

**JENNIFER SUGIYAMA**

**v.**

**VICTOR M. YANO**

Civil Appeal No. 14-010

Appeal from Civil Action No. 09-287

Supreme Court, Appellate Division

Republic of Palau

Decided: June 24, 2015

Counsel for Jennifer Sugiyama..... Siegfried B. Nakamura

Counsel for Victor M. Yano ..... Jeffrey L. Beattie

John K. Rechucher

Steven R. Marks

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice

KATHLEEN M. SALII, Associate Justice

KATHERINE A. MARAMAN, Part-Time Associate Justice

Appeal from the Trial Division, the Honorable R. Ashby Pate, Associate Justice, presiding.

[1] **Standard of Review:** Discretionary Matters

Where such an uneven total distribution was, due to the parties' positions, unavoidable, we see no basis for finding that the Trial Division abused its discretion in awarding the bulk of the property to the party that was found not to be at fault.

[2] **Standard of Review:** Discretionary Matters

At most, Appellant's arguments suggest that the evidence of record, depending on the weight it was given or how it was interpreted, might have supported conflicting but equally reasonable results. Put differently, even viewed in the light most favorable to Appellant, these claims only show that reasonable minds could have reached differing conclusions based on the same factual record.

**OPINION**

Per Curiam:

This case concerning the divorce of Appellant Jennifer Sugiyama and Appellee Dr. Victor Yano is before us for the second time, this time for review of the Trial Division's distribution of the marital assets. Considering the wide discretion given to the Trial

Division in such matters, and finding no abuse of that discretion in the judgment, we affirm.<sup>1</sup>

### BACKGROUND

The proceedings in this case were initially heard by Associate Justice Alexandra F. Foster, who issued a decision in February of 2011 granting the parties a divorce and setting the terms of custody, property division, and child support. Yano appealed this decision and we affirmed in part and reversed in part. Of particular relevance to the present appeal, we reversed the Trial Division's finding that both parties were entitled to a divorce on separate grounds and concluded that, in light of the litany of evidence that Sugiyama was having an affair with Isley Singichi, "Yano should be granted a divorce on the basis of adultery." *Yano v. Yano*, 20 ROP 190, 199-200 (2013). We further found that the Trial Division erred in failing to make any factual findings regarding the value of the marital property and remanded for a proper valuation of this property. *Id.* at 201-02. Although this precluded further consideration of whether that property had been equitably divided by the lower court, we nonetheless undertook to provide some "guidance on the application of equitable distribution," due to "the dearth of Palauan authority on" this matter. *Id.* at 202-03. After adopting the common law factors for distributing marital property as set forth in *Ferguson v. Ferguson*, 639 So.2d 921 (Miss. 1994), we remanded with instructions to apply these equitable factors in dividing the property at issue in this case. *Yano*, 20 ROP at 203.

On remand, the Trial Division, Associate Justice R. Ashby Pate presiding, held a three-day hearing, during which the parties presented additional evidence regarding the proper division of the marital property under the factors we adopted on the first appeal. Prior to and during these proceedings, the parties stipulated to the value of each piece of marital property, which the Trial Division accepted as both factually accurate and consistent with the evidence adduced during the hearing. The Trial Division then turned to the equitable distribution of this property and, upon consideration of the evidence presented and the relevant factors, awarded Yano the majority of the marital property.

Sugiyama timely appeals.

### STANDARD OF REVIEW

Sugiyama's arguments on appeal primarily concern the manner in which the Trial Division distributed the marital property. The distribution of marital property in a divorce proceeding is reviewed for abuse of discretion. *Yano*, 20 ROP at 198 (citing *Ngoriakl v. Gulibert*, 16 ROP 105, 107 (2008)). "Under this standard, a trial court's

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<sup>1</sup> Although Sugiyama requests oral argument, we determine pursuant to ROP R. App. P. 34(a) that oral argument is unnecessary to resolve this matter.

decision will not be overturned on appeal unless the decision was arbitrary, capricious, or manifestly unreasonable, or because it stemmed from an improper motive.” *Ngoriakl*, 16 ROP at 107. On appeal, a discretionary decision “is presumptively correct,” and the party seeking to reverse the decision has the burden of demonstrating that the lower court abused its discretion. *Id.* To the extent that Sugiyama challenges the Trial Division’s conclusions of law, these are reviewed de novo. *Pamintuan v. ROP*, 16 ROP 32, 36 (2008). The Trial Division’s factual findings are reviewed for clear error, such that they “will be reversed only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion.” *Id.* (quotation omitted).

## ANALYSIS

### I. Whether the Overall Distribution Was Equitable

Sugiyama argues that the distribution of the marital assets must be reversed because it “was inherently inequitable,” in so far as the Trial Division “award[ed] Yano the bulk of the marital property.” Appellant’s Br. at 5-7. Specifically, according to Sugiyama’s arithmetic, Yano was awarded 88% of the total value of the property, while Sugiyama was awarded 12%. We previously interpreted the relevant statutory provision as requiring that the marital “property be distributed equitably.” *Yano*, 20 ROP at 201. At the same time, however, we cautioned that “[t]he doctrine of equitable distribution is based on the general rule that in a divorce proceeding the division of property must be equitable, but not necessarily *equal*.” *Id.* (emphasis added). Rather than reflecting a mere even division, the equitable division of property is determined in accordance with the following three steps: “first, identifying the property as marital or separate; second, valuing the property; and third, allocating it between spouses according to equitable factors.”<sup>2</sup> *Id.*

As a result, Sugiyama’s claim is unpersuasive for multiple reasons. First, it inappropriately conflates equity with equality. The Trial Division applied the appropriate, three-step test and, based on the relevant equitable factors, reached a reasoned determination as to the distribution of the marital property. While the ultimate distribution does not, in the aggregate, reflect a perfectly equal division of the assets, it is grounded in the proper principles of equity and thus constitutes an equitable distribution.

In addition, Sugiyama’s argument overlooks the fact that, as found by the Trial Division, one particular piece of marital property, namely the Steba house and attendant two leases, accounted for approximately three quarters of the total value of all of the marital property at issue. Since neither party would agree to sell the home,

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<sup>2</sup> As discussed above, the relevant equitable factors are those set forth in *Ferguson v. Ferguson*, 639 So.2d 921 (Miss. 1994).

whichever party was ultimately awarded this property would necessarily receive, in terms of percentage, a large majority of the marital assets.

- [1] In fact, had Sugiyama been awarded the Steba property, as she requests on appeal, with all of the other distributions remaining the same, Sugiyama's method of calculating each party's percentage would show that her award constitutes 84% of the marital property, whereas Yano's would account for only 16% of the total. Yet, according to Sugiyama's position, such a lopsided percentage would have to be considered inherently inequitable. Where such an uneven total distribution was, due to the parties' positions, unavoidable, we see no basis for finding that the Trial Division abused its discretion in awarding the bulk of the property to the party that was found not to be at fault. *Cf. Bond v. Bond*, 69 So. 3d 771, 773 (Miss. Ct. App. 2011) (affirming the lower court's decision to weigh the wife's infidelity, which caused the dissolution of the marriage, heavily against her in considering the equities attendant to the division of the marital property).

Finally, Sugiyama's calculations fail to account for the conditions the Trial Division placed on the award of the Steba property. In particular, the Trial Division granted Sugiyama a tenancy, rent-free and maintenance-free, in the Steba home until the youngest of the parties' children, who was born in 2004, reaches 18 years of age. Further, Yano is unable to benefit from his ownership of the house, which he must nonetheless maintain, for approximately eleven years (2011 through 2022.) Without question, this condition constitutes a substantial, monetary value that is wholly unaccounted for in Sugiyama's arithmetic.

In sum, we find nothing inherently inequitable in the Trial Division's overall distribution of the property. Having addressed the judgment in the abstract, we now turn to the more specific objections Sugiyama raises with respect to the manner in which the Trial Division applied the various equitable factors.

## **II. Whether the Trial Division Properly Evaluated the Equitable Factors**

- [2] Sugiyama raises a number of challenges to the Trial Division's application of the relevant equitable factors in determining the distribution of assets. These arguments, however, do little more than express disagreement with how the Trial Division evaluated the evidence. In general, Sugiyama simply reiterates the evidence favorable to her, often to the exclusion of competing, conflicting, or unfavorable evidence, and then concludes that the Trial Division abused its discretion by failing to credit or weigh her evidence in the manner that she preferred. At most, these claims suggest that the evidence of record, depending on the weight it was given or how it was interpreted, might have supported conflicting but equally reasonable results. Put differently, even viewed in the light most favorable to Sugiyama, these claims only show that reasonable minds could have reached differing conclusions based on the same factual record. In the context of such a highly discretionary award, this is neither unusual nor indicative of error, and in any event falls far short of demonstrating that the Trial Division's

decision was arbitrary, capricious, or manifestly unreasonable, or that it otherwise stemmed from an improper motive. *See Ngoriakl*, 16 ROP at 107.

In particular, the bulk of Sugiyama's arguments in this regard concern the Trial Division's decision to award permanent ownership of the Steba property to Yano. Sugiyama generally claims that the Trial Division failed to fully credit her contributions to this property, which she claims include: her work for Yano's separately owned business, Belau Medical Clinic ("BMC"), which was one of the primary sources of the funds used to acquire this property; her role in procuring and negotiating the contracts related to this acquisition; her participation in the construction and maintenance of the Steba house; and the services she provided as a homemaker and wife to Yano. Sugiyama maintains that these considerations counsel in favor of awarding her the Steba property under the first, third, and eighth equitable factors.<sup>3</sup> In addition, Sugiyama argues that the considerable assets Yano owns as separate property and his relatively greater earning capacity require awarding her the Steba property.

Yet, Sugiyama's contentions largely fail to take into account the countervailing evidence and equitable considerations that supported the Trial Division's decision. For instance, as the Trial Division found and Sugiyama concedes, the acquisition of the Steba house was financed almost entirely with funds from Yano's separate property, including the BMC account and rent from two of his other properties. Thus, while Sugiyama maintains that the house could not have been built without her efforts to procure the relevant lease, it is equally apparent that the house could not have been acquired without Yano's substantial monetary contributions from his separately owned properties. Significantly, the relevant equitable factor concerns "[d]irect or indirect *economic* contribution to the acquisition of the property;" *Yano*, 20 ROP at 202 (emphasis added), such that this factor necessarily weighs heavily in favor of Yano.

Furthermore, although Sugiyama suggests that she directly or indirectly contributed to the funds available for the house through her employment at BMC, she also concedes that "it is not clear whether there is any appreciation in value gained by BMC while it was under [her] management that could then be analogously attributed to her." Appellant's Br. at 11. In fact, the initial trial decision issued by Judge Foster concluded that, overall, Sugiyama caused significant harm to BMC's net worth, which we acknowledged—and Sugiyama did not challenge—on the first appeal. *See Yano*, 20 ROP 194. On remand, the Trial Division's decision likewise recognized the

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<sup>3</sup> Respectively, these are: "[s]ubstantial contribution to the accumulation of the property[,]" including "[d]irect or indirect economic contribution to the acquisition of the property[,]" and "[c]ontribution to the stability and harmony of the marital and family relationships"; "[t]he market value and the emotional value of the assets subject to distribution;" and "[a]ny other factor which in equity should be considered." *Yano*, 20 ROP at 202-03.

considerable financial mismanagement of BMC and, while it attributed the fault to both parties, Yano was specifically faulted for failing to employ competent staff, expressly including Sugiyama. In any event, Sugiyama's purported contributions to BMC occurred as part of her employment, for which she was paid an annual salary of approximately \$15,000. Accordingly, these contributions may more accurately be characterized as those of a salaried employee to her place of business as part of her employment, as opposed to a spouse's direct or even indirect economic contribution to the acquisition of marital property.

In addition, contrary to Sugiyama's claim, the Trial Division specifically credited her substantial involvement in the acquisition and maintenance of the Steba property, as well as the services she provided as homemaker and wife, though there was evidence that the latter were relatively limited. As a result of these considerations and Yano's consent, the Trial Division included the condition that Sugiyama be permitted to continue to reside in the Steba home, rent-free and maintenance-free, until their youngest child reaches 18 years of age. Sugiyama's efforts to overstate her contributions to BMC and as a homemaker, to the exclusion of evidence suggesting that BMC suffered overall under her mismanagement and that she contributed minimal services as a homemaker, do little to overcome the presumption that the decision below is correct. Furthermore, the Trial Division correctly found that whatever contributions Sugiyama may have made to the marriage were tempered by the relatively short duration of the marriage. *See Lacey v. Lacey*, 173 N.W.2d 142, 145 (Wisc. 1970); *Prosser v. Cook*, 519 N.W.2d 649, 653 (Ct. App. 1994) (affirming the trial court's decision that "the presumption of equal division should be altered because of the relatively short length of the marriage and the fact that Prosser brought substantially all of the property into the marriage."). Sugiyama argues that this finding fails to take into account the fact that her relationship with Yano predated their marriage, but cites no authority that suggests the length of the pre-marital relationship is relevant to the division of marital assets.

Similarly, Sugiyama makes the largely conclusory and wholly unpersuasive argument that the Trial Division placed too much weight on the evidence of her infidelity. Our remand opinion, however, specifically advised, "Of import to this matter, a party's infidelity is relevant to the distribution insofar as it relates to the contribution to the stability of the marriage and (in some cases) to the dissipation of assets." *Yano*, 20 ROP at 203. Furthermore, contrary to Sugiyama's contention, the Trial Division also weighed against her adultery the evidence that, prior to this affair, the marriage was, at least for a time, a happy one.

While Sugiyama plainly disagrees with how the lower court ultimately weighed these competing considerations, she has not even attempted to explain how its detailed evaluation of the evidence presented and resulting decision was arbitrary, capricious, manifestly unreasonable, or otherwise stemmed from an improper motive. Considering our explicit finding on appeal that Yano was entitled to a divorce on the

basis of adultery and direct instruction to consider this infidelity in determining the proper distribution of the assets, the Trial Division did not err in attaching significant weight to the affair, which it accurately described as “the primary factor in the destabilization and ultimate dissolution of [the marriage],” Trial Div. Decision at 10. As a result, as the Trial Division concluded, the equitable factor concerning “[c]ontribution to the stability and harmony of the marital and family relationships,” *Yano*, 20 ROP at 202, plainly weighs against Sugiyama. *See, e.g., Bond*, 69 So. 3d at 773 (“[M]arital misconduct is a viable factor entitled to be given weight by the [lower court] when the misconduct places a burden on the stability and harmony of the marital and family relationship.” (quotation omitted)).

The Trial Division also found that Sugiyama had dissipated marital funds, including some through her affair, which further weighs against Sugiyama under the second relevant equitable factor. Sugiyama argues that the Trial Division failed to consider that the loans she made to Singichi, using marital property, were ultimately repaid. Yet, this argument wholly overlooks the evidence that any repayment occurred after the parties separated and that Sugiyama put these funds toward her own, separately held business. Sugiyama’s sole response on this point is that there was “nothing stopping” Yano from demanding repayment in these proceedings—once he learned that the loans had been repaid—to be divided among the parties. Appellant’s Reply Br. at 10. Given these circumstances, however, we see no abuse of discretion in the Trial Division’s finding that the loans Sugiyama made to the person with whom she was having an affair, which were never repaid to the marital estate, constitutes a dissipation of marital funds.

Sugiyama’s challenge to the Trial Division’s finding that her secret bank account at Palau Savings Bank (“PSB”) constituted dissipation of marital funds is equally unpersuasive. Sugiyama has not challenged the Trial Division’s factual findings in this regard, which were plainly sufficient to permit the inference that she intentionally hid this account, which was opened in the name of BMC but only accessible by Sugiyama. As a result, we find no abuse of discretion in the Trial Division’s reasoning that, when PSB ultimately collapsed, her dishonesty, or at the very least incompetency, in opening and hiding this account contributed to the dissipation of marital funds.

Finally, with respect to the parties’ needs “for financial security with due regard to the combination of assets, income and earning capacity[,]” *Yano*, 20 ROP at 203, Sugiyama unduly emphasizes the current disparities between the parties, to the exclusion of the effects of time and age. Although Yano, at present, has greater assets and earning capacity, the Trial Division acknowledged that he is also much older than Sugiyama and suffering from health problems. By contrast, while Sugiyama has a relatively smaller earning capacity at present, the Trial Division reasoned that she is much younger and so has many more years of earned income ahead of her. After weighing these competing considerations, the Trial Division concluded that this factor

weighs only slightly in favor of Sugiyama. We see no abuse of discretion in this decision.

In sum, while the Trial Division found that that Yano's significant, separately owned assets weighed in Sugiyama's favor under the fourth equitable factor, this was counterbalanced, as the lower court found, by all of the additional considerations discussed above, most of which weighed, often greatly, in Yano's favor. All of the pertinent evidence and equitable factors were considered; Sugiyama merely disagrees with the manner in which the Trial Division exercised its discretion in weighing these competing considerations. Sugiyama's attempts to simply reargue matters that were properly considered and resolved in the first instance by the lower court fail to demonstrate that the decision below was in any way arbitrary, capricious, manifestly unreasonable, or otherwise stemmed from an improper motive.

### **III. Whether the Trial Division Erred in Referring to the Equitable Factors as “a Disjunctive Balancing Test”**

Sugiyama also argues that the Trial Division abused its discretion when it referred to the equitable factors adopted from *Ferguson* as “a disjunctive balancing test.” Trial Div. Decision at 18. This argument, however, fails to consider the context of this statement. Specifically, at the conclusion of its discussion of the various equitable factors, the decision below states:

As a final note to this section, the Court has omitted an analysis of what it deems to be the largely irrelevant *Ferguson* factors, namely those involving tax consequences and the eighth “catch-all” factor. As the *Ferguson* case has instructed, these are guidelines to be applied, “where applicable.” . . . As such, this Court views these guidelines as a disjunctive balancing test—and not a mandatory conjunctive rubric. In doing so, the Court determines that, as [a] whole, the factors weigh heavily in favor of awarding Yano the bulk of marital property.

Trial Div. Decision at 18 (citation omitted).

Whatever objections Sugiyama may have to the lower court's use of the phrase “disjunctive balancing test,” there is no error in the Trial Division's overall application of the equitable factors, which consisted of an individualized discussion of each relevant factor followed by a final determination that considered all of these factors as a whole. Furthermore, in context, the meaning of the Trial Division's concluding remark is clear: where one of the eight guidelines did not apply, for instance because there was no evidence in the record related to it, the lower court did not expressly address it in any detail. Accordingly, although the eighth factor permits consideration of “[a]ny other factor which in equity should be considered,” *Yano* 20 ROP at 203, the Trial Division did not find that there were any other factors in equity that warranted consideration. On appeal, Sugiyama has not even attempted to identify any additional

factors that ought to have been considered but were not. Consequently, we find no error in the manner in which the Trial Division applied the equitable factors in this case.

### CONCLUSION

In sum, the Trial Division's application of the relevant equitable factors was entirely consistent with our first opinion, *Ferguson*, and the general rule that equity guides the division of marital assets. Furthermore, having reviewed this decision and finding no abuse of discretion, the judgment of the Trial Division is **AFFIRMED**.