Case No. 97936-7

IN THE COURT OF APPEALS, DIVISION ONE,
OF THE STATE OF WASHINGTON
Case No. 77980-0

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

FABIENNE L. RIGGERS,

Petitioner,

vs.

CATHERINE STOTZKY,

Respondent.

CATHERINE STOTZKY'S ANSWER TO PETITION FOR REVIEW

Erin K. Olson, WSBA No. 34656
Attorney for Respondent Catherine Stotzky

Law Office of Erin Olson, P.C.
2014 N.E. Broadway Street
Portland, OR 97232
Phone: (503) 546-3150
Fax: (503) 548-4435
Email: eolson@erinolsonlaw.com

TABLE OF CONTENTS

I. TABLE OF AUTHORITIES

Cases

Statutes

Rules

II. IDENTITY OF RESPONDENT

Catherine Stotzky, the appellee and cross-appellant in the case below, is the respondent (only) before this Court.

III. STATEMENT OF THE CASE

In 1995, Ms. Stotzky relocated from Aurora, Colorado to the Bellevue, Washington area after a bitter divorce from her husband of 36 years. She did so at the urging of Ms. Riggers, in part because Ms. Riggers and her husband, Tim Riggers, wanted Ms. Stotzky nearby to help care for their two daughters. RP 69-71, 111-112, 173, 199, 363-366, 481-487, 500-501, 552.

After Ms. Stotzky had relocated to Bellevue, the Riggers contacted their realtor and friend, Alice Woo, to assist Ms. Stotzky in locating a suitable permanent residence. RP 71-75, 221, 228-229, 451-454, 456-457, 469, 485-488. Ms. Woo was retained pursuant to a written agency agreement signed by Tim Riggers, Fabienne Riggers, and Ms. Stotzky. RP 80, 459; Ex 2.

Ms. Stotzky located a home in Maple Valley that she liked and that was within her price range of up to $150,000, but Mr. Riggers actively discouraged Ms. Stotzky's purchase of the Maple Valley home, arguing that it was too far from the Riggers' home for Ms. Stotzky to easily

commute to care for the Riggers' children. RP 76-77, 173-174, 188, 199-200, 439-440, 484, 486-487, 498, 538-539, 545-546.

When efforts to locate a suitable residence nearer the Riggers' home that was within Ms. Stotzky's price range were unsuccessful, Tim Riggers proposed that he and Ms. Riggers assist Ms. Stotzky in the purchase of a higher-priced home that was nearer their Bellevue home. RP 72, 77-78, 200-201, 368, 486-487. They eventually located a residence at 25717 S.E. 35th Place in Issaquah, and their offer of $175,000 was accepted. RP 78-79, 81, 454-455, 459; Ex 3.

Tim Riggers made the financial and other arrangements for the purchase of the Issaquah residence, including engaging a friend of his who was a mortgage broker, Rourke O'Brien, to assist in obtaining a mortgage loan. RP 81-82, 143-144, 200-205, 216-217, 222-223, 442, 468, 488-489, 545. The Riggers and Ms. Stotzky signed applications for the mortgage loan. RP 84-85; Exs 6-7. All three also signed the mortgage note and various disclosures, attestations, and certifications. Exs 5, 8-13. Title to the Issaquah home was conveyed to "Timothy P. Riggers and Fabienne L. Riggers, Husband and Wife and Catherine Stotzky, A Single Person." Ex 1.

Additionally, the Riggers and Ms. Stotzky signed multiple documents under oath or other attestation stating that title would be held

in the names of all three, and that the Issaquah home would be owner-occupied. RP 85-87; Exs 6-9. There is no dispute that the "owner" who would be occupying the home was Ms. Stotzky. RP 85, 88.

Ms. Stotzky understood and believed that she co-owned the home with the Riggers, and that she would be able to live there for the rest of her life. RP 189, 487-489, 508-509, 537-538.

Mr. Riggers dictated the financial terms of the arrangement, which included the Riggers making the $35,000 down payment including closing costs, taking the tax deductions for the mortgage interest and property taxes, and paying the balance due on the monthly mortgage payment after Ms. Stotzky's monthly payments of $802 were applied. RP 89-90, 187, 224-225, 382-383, 389, 392, 488, 497-498, 513, 551; Exs 8, 11. The monthly payments to the mortgage servicer of $1,263.00 included $1,002.98 principal, $216.19 interest, and $43.83 toward the insurance premium, and the first payment was due November 1, 1995. Exs 5, 8, 10. Ms. Stotzky assumed responsibility for paying the homeowner's association dues, which were assessed quarterly. RP 98, 100, 496-497; Ex 50.

Ms. Stotzky turned over the funds she had intended to use to purchase a residence to Tim Riggers to invest for her, as he was working

in the financial services industry at the time, and she trusted him to act in her interests. RP 72, 78, 368-372, 425-426, 498-499, 534-536.

During the first few months after the purchase of the Issaquah property, Ms. Stotzky made a notation in the memo line of the checks she wrote to pay her share of the mortgage. The first check, which bears the words "Mortgage payment" in the memo line, is in the amount of $1,263 and is payable to the mortgage company. Ms. Stotzky wrote "cancelled" across the front of the check. The second check is payable to Tim and Fabienne Riggers in the amount of $1,604, and the memo line reads "Rent for Dec and Jan." Three of the other four checks with annotations in the memo line include the word "rent." The fourth check, for $1,600, reads "2 month mortgage" in the memo line. No checks after March 22, 1996 have anything written in the memo line. Ms. Stotzky does not now remember why she put the "mortgage" in the memo line of some checks and "rent" in others. RP 96-98, 520-524; Exs 51, 54.

The Riggers divorced in 2001, with financial disputes ongoing until 2005. RP 215. Throughout those proceedings, Ms. Riggers maintained that Ms. Stotzky was a co-owner of the Issaquah property, and not a renter. She did so in declarations and testimony given in those proceedings. RP 93, 108-109, 112-115, 237, 313-315, 329-331; Exs 15-16, 24-25.

Ms. Riggers' adamant assertions during her divorce proceedings that Ms. Stotzky co-owned the Issaquah property led Tim Riggers to file a declaratory judgment action against Ms. Riggers and Ms. Stotzky to adjudicate title to the Issaquah property. RP 115-116, 292-293, 317-320, 501-502; Ex 18. During the declaratory judgment action, Ms. Riggers retained an attorney for Ms. Stotzky to defend Ms. Stotzky's ownership interest in the Issaquah property and assisted the attorney in that defense. RP 116-117. Pursuant to the settlement agreement reached in the Riggers' divorce case, the declaratory judgment action was dismissed without adjudication, and Mr. Riggers conveyed his interest in the Issaquah property to Ms. Riggers. RP 117, 308-309, 311, 327; Exs 21, 57. Ms. Riggers' financial settlement in the dissolution proceedings was in excess of $1 million, plus spousal maintenance payments through 2010 and the maximum statutory child support for the Riggers' two children. RP 119, 323-327, 329; Ex 57.

After the Riggers' divorce proceedings were concluded, Ms. Riggers pressured Ms. Stotzky to change her will so only she would inherit Ms. Stotzky's interest in the Issaquah property, and not Ms. Stotzky's two other daughters. Ms. Stotzky acquiesced, and one of her other daughters, Melinda Baldwin, drove her to a nearby military base

where she changed her will as requested by Ms. Riggers. RP 195-197, 502-503; Ex 82.

The 1995 mortgage loan was refinanced in 2002 after the Riggers' divorce in order to remove Tim Riggers as an obligor. RP 117-118; Exs 22, 57. The principal balance on the 1995 note of $131,365.80 was paid off with a new loan of $134,000. Ex 23. The note for the 2002 refinance was not produced, but the final HUD Settlement Statement lists only Ms. Riggers as "borrower." RP 118-119; Ex 23. Both Ms. Riggers and Ms. Stotzky signed the trust deed as the "borrowers." Tr 503-504, 563; Ex 22.

After Ms. Riggers' spousal maintenance payments ended in 2010, she was unable to financially sustain her lifestyle, and contacted her sisters to request assistance in paying the $300 or so per month that was her portion of the obligation toward the Issaquah property. Her sisters' declined, so instead, Ms. Riggers remodeled the basement of her own home, and has rented it for $1,250-$1,600/month since that time. RP 119-121, 129-131, 175-177, 334-335, 406.

In 2012, Ms. Riggers arranged to refinance the mortgage loan on the Issaquah property, with $116,572.44 in principal from the 2002 loan paid off with the proceeds from a new loan for $121,450. RP 131; Exs 28-33. Only Ms. Riggers signed the 2012 note, which was secured by a trust deed that was again signed by both Ms. Stotzky and Ms. Riggers.

RP 504, 563; Exs 31, 34. At time of trial, the balance on the mortgage was approximately $109,000. Ex 63.

In 2013, Ms. Riggers advised Ms. Stotzky that she had arranged to refinance the mortgage again, and Ms. Stotzky went to a credit union to sign the necessary documents. Once there, she learned that Ms. Riggers had not arranged to refinance the mortgage, but rather, had applied for a $50,000 HELOC. Ms. Stotzky objected to further encumbering the property, but after a heated discussion during which Ms. Riggers threatened to make her go live in an apartment if she did not sign, Ms. Stotzky signed the trust deed. RP 131, 504-505; CP 347; Exs 38-40. Ms. Riggers fully extended the $50,000 HELOC to pay for her personal expenses, and at time of trial, the balance on the HELOC remained $50,000. RP 64, 581, 649-650.

Still experiencing financial challenges, in the spring of 2016, Ms. Riggers called Ms. Stotzky and told her she needed to sell the Issaquah property, and that Ms. Stotzky would have to move out. Ms. Stotzky declined. RP 132-133, 505-506, 553-554.

In early July 2016, Ms. Riggers delivered to her two sisters, Nathalie Roloff and Melinda Baldwin, a lengthy statement written at Ms. Riggers' request by her ex-husband, Tim Riggers. Exs 42-43. The statement conveyed demands that Ms. Stotzky quitclaim her interest in

the Issaquah property to Ms. Riggers by July 15th so Ms. Riggers could list the property for sale by August 1st, and that Ms. Stotzky vacate the property by September 15th. Ex 42; RP 134-137, 230-231, 526, 528, 554-555, 571. After discussions with Nathalie and Melinda, Ms. Stotzky understood that Ms. Riggers was going to force her out of her home one way or another, so in November 2016, after living independently in her Issaquah home for 21 years, she moved to Portland to live with Nathalie and her family. RP 180-181, 192-193, 506-508, 525-526, 529.

During the 21 years she resided in the Issaquah home, Ms. Stotzky paid $802 per month to the Riggers toward the monthly expenses of ownership, paid for most of the routine and other maintenance on the property, and paid the HOA fees. RP 98, 100, 102-103, 488, 490-496, 532; Exs 50, 52. Her last payment of $802 was in November 2016, by which time she had paid a total of $202,104 to the Riggers toward the monthly mortgage expenses. RP 525, 558, 643. She had paid $10,840 in HOA fees during her occupancy, with her final payment covering the last quarter of 2016. RP 496-497, 634; Ex 50.

The Riggers have never reported Ms. Stotzky's $802 monthly payments as rental or other income on their tax returns, nor as income in financial statements or applications. RP 104, 106-107, 247; Exs 17, 24, 26, 32, 38, 55.

After Ms. Stotzky had relocated to Oregon to live with Nathalie, and after she had filed this lawsuit, Ms. Riggers changed the locks to the Issaquah residence, removed furniture Ms. Stotzky intended to retrieve, replaced appliances, contracted for maintenance and repairs, engaged a leasing agent, and entered into a one-year lease with an unwitting third party, all without Ms. Stotzky's knowledge or consent. RP 137-139, 532, 556-557, 559-562; Exs 64-78, 90.

IV. ARGUMENT

A. The Court of Appeals' decision on the determination of the percentage ownership of co-tenants is consistent with this Court's jurisprudence.

Petitioner asserts that the Court of Appeals' decision conflicts with four decisions of this Court: *Iredell v. Iredell*, 49 Wn.2d 627, 305 P.2d 805 (1957); *West v. Knowles*, 50 Wn.2d 311, 311 P.2d 89 (1957); *Schull v. Shepherd*, 63 Wn.2d 503, 387 P.2d 767 (1963); and *Cummings v. Anderson*, 94 Wn.2d 135, 614 P.2d 1283 (1980). The collective holding of those cases, says Petitioner, is that when a deed is silent on the respective interests of cotenants, a court in a partition action must determine percentage of ownership based only on the contributions of each of the cotenants toward the total of the down payment and the payments that reduced the principal balance of the mortgage. Petitioner

describes this formula as a "substantive rule of law" set by this Court from which a trial court cannot deviate.

Petitioner mischaracterizes this Court's decisions. Her argument that the Court of Appeals' decision conflicts with decisions of this Court is refuted by the most recent opinion cited by Petitioner: *Cummings v. Anderson*, 94 Wn.2d 135, 614 P.2d 1283 (1980).

In *Cummings*, this Court cited to *Iredell v. Iredell*, *West v. Knowles*, and *Shull v. Shepherd* for foundational principles concerning the determination of cotenancy interests. The Court's conclusion in *Cummings* was that:

> "[T]he respondent has an equity in the real property which bears the same ratio to the total equity as the ratio of her investment to the total investment of the parties. The petitioner is entitled to have offset against that interest a corresponding portion of the taxes and insurance premiums which he has paid."

Cummings v. Anderson, 94 Wn.2d at 144. The Court thus factored in more than just the source of the down payment and payments to reduce the principal balance on the mortgage in determining the parties' respective interests.

Even more notable in *Cummings* is that the Court also affirmed the trial court's general equitable approach in ordering relief based not only on the parties' respective contributions toward the purchase of the real

property in question, but also in jointly-owned personal property taken by the respondent when she left the relationship with petitioner. *Id.* at 144. In doing so, the Court acknowledged the trial court's "great flexibility in fashioning relief for the parties." *Cummings*, 94 Wn.2d at 143-44.

The Court of Appeals did not deviate from this Court's approach in *Cummings v. Anderson* when it affirmed the trial court's decision.

B. The Court of Appeals was correct in affirming the trial court's determination that Ms. Stotzky owed no rent to Ms. Riggers.

Petitioner also asserts that the Court of Appeals decision denying her an offset for fair market rent conflicts with this Court's decisions and a published decision of the Court of Appeals. Neither is true.

In *Cummings v. Anderson*, this Court wrote:

> "It is the rule in Washington that, in the absence of an agreement to pay rent, or limiting or assigning rights of occupancy, a cotenant in possession who has not ousted or actively excluded the cotenant is not liable for rent based upon his occupancy of the premises. In order for ouster to exist, there must be an assertion of a right to exclusive possession."

94 Wn.2d at 145 (internal citations omitted). The Court went on to say that "An appealing argument is made that, in a situation such as this, where the property is not adaptable to double occupancy, the mere occupation of the property by one cotenant may operate to exclude the other." *Id.* However, the Court nonetheless affirmed the Court of Appeals

denial of respondent's request for a rent offset, concluding that "[u]nder the circumstances as they exist, she has not demonstrated a sufficient equitable interest to warrant this extension of the rule." *Id.*

In this case, the Court of Appeals affirmed the trial court's similar reasoning, and so there is no conflict with this Court's decision in *Cummings v. Anderson*.

Nor is there a conflict with the decision of Division III of the Court of Appeals in *In re the Marriage of Maxfield*, 47 Wn. App. 699, 737 P.2d 671 (1987). In that case, Division III acknowledged the general rule stated in *Cummings* that, "In the absence of an agreement to pay rent, or limiting or assigning rights of occupancy, a cotenant in possession who has not ousted or actively excluded the cotenant out of possession is not liable for rent based upon her occupancy of the premises." *Maxfield*, 47 Wn. App. at 707-708. However, ouster had been proven to the satisfaction of the trial court in *Maxfield*, and Division III affirmed the trial court's conclusion.

In this case, the trial court concluded that ouster of Petitioner did not occur,[1] and the Court of Appeals agreed: "Fabienne never attempted

[1] Indeed, Petitioner did not plead ouster, and presented no evidence of ouster at trial, probably because her trial position was that Respondent was renting the property pursuant to an oral rental agreement that was

to occupy the house, so her ouster argument is meritless." *Stotzky v. Riggers*, 10 Wn. App. 2d 1023, slip op. at 17-18 (2019).

There is no conflict between the Court of Appeals' decision in this case and the decisions of this Court or other divisions of the Court of Appeals because ouster was not alleged or proven by Petitioner at trial.

C. The Court of Appeals applied the correct standard of review.

The Court of Appeals properly reviewed the trial court's partition decision for abuse of discretion. *Stotzky v. Riggers*, *supra* at 14. The Court of Appeals' discussion of the trial court's exercise of discretion addresses the grounds and reasons that supported its affirmance, and its conclusion that the trial court did not abuse its discretion is amply supported by both the record and the trial court's findings. *Id.* at 14-19.

D. The petition does not involve an issue of substantial public interest that warrants review by the Supreme Court.

This case involves a fact-intensive dispute between an adult daughter and her elderly mother over the ownership of real property. The panel of the Court of Appeals who decided the case determined that the opinion did not have "sufficient precedential value to be published as an opinion of the court." RCW 2.06.040. The criteria for that determination,

---

contradicted by every document that existed concerning the property. *Id.* at 7-8.

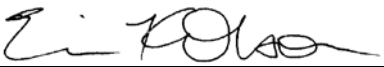
found in RAP 12.3(d), includes whether the opinion contained a decision "of general public interest or importance." RAP 12.3(d). If Petitioner truly believed the issues decided are of substantial public interest, she would have filed a motion to publish the Court of Appeals' opinion, as was her right. RAP 12.3(e) (motion to publish must be supported by addressing criteria including "whether the decision is of general public interest or importance"). She did not, and her statistics-based argument concerning the increasing prevalence of unmarried domestic partners' cotenancies is inapposite. The Court of Appeals' decision in this case is of neither general public interest nor general public importance.

V. CONCLUSION

For the reasons herein, Ms. Stotzky respectfully asks this Court to deny Ms. Riggers' petition for review.

Dated: December 19, 2019, at Portland, Oregon.

Respectfully submitted,



Erin K. Olson WSBA No. 34656
Attorney for Respondent Catherine Stozky

Law Office of Erin Olson, P.C.
2014 N.E. Broadway Street
Portland, OR 97232
Phone: (503) 546-3150
Fax: (503) 548-4435
Email: eolson@erinolsonlaw.com

LAW OFFICE OF ERIN OLSON P.C.

December 19, 2019 - 11:19 AM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	97936-7
Appellate Court Case Title:	Catherine Stotzky v. Fabienne L. Riggers

The following documents have been uploaded:

- 979367_Answer_Reply_20191219111324SC756348_8703.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was PltfAnswertoPFR.pdf

A copy of the uploaded files will be sent to:

- bryan@kirklandlaw.com
- kdavidson@kirklandlaw.com
- ken@kirklandlaw.com

Comments:

Sender Name: Erin Olson - Email: eolson@erinolsonlaw.com
Address:
2014 NE BROADWAY ST
PORTLAND, OR, 97232-1511
Phone: 503-546-3150

Note: The Filing Id is 20191219111324SC756348