NO. 1016280

THE SUPREME COURT
OF THE STATE OF WASHINGTON

HIDDEN RIVER RANCH, LLC, et al.,

Petitioners,

vs.

LINDSEY RODRIGUEZ, et al.

Respondents.

ANSWER TO PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Table of Cases

Statutes

Rules and Regulations

A. INTRODUCTION:

The trial court put to rest this prolonged dispute between family members over the fate of a piece of property occupied and operated as a ranch by Calvin Evans, Jr. Cal Jr. was disinherited under the slayer's statute because he exploited his father, the former owner of the property. Cal Jr. has fought tooth and nail to prevent his children, the rightful heirs, from receiving value from their inheritance, a value established by a certified appraiser, who also opined the property could not be subdivided without considerable loss of value. Early in the proceedings, Cal Jr. expressed the identical view.

The Court of Appeals affirmed the trial court's action and did so without, in any way, conflicting with this Court's decisions. Discretionary review is not warranted. RAP 13.4(b)(1).

B. RESTATEMENT OF ISSUES:

(1) The trial court did not develop a new test but applied the statute's requirement of determining whether partitioning

the property "in kind" would cause "great prejudice" per the standard of RCW 7.52.080.

(2) The "great prejudice" analysis, as an objective economic analysis, applies to the effect of partition "in kind" on all co-tenants, not whether one or more objects to a sale.

(3) Substantial evidence supported the trial court's determination that the property could not be partitioned "in kind" without causing "great prejudice". This evidence included more than the appraisal and the appraiser's declaration; in fact, all the co-tenants, including Cal Jr., expressed the identical view. The evidence also established that, if partitioned "in kind", portions could not be economically valued.

(4) In over two years of proceedings, Cal Jr. had multiple opportunities and hearings to make his record. The trial court examined hundreds of pages of documentary evidence, weighed the evidence where it conflicted, and made credibility findings. On appeal these findings of fact are reviewed for substantial

evidence, not *de novo*. The Court of Appeals correctly applied this standard.

C. STATEMENT OF THE CASE:

1. Background

The property at issue here was owned by Calvin Evans, Sr. His son, Calvin Evans, Jr. ("Cal Jr.") moved to the property in 2005. After Cal Sr.'s death, Cal Jr. was disinherited as a financial abuser of his father, a vulnerable adult. Cal Jr.'s thefts and misconduct are detailed in the appellate ruling affirming his disinheritance. *In re Estate of Evans*, 191 Wn.App. 1048 (2015).[1]

By virtue of the anti-lapse statute, the ranch passed to Cal Jr.'s four children: Calvin Evans III, Lindsey (Evans) Rodriguez, Cory Evans, and Jesse Evans. Their rights of inheritance were affirmed in another appeal: *In re Estate of Evans,* 181 Wn.App. 436, 441, 326 P.3d 755, 758 (2014). Later, Cory and Jesse transferred their 25% interests to Hidden

[1] Prior unpublished opinion regarding this estate dispute cited herein pursuant to GR 14.1

River Ranch LLC ("HRR") an entity formed with their father. Thus, despite being disinherited, Cal. Jr. regained control over a 50% interest in the ranch. He has never left the property to this day.

2. Partition Proceedings

In 2019, Lindsey a 25% owner of the property, petitioned to partition. CP 313-316. Her brother, Calvin III, also a 25% owner, supports the petition and sale. RP (12/23/21) 38. Cory joined the petition, supports the sale, and seeks in a third party action to set aside transfer to HRR of his 25% interest. CP 302-307. The fourth heir, Jesse, is not involved in the litigation.

The partition petition went to trial on October 27, 2020 (see Report of Proceedings starting at CP 192). All co-owners agreed that partition in kind into separate parcels was not feasible and would cause great prejudice to the owners by destruction of value. CP 175-6, 316, CP 701 (FOF#3). This makes sense as a practical matter because much of the acreage

is pasture or wetlands with little intrinsic value, and the ranch has significant value only as a functioning whole with pasture, barns and residence. CP 320, 342, 701-702 (FOF#4). HRR told the trial court there were only two possible partition remedies: sale of the entire property or a life estate for Cal Jr. (a non-owner) in the entire property. CP 192, 702 (FOF#5), 820-822, RP 25, 32. Cal Jr. wanted the entire property for himself to operate the ranch for the rest of his life, but HRR did not present evidence how to value this life estate nor how to compensate the other owners. RP 32, 39-40; CP 702 (FOF#6). The trial judge granted the petition for partition and ordered that the remedy would be determined by motions practice. RP 40; CP 149.[2]

Lindsey moved for sale of the property as the partition remedy based on the pleadings, Cal Jr.'s discovery responses, and an appraisal report of Jim Dodge. CP 175-176, 239-240, CP

[2] Though HRR assigned error to this Order, the Court of Appeals held that HRR waived the assignment of error by failing to present argument on appeal. Op. at 8.

319-381. Dodge opined that partition into separate parcels "would be very impractical or impossible ... without substantial loss of value from the property as a whole" and that "the highest and best use of the subject property is in its current configuration as a residence with horse training and boarding facilities and acreage" as a whole. CP 320, 342, 701-2 (FOF#4). The motion was heard on December 1, 2020. HRR asked for more time to present evidence for a life estate. The court granted HRR an additional week to submit its evidence. CP 151. 702 (FOF#7).

More than a week later, HRR submitted the declaration of Jennifer Schultz, a real estate agent and personal friend of Cal Jr. CP 64-66. It did not address the life estate issue nor whether partition in kind to separate parcels would harm the value of the property. She did not rebut the opinion of appraiser Dodge. Her declaration merely speculated on what price arbitrarily divided portions of the property could be listed for sale. She did not opine on the value of the property as a

whole nor whether partition to separate parcels by subdivision was legally possible. CP 703 (FOF#8).

On January 6, 2021, following these submissions, the trial court granted Lindsey's motion and ordered sale of the entire property as the partition remedy. CP 21-22. Later, the trial court denied HRR's motion per CR 54(b) to determine the order to be a final judgment. CP 817-818. HRR's motion for discretionary review and a stay of the property sale were granted by the Court of Appeals. Comm'r Ruling May 20, 2021.

Lindsey asked, pursuant to CR 54(b), for the trial court to clarify the January 6, 2021 order for sale by entry of findings of fact and conclusions of law. CP 802-809. The trial court heard the motion on November 12 and 23, 2021 and on December 29, 2021 entered findings of fact and conclusions of law supporting the order for sale. CP 699-705. In so doing, the trial judge considered only evidence before him at the December 2020

hearing on the motion for sale, and struck new declarations and allegations offered by HRR. RP (11/12/21) 16-19; CP 700.

Now, HRR's Petition at pp. 4-5 improperly offers photographs and a property diagram not in the record considered by the trial court at the December 1, 2020 hearing on the motion for sale. HRR offered these for the November 2021 hearing on the motion for clarification, but the trial court struck the new materials and entered findings on the record as it existed at the first hearing. RP (11/12/21) 16-19; CP 700. HRR did not appeal this ruling. In its brief to the Court of Appeals, HRR submitted the photographs and diagram only for "illustrative purposes", Brief of Appellant at 8-11, conceding these were not part of the trial court record on the motion for sale. The Court of Appeals disregarded these allegations as well. Op. at 7. The photographs and diagram are irrelevant and misleading, since the proposed boundary line for four parcels is of Cal Jr's manufacture; it is not a legal record showing the land can be subdivided into four ten-acre parcels, which nothing

in the record supports. CP 703, FOF#8 (re "...if it could be subdivided..."). [3] HRR does not seek permission to submit new evidence on appeal per RAP 9.11(a). Every factual assertion in a brief must be supported by evidence in the record. RAP 9.1; RAP 10.3(a)(5).

D. ARGUMENT:

1. THE COURT OF APPEALS CORRECTLY APPLIED THE SUBSTANTIAL EVIDENCE STANDARD OF REVIEW.

Petitioner HRR argues for *de novo* review because the Jennifer Schultz declaration "was uncontroverted" and the trial court's credibility findings were "not necessary to a conclusion of 'great prejudice'..." under RCW 7.52.080. Petition at 25, 27. These arguments are false and misrepresent the record and decisions. The Court of Appeals correctly applied the substantial evidence standard of review to the trial court's findings. Op. at 9. The Court of Appeals decision does not

[3] The Dodge appraisal shows the undivided property actually consists of six tax parcels totaling only 31.83 acres. CP 320, 326-8, 330; Op. at 4-5.

conflict with a decision of the Supreme Court and discretionary review should not be granted under RAP 13.4(b)(1).

The allegations of the Schultz declaration, CP 64-66, and her credibility were "very much at issue". Op. at 14. Schultz did not rebut the Dodge appraisal and did not address how to value a life estate. She did not address how to value the property as a whole nor how partition in kind would affect the value. Her declaration merely speculated on what price arbitrarily divided portions of the property could be listed for sale. There was no showing that legal subdivision of the land is even possible. Schulz is a personal friend of Cal Jr. and is not an expert appraiser. The trial court found her declaration unconvincing and lacking credibility. FOF # 8, CP 703. The Court of Appeals thoroughly reviewed the conflicting evidence and affirmed this credibility finding based on substantial evidence in the record. Op. at 6-7, 14-17, 20.

The trial court weighed Cal Jr.'s "evolving" and changing allegations (that partition was "not feasible due to the

nature of the property and structures ... and would destroy much of the value"; for a life estate for Cal Jr. in lieu of sale; for sale of a portion of the property because it cannot be partitioned in kind), the conflicting declarations of appraiser Dodge and of realtor Schultz, and Lindsey's petition. The trial court made credibility determinations regarding these witnesses. CP 702-703(FOF#5 - #8). The Court of Appeals reviewed these findings based on substantial evidence in the record. Op. at 11-22.

The Court of Appeals decision is consistent with *In re Marriage of Rideout,* 150 Wn.2d 337, 350-351, 77 P.3d 1174, 1180 (2003)("where competing documentary evidence had to be weighed and conflicts resolved" the substantial evidence standard applies). Indeed, in a partition case "[a] presumption exists in favor of the trial court's findings of fact ... and the party claiming error has the burden of showing findings are not supported by substantial evidence." *Overlake Farms B.L.K. III,*

LLC v. Bellevue-Overlake Farm, LLC, 196 Wn.App. 929, 944, 386 P.3d 1118, 1127 (2016).

None of the cases cited by HRR, Petition at 23-25, involved judicial review of credibility findings on conflicting evidence. Those cases involved *de novo* judicial review of administrative agency action and do not conflict with the Court of Appeals decision here. Petitioner also cites *Dolan v. King County*, 172 Wn.2d 310, 311, 258 P.3d 20 (2011) which held that the "substantial evidence" standard should apply where the trial court had to resolve conflicting factual assertions.

Without citing legal authority, HRR argues *de novo* review should apply to a trial court's determination of "great prejudice" made without live witness testimony. Petition at 28-29. But RCW 7.52.070 and .080 do not state how the trial court must conduct its fact finding – by a motion hearing on witness declarations or by trial. HRR concedes the trial court has discretion in this regard, Petition at 29, but does not provide legal authority or facts showing abuse of discretion. HRR had

three opportunities to present evidence and legal arguments: at trial in October 2020 (CP 192), at the hearing on the motion for sale in December 2020 (CP 151), and an additional week thereafter to submit evidence for a life estate. (*Id.)*, CP 702 (FOF#7); Op. at 3-4, 16, 19-20. But the declarations of Cal Jr. and Schultz were not responsive on how to value a life estate nor a comparison of values if partitioned. CP 702-703 (FOF#7, #8). The trial court had discretion to decide the motion without live testimony on this record. This is not a basis for discretionary review. RAP 13.4(b)(1).

2. SUBSTANTIAL EVIDENCE SUPPORTS THE TRIAL COURT'S DECISION.

Petitioner HRR argues that the trial court relied only upon the declaration of appraiser Jim Dodge as the sole basis for its finding of "great prejudice". Petition at 17-18. However, this ignores the other evidence in the trial court's findings, FOF #3 - #9, CP 701-703, and misrepresents the Court of Appeals decision regarding sufficiency of the evidence. Op.

at 4-7, 11-17. See also, Brief of Respondent at 22 – 31 for citations to the record below supporting the trial court's findings. The trial court was entitled to believe Cal Jr.'s earlier admission under oath that "partition in kind is not feasible … and would destroy most of the value" as evidence of great prejudice to the owners. CP 175-176, CP 701 (FOF#3); Op. at 11-12. This is consistent with Lindsey's contention that separating the property into parcels would result in great prejudice to the owners. *Id.*, Op. at 12.

HRR argues the Dodge appraisal, CP 319-381, is a "barebones opinion" and the court's credibility findings were "fluff added onto the court's findings to avoid scrutiny …" on appeal. Petition at 20, 26. HRR argues this conflicts with standards "for scrutiny of expert declarations" and the presumption against partition sales. *Id.* at 23. But trial court explained in detail why it found the Dodge appraisal persuasive and the Schultz declaration not credible. FOF# 4 – FOF#8, CP 701-703. The appraisal shows Dodge's data, method,

conclusion, training and experience. CP 320, 342, 368-370. The trial court's determination of credibility is unassailable. *Morse v. Antonellis,* 149 Wn.2d 572, 574, 70 P.3d 125, 126 (2003)("[c]redibility determinations cannot be reviewed on appeal"). HRR argues that the Court of Appeals decision conflicts with *Volk v. DeMeerleer,* 187 Wn.2d 241, 277, 386 P.3d 254 (2016) warranting discretionary review. Petition at 23. *Volk* requires that "the expert's opinion must be based on fact and cannot simply be a conclusion...". But the Dodge appraisal, CP 319-381, is neither conclusory nor speculative, and the trial court found it supported proof of great prejudice to value if the land was partitioned in kind. CP 701-2 (FOF#4). The Court of Appeals did "not review credibility determinations or reweigh evidence on appeal". Op. at 8.

There is no "presumption" against partition sales. The statute "favors partition in kind whenever practicable." *Hegewald v. Neal,* 20 Wn.App. 517, 522, 582 P.2d 529, 531 (1978). RCW 7.52.080 requires proof "to the satisfaction of the

court" that "partition cannot be made without great prejudice to the owners...". The standard of proof is a civil preponderance. *Williamson Inv. Co. v. Williamson,* 96 Wn. 529, 538, 165 P. 385, 389 (1917).

The Court of Appeals decision does not conflict with this Court's precedent on expert opinions nor with the preponderance of evidence standard of proof. Discretionary review is not warranted. RAP 13.4(b)(1),

3. THE COURT OF APPEALS CORRECTLY APPLIED EXISTING LAW TO AFFIRM THE FINDING OF "GREAT PREJUDICE".

Petitioner HRR argues that the Court of Appeals applied a new standard of "economic feasibility" "based on unquantified amounts of injury or on mere hardship" – less proof than required by RCW 7.52.080. Petition at 10 – 15. HRR also argues that *Williamson Inv. Co. v. Williamson*, supra, requires a comparison of quantified values before and after partition for a finding of "great prejudice". Petition at 1 – 2, 13 – 14. But these arguments have no basis in fact or law.

The Court of Appeals correctly applied the *Williamson* standard: "[g]reat prejudice means 'material pecuniary loss'". Op. at 10. *Williamson* does not require quantification of lost value of each parcel if separated for partition. Op. at 20-22. In *Williamson,* the opinions of expert witnesses "were hopelessly divided" on comparison of values if the property was partitioned to separate parcels or valued as a whole. 96 Wn. at 540. Without finding specific quantities of lost value, the trial court appointed three referees to divide the property into parcels without great prejudice to the owners. The trial court later adopted the referees' report as its final decision dividing the land into parcels of approximately equal values. *Id.* at 533-4. Noting that each partition case "must ultimately depend on its own peculiar facts" the Supreme Court affirmed the trial court's findings as supported by substantial evidence. Given the wide range of disputed expert opinions on valuation "we are unable to say that the court's findings are contrary to the preponderance of evidence." *Id.* at 540.

Here, likewise the trial court compared values: the property at its highest and best use as a single property and partition of it is not economically feasible. Op. at 12; CP 701, FOF#2 - #4. Even Cal Jr. agreed that "trying to separate the property ... would destroy most of the value" and that partition in kind to separate parcels was not feasible. CP 175-176, CP 701, FOF#3. And no evidence established it could be legally divided. If "partition in kind is not economically feasible ... it would be impossible to speculate on possible valuation for portions of a piece of property that cannot be divided." Op. at 22. These findings are sufficient proof of great prejudice under *Williamson. Hegewald v. Neal,* supra, and *Overlake Farms,* supra, discussed by the Court of Appeals, do not conflict with *Williamson.* Op. at 10-11, 19-22.

HRR argues that an individual co-owner may object to the partition sale if he suffers hardship (i.e., Cal Jr. losing the farm) because "all owners" must suffer great prejudice equally. Petition at 15-17. HRR argues that Cal Jr.'s labor, materials

and cash expenditures on the ranch should be relevant to comparison of "great prejudice" amongst the owners. Petition at 5, 7. But the claim for reimbursement and/or equitable recognition of labor, materials and cash expenditures was dismissed, CP 815-816, an order that HRR did not appeal. All owners are greatly prejudiced if splitting up the property causes portions to be useless or less valuable than if sold as a whole. No single owner has a right to retain possession and control of the land, nor force others to remain co-tenants in property they do not wish to own. The test is whether partition in kind will cause great prejudice to the owners, not a comparison of hardships amongst the owners if the property is sold. Op. at 22-23.

HRR argues an owelty award under RCW 7.52.440 should have been considered. Petition at 22-23. But the issue of owelty was not presented at trial and cannot be raised for the first time on appeal. In any event, it does not make sense. HRR never explained how a life estate would work without

offsetting value to the other owners, RP (10/27/20) 32, CP 702-703 (FOF#6 - FOF#8) and abandoned it as a remedy on appeal. Op. at 16, 19. Later, HRR argued that a portion of the property could be sold, per the discredited Schultz declaration, such that owelty was not needed. The owelty argument is baseless.

E. CONCLUSION:

HRR has never explained the contradiction in its position: HRR's requests for a life estate or sale of a portion of the property both require a finding that the preferred remedy of partition in kind is not feasible due to "great prejudice." Yet HRR argues that great prejudice has not been proven without explaining how its proposed remedy can then be granted. HRR does not show that the Court of Appeals decision conflicts with a decision of the Supreme Court and its Petition for Review should be denied.

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RESPECTFULLY SUBMITTED this 10th day of February, 2023.

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Declaration of Service

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I declare under penalty of perjury under the laws of the State of Washington and the United State that the foregoing is true and correct.

Dated this 10th day of February, 2023.

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