential schedule without those considerations.

As for its property distribution, the court found that even if it “mischaracterized” the house in Cambodia as property subject to distribution and had not awarded Chea the house, its distribution of the parties’ assets and debt would not have been different and would still be “just and equitable.” In making those supplemental findings, the court considered the nature and extent of other property, the duration of the marriage, and each party’s economic circumstances. It also reconsidered the spousal maintenance factors and found that even if the home in Cambodia was not distributable property, “spousal maintenance would still not be just.”

After the stay lifted, Chea filed a supplemental brief in this court, challenging the trial court’s supplemental findings.

ANALYSIS

Chea argues we should vacate the trial court’s supplemental findings because the court had no authority to enter them under CR 60(a). She also argues the trial court erred by entering a residential schedule without considering the RCW 26.09.187(3)(a) factors, by distributing to her a property in Cambodia that neither party owns, and by failing to make a just and equitable property distribution overall. And she requests attorney fees and costs on appeal. We address each argument in turn.

1. Supplemental Findings

As an initial matter, Chea argues we should vacate the trial court’s supplemental findings because CR 60(a) provides for the correction of clerical errors only, and the findings here substantively modify the court’s rulings. Long

argues the trial court had authority under CR 60(a) to enter the supplemental findings because they “merely filled gaps” in the court’s findings “without altering the substantive outcomes.”⁴ We agree with Chea.

We review a trial court’s amended order under CR 60 for abuse of discretion. *Presidential Ests Apt. Assocs. v. Barrett*, 129 Wn.2d 320, 325-26, 917 P.2d 100 (1996). A ruling based on an erroneous view of the law amounts to an abuse of discretion. *In re Marriage of Niemi*, 19 Wn. App. 2d 357, 362, 496 P.3d 305 (2021).

Under CR 60(a),

[c]lerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).

CR 60(a) “allows a trial court to grant relief from judgments only for clerical mistakes. It does not permit correction of judicial errors.” *Presidential Ests.*, 129 Wn.2d at 326. A clerical error is a “mistake or omission mechanical in nature which is apparent on the record and which does not involve a legal decision or judgment by an attorney.” *In re Marriage of King*, 66 Wn. App. 134, 138, 831

⁴ Long also argues our commissioner authorized the trial court’s supplemental findings under RAP 8.3. We disagree. RAP 8.3 gives this court “authority to issue orders, before or after acceptance of review . . . , to insure effective and equitable review, including authority to grant injunctive or other relief to a party.” We interpret the commissioner’s order under RAP 8.3 as allowing a stay in this court so Long could obtain “effective and equitable review” of his CR 60(a) motion in the trial court. The order was not a substitute for the trial court’s proper application of CR 60(a).

P.2d 1094 (1992). But a judicial error is one of substance. *In re Marriage of Stern*, 68 Wn. App. 922, 927, 846 P.2d 1387 (1993).

To determine whether an error is “clerical” or “judicial,” we ask whether the amended order “embodies the trial court’s intention, as expressed in the record at trial.” *Presidential Ests.*, 129 Wn.2d at 326. If it does, the error is clerical because the amended order “merely corrects language that did not correctly convey the intention of the court, or supplies language that was inadvertently omitted from the original [order].” *Id.* If it does not embody the court’s intention, the error is judicial and cannot be corrected under CR 60(a). *Id.* Once a court “enters a written judgment, it cannot, under CR 60(a), go back, rethink the case, and enter an amended judgment that does not find support in the trial court record.” *Id.* Also, whether a court “intended that a judgment *should have a certain result* is a matter involving legal analysis and is beyond the scope of CR 60(a).” *Id.* at n.5.

Here, the record shows that the trial court entered supplemental findings that exceeded its analysis in its original orders and aimed to correct substantive errors. In its supplemental findings about the residential schedule, the court did not merely supply language inadvertently omitted from the original order. Instead, it performed the legal analysis under RCW 26.09.187(3) that it first failed to perform and that is otherwise absent from the record. And with regard to the court’s supplemental findings about the house in Cambodia, the court effectively

conceded it erred and then redistributed the property without the house in Cambodia.⁵

Still, Long argues the trial court's supplemental findings were "precisely the kind . . . approved" by *Stern*. In that case, the mother petitioned for modification of a child support order. *Stern*, 68 Wn. App. at 925. The trial court entered an amended order modifying the dissolution decree and, among other modifications, increased the father's child support obligation. *Id.* The court did not enter written findings or conclusions of law with the order. *Id.* at 926. The father appealed the trial court's failure to enter written findings. *Id.* After obtaining an extension from this court to file her brief, the mother moved the trial court under CR 60(b)⁶ to enter findings of fact and conclusions of law, which the trial court granted. *Id.* The father appealed the trial court's amended order and its belated findings and conclusions. *Id.* On appeal, we affirmed the amended order, explaining that CR 60(a) authorized the amendment, not CR 60(b). *Id.* at 927-28. We reasoned that a trial court's failure "to memorialize part of its decision does not alter or amend the judgment. Rather, it is a clerical error of omission correctable under CR 60(a)." *Id.* at 927.

Stern is different from this case. There, the trial court performed an adequate legal analysis on the record but inadvertently failed to memorialize it in

⁵ For the trial court to modify its decision, a party must seek our permission to do so under RAP 7.2(e). Long asks, alternatively, that we retroactively grant the trial court permission to modify its decision and enter supplemental findings. We deny Long's request.

⁶ CR 60(b) provides that the trial court may relieve a party from a final judgment, order, or proceeding for one of 11 stated reasons, including mistake, inadvertence, excusable neglect, newly discovered evidence, and fraud.

writing. *Stern*, 68 Wn. App. at 927-28. As a result, it could correct the error under CR 60(a). *Id.* But those facts are not before us. Here, the trial court failed to engage in an adequate legal analysis on the record or in writing and misapplied the law in its property distribution. It then tried to correct those errors retroactively through supplemental findings. These substantive errors differ from the clerical error in *Stern*.

Because the trial court abused its discretion by entering supplemental findings under CR 60(a), we vacate the supplemental findings.

We have determined that the rest of this opinion has no precedential value and should not be published under RCW 2.06.040.

2. Parenting Plan

Chea argues the trial court abused its discretion by failing to consider RCW 26.09.187(3) when it determined the residential schedule in the original parenting plan. We agree.⁷

We review a trial court's parenting plan for abuse of discretion. *In re Marriage of Chandola*, 180 Wn.2d 632, 642, 327 P.3d 644 (2014). A court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or reasons. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). This includes a court's failure to apply the correct legal standard. *Id.* at 47.

⁷ Chea also argues the court erred by relying on an unknown extrajudicial source when determining the residential schedule and by inappropriately presuming a 50/50 residential schedule. Because we remand for the trial court to reconsider the parenting plan, we need not reach these issues.

Under RCW 26.09.187(3)(a), the court “shall consider” seven factors when determining the residential provisions in a permanent parenting plan. Those factors include the “relative strength, nature, and stability of the child’s relationship with each parent,”⁸ each parent’s “past and potential for future performance of parenting functions,” the child’s emotional needs and developmental level, and the parents’ employment schedules. See RCW 26.09.187(3)(a). When the parties present evidence of the statutory factors and the court’s “oral opinion and written findings reflect consideration of the statutory elements, specific findings are not required on each factor.” *In re Marriage of Murray*, 28 Wn. App. 187, 189, 622 P.2d 1288 (1981). But when the record does not show the court made its determination by applying the statutory factors, we remand for the court to consider them. See *id.* at 189-90.

Here, there is no evidence in the record that the trial court considered the statutory factors as required under RCW 26.09.187(3)(a). The court’s written parenting plan identifies the residential schedule without providing any legal reasoning. And the court’s oral findings state only that Long’s proposals “are absolutely in the best interest of the children as demonstrated at times by un rebutted testimony.”

We reverse and remand for the trial court to consider and make findings under RCW 26.09.187(3) when determining the residential schedule in the parenting plan.

⁸ The court gives this factor the most weight. RCW 26.09.187(3)(a).

3. House in Cambodia

Chea argues the trial court abused its discretion under RCW 26.09.080 by distributing a home in Cambodia that neither party owns. We agree.

The trial court has broad discretion in distributing marital property, and we will reverse only if there is a manifest abuse of discretion. *In re Marriage of Rockwell*, 141 Wn. App. 235, 242-43, 170 P.3d 572 (2007). Under RCW 26.09.080, the trial court must make a “disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable.”⁹ And to be community or separate property, one of the parties must have acquired the asset. See *In re Marriage of White*, 105 Wn. App. 545, 550, 20 P.3d 481 (2001).

Here, the trial court awarded Chea the house in Cambodia at a market value of \$115,000. But the undisputed evidence presented at trial shows that neither party owns the property. Both Chea and Long testified that they gave Chea’s mother in Cambodia some money to build a house but agree that the house is titled in only Chea’s mother’s name.¹⁰ Although the trial court has broad discretion in the disposition of property, it can only distribute property belonging to at least one of the parties. See RCW 26.09.080. Because the record shows

⁹ Emphasis added.

¹⁰ Long argues that the trial court made no determination about title to the Cambodia house. He contends that instead, the court determined the marital community “had a personal interest in, or beneficial ownership of,” the Cambodia property, and then awarded the asset to Chea. But the trial court did not characterize the home as a community equitable interest. It characterized the home as a real property asset of the community and awarded it to Chea. The trial court cannot distribute an asset owned by a third party. RCW 26.09.080.

neither party acquired the property in Cambodia, the court erred by awarding it to Chea.

We vacate the trial court's final divorce order and its findings and conclusions about a marriage as they relate to distributing the parties' property, and remand for the court to redistribute the parties' property in a manner consistent with RCW 26.09.080. The court may also redistribute other assets or liabilities necessary to achieve a just and equitable outcome.

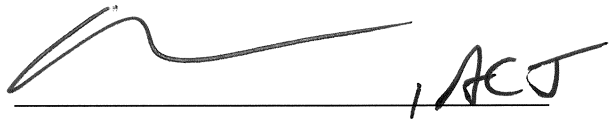
4. Attorney Fees and Costs on Appeal

Chea asks for an award of attorney fees and costs on appeal under RCW 26.09.140. Under that statute, this court may, "in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs." *Id.* When exercising that discretion, we consider the parties' financial resources. *In re Marriage of Raskob*, 183 Wn. App. 503, 520, 334 P.3d 30 (2014). We balance the needs of the requesting party against the other party's ability to pay. *Leslie v. Verhey*, 90 Wn. App. 796, 805, 954 P.2d 330 (1998). We also examine the arguable merit of the issues raised on appeal. *Id.* at 807.

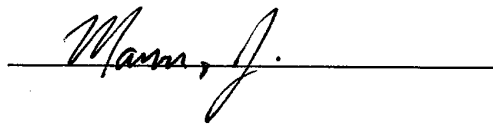
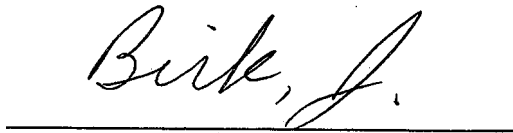
Chea and Long both filed affidavits of financial need. Their affidavits show that payment would create a hardship for Chea and that Long is in a better financial position than Chea. Long argues he cannot satisfy Chea's request for attorney fees and costs, but his financial affidavit shows he has \$42,000 in liquid assets. Given their financial disparity and that Chea presents meritorious

arguments on appeal, we award Chea attorney fees and costs subject to compliance with RAP 18.1.

In sum, we vacate the trial court's supplemental findings. And we reverse and remand for the trial court to consider on the record the statutory residential factors under RCW 26.09.187(3)(a) and any restrictions under RCW 26.09.191 when determining the permanent parenting plan.¹¹ We also vacate the trial court's final divorce order and its findings and conclusions about a marriage as they relate to distributing the parties' property, and remand for the court to redistribute the parties' debts and assets and to make a just and equitable disposition of their property. We authorize the court to reconsider its awards for child support and spousal maintenance when distributing the property.¹² We also award Chea attorney fees and costs on appeal.



WE CONCUR:



¹¹ The parties are free to present argument on these issues.

¹² Chea asks for a different judge on remand. We deny Chea's request because she failed to move for recusal below, and reassignment is generally not available as an appellate remedy when we offer "sufficient guidance to effectively limit trial court discretion on remand," as we do here. *State v. Solis-Diaz*, 187 Wn.2d 535, 540, 387 P.3d 703 (2017).