No. 101628-0
COA 82228-4-I

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

LINDSEY (EVANS) RODRIGUEZ and CORY EVANS,

Respondents

v.

HIDDEN RIVER RANCH, LLC, a Washington limited liability company; and CALVIN EVANS, JR., an individual;

Petitioners,

and

CALVIN EVANS III,

Defendant.

ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

Respondent Cory Evans ("Cory")[1] was the Third Party Plaintiff in the trial court. Cory was granted intervention after his sister, Respondent Lindsey (Evans) Rodriguez ("Lindsey"), filed her 2019 partition action. The trial court agreed that intervention was warranted to protect Cory's ownership shares in: a) Petitioner LLC Hidden River Ranch ("HRR"); and, b) the subject property. All risked conversion by his father, Petitioner Calvin Evans Junior, earlier held a financial abuser of his elderly father after converting the patriarch's savings, social security payments, and 31.8-acre Sultan homestead for personal use.

Cory is the younger brother of Lindsey, and of Defendant *Pro Se* Calvin Evans III. The children are united in their opposition to HRR's Petition for Review.

[1] First names are employed to distinguish family members with similar, and in some cases identical, names. No disrespect is intended or should be inferred.

II. COURT OF APPEALS DECISION

The unpublished Opinion of the Court of Appeals, Division I, filed on November 14, 2022 and affirmed on December 14, 2022, methodically confirms each finding of fact and conclusion of law informing the disputed January 6, 2021 Order of Sale. Division I found that each element was supported by the record, Washington's partition statute, and consistent with more than one hundred years of legal precedent authorizing partition by sale over partition in kind. The decision is legally correct. Review is not warranted.

III. ISSUE PRESENTED FOR REVIEW

Has the Court of Appeals properly applied the Washington State partition statute and precedent, in a manner consistent with this Court's prior analysis? It has.

HRR posits that the Court has invented a "new test" for great prejudice by misrepresenting precedent and Division I's holding. HRR's petition is, simply, a disingenuous effort calculated to pique the higher court's interest with the prospects of judicial activism and a break from tradition. No such break

has occurred; the petition is unpersuasive and merits no further review.

IV. STATEMENT OF PROCEDURE

By November 2021, after Division I accepted review of the trial court's January 2021 Order of Sale, a series of discovery Orders and sanctions were issued against HRR in Cory's third party action. *See, e.g.*, Order, February 24, 2021; Order, September 3, 2021; Order, October 8, 2021, *on file herein*. On October 7, Division I rejected a series of HRR "emergency motions" to stay discovery and trial of Cory's third party claims. *See* Notation Ruling, October 7, 2021; Order Denying Motion to Modify, October 14, 2021, *on file herein*. On November 15, 2021, the trial court issued its strongest sanction yet, striking HRR's pleadings. *See* Order, November 15, 2021; Order Denying Reconsideration, December 9, 2021, *on file herein*.

Cory's Motion for Constructive Trust on proceeds from the subject property's sale, continued at the trial court pending the outcome of Division I's deliberations, was granted in December 2022. *See* Order, December 8, 2022. HRR was held in default, and in January 2023, default judgment was entered on all claims

against HRR, dissolving the Petitioner LLC. *See* Orders, December 22, 2022, and January 10, 2023.

Cory, Lindsey, and Calvin III have stood united through nearly four years of litigation in this matter, but they have been subjected to litigation involving their grandfather's property for the entirely of their adult lives. *In re Estate of Evans*, 181 Wn.App. 436 (2014); *Estate of Evans v. Calvin Evans, Jr*., 191 Wn.App. 1048 (2015), *petition for review denied*, 191 Wn.2d 1049 (2015); *Jones v. Estate of Evans, et al*., Snohomish County Superior Court no. 16-2-17464-31. The instant matter is merely the latest in a series of lawsuits that found Calvin Junior a financial abuser of his ailing father, disinherited and legally predeceased. *Id*. Now HRR, the LLC Cory and Petitioner founded to "protect" Cory's ownership share of the property, is no more.

The absence of new issues for the Court's consideration is fatal to the petition; the time to move on is now.

V. REASONS THIS COURT SHOULD DENY REVIEW

The Petition for Review opens by misrepresenting Division I's Order and subsequent affirmation in service to recycled arguments.

A. The Petition for Review Fails to Meet RAP 13.4's Threshold Requirement: *Raise New Issues*.

RAP 13.4 mandates that the petition for review raise new issues. Petitioner instead recycles arguments that date to its earliest motion for reconsideration at the trial court. These are, by now, well familiar to the parties:

(1) Misrepresentation of expert Jim Dodge's thorough, detailed, three-tiered property appraisal as "conclusory," rendering the lower court's findings "insubstantial" or "insufficient;"

(2) A well-worn misinterpretation of RCW 7.52.080 repeated so many times that it is designated here as objective "Background;" and,

(3) A rewrite of the 1917 *Williamson* holding, gateway to a disingenuous critique of the court's standard of review and application of precedent already addressed by Division I.

HRR makes no claim that these three issues are new. Such a claim would face almost insurmountable obstacles. First, these issues are encompassed by Division I's Analysis: "HRR…argu[es] the trial court's findings of fact are not supported by substantial evidence, its findings do not support its legal conclusions, and it applied the incorrect legal standard for determining whether partition by sale was the appropriate remedy." Op. at 7 – 8.

These all-purpose arguments have accompanied a broad array of defense pleadings at the lower courts. Two of the three issues first took root in HRR's January 19, 2021 Motion for Reconsideration of the Court's January 6 Order of Sale. CP 583. There, HRR disregarded Mr. Dodge's affidavit altogether ("no evidence was presented regarding the relative interests of the parties other than the tenancy in common deed"). *Id*. In fact, the comprehensive Dodge appraisal and Cal Jr.'s own testimony comprised substantial evidence supporting the finding of great prejudice. *Id*; CP 34 ("Partition in kind… is not feasible due to the nature of the property and structures. Trying to separate the property into three parcels or four parcels would destroy most of

the value."); Op. at 11-13. HRR also proffered an interpretation of RCW 7.52.080 that found a novel "requirement" of multiple referees not contained in the statute. CP 583-84, 585.

HRR's creative take on *Williamson*, repeated here, has also covered significant mileage. *Williamson Inv. Co. v. Williamson*, 96 Wash. 529, 165 P. 385 (1917). *Williamson* is most frequently cited for the proposition that, "Partition in kind is favored whenever practicable." *Williamson*, 96 Wash. at 535; *Hegewald v. Neal*, 20 Wn. App. 517, 522, 582 P.2d 529, *review denied*, 91 Wn.2d 1007 (1978). HRR converts "favored" into "a strong presumption against," combining language from *Williamson* and *Overlake Farms* while casting aside the "wherever practicable" condition altogether. Pet. Rev. at 26.

But Washington's partition statute contradicts HRR's reframing effort on its face: where partition in kind is not practicable, partition by sale is authorized—and, as shown by Division I, authorized through the precise analysis conducted by the trial court. "Thus, a court may order partition by sale, whether or not the parties request it, provided satisfactory evidence demonstrates that the property or any part of it cannot

be divided without great prejudice to the owners. *Friend v. Friend*, 92 Wn. App. 799, 803, 964 P.2d 1219 (1998) (*citing* RCW 7.52.080; *Hill v. Young*, 7 Wash. 33, 37, 34 P. 144 (1893)).

Thus HRR is left to forge a single new issue to justify its petition. HRR primes the pump by framing the ruling as an "unprecedented departure," while rehashing its earlier dispute with the standard of review. HRR submits the fallacy that Division I has invented a new "economic feasibility" test, supplanting this Court's "great prejudice" analysis. This proposition turns out to be no more than a minor variation on HRR's prior charge that the trial court engaged in burden-shifting in its original analysis; both propositions are equally frivolous.

B. Division I's Application of RCW 7.52.080 Is Consistent with More Than 100 Years of Post-*Williamson* Partition Decisions

The trial court's Order of Sale and Division I's affirmation of same are textbook application of Washington State partition precedent, but that doesn't stop Petitioner from engaging in semantic games. Petitioner attributes "feasibility" language from *Hegewald v. Neal*, 20 Wn. App. 517, P.2d 529, *review*

denied, 91 Wn.2d 1007 (1978) to Division I. Then, Petitioner employs semantic sleight of hand to complain that Division I has invented a new "economic feasibility" test, supplanting years of Washington State precedent. The argument is tantalizing but demonstrably false.

In *Hegewald*, a referee's report was issued as part of a feasibility study ordered by the trial court. *Hegewald*, 20 Wn. App. at 517. The report described topographical challenges posed by the subject property concluded that partition in kind would "destroy the usefulness of the property." Op. 21, citing *Hegewald*, 20 Wn. App. at 523. Though the report did not employ the magic words, "great prejudice," it was held sufficient to support the order of sale, despite "not [being] phrased in the exact language of the statute." *Id*.

Hegewald facts are mirrored here. The topographic challenge is a water feature that only has value as part of a whole; and for some time, the parties were agreed that the property could not be partitioned in kind without destroying its value.

In *Hegewald*, the water feature was hot springs; here, it's the Skykomish River, which *bisects four* of the 31.83-acre

property's *six* contiguous parcels. Op. at 4-5. As described in the Dodge appraisal and discussed by the trial court, the river floods regularly, rendering the surrounding property little more than FEMA floodplains. *Id*. These floodplains have no point of access other than from the road accessing the main parcel abutting Mann Road. *Id*. Thus, four of the property's six parcels have no value except as part of the whole. *Id*. Similarly, the *Hegewald* hot springs were "an unusual amenity and apparently have substantial value if used in connection with the rest of the land, but not otherwise." *Hegewald*, 20 Wn. App. at 517. Division I notes that in Washington State such value variations are foundational to finding great prejudice: "[T]his type of prejudice occurs when the value of the partitioned parcels would be materially less than the value of the undivided property." *Overlake Farms B.L.K. III, LLC v. Bellevue-Overlake Farm, LLC,* 196 Wn. App. 929, 386 P.3d 1118 (2016); *reconsideration denied,* 2017 Wash. App. LEXIS 2492 (Wash. Ct. App., 2017); *review denied* 188 Wn.2d 1007, 393 P.3d 785 (2017).

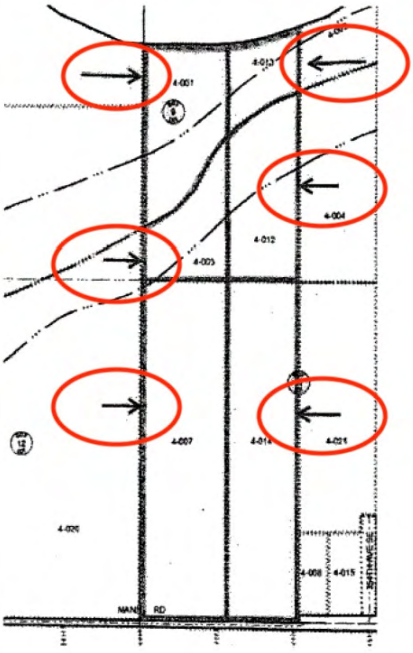
Unlike the influential report in *Hegewald*, however, HRR failed to acknowledge the presence of the Skykomish River or its

impact upon four floodway parcels, proffering a fictional, opinion-based real estate valuation authored by a personal friend and patron of HRR, based on boundary lines that simply didn't exist, creating parcels of sizes that matched no public records, with values arising from no recognized or credible bases. Pet. Rev. at 28; Op. at 6, 14. Despite having its credibility questioned and related misrepresentations disregarded by an array of authorities at the trial and appellate courts, HRR's Petition for Review forges ahead with the same falsehoods. Op. at 7.

Here, even the most basic misrepresentations announce their falsehood. For example, HRR doesn't seem to notice that its hand-drawn, unofficial support for a fictional four-parcel "farm" contradicts Petitioner's imagined "40 acres along the Skykomish," illustrating the burden of the Skykomish River and its vast flood zones. Petitioner appears not to notice its drawing includes *six arrows* generally indicating each of the property's *six parcels*:

(1) The 40-Acre 'Hidden River Ranch' Horse Farm, Which Has Been in the Evans Family for Three Generations, Comprises Four Distinct Parcels

Hidden River Ranch is a horse farm ~~along~~ the Skykomish River in Sultan. CP 61. ~~Four~~ parcels make up the farm, which covers about 32~~-40~~ acres. CP 61-62, 257, 259. Two parcels, each about 10 acres along Mann Road, have wells for water and meters for electricity. CP 61-62. Both these 10-acre parcels are livable, but only one of them, the



Petition for Review at 4.

In addition to inventing basic characteristics of the subject property which are contradicted by public record, HRR invents formulaic standards for a determination of "great prejudice" that don't appear in the partition statutes, in *Williamson*, or any Washington State authority since. Division I rejects HRR's new requirements.

The Opinion quotes the trial court where it found that "[m]uch of the property is pasture and some of the property is in the floodway of the Skykomish River, making partition in kind not economically feasible." Op. at 18-19. The Opinion also quotes the *Hegewald* Court to discredit and discard the same arguments HRR pitches here. Division I writes, "Indeed, we have previously affirmed findings even when they were not phrased in the exact language of the partition statute." Op. at 21, citing *Hegewald*. "No standards for factual content are fixed by statute." *Id*., at 22. "The trial court was free to reject the formulistic approach HRR advances on appeal when there was no evidence of an economically feasible way to divide this property in kind." *Id*.

Division I employs this language in rejecting Petitioner's similar sleight of hand below. On appeal, HRR charged "burden shifting," claiming the trial court improperly shifted the burden of establishing material pecuniary loss ("great prejudice") from the party seeking partition by sale (Lindsey) to the party promoting partition in kind (HRR). Op. at 18. But Division I notes that the trial court in fact found that Lindsey met her burden

through the Dodge appraisal, which established that the property could not be partitioned in kind without substantial loss of value; much as the feasibility study established the same in *Hegewald*. *Id*. Subsequent references to HRR's delay, refusal, and/or inability to present competing evidence of any kind, properly belonged in this context. Op. at 18-19.

Division I no more invents a new "economic feasibility test" than did the trial court shift the burden of proof from Lindsey to HRR. In truth, Division I recognized that the trial court conducted the precise *Williamson* and *Overlake Farms* analysis cited by HRR time and again. Op. at 10-11. Moreover, Division I determined that *Hegewald* rejected very nearly identical argument to that forwarded by HRR. Op. at 21-22.

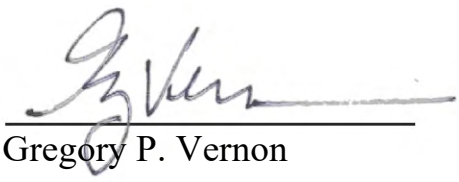
Petitioner's repackaging of Division I's application of precedent as departure from precedent is both bold, and boldly disingenuous. It cannot, however, justify discretionary review.

VI. CONCLUSION

The trial court conducted textbook partition analysis under the statute and precedent. Division I's affirmation of the trial courts findings of fact and conclusions of law was equally consistent. There is simply no basis for discretionary review.

I certify that the number of words in this document is 2,330, pursuant to the requirements of Rule of Appellate Procedure 18.17.

RESPECTFULLY SUBMITTED this 13th day of February 2023.

By: 
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