No. 100581-4
IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

No. 81966-6-I
COURT OF APPEALS, DIVISION 1
OF THE STATE OF WASHINGTON

In the Matter of the Marriage of:

KATHRYN M. COX

Appellant,

and

JOHN JOSEPH COX,

Respondent.

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER AND COURT OF APPEALS DECISION

The Petitioner is Kathryn Cox, ex-spouse of Respondent John Cox. Kathryn, seeks review of the Court of Appeals' published decision that affirmed the trial court's Order for writ of restitution against Kathryn, which was entered without regard to the procedures required by ch. 59.12 RCW, and in violation of Governor Inslee's Proclamation 19.4 related to judicial eviction actions. In relying on the trial court's inherent authority to enforce its orders related to property division and RCW 2.28.150, Division One's decision over-extended the trial court's authority in affirming a remedy that was contrary to law. *Cox v. Cox*, 81966-6-I, 2021 WL 6014577, (Wash. Ct. App. Dec. 20, 2021) (Appendix A).

II. ISSUES PRESENTED FOR REVIEW

1. Did the trial court exceed its inherent authority under RCW 2.28.150 when it ordered a writ of restitution against Petitioner in this case?

2. Did the trial court violate the Governor's Proclamation when it ordered a writ of restitution against Petitioner despite Respondent's failure to comply with the requirements for judicial eviction actions?

III. STATEMENT OF THE CASE

In this case, Respondent, Mr. John Joseph Cox ("John"), sought and obtained a writ of restitution from the trial court in the couple's marriage dissolution, after Petitioner, Ms. Kathryn M. Cox ("Kathryn"), did not comply with the court's orders related to sale of the couples' primary residence, where Kathryn was living. The trial court issued the writ of restitution without a bond, without regard to the statutory process of the forcible and unlawful detainer statute and without serving the "sworn affidavit" required for judicial eviction orders sought after

October 14, 2020, under the rules of Governor Inslee's eviction moratorium.

The Court of Appeals affirmed the trial court's action, holding that the trial court "did not need" to follow the procedures of ch. 59.12 RCW because it had inherent authority to enter the writ as an equitable remedy to effectuate its prior orders under RCW 2.28.150. The Court of Appeals ignored and did not render an opinion on Kathryn's arguments that John had failed to include notice of the sale of the home in a "sworn affidavit," a requirement prior to seeking to enforce a judicial eviction under Governor Inslee's Proclamation 19.4.

IV. ARGUMENT FOR WHY THIS COURT SHOULD GRANT REVIEW

This case presents a significant issue of first impression. RAP 13.4(b)(4). *See Schmidt v. Coogan*, 181 Wn.2d 661, 670, 335 P.3d 424 (2014) (issues of first impression are the province of the Supreme Court). No court has analyzed whether a court with jurisdiction over a marital dissolution has authority

pursuant to its equitable powers to "borrow" the statutory remedy of summary eviction outside of the statutory framework of ch. 59.12 RCW.

This case involves a significant question of law under the Constitution of the State of Washington and Constitution of the United States. RAP 13.4(b)(3). Kathryn's liberty rights were affected by the court's decision to Order a summary eviction outside of the guidelines adopted by the legislature and in violation of the Governor's moratorium.

Division One allowed the trial court to over-extend its inherent authority without legal basis and in defiance of the Governor's emergency orders. Its decision is contrary to the plain language of RCW 2.28.150 and at odds with Division Two's recent holding in *Dzaman v. Gowman*, 18 Wn. App. 2d 469, 491 P.3d 1012 (2021), which affirmed the force and authority of the Governor's prerequisites for judicial eviction orders sought during the pandemic. RAP 13.4(b)(2).

Review and correction of the Appellate Court's misapplication of these two important but legally underdeveloped areas of law will serve as guidance to attorneys, judges and other public officers as these issues are likely to recur in the future.

A. Division One Applied an Overly Broad Analysis of Inherent Authority in Affirming the Trial Court's Actions

1. Under Washington Law, the Remedy of Writ of Restitution Does Not Exist Outside ch. 59.12 RCW

The Appellate Court correctly found that the court did not follow the procedures required by ch. 59.12 RCW, but then improperly concluded that the trial court "did not need" to. Op. at 5. This holding is contrary to the legislative history of the remedy, its statutory nature and the lack of case law supporting a writ of restitution outside of ch. 59.12 RCW.

In Washington, the remedy of writ of restitution only exists in unlawful detainer actions, where "the superior court sits as a special statutory tribunal, limited to deciding the

primary issue of right to possession together with the statutorily designated incidents thereto." *MacRae v. Way*, 64 Wn.2d 544, 546, 392 P.2d 827 (1964). The Revised Code of Washington refers to writs of restitution only in Title 59. Writs of restitution are mentioned in three chapters of Title 59 RCW: RCW 59.08 (default in rent of forty dollars or less), RCW 59.12 (forcible entry and forcible and unlawful detainer) and RCW 59.18 (residential landlord-tenant act).

In unlawful detainer proceedings, "the right and remedy alike are statutory, and the procedural remedy is an integral part of the right itself." *Young v. Riley*, 59 Wn.2d 50, 52, 365 P.2d 769 (1961). The unlawful detainer statutes are in "derogation of the common law" and designed to "hasten recovery of possession" by removing the common law requirement of bringing an action in ejection. *Wilson v. Daniels*, 31 Wn.2d 633, 643, 198 P.2d 496 (1948).

The limited nature of the statute, and its summary eviction remedy, is highlighted by the Legislature's choice to

selectively extend the benefits of summary eviction actions to only one other area of law, RCW 61.24.060, which gives the purchaser of foreclosed property at a trustee's sale the "… right to the summary proceedings to obtain possession of real property provided in chapter 59.12 RCW." RCW 61.24.060. Here, the Legislature enacted the statute to preserve the summary nature of foreclosure actions permitted under ch. RCW 61.24 in referring purchasers to the unlawful detainer statutes for the removal of "reluctant" former owners. *See Sav. Bank of Puget Sound v. Mink*, 49 Wn. App. 204, 208, 741 P.2d 1043 (1987). The Legislature has extended no similar authority to reluctant spouses who hold property as tenants in common.

Indeed, the Appellate Court cites no statute or case authorizing a writ of restitution directly from a marriage dissolution proceeding, or outside the statutory framework of ch. 59.12 RCW. The Appellate Court's expansion of this statutory remedy based on the trial court's inherent authority should be rejected.

2. The Trial Court's Inherent Authority Under RCW 2.28.150 is Not Unlimited

In this case, the Appellate Court ignored the statutory requirements of RCW 2.28.150 in justifying the trial court's use "equitable discretion" to enforce its order by issuing a writ of restitution.

RCW 2.28.150 allows "the courts to adopt suitable procedures to effect their jurisdiction when no procedures are specifically provided." *In re Cross,* 99 Wn.2d 373, 378, 662 P.2d 828, 831 (1983). In choosing which procedure to adopt, the court is to select a process which appears "most conformable to the spirit of the laws." RCW 2.28.150.

However, the power of the court to adopt such procedures is not unlimited and is subject to review under the "arbitrary, capricious or contrary to law" standard. *State v. S.H.*, 102 Wn. App. 468, 474, 8 P.3d 1058 (2000).

That there be no "course of proceeding … specifically pointed out by statute" is a condition precedent of RCW 2.28.150. *In re Cross*, 99 Wn.2d at 380. Furthermore, this

"condition precedent," is to be construed strictly where a deprivation of liberty is involved. *Id.* at 379.

3. In Relying on RCW 2.28.150, the Appellate Court Ignored "Specifically Pointed Out Procedures" for Summary Eviction Under Washington Law

In its decision, the Appellate Court characterized the trial court's procedural aim as enforcement of its order related to the sale of the marital home.[1] Op. at 5. To enforce its order, the trial court chose the remedy of summary eviction, yet ignored the "specifically pointed out procedures" surrounding summary evictions under Washington law, violating RCW 2.28.150.

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[1] In doing so, the Appellate Court conspicuously concludes, without discussion, that the writ of restitution was not issued as a remedy for contempt, thereby side stepping analysis of the action as a "punitive contempt" sanction. Punitive sanctions are "imposed to punish a past contempt of court for the purpose of upholding the authority of the court." RCW 7.21.010(2). Punitive sanctions may only be imposed pursuant to the procedures contained in RCW 7.21.040. As a "punitive contempt" sanction, the trial court ignored the "specifically pointed out" procedures in RCW 7.21.040 and thereby violated RCW 2.28.150.

There is no leeway or excuse for the court's "borrowing" of a summary eviction tool in light of the statutory notice requirements of ch. 59.12 RCW and RCW 2.28.150's requirement that, where it exists, the court must follow a "specifically pointed out procedure," is to be "strictly construed" when a "deprivation of liberty" is involved.

Here, the summary eviction action issued by the trial court implicated Kathryn's liberty interests under the Fourteenth Amendment of the United States Constitution, as well as Article I, Section 3 of the Washington Constitution. Liberty interests include:

> "the right of the citizen ... to use [his faculties] in all lawful ways, to live and work where he will; to earn his livelihood by any lawful calling; to pursue any lawful trade or vocation. All laws, therefore, which impair or trammel these rights, which limit one in his choice of a trade or profession, or confine him to work or live in a specified locality, or **exclude him from his own house**, or restrain his otherwise lawful movements... are infringements upon his fundamental rights of liberty, which are under constitutional protection."

Allgeyer v. Louisiana, 165 U.S. 578, 589, 17 S. Ct. 427, 431, 41 L. Ed. 832 (1897) (emphasis added). The United States Western District Court recently stated that issuance and execution of a writ of restitution implicates a constitutionally protected "deprivation." *Moore v. Johanknecht,* C16-1123 TSZ, 2019 WL 7049884, at *8 (W.D. Wash. Dec. 23, 2019), *rev'd and remanded,* 831 Fed. Appx. 841 (9th Cir. 2020).

The *Robinson* holding, which the Appellate Court relies on to support the Court's authority to "compel obedience," is distinguishable. Op. at 5. *Robinson* did not involve eviction from a spouse's principal residence or any other sort of deprivation of a liberty interest. Rather, it involved the distribution of tax proceeds. *Robinson v. Robinson*, 37 Wn.2d 511, 516, 225 P.2d 411 (1950). Moreover, no Washington case or statute authorizes a writ of restitution directly from a marriage dissolution proceeding.

Here, the trial court in adopting its remedy of "writ of restitution," clearly failed to follow the "strictly construed"

requirements of ch. 59.12 for issuance of a writ of restitution. Therefore, the trial court's order fails to comply with RCW 2.28.150 and must be reversed as it is contrary to law.

4. The Trial Court Failed to Adopt a Suitable Remedy Reflecting the "Spirit of the Laws"

The trial court's chosen remedy, and the Appellate Court's acceptance of this action, should also be rejected because the trial court could have followed alternative means to carry out its orders in a more suitable manner which better reflected the "spirit of the laws." RCW 2.28.150. The divorce decree specified that disputes related to the sale of the home were to be "submitted … for binding arbitration," and, pursuant to this authority, the trial court had authorized a special master to "sign any … documents" on behalf of Katherine to "effectuate the listing and the sale" of the home. Op. at 2, CP 245, 372. Under this order, the special master had the authority to sign a quit claim deed on behalf of Kathryn transferring her interest in the home to John, which would have removed her

color of title in the home. *See Robinson v. Robinson*, 37 Wn.2d 511, 516, 225 P.2d 411 (1950) (court has authority to direct "the making of a conveyance by a representative of the court if the party fails or refuses to make it").

In this scenario, Kathryn would no longer have held the property as a "tenant for a term less than life," nor would she have been considered a "tenant at will" since the divorce court fixed the "term" of her tenancy, which ended upon her noncompliance. Thereafter, she would have been properly subject to an action for forcible or unlawful detainer statute under RCW 59.12.030(6).[2] *See Enforcement of property*

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[2] The Appellate Court incorrectly implies in its decision that "John is not Kathryn's landlord" and cannot bring an unlawful detainer action under ch. 59.12. Op. at 5. This view conflicts with the Supreme Court's holding in *Pacific Mut. Life. Ins. Co. v. Munson*, 115 Wash. 119, 120-21, 196 P. 633 (1921), which states that an unlawful detainer is still an appropriate remedy even where the conventional landlord tenant relationship does not exist, and has not been overturned, reversed or otherwise limited. *See also Puget Sound Inv. Grp., Inc. v. Bridges*, 92 Wn. App. 523, 527, 963 P.2d 944 (1998) (purchaser of real property at federal tax foreclosure sale may seek

division—Forcible or unlawful detainer and restitution; ejectment, 20 WASH. PRAC., FAM. AND COMMUNITY PROP. L. § 32:51 ("The forcible entry and detainer and unlawful detainer statutes may be used to remove a former spouse who refuses to vacate property.").

Alternatively, the trial court had a "specifically pointed out" procedure in the action of ejectment. RCW 2.28.150; RCW 7.28.010 ("Any person having a valid subsisting interest in real property, and a right to the possession thereof, may recover the same by action … against the tenant in possession."). An action in ejectment provides "a plain and adequate remedy." *Meeker v. Gilbert*, 3 Wash. Terr. 369, 377–78, 19 P. 18 (1888) (denying Plaintiff's request to Order equitable relief in the form of injunction where cause of action was within the purview of former ejectment statute). Where the summary eviction procedure of ch. RCW 59.12 is unavailable,

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dispossession of former owner under RCW 59.12.030(6) once title clears).

"[t]he appropriate procedure is an action in ejectment…." *Puget Sound Inv. Grp., Inc. v. Bridges*, 92 Wn. App. 523, 527, 963 P.2d 944 (1998). An ejectment action, although a slower remedy, is a "specifically pointed out" statute that the trial court could have used to effectuate its prior orders.

The Appellate Court's decision to allow the trial court to ignore these alternative courses of action and to issue a writ of restitution "without bond," outside of the procedural safeguards of ch. 59.12 RCW is especially troubling considering Kathryn's circumstances at that time. If not for the success of the supersedeas bond, Kathryn would have been shut out of her home, cut off from her personal belongings in a fragile mental health state, in the middle of the pandemic. *See* Appellant's Brief at 16.

The Appellate Court's opinion, which circumvents the established procedures of law and requirements of RCW 2.28.150 for use of inherent authority, should not be allowed to stand.

B. The Appellate Court Impermissibly Ignored the Trial Court's Violation of Governor Inslee's Moratorium in Affirming the Order for Writ

The Appellate Court's decision ignored the trial court's improper decision to Order a writ of restitution despite John's failure to comply with the rules related to eviction actions under the Governor's Moratorium.

Governor Inslee's Proclamation 20-19.3 was issued on July 24, 2020, and prohibits a property owner from "enforcing … any notice requiring a resident to vacate any dwelling" unless he (b) provides at least 60 days' written notice of intent to … sell the property." Governor Inslee's Proclamation 20-19.3, *available at* https://www.governor.wa.gov/sites/default/files/proclamations/20-19.3%20Coronavirus%20Evictions%20%28tmp%29.pdf.

John acknowledged that Governor Inslee's Proclamation 20-19.3 applied but argued that he satisfied the exemption because notice was effectively provided by various court orders

and arbitration awards pertaining to the sale of the property. Appellant's Opening Br. at 20.

On October 14, 2020, Governor Inslee renewed and extended his prior orders limiting evictions during the COVID-19 pandemic by issuing Proclamation 20-19.4. Proclamation 20-19.4 required "property owners …seeking … to enforce a judicial eviction order" to provide 60-day notice of intent to sell in the form off a sworn affidavit signed under penalty of perjury. Governor Inslee's Proclamation 20-19.4, p. 5, available at https://www.governor.wa.gov/sites/default/files/proclamations/proc_20-19.4.pdf.

On October 19, 2020, John filed a Motion to Correct Writ, seeking a writ of restitution, but failed to provide the notice conforming with the new requirements. Appellant's Opening Br. at 21.

Division 2's recent ruling in *Dzaman v. Gowman*, 18 Wn. App. 2d 469, 491 P.3d 1012 (2021) reversed the trial

court's decision to allow a writ of restitution to issue where the petitioner's failure to comply with the updated notice requirements contained in Proclamation 20-19.4. *Dzaman v. Gowman*, 18 Wn. App. 2d 469, 482-483, 491 P.3d 1012 (2021).

Notably, the Court disagreed with petitioner's arguments that the writ of restitution was properly issued because the 60-day notice complied with the notice requirements in effect at the time the Order for writ of restitution was entered (under Proclamation 20-19.3.) *Dzaman*, 18 Wn. App. 2d at 477.

The Court further concluded that the statute was constitutional and properly prevented the petitioner from enforcing a judgment for a certain period of time where he did not submit the required affidavit. "The proclamation was … effective after October 14, and applied … to the enforcement of judicial eviction orders after that date." *Dzaman*, 18 Wn. App. 2d at 482.

The fact pattern in this case is analogous to *Dzaman*: the trial court in the Cox's case, in issuing the writ or restitution,

ignored the plain language of the requirements for exemption from prohibited "eviction orders" as stated in the Proclamations. Despite Kathryn's extensive briefing of these issues in her appeal, the Appellate Court unexplainably failed to analyze them and delivered an opinion that conflicts with the holding in *Dzaman*. Appellant's Opening Br. at 19-22, Appellant's Reply Br. at 14-17.

The inherent authority of the trial court under RCW 2.28.150, relied upon by the Appellate Court, in no way cures or justifies the trial court's failure to follow the Governor's Proclamation. As discussed in the previous section, the trial court's inherent authority under RCW 2.28.150 must yield to "specifically pointed out" procedures related to the remedy adopted. Here, the Governor's rules mandate the specific requirements for summary evictions, which the trial court failed to apply.

Cross states that the "specifically pointed out" limitation in RCW 2.28.150 encompasses existing statutory rules and

court rules alike. Under this broad scope, the Governor's proclamations clearly constitute "procedures" for summary evictions that the trial court must follow. *In re Cross*, 99 Wn.2d 373, 381, 662 P.2d 828 (1983).

As such, this Court should accept review and vacate the trial court's Order for writ of restitution and remand for further proceedings.

V. CONCLUSION

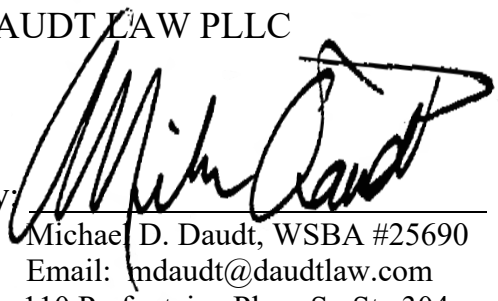
For the foregoing reasons, this Court should grant this Petition.

RESPECTFULLY SUBMITTED AND DATED this 19th day of January, 2022.

CERTIFICATE OF COMPLIANCE

I, Michael Daudt, hereby certify that this document contains 3137 words.

DAUDT LAW PLLC



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DECLARATION OF SERVICE

I, Michael Daudt, hereby certify that on January 19, 2022, I served the foregoing document upon counsel of record in the above-captioned matter by the means indicated below:

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

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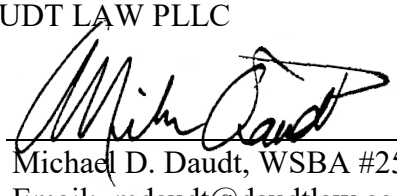
By: 

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— APPENDIX A —

FILED
12/20/2021
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of:	)	No. 81966-6-I
	)	
KATHRYN M. COX,	)	
	)	
Appellant,	)	
	)	DIVISION ONE
and	)	
	)	
JOHN JOSEPH COX,	)	
	)	PUBLISHED OPINION
Respondent.	)	
	)	

MANN, C.J. — Kathryn Cox appeals the trial court's order issuing a writ of restitution. The order stems from a dissolution proceeding between Kathryn and John Cox. Kathryn[1] argues that the trial court did not have subject matter jurisdiction to issue the writ, that the writ was an improper form of relief, and that the court lacked authority to enter contempt sanctions. We affirm.

FACTS

Kathryn and John Cox married in 1986. Kathryn petitioned for dissolution in 2016. Following a bench trial, the trial court entered a decree of dissolution in July 2017. The decree ordered that Kathryn and John's family home "shall be listed for sale with an agreed upon real estate agent within 90 days of the date of entry of this order."

[1] We refer to the parties by their first names for clarity. We intend no disrespect.

The order further stated "both spouses shall promptly execute all documents necessary to facilitate the sale of the Real Property" and take no action "further encumber[ing] the Real Property." All decisions regarding the sale were to "be made by the parties jointly and promptly, without unreasonable delay, and with any disputes submitted to arbitration." Pending sale, Kathryn and John were to hold the home in "equal shares, as Tenants in Common (without right of survivorship)." The court permitted Kathryn to "occupy the [home] pending sale," but she was to "maintain it in reasonable show condition and facilitate showings at reasonable times."

Kathryn appealed the final decree to this court which affirmed the trial court's decision in an unpublished decision. In re Marriage of Cox, No. 77634-7-I (Wash. Ct. App. June 10, 2019) (unpublished), https://www.courts.wa.gov/opinions/pdf/776347.pdf.

Kathryn has refused to leave the home since entry of the dissolution decree in 2017. Following entry of this court's mandate, John attempted to enforce the decree and facilitate sale of the home. On March 4, 2020, the trial court granted John's motion to compel arbitration. On March 13, 2020, the arbitrator granted John's request to enforce the decree and ordered the sale of the home, requiring that John and Kathryn sign a listing agreement within 10 days of the decision. Despite the arbitrator's order, Kathryn continued to occupy and inhibit the sale of the home.

On April 18, 2020, John sought a second arbitration. The arbitrator granted John's request for an order appointing a special master to sign "any and all documents" on behalf of Kathryn to effectuate the sale of the home. Despite two arbitrations, Kathryn continued to occupy and inhibit the sale of the home.

On June 17, 2020, John sought a third arbitration. The arbitrator entered an order requiring that Kathryn vacate the home by no later than July 27, 2020. The arbitrator further determined that should Kathryn fail to vacate the property, John "shall be entitled to a civil standby officer to forcibly remove [her]." Finally, the arbitrator granted John the "sole decision making on the sale process for the residence."

On July 21, 2020, the trial court confirmed all three of the arbitration awards and entered judgment in favor of John. Kathryn did not appeal this order.

On September 16, 2020, John sought a writ of restitution from the trial court to forcibly remove Kathryn from the home. After briefing, on October 8, the trial court ordered that a writ of restitution be issued. After the sheriff refused to serve the writ due to a scrivener's error, an amended writ was issued on November 9, 2020. The amended writ was consistent with the sheriff's Covid-19 policy of allowing an additional 30 days to execute the writ. The sheriff served, but did not execute, the writ on November 17, 2020.

The same day that the sheriff served the writ, Kathryn posted a supersedeas bond with the trial court to stay the writ pending appeal. Kathryn's counsel contacted the sheriff, informing them that the bond stayed the matter. Relying on RAP 8.1(b)(2),[2] the sheriff agreed not to enforce the writ.

On December 23, 2020, John moved to extend the writ, dissolve the stay of enforcement, and assess terms for contempt. On January 8, 2021, the court denied

[2] RAP 8.1(b)(2) states:
Except where prohibited by statute, a party may obtain a stay of enforcement of a decision affecting rights to possession, ownership or use of real property or of tangible personal property, or intangible personal property, by filing in the trial court a supersedeas bond or cash, or alternate security approved by the trial court pursuant to subsection (b)(4).

John's motion, finding that Kathryn had stayed the writ pending appeal by posting the supersedeas bond.

This appeal follows.

ANALYSIS

A. Writ of Restitution

Kathryn argues first that the trial court erred in granting a writ of restitution outside an action under the forcible entry and unlawful detainer statute, ch. 59.12 RCW.[3] We disagree.

A court's authority to enforce its orders is well settled by Washington statute. "every court of justice has power . . . to compel obedience to its judgments, decrees, orders and process, and to the orders of a judge out of court, in an action, suit or proceeding pending therein." RCW 2.28.010(4). Further, "[e]very judicial officer has power . . . to compel obedience to his or her lawful orders as provided by law." RCW 2.28.060(2). When no proceeding is prescribed, a court may draw from its implied powers to compel obedience:

> When jurisdiction is, by the Constitution of this state, or by statute, conferred on a court or judicial officer all the means to carry it into effect are also given; and in the exercise of the jurisdiction, if the course of proceeding is not specifically pointed out by statute, any suitable process

[3] Kathryn's briefing argues that the trial court lacked "subject matter jurisdiction" to issue the writ of restitution. She is incorrect. Subject matter jurisdiction "refers to the court, in which a party files a suit or a motion, being the correct court for the type of suit or character of a motion." In re Estate of Reugh, 10 Wn. App. 2d 20, 48, 447 P.3d 544 (2019). "Superior courts are courts of general jurisdiction" and thus have "the power to hear and determine all matters, legal and equitable, . . . except in so far as these powers have been expressly denied." In re Marriage of Thurston, 92 Wn. App. 494, 498, 963 P.2d 947 (1998). The controlling question when determining subject matter jurisdiction is "whether the court possessed the authority to adjudicate the type of controversy involved in the action." Ronald Wastewater Dist. v. Olympic View Water and Sewer Dist., 196 Wn.2d 353, 372, 474 P.3d 547 (2020). Here, the type of controversy is the Cox's dissolution proceeding. It is well understood that the trial court has subject matter jurisdiction over this type of controversy. See Farmer v. Farmer, 172 Wn.2d 616, 624, 259 P.3d 256 (2011) ("Dissolution proceedings invoke the court's equitable jurisdiction.").

> or mode of proceeding may be adopted which may appear most conformable to the spirit of the laws.

RCW 2.28.150.

The Washington Supreme Court expounded on the implied powers to compel obedience during dissolution proceedings in Robinson v. Robinson, 37 Wn.2d 511, 516, 225 P.2d 411 (1950):

> It is inconceivable that a court in a [dissolution] proceeding can divide the property between the parties and yet have no power to make that division effective if the parties are recalcitrant. . . . If a court in equity could not enforce its decrees, obviously the court would be rendered impotent and we would have neither law nor order but every one could do as he or she pleased. Of course, such a situation cannot be countenanced by the courts for a moment.

Kathryn's recalcitrance put the trial court in just such a situation. The trial court ordered the sale of the marital home within 90 days of the entry of its dissolution order. Over four years later and after three arbitrations, the appointment of a special master, and potential threat of removal by sheriff, Kathryn remains in the home in direct disobedience of the trial court's order. As such, the trial court selected what, within its equitable discretion, it believed to be a suitable process for enforcing its order: a writ of restitution.

While it is true that the trial court did not follow the statutory process under forcible entry and unlawful detainer statute, ch. 59.12 RCW, it did not need to. Title 59 RCW addresses landlord and tenant rights. Here, until the family home is sold, the Coxes own the property as tenants in common. As such, John is not Kathryn's landlord and cannot bring and unlawful detain action under ch. 59.12 RCW. While the unlawful detainer statute, RCW 59.12.090, does allow a plaintiff landlord to seek a writ of restitution to restore the property to the plaintiff, there is no authority for the proposition

that a writ of restitution is only available under ch. 59.12 RCW. By entering a writ of restitution the trial court chose an equitable remedy that allowed it to effectuate its order using a process familiar both to the court as well as the sheriff's office serving and enforcing the writ.

B. Contempt and Injunctive Relief

Kathryn also argues that the trial court lacked authority to issue a writ of restitution: (1) outside the statutory process for contempt under RCW 7.21.040 and (2) outside the statutory provisions for injunctive relief under ch. 7.40 RCW. Both arguments fail. While the trial court found Kathryn in contempt,[4] as discussed above, the writ of restitution was properly issued under the trial court's equitable power to enforce the dissolution decree. The trial court did not issue the writ of restitution as a remedy for either contempt or for injunctive relief.

Affirmed.

Mann, C.J.

WE CONCUR:

Coburn, J.

Dwyer, J.

[4] We uphold a finding of contempt "as long as a proper basis can be found." State v. Hobble, 126 Wn.2d 283, 291, 892 P.2d 85 (1995). The record offers ample bases to find Kathryn in contempt. After disobeying multiple trial court orders and impeding the sale of the marital home for over four years, Kathryn's actions support the trial court's contempt finding.

DAUDT LAW PLLC

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