

WASHINGTON STATE COURT OF APPEALS DIVISION THREE

CASE SUMMARIES FOR ORAL ARGUMENT

The following summaries are drawn from briefs and lower court judgments. The summaries have not been reviewed for accuracy by the judges and are intended to provide a general idea of facts and issues presented in the cases. The summaries should not be considered official court documents. Facts and issues presented in these summaries should be checked for accuracy against records and briefs, available from the Court, which provide more specific information.

Date of Hearing: Tuesday, December 4, 2018
Location: Spokane, WA – 500 North Cedar
Panel: Rebecca Pennell, Laurel Siddoway, George Fearing

9:00 a.m.

- 1) **No.: 344436**
Case Name: In re the Marriage of: Mary Alice Carlson and Hugh David Carlson
County: Yakima

Case Summary: During the 23 years of their marriage, David and Mary Carlson and David's son Nicholas farmed fruit orchards in the Yakima area. These orchards were managed through various family business entities, with assets totaling over \$4 million at the time the couple separated. One of the family's businesses was HMD Limited Partnership, formed by David's father in 1999. The Carlsons borrowed operating capital from HMD from time to time. After the separation, HMD sued Mary for torts and contract claims, including a breach of contract claim to recover loans from 2003-2007, 2009, and 2012-13. The trial court consolidated the dissolution action with HMD's commercial action. The court treated the various farming entities largely as commingled property and divided the community's property so as to give 55 percent to Mary and 45 percent to David. HMD was awarded to David as his separate property. Mary received maintenance and attorney fees. Most of HMD's loan claims were dismissed as barred by the statute of limitations. The trial court assigned the \$216,654 debt on the remaining 2012-13 claim to David.

Both David and HMD appeal. David assigns error to the trial court's characterization of and division of property, to the maintenance award, and to the attorney fees awarded to Mary. HMD challenges the dismissal of the loan claims, assignment of the remaining debt to David, and the court's failure to impose prejudgment interest to the funds Mary placed in the court registry pending the dissolution. Mary cross-appeals and challenges the amount of maintenance, the characterization of certain properties and debt, and the amount of the attorney fees award.

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2) **No.: 357201**

Case Name: Asotin County v. Richard Eggleston

County: Asotin

Case Summary: In July 2017 Richard Eggleston submitted a records request to Asotin County (County) under the Public Records Act (PRA), chapter 42.56 RCW. He requested records related to attorney fees in two legal disputes between Mr. Eggleston and the County. The County filed a motion for order to show cause, seeking permission to either withhold attorney invoices or redact attorney client privileged information or work product. Mr. Eggleston responded to the County's motion, objecting to the County withholding the records, but encouraged an in camera review and selective redaction. After an in camera review, the trial court concluded valid exemptions applied, and approved the County's requested redactions. Mr. Eggleston requested attorney fees and costs as the prevailing party. The trial court concluded the County was the prevailing party, not Mr. Eggleston, and denied the fee request. Mr. Eggleston appeals; he argues the trial court erred when it concluded he was not the prevailing party and denied his request for an award under the PRA.

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3) **No.: 357287**

Case Name: In re the Welfare of: G.R.J.S.

County: Benton

Case Summary: G.S., a minor, was removed from his parents' care in March 2015 after social workers with the Department of Social and Human Services (Department) received complaints of drug use and neglect regarding G.S. and his siblings. G.S. was found to be dependent, and the court ordered the mother to participate in parenting training, mental health counseling, substance abuse treatment, and random urinalysis testing during the dependency proceedings. The mother did not consistently participate in or complete any of these programs. The Department subsequently petitioned to terminate the mother's parental rights. Following trial, the court terminated the mother's rights, allowing G.S. to be adopted by relatives. The mother appeals, claiming that (1) many of the court's factual findings were not supported by substantial evidence and (2) the Department failed to offer her all necessary services prior to termination where it failed to place her in an integrated, inpatient treatment program with both mental health and substance abuse services but instead offered staggered services.

4) **No.: 355543**

Case Name: State of Washington v. Noe Ruiz Roque

County: Kittitas

Case Summary: The State charged Noe Ruiz Roque with two counts of felony harassment – domestic violence and two counts of cyberstalking – domestic violence based on his conduct towards Patricia Campos, with whom he had previously had a relationship. A jury found Mr. Roque guilty of one count of felony harassment and two counts of cyberstalking. The trial court found that Mr. Roque had an offender score of six, and imposed a sentence of 27 months incarceration on the felony harassment count and 12 months concurrent on the two cyberstalking counts.

Mr. Roque appeals, contending: (i) the evidence was insufficient to support the charges, (ii) his right to a unanimous jury verdict for the cyberstalking charges was violated because an alternative means was not supported by sufficient evidence, (iii) the court miscalculated his offender score and erred by including his gross misdemeanor cyberstalking counts in the score, and (iv) he was denied his right to effective counsel when his attorney failed to object to the imposition of a 10-year no-contact order.

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5) **No.: 355799**
Consolidated: 358160
Case Name: Estate of Edward Amos Comenout
County: Spokane

Case Summary: Edward Amos Comenout, Jr., (the “Deceased”) a member of the Quinault Indian Nation, died testate in June 2010. The Decedent owned off-reservation trust property, or a public domain allotment, located in Puyallup, Washington. The Decedent’s will left all of his Indian trust property equally, in undivided shares, to his four great-nephews: Richard Gardee, Christopher Gardee, William Gardee, and Edward Comenout, III. The United States Department of Interior’s Bureau of Indian Affairs probated the Decedent’s trust interests and the Decedent’s four great-nephews received their interests in the Puyallup trust land. While the probate was being settled, the federal government settled *Cobell v. Salazar*, 573 F.3d 808 (D.C. Cir. 2009), which arose out of the federal government’s alleged mismanagement and accounting of Indian trust accounts and land, affecting several thousand Indian plaintiffs. As a result of the *Cobell* settlement, the Decedent’s estate received a check from the Indian Trust Settlement in September 2014 that was deposited into the trust account of the estate’s attorney, Mr. Kovacevich.

Although the Deceased’s estate is insolvent, Mr. Kovacevich, who also became the special administrator for the estate, moved for an interim payment of fees for his role as special administrator and attorney fees in the total amount of \$49,000. The Gardees objected to this and filed their own motion to disburse the *Cobell* settlement check to the Decedent’s heirs as they owned the interest in the Decedent’s trust land and the money accrued from such interest after the Decedent’s death. The trial court agreed with the Gardees and disbursed the *Cobell* settlement check, and only granted Mr. Kovacevich’s request to the extent of \$20,000. Prior to the trial court issuing this order, Mr. Kovacevich filed another motion requesting additional fees. The court denied the motion and entered an order staying the matter of fee requests.

The Deceased, represented by Mr. Kovacevich, appeals the court’s orders denying the fee requests, granting the motion to disburse the *Cobell* settlement check, and staying the issue of fee request. He claims that the trial court erroneously denied his request for fees, and the court abused its discretion in denying his second fee request and ordering a stay on the matter of fees.

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