710206-6

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No. 710206

COURT OF APPEALS
DIVISION I OF THE STATE OF WASHINGTON

WALTER PAGE

Appellant,

Vs.

RAYMOND HOVICK and JACQUELINE HOVICK,

Respondents'

APPELLANT'S RESPONSE

TO RESPONDENTS BRIEF

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A. INTRODUCTION

This is an Appeal of a Motion For Mistrial. It is well established and documented by the Court of Appeals in their Opinion issued on November 5, 2012, that the COA has expunged from the 'Decreed Agreement' three (3) most paramount words, therefore by doing so: Stripped the decreed Rights of the Appellant, give new meaning to, and changed the intent of a ratified decree.

Op at 2, (first paragraph, FACTS) ...parties to "'execute whatever documents are necessary to carry out the transfers and distributions ordered herein.'" (APPENDIX A)

A true and factual reading of the decree clearly expresses; "**Both parties shall execute...**" This is a large omission, for the reason - it reverses the order of the court, the sequence and succession of what was intended for the formal distribution of property, (RCW 64.04.010, .020) changing the Agreement, written, executed and ratified within the decree.

The courts do not have jurisdiction to change a Settled Agreement, therefore overstepping their authority. **(APPENDIX B)**

The court has also overstepped it's authority by mischaracterizing a Settled Agreement as a "trial court" giving the decree a complete different character.

Op at 4, (Decision) " In a dissolution proceeding, the trial court "'has practically unlimited power over the property, when exercised with reference to the rights of the parties and their children'" In Remarriage of Kowaleski, 163 Wn.2d 542.

The subject properties at hand is based a "Settled Agreement," a

complete inapposite of the 'dissolution proceeding of a 'trial court."

Regrettably, the Respondents still adhere to the proverbial, 'cart before the horse' attitude which reverses the systematic approach of property ownership in the State of Washington. RCW 64.04.010, .020. Their argument is based upon their previous mistruths to the courts, (divorce, trial court) whereas their idiom has mistakenly worked in the past for Respondents, therefore, they believe it will continue to work in the future. The case at bar is a claim for Quiet Title, Release of Les Pendens, 'A Mistrial,' based upon the "Cart before the Horse" scenario, inapposite of the words installed into the Agreement.

At the nucleus of this Mistrial, lies a 'Settled Agreement' **(Appendix B)** decreed, executed and ratified on 11/05/1999 between Walter and Debra Page, whereas the parties to an agreed settlement, agreed; "Both parties shall execute whatever documents are necessary to carry out the transfers and distributions order herein." (CP 164-173 @ Section 3.13(c) Decree) This was the intent of the parties, ratified by the court, that the children of a 25 year marriage would receive the benefits of a home and the business ventures, executed and ratified and ordered by the court. The assets of the 25 year marriage would not be squandered ***unless*** 'Both parties shall execute....' So this verbatim was intended, written, executed and ratified. The court does not have the authority to change this meaning. This agreed paragraph (Section 3.13) was not in lieu or connected to support payments, or maintenance for

those obligations were also addressed within the Decree. (CP 164-173) Appellant was decreed to make the House payments of $458.00 per month, $600.00 Spousal Maintenance per month, Child Support, insurance, taxes on entire properties, (CP 164-173) etc. etc.

Prior to filing for divorce, Ms. Page had the community home appraised by independent appraisers, whereas she withheld those important documents from Appellant, Walter Page and filed papers for divorce. Fraud. (CP 64-68) Immediately after the Settled Agreement was ratified, Ms. Page unilaterally listed the 1920 farm house on Deer Lake Rd., and Lake property previously purchased for $80,000. with a local Real Estate Brokerage, for the sum of $300,000. (CP 57-58) Coinciding at the same time, Appellant was diligently paying the mortgage, taxes and insurance on the properties Ms. Page unilaterally listed for sale, contrary and in contempt of court order, without concurrence or execution of Appellant.

Appellant Walter Page was issued a recorded Full Deed of Reconveyance on 8/08/2000, 30 days prior to the Respondent's (Hovick's) purchase. (CP 76-77) On 9/22/2000, Ms. Page unilaterally sold and transferred the community homestead to the Respondent's, less than one year prior to any Statute of Limitations of Appeal to the Decree, (CP 74-75) clearly lacking execution of Appellant Walter Page as Decreed within the Agreement and Washington State Law. RCW 6.13.060

Moving forward, for the sake of the case at bar, the Appeals Court

(including the Superior Court) lacks jurisdiction of Page vs. Page, the Superior Court (which issued the Summary Judgment in Hovick vs. Page, - this case at bar) **clearly lacks jurisdiction** in Hovick vs. Page for Quiet Title, until such time as the courts adjudicate the statutory requirements of Page vs. Page, "Both Parties Shall Execute..." "the cart before the horse!" Due Process. RCW 64.04.010, RCW 6.13.060.

See; Tesoro Ref. & Mktg. Co. vs. Dept of Revenue, 164 Wn.2d 310 En Banc, (holding that the Court of Appeals erred when it looked beyond the statutory language and related statutes to determine legislative intent "without first determining that the statute was ambiguous."

Hovick vs. Page cannot move forward, until such time as Page vs. Page is adjudicated, executed one to another, or neither, 'to determine legislative intent,' of the properties in question. "Both parties shall execute..."

It is a well established rule and precedence of the Washington State Judicial Counsel, that 'the courts may not add terms to the agreement or impose obligations that did not previously exist,' nor 'make a contract for the parties based on general considerations of abstract justice.'

In the case at bar; VERBATUM REPORT OF PROCEEDINGS: Motion to Release Lis Pendens, Attorney Fees. April 23, 2010.

Page 16, Line 12,
THE COURT: So you were under a requirement to sign a deed, didn't do so, and I believe that because you didn't do so that it stopped everything?
WALTER S. PAGE: No. I was never required to sign a deed.
THE COURT: It says you shall; doesn't it?
WALTER S. PAGE: No. It does not say I'm required to sign a deed.
WALTER S. PAGE: There is no - nothing in this decree that requires or compels me to sign a deed. However, there is something in this decree that compels them to have my signature.

WALTER S. PAGE: I was never asked to sign a deed. A deed was never presented to me to sign.
THE COURT: It's not that hard to get one.
WALTER S. PAGE: I'm sorry?
THE COURT: It's not that hard to get one yourself and sign it if that's what the court orders. And the court says, 'This property belongs to her. That property belongs to you,' or whatever it says, then that's what your suppose to have done.

The court has overstepped it's authority to suggest that 'then that's what your suppose to have done.' The decree is very clear that there is not a time limit or requirement to go to the local Walmart to execute a deed. Section 3.13 is crystal clear that ' Any disputes concerning the requirements of this order shall be presented to the court for resolution." RCW 64.04.010 requires that 'Both parties shall execute.'

BYRNE V. ACKERLUND, 108 Wn.2d, 445.
"The court may not add to the terms of the agreement or impose obligations that did not previously exist."

"If Byrne had intended to have the power to force a sale of the property, the agreement, which was drafted by her attorneys, should have specifically provided for such."

Kinne V. Kinne, 82 Wn.2D 360 En Banc.
"Property dispositions of a divorce decree are non-modifiable."

The facts are well established. The Superior Court, including the Court of Appeals, (Hovick vs. Page) do not have jurisdiction of this matter at bar. This is a classic example of "The Cart Before the Horse." Page v. Page has to be adjudicated prior to Hovick v. Page, **a sequence that is Ordered by the court.** Hovick v. Page is a MISTRIAL which can never be resolved, due to the

"Back Door Approach" of the Respondents, jurisdiction of the parties and properties, and lack of Due Process. The house and five acres on Whidbey Island, Deer Lake Road, and Lot 14 of Lake of the Woods, belong to children and Appellant Walter Page, until Walter Page executes a Deed to another. RCW 64.04.010. This is the written, executed and ratified, intent of the parties, - that the properties will be passed to the heirs of the family, **unless** Both parties shall execute or resolve in court, not vice versa. "End of Story."

B. STATEMENT OF CASE

Opinion Issued On November 5, 2012 By Court of Appeals Expunged Lawful Provisions Agreed to and Negotiated By The Parties:

The relevant facts ARE disputed. Walter Page and Debra Page entered into an "Out of Court" settlement, "Agreed Settlement." Debra Page was NOT awarded the two parcels of property on Deer Lake Road, TO SELL at her disposal, but rather TO LIVE within, UNLESS "Both Parties Shall Execute."

See OP. at 2. The decree also directed the parties to "execute whatever documents are necessary to carry out the transfers and distributions order[ed] herein."

The foregoing statement and opinion issued by the COA is **ABSOLUTLY INCORRECT!** A true reading clearly exposes the words 'Both parties shall.' Both (two) parties (Walter and Debra) shall (are obligated through this "Court Order") execute (to give effect in a legal manner) ....

See Marriage of Mudgett, 41 Wn. App 337; "A court may not create a contract for the parties which they did not make themselves. It may neither impose obligations which never existed, ***nor expunge lawful provisions agreed to and negotiated by the parties."*** my emphasis.

By the COA omitting the words "Both Parties Shall" of the written decree, ("Both parties shall execute whatever documents...") the court has cleverly rewritten the "wording and the meaning" of the lawful provisions agreed to by the parties subject to the decree. If it is the intention of the court to expunge the lawful meaning and wording of the decree, perhaps the entire decree would be expunged? As in **Mudgett: "The court may not....expunge lawful provisions agreed to and negotiated by the parties."** (also see RCW 64-04.010, .020) This is a **PARAMOUNT PROVISION, -** written, executed and ratified. The courts cannot merely strike this meaning to suit their objectives. If the paragraph (Section 3.13 Decree) has no value or meaning, why would it even be presented within the decree? Answer: Because it was agreed, agreement, intended, written, executed, and ratified!! The court did not write this Agreement, Walter Page and Debra Page wrote this agreement, therefore it is the courts duty to enforce the terms of the agreement, not to deduct from the meaning of the agreement.

By omitting these most powerful and lawful words from the decree, the COA has effectively changed the meaning of the ENTIRE DECREE! Either party could randomly dispose or transfer, ANYTHING OF THEIR DESIRE.

See OP at 4, ("The 1999 dissolution decree effectively divested Page of his interest in the Deer Lake Property.")

By omitting the words "Both Parties Shall Execute..." the COA effectively [divested] the interest (of Walter Page and family) of the Deer Lake

Property, unlike the parties decreed intention. The COA in their documented omission - 'created another contract for the party(s) which they did not make themselves.' Day and Night! By excluding "Both Parties.." the court has effectively rewritten and mischaracterized the decree to favor one side only, unlike the original intent. "Both Parties," (Two.) Hypothetically if the decree were explicit to state; 'Four Parties shall execute…' then in fact, four (4) parties are BOUND BY LAW to execute whatever documents are necessary. RCW 64.04.020 - Due Process.

As in; See Firth v. Hefu Lu, 146 Wn.2d 608 En Banc. 2002,
"A grantor of property can convey no greater interest than the grantor has in the property."
[3] "By it's plain language RCW 64.04.010 applies only to the following agreements: (1) actual conveyances of title or interests in real property; and (2) ***agreements that create or evidence an encumbrance of real property.*** If an ***agreement*** falls into either of these categories, ***it is enforceable only if executed in the form of a deed."*** my emphasis.

The Agreement was intended and decreed to create an encumbrance on the real property whereas; Prior to a sale, transfer, mortgage, encumbrance, "Both parties shall execute whatever documents are necessary…" "Any disputes…shall be presented to the court for resolution." Very simple.

By **"expunging"** the intent of the parties lawful provisions, the court has removed the three most important words of the decree therefore giving the agreement a "different meaning" of entirety.

By expunging the three most paramount words of the decree, the court has reduced the intent that Appellant Walter, is not one of the parties, therefore

not eligible to execute a transfer, leaving only one party eligible to make the transfer. **This is in complete opposite of the meaning and intent of the decreed Agreement.** Walter Page's execution in clearly lacking on the transfer of the most valued asset of the community. CP 76-77, CP 74-75

See; BYRNE V. ACKERLUND, 108 Wn.2d, 445 "The court may not add to the terms of the agreement or impose obligations that did not previously exist." **MUDGETT** at 341; **See also SCHOENWALD V. DIAMOND PACKING CO.** 192 Wash. 409, 419-20 73 P.2d 748 (1937). "Nor can a court make a contract for the parties based on abstract justice." **WAGNER V. WAGNER,** 95 Wn.2d 94 (1980)

The court is not at liberty to add to the terms **(or remove from)** the words / terms of the agreement. The property agreements of a divorce decree are non-modifiable.

See **Byrne v. Ackerlund,** "If Byrne had intended to have the power to force a sale of property, the agreement, which was drafted by her attorneys, should have specifically provided for such."

The Courts have overstepped their authority, based on abstract justice; MISTRIAL.

C. The Courts Do Not Have Jurisdiction of This Matter

Walter and Debra Page entered an Out of Court, Settlement Agreement on November 5, 1999. In that Agreement, (which Walter did not approve or execute) the combined common properties were to be held in the names of Walter and Debra Page, unless, "Both parties shall execute..." or neither. (See **Byrne v. Ackerlund,** "If Byrne had intended to have the power to force sale.....should have specifically provided for such.") These properties

included the Deer Lake Homestead property, Lot 14 Lake of the Woods, 42' Documented Commercial Fishing Vessel, Licenses, Commercial property in Alaska, with a current Lease to Commercial Entities, it's Structures, and buildings, numerous vehicles, Licenses, Leases, stocks, bonds, insurances' etc.

Walter (not) and Debra drafted an agreement to divide the assets of the 25 year marriage, to withhold all the assets from the jurisdiction of the court, to be made available at a later date to the children of this marriage. Therefore the wording "Both parties **shall** execute whatever documents are necessary...." These words alone, Decreed, executed and ratified, would prevent one party from selling the assets of the other party unless Both Parties Executed." Now come the courts; Have eliminated the three most important words of the decree. The courts did not have the authority, nor play a part, - in installing the words or verbiage within the decree. The decree is not ambigious. The court cannot return 13 years later and manipulate the exact wording of the parties, to qualify the Respondents for Quiet Title, whereas the court does not have jurisdiction over the properties, or the authority to exclude the wording of the Agreement.

See Mudgett, SUPRA, 41 Wn. APP 337, "A court may not create a contract for the parties which they did not make themselves. It may neither impose obligations which never existed, nor expunge lawful provisions agreed to and negotiated by the parties."

See Mudgett, 41 Wn.2d 337, "The courts will not invoke their equitable powers to aid a party who was the sole cause of his misfortunate."

See Op. at 4, "In a dissolution proceeding, the trial court "'has practically unlimited power over the property, when excerised with referance to the rights of the parties and their children.'" In Remarriage of Kowalewski

163 Wn.2d 542 (2008)

Appellant, gives credence that a "**trial court"** has 'unlimited power" **in a trial,** - however in a "Settled Agreement" which was never adjudicated in court, the "trial court" does not have jurisdiction over the property, subject to the Agreement. Only the parties subject to the agreement.

See, Sears v. Rusden, 39 Wn.2d 412, "The property settlement agreement became more than the stipulation of the parties, - it became the courts disposition of the property…binding on the parties and merged in the decree."

The court cannot return to become a "Monday Morning Quarterback." (*'Lets just say we get together and omit a few words of this decree and everything will be fine!')* The case at bar is a dereliction of Fiduciary and Judicial responsibility. MISTRIAL!

See KINNE V. KINNE, 82 WN.2d, 360 (1973) "While alimony provisions of a divorce decree are subject to subsequent modifications upon proper showing, property dispositions of a divorce decree are non-modifiable."

See Op. at 4, ("quoting **Arneson v. Arneson,** 38 Wn.2d 99, 102, 227, P.2d 1016 (1951). A dissolution decree operates not only to vest in the spouse designated the property awarded to him or her, but to divest the other spouse of all interest in the property so awarded, ***except as the decree may otherwise designate."*** my emphisis

Is Section 3.13 of the decree **Chopped Liver! "Both parties shall execute** whatever documents are necessary…. **Any disputes….**shall be presented to the court for resolution." These are the words that the decree clearly designates! Appellant's execution is clearly missing! CP 76-77.

It is hard enough in life to accumulate the assets and an unencumbered

roof over ones head, (Homestead) without the courts trying to remove those assets of which they never had the jurisdiction to divide in the First Place! Thank you very much, - Due Process! This is NOT a Bananna Republic! If the court wanted Jurisdiction in favor of Respondents - The court should never have ratified a Settled Agreement! Hypotethically, *EVEN* if there were a 'trial court,' the courts would have spoken. Both Parties Shall Execute.

See LAW OF PROPERTY, Lawyers Edition, Chapter 10, Pg. 691. "A title traced through a judicial or legal proceeding is unmarketable if it was conducted without jurisdiction or without compliance with statute.

The courts cannot have jurisdiction over the properties of Walter and Debra Page, for the court never assumed jurisdiction from the conception. The property distrubution of assets of Walter and Debra Page are between Walter and Debra Page, - NEVER the Court, - unless the Courts were summoned BY Walter or Debra Page, NOT the Respondent's, Hovick. Ms. Page foregone her right to appeal. If Ms. Page and her attorney intended a different interpretation of the decree, they had ample time to change the agreement. Quiet Title can only be a dream. MISTRIAL

D. RESPONDENTS HAVE TESTIFIED UNDER OATH, THEY DO NOT POSSESS A VALID DEED

See Op. at 2 "In September of 2000, Ms. Page sold the Deer Lake property to Respondents Raymond and Jacqueline Hovick via a Statutory Warrantee deed."

Raymond and Jacqueline Hovick are in reality, "Strawmen," whereas the Persons / Corporations culpable for this case at bar is Fidelity National

Title Insurance Company. CP 78-105 Fidelity National is the Title Insurance Company (and the financiers of this lawsuit) which issued the Respondents their Statutory Warrantee Deed, without the execution of Appellant. CP 76-77, CP 74-75.

See Appendix H of Appellant's Brief; Verbatim Report of Proceedings, Pg. 21, Line 16, Ms. Johnson, Attorney for Respondents:
"We would be more that willing to settle this case through the preparation of a quit claim deed to be signed by Mr. Page and filed with the Island County Recorders Office. We would of course deliver that to the title company."

"The properties never have been, - nor ever will be, - FOR SALE. The properties have been assured to the Children and the Grandchildren of the marriage!" This is the intent of the decree. Ms. Page can live in the house until the day she dies, however she is not decreed to transfer the deed unless "Both parties shall execute..."

Is the court so blind, that the court would not question the "True Respondents, Fidelity National" motive to issue a Statutory Warrantee Deed to the Hovick's and in turn, give 'Carte Blanche' to the leading Attorney's of Bellevue WA to litigate their folly ? Does the court not have a Judicial Responsibility to merely "Follow the Money?" Any fool can see, that Fidelity National didn't do their homework prior to issuing the Hovick's their "Statutory Warrantee deed" (which is not worth the paper it is written upon.) At the VERY BEST, the Hovick's could ONLY claim title to;

"A grantor of property can convey no greater title or interest than the grantor has in the property." **FIRTH V. HEFU,** 146 Wn.2d 608 En Banc, (2002)

OF COURSE, Fidelity National is going to beg on the steps of the court house for a "Quit Claim Deed" from Walter Page and file that with the

Recorders Office and deliver that deed to "THEMSELVES!" Two halves would make a whole! It is unconscionable to witness the audacity of a Fidicuary unable to admit their failures, hiding under the skirts of their clientele, begging the courts for a Quiet Title or a Quit Claim, - whichever comes first!

Law of Property; "A title traced through a judicial or other legal proceeding is unmarketable if it was conducted without jurisdiction or without compliance with statute.

If Fidelity National can produce a deed in compliance of a judicial proceeding, (Page v. Page) why are they holding their clientele's head upon the chopping block waiting for the ax to fall? CP 76-77, CP 74-75. Why would Fedility National's attorneys be begging Walter Page for a Quit Claim Deed? Why would they beg the court for Quiet Title? Why would they *'be more than willing* to settle this case' for a quit claim deed? Why haven't the Respondent's produced to the court their purported Deed that complies with statute? CP 76-77, CP74-75 Fidelity National / Respondents have admitted their guilt that they do not possess a valid deed, (for they only possess one half,) why is the court letting this frivolous lawsuit continue? With enough money, and the courts omitting the words from the original decree, a frivolous lawsuit to gain time, is their only answer. Who is protecting Whom? If Fidelity National **cannot** produce a deed in compliance of a judicial proceeding verbatim to the written words of the decree ratified on 11/05/1999; "The Party is Over!" Put UP or Shut UP! Pull your pants back to your waist, face your

clients and Man Up! Fidelity Nationals baseless and frivolous allegations have been allowed to proceed far to long! MISTRIAL.

E. PURPORTED 2002 FRAUDULENT STIPULATION, AGAIN THE CART BEFROE THE HORSE

Respondents purport a CR2A stipulation, (drafted and unexecuted on an unrelated parcel of property) however there is never a Motion in the record showing an Application to Court as required RCW 7.04A.050. The Respondents have pulled a piece of paper from a garbage can, purporting a CR2A stipulation, never ordered by the court, not on the minutes of the record in open court in presence of the clerk, unsigned or executed by the party against whom the same is alledged, by attorneys who are not of record. This fraudulent document does not even clear, - the smell test! It is well documented that this purported stipulation was stricken by Appellant on August 7, 2002. CP 50-52.

RCW 2.44.010 (1) "... but the court shall disregard all agreements and stipulations in relation to the conduct of, or any of the proceedings in, an action or special proceedings unless such agreement or stipulation be made in open court, or in the presence of the clerk, and entered in the minutes by him or her, or signed by the party aginist whom the same is alledged, or his attorney."

The Respondent's failure to identify: **(1.)** A Motion to Arbitrate was presented to the court as per RCW 7.04A.050. **(2.)** An Appointment of Arbitrator RCW 7.04A.110 (1) was never presented to the court. **(3.)** RCW 7.04A.110 (2) That "An arbritrator who has a known, direct and material interest in the outcome....may not serve as a nutural arbitrator." **(4.)** Attorney's

not of record, RCW 2.44.010, **(5.)** signed by the party against whom is alleged; RCW 2.44.010 (1). **(6.)** " That a property settlement agreement incorporated into a dissolution that was not appealed cannot be later modified." **Byrne v. Ackerlund; 108 Wn.2d 445.**

Respondent's are grasping for straws!

See KINNE v. KINNE, 82 Wn.2d 360, En Banc. (1973) "property dispositions of a divorce decree are unmodifiable." also: "The agreement, signed by the respondent and incorporated in the decree with his (her) consent, is his (her) contract. He is bound under the decree and the contract."

Respondents should be sanctioned for their allegation to enter an alleged CR2A stipulation, that is not even of Record, and defies the Laws of Washington State. Ms. Page did not appeal the terms decree of November 5, 1999. Ms. Page (and the Respondents) are barred to stipulate the Decreed Rights of Walter Page in the year of 2002. She is bound under the decree and the contract. "A property settlement agreement, cannot be later modified." MISTRIAL.

F. ARGUMENT

The Court of Appeals Opinion dated November 5, 2012, deleted and omitted the three most paramount words of the Agreeed Settlement of Walter and Debra Page's decreed settlement. ("Both parties shall…") By so doing, the COA established a complete different character of the decree, unlike what was established by the parties original intention. By removing the intent (Both parties SHALL) the COA reduced a court ordered, lawful directive, into merely

a convenience ceremony, in complete opposite of the intent of the parties. RCW 64.04.010. By expunging the paramount wording of the decree, the court has opened the floodgates to allow noncompliance throughout the entire decree. (If it is the COA intent to expunge the word SHALL in the decree, [Section 3-13] then the word 'shall' can be expunged throughout the entire decree?)

"The court may not add to the terms of the agreement or impose obligations which did not previously exist." **BYRNE V. ACKERLUND.** "Nor can a court make a contract for the parties based upon general considerations based on abstract justice." **WAGNER V. WAGNER,** 95 Wn.2d 94.

By expunging these paramount words / parties intentions, the COA established an new and unintended time frame by which paramount properties can be disposed, and reduced a substantial right and due process of Walter Page, unlike what was the intent of the decree. Even though the decree awarded Ms. Page the Deer Lake properties to reside with the children, Walter Page retained ownership (tennants in common) unless Walter executed a deed to Ms. Page. (Both parties shall execute - RCW 64.04.010.) This same scenerio holds true for the entire list of assets provided by the parties subject to the agreement. It would be unconscionable to think that 'both parties shall' execute a title of a $2,000 vehicle and NOT the most valueable asset of the community. As the decree and RCW 64.04.010 are crystal clear in direction, Walter retains ownership UNTIL he executes a deed to another. (The same as ALL the assets of the community. I.e. Vessels, Licenses, Leases, Contracts,

Properties, Vehicles, Stocks, Bonds, Insurances.)

CASE IN POINT: If the community home burnt to the ground on December 5, 1999, -30 days after the decree was entered, and Walter was making the house payments / insurance payments as decreed on 11/05/1999. The bank mortgage is held in Walter and Debra, the insurance is held as Walter and Debra, the Deed is held as Walter and Debra. Who is the insurance company obligated to make payment? Correct answer: Walter Page and Debra Page!

CASE IN POINT: If the vessel sinks losing all hands on deck! The insurance only covers the vessel and not the crew. The vessel is currently (to this day) held and documented in the names of Walter Page and Debra Page. Who are the heirs and next of kin of the deceased going to file a lawsuit against for wrongful death? Correct Answer: Walter Page and Debra Page!

CASE IN POINT: Debra Page is driving the community vehicle down I-5 on January 1, 2000, and gets into a terrible wreck with no insurance, leaving the opposing driver disfigured for life. The vehicle is licensed and titled in the names of Walter Page and Debra Page. Who is the opposing driver going to sue? Correct Answer: Walter Page and Debra Page!

The Deer Lake properties are held by Deed in the names of Walter Page and Debra Page, and only as RCW 64.04.010 and the decree state; Title does not transfer <u>until</u>, "Both parties shall execute…"

Furthermore, the properties of Walter Page and Debra Page were not divided by the Superior Court, or by arbitration but rather between themselves without court intervention.

"The courts may not create a contract for the parties which they did not make themselves." see **MUDGETT, SUPRA,** 41 Wn.APP 337.

Also see **SEARS V. RUSDEN,** 39, Wn.2d 412, <u>"The parties of a divorce action become tenants in common of community property not disposed of by the interlocutory order of divorce, since the court did not exercise it's jurisdiction over such property."</u> my emphasis

The court did not exercise it's jurisdiction over the property, there was

no trial, therefore there is no decision / ruling before the court, only the Agreement. The parties agreed to hold the community properties as Tenants in Common unless; Both parties shall execute. The courts cannot return and exercise their jurisdiction of the properties at bar, unless invited by the parties subject to the Agreement. "the cart before the horse.' Most certainly, - the Respondents are barred to rely on the courts to assume jurisdiction of the properties, whereas the courts never assumed jurisdiction in the conception, for the Respondent's purpose to beg for a Quit Claim or Quiet Title, the cart before the horse.

See MUDGETT, 41 Wn. APP 337, 704, P.2d 169 "Where there is a unilateral mistake, courts will not invoke their equitable powers to aid the party who was the sole cause of his misfortune."

The Respondent's misfortune became clear, faster than the ink dried on their useless one half deed.

CONCLUSION

This is not a litigation of the same issues as suggested by the Respondent's Counsel, but a litigation of the issues further presented when the Court of Appeals expunged from the wording of the original decree. By doing so, the COA viewed the Agreement in a different light as what was intended by the parties subject to the Agreement. The court has overstepped it's authority by rewording and mischaracterizing a Settled Agreement. The courts cannot rule in abstract justice, only what is the written intent of the parties. It is not in the courts authority to make a contract for the parties, which the parties did not

make themselves. These failures represent a Mistrial.

DATED this 10TH day of October, 2014

By: Walter S. Page

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APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

RAYMOND A. HOVICK and JACQUELINE K. HOVICK, husband and wife,	)	NO. 65606-6 –I
	)	DIVISION ONE
Respondents,	)	
v.	)	
WALTER S. PAGE,	)	UNPUBLISHED OPINION
Appellant.	)	FILED: November 5, 2012

LAU, J. — Walter Page appeals from trial court orders rejecting his claims to ownership of real property on Whidbey Island. Because a valid 1999 dissolution decree awarded the property to Page's ex-wife and Page failed to identify any supporting evidence or legal theory, we agree with the trial court that Page's ongoing claims of ownership are frivolous. We therefore affirm the trial court rulings cancelling a lis pendens, dismissing Page's counterclaims, and quieting title to the property in respondents Raymond and Jacqueline Hovick. We also award attorney fees for a frivolous appeal.

FACTS

The relevant facts are undisputed. Walter Page and Debra Page divorced in November 1999. The agreed dissolution order awarded Ms. Page the two parcels of real property on Whidbey Island at issue in this appeal (the Deer Lake property). The decree also directed the parties to "execute whatever documents are necessary to carry out the transfers and distributions order[ed] herein."

In 2000, Page moved to vacate the decree, alleging, among other things, that he had not signed the decree and had not authorized his attorney to approve the decree for entry. After considering the conflicting testimony of Page and his former attorney, the trial court denied the motion to vacate, finding that Page had authorized his attorney to enter into the proposed settlement and to approve the agreed dissolution decree. Page did not appeal from the trial court's decision.

In September 2000, Ms. Page sold the Deer Lake property to respondents Raymond and Jacqueline Hovick via a statutory warranty deed. In November 2002, Page and his ex-wife entered into a CR 2A stipulation settling a dispute about an unrelated parcel of property. Under the terms of the stipulation, Page also agreed "that he will assert no claims against the petitioner [Ms. Page] or any third parties in connection with the respondent's [sic] sale of the Island County, Deer Lake Road real property that was awarded to her in the decree."

In November 2002, Page filed a legal malpractice action, once again alleging that he had not authorized his former attorney to approve the agreed dissolution decree. The trial court eventually dismissed Page's claims on summary judgment. This court affirmed, concluding that collateral estoppel barred Page's attempt to relitigate the

alleged lack of authority issue. See Page v. Kelly & Harvey, No. 55518-9-I (Wash. Ct. App. Jan. 12, 2006). Despite the court rulings, Page continued to claim he had an ownership interest in the Deer Lake property in various representations to the title company, the sheriff's office, and various businesses.

On February 23, 2009, Page recorded a lis pendens against one of the Deer Lake parcels, alleging a pending action under the dissolution cause number. On June 12, 2009, the Hovicks filed this action seeking release of the lis pendens and an injunction prohibiting Page from any future efforts to cloud their title on the Deer Lake property. In response, Page filed counterclaims seeking an award of damages based on a theory of ouster and an order quieting title to the property in Page and the Hovicks as tenants-in-common.

At the hearing on April 23, 2010, Page once again alleged that he had never authorized his attorney to enter into a settlement and approve the entry of the decree. He argued that because he had never conveyed his interest in the property to his ex-wife, he retained an ownership interest.

The court found that the dissolution decree awarded the disputed property to Page's ex-wife and that Page had no ownership interest. The court cancelled the lis pendens, restrained Page from "filing, recording or otherwise affecting title to the real property," and awarded the Hovicks attorney fees under RCW 4.28.328.

On June 17, 2010, the trial court granted the Hovicks' motion for summary judgment and dismissed all of Page's counterclaims as frivolous. The court entered a judgment quieting title to the property in the Hovicks and awarding the Hovicks their attorney fees under RCW 4.84.185.

DECISION

Deer Lake Property

Page contends the trial court erred in releasing the lis pendens, quieting title in the Hovicks, dismissing his counterclaims, and awarding attorney fees. But his arguments all rest on the mistaken belief that he retained an ownership interest in the Deer Lake property.

Page concedes the 1999 decree awarded the Deer Lake property to his ex-wife, but he points to the provision requiring both parties to execute the necessary documents to carry out the property distribution. He reasons that because he never complied with this provision by signing a deed or otherwise formally conveying his interest in the property, he retains an ownership interest "until he signs a deed to another, or a court of law orders him to do the same." Br. of Appellant at 13. But Page's reliance on cases addressing the general requirements for conveying real property is misplaced. See, e.g., Kesinger v. Logan, 113 Wn.2d 320, 324, 779 P.2d 263 (1989) ("The conveyance of an interest in real property must be by deed"). Those decisions are inapposite because they do not involve dissolution proceedings.

In a dissolution proceeding, the trial court "'has practically unlimited power over the property, when exercised with reference to the rights of the parties and their children.'" In re Marriage of Kowalewski, 163 Wn.2d 542, 550, 182 P.3d 959 (2008) (quoting Arneson v. Arneson, 38 Wn.2d 99, 102, 227 P.2d 1016 (1951)). A dissolution decree "operates not only to vest in the spouse designated the property awarded to him or her, but to divest the other spouse of all interest in the property so awarded, except as the decree may otherwise designate." United Benefit Life Ins. Co. v. Price, 46 Wn.2d

587, 589, 283 P.2d 119 (1955), overruled on other grounds, Aetna Life Ins. Co. v. Wadsworth, 102 Wn.2d 652, 689 P.2d 46 (1984). Consequently, "a Washington [dissolution] decree awarding property situated within the state has the operative effect of transferring title . . . ." Kowalewski, 163 Wn.2d at 548.

The 1999 dissolution decree effectively divested Page of his interest in the Deer Lake property. He has not identified any relevant authority or legal theory supporting his claim to a continuing interest in the property. Because Page's arguments on appeal rest solely on his meritless allegations of a continuing interest in the Hovicks' property, his challenges to the release of the lis pendens, dismissal of his counterclaims on summary judgment, and order quieting title necessarily fail.

Moreover, as the trial court noted, Page's legal challenges to the dissolution decree were previously rejected. And in 2002, Page stipulated he would not interfere with the property distributed by the decree. The record amply supports the court's determination that Page failed to establish any legal justification for filing the lis pendens. The court therefore did not abuse its discretion in awarding the Hovicks attorney fees for cancelling the lis pendens. See RCW 4.28.328(3).

Nor did the trial court err in awarding attorney fees under RCW 4.84.185. RCW 4.84.185 authorizes the court to award a prevailing party reasonable expenses, including attorney fees, for opposing a frivolous action. "'A lawsuit is frivolous when it cannot be supported by any rational argument on the law or facts.'" Skimming v. Boxer, 119 Wn. App. 748, 756, 82 P.3d 707 (2004) (quoting Tiger Oil Corp. v. Dep't of Licensing, 88 Wn. App. 925, 938, 946 P.2d 1235 (1997)).

Page's counterclaims, including his claim for quiet title and claim for ouster, were based solely on conclusory allegations of a continuing interest in the property. The record supports the trial court's finding that these claims were unfounded, advanced without reasonable cause, and unsupported by any rational argument. The court did not abuse its discretion in awarding attorney fees under RCW 4.84.185. See Fluke Capital & Mgmt. Servs. Co. v. Richmond, 106 Wn.2d 614, 625, 724 P.2d 356 (1986).

On appeal, Page repeatedly asserts that the 1999 dissolution decree was invalid because he did not sign it and never authorized his attorney to agree to its entry. Page raised identical claims in his 2000 motion to vacate the decree. After conducting an evidentiary hearing, the trial court in that proceeding rejected Page's allegations, and Page did not appeal the decision. Collateral estoppel bars Page's attempts to relitigate the issue yet again. See Hanson v. City of Snohomish, 121 Wn.2d 552, 564, 852 P.2d 295 (1993).

Virtually all of Page's arguments on appeal rest on unsupported factual assertions, including sweeping allegations of fraud or misfeasance directed to individuals and entities that are not parties to this action. Page further alleges the 2002 stipulation is invalid and fraudulent.

But Page has not identified any evidence in the record to support these allegations. Neither Page's opening brief nor his reply brief contains any meaningful references to the record, in violation of the Rules of Appellate Procedure. See RAP 10.3(a)(6) (legal argument in brief must include reference to relevant parts of the record). Appellate courts are not required to search the record to locate documents that

might be relevant to a litigant's arguments. Mills v. Park, 67 Wn.2d 717, 721, 409 P.2d 646 (1966). Page's factual allegations warrant no further judicial consideration.

Page contends the trial court's order quieting title in the Hovicks violated both RCW 7.28.120 and .050. RCW 7.28.120 provides that the plaintiff in a quiet title action must set forth "the nature of his [or her] estate, claim or title to the property" in the complaint. Page fails to identify any relevant deficiency in the Hovicks' pleadings. And in any event, Page's arguments rest primarily on the mistaken assumption that he has an interest in the Deer Lake property.

RCW 7.28.050 specifies the limitations period for a party seeking to recover property under certain circumstances from the party possessing the property. There is no dispute that the Hovicks are in possession of the Deer Lake property. RCW 7.28.050 has no application to the facts of this case.

Motion to Supplement the Record

While this appeal was pending, Page moved in the trial court to supplement the record with 12 documents. On February 28, 2011, the trial court denied the motion, noting that Page had not submitted the documents for consideration on summary judgment. The court also denied Page's motion for reconsideration and awarded attorney fees for a frivolous motion. A commissioner referred Page's objection to the trial court's order for consideration along with his appeal. See RAP 9.13.

Page seeks to supplement the record with documents relating to the purchase and sale of the Deer Lake property. There is no dispute that Page failed to submit these documents to the trial court for consideration on summary judgment. On appeal from a summary judgment order, we will consider "only evidence and issues called to

the attention of the trial court." RAP 9.12. Accordingly, the trial court properly denied Page's motion to supplement the record.

Motion to Recuse

Page contends the trial judge erred in denying his motion to recuse. At the hearing on the motion, Page informed the judge he had learned she was "the owner of a real estate brokerage" and that her "livelihood" was derived from the title company paying the Hovicks' attorneys. RP 3/28/2011, at 3. He further alleged she was biased, misapplied the law, and acted according to the "marching orders from the title companies." RP 3/28/2011 at 4.

The judge noted that her husband's real estate company was separate property and denied the motion to recuse.

"The trial court is presumed ... to perform its functions ... without bias or prejudice." Wolfkill Feed & Fertilizer Corp. v. Martin, 103 Wn. App. 836, 841, 14 P.3d 877 (2000). Consequently, the party seeking to overcome that presumption bears the burden of presenting evidence of a judge's "actual or potential bias." State v. Post, 118 Wn.2d 596, 619, 826 P.2d 172 (1992). We review the trial court's decision not to recuse for an abuse of discretion. State v. Perala, 132 Wn. App. 98, 111, 130 P.3d 852 (2006).

Page failed to submit any relevant evidence to support the existence of the trial judge's alleged financial conflict of interest. Contrary to Page's apparent belief, a judge's unfavorable rulings and critical comments about a party's legal arguments are insufficient, without more, to demonstrate actual or potential bias. See In re Pers. Restraint of Davis, 152 Wn.2d 647, 692, 101 P.3d 1 (2004). The trial court did not abuse its discretion in denying the motion to recuse.

Attorney Fees

The Hovicks request an award of attorney fees under RCW 4.84.185 and RAP 18.9(a) for a frivolous appeal. An appeal is frivolous "if the appellate court is convinced that the appeal presents no debatable issues upon which reasonable minds could differ and is so lacking in merit that there is no possibility of reversal." In re Marriage of Foley, 84 Wn. App. 839, 847, 930 P.2d 929 (1997). Page's continuing assertions of an interest in the Deer Lake property (unsupported by any coherent legal theory), his reliance on factual allegations directly rejected in a prior court proceeding, and his failure to identify any meaningful evidentiary support in the record satisfy that standard here. The Hovicks are awarded their attorney fees on appeal subject to compliance with RAP 18.1(d). We reject Page's request for costs and expenses on appeal.

Affirmed.

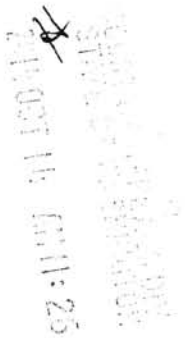
Ian, J.

WE CONCUR:

Leach, C. J.

Appelwick, J.

APPENDIX B



SE#: 97-3-00436-3 JUDGMENT# 01-9-00102-7 JUDGE ID: 1
TLE: PAGE VS PAGE
_ED: 10/16/1997
JSE: DIC DISSOLUTION WITH CHILDREN DV: Y

SOLUTION: STPR DATE: 11/05/1999 SETTLED BY PARTIES AND/OR AGREED JUDGMEN
MPLETION: JODF DATE: 11/05/1999 JUDGMENT/ORDER/DECREE FILED
SE STATUS: CMPL DATE: 11/05/1999 COMPLETED/RE-COMPLETED
CHIVED: RESTORE DATE : 11/15/2004
NSOLIDT:
OTE1:HANCOCK RECUSED **CHURCHILL RECUSED**SNOHOMISH COUNTY JUDGE BOWDEN
OTE2: *DECREE OF DISSOLUTION 10 PAGES**

---------- PARTIES ----------

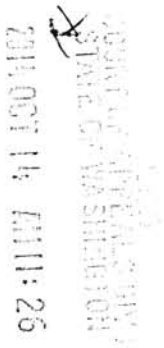
CONN.	LAST NAME, FIRST MI TITLE	LITIGANTS	SERVICE
PET01	PAGE, DEBRA MAY		
RSP01	PAGE, WALTER S		
ATP01	COHEN, JACOB		
BAR#	05070		
WSD01			
WTR01	HARVEY, H. CLARKE		05/19/2000
BAR#	08238		
WTR02	HARVEY, H. CLARKE		07/26/2000
BAR#	08238		
WTR03	SKINNER, CHRISTON CLARK		08/02/2002
BAR#	09515		
PSD01			

----------APPEARANCE DOCKET----------

UB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
	10/16/1997	$FW	FEE WAIVED	
	10/16/1997	MTAF	MT & DECLR TO COMMENCE & PROSECUTE PROCEEDINGS IN FORMA PAUPERIS	
	10/16/1997	ORPRFP	ORDER TO COMMENCE & PROSECUTE PROCEEDINGS INFORMA PAUPERIS	
		COM02	COMMISSIONER MARILEE BLACK	
	10/16/1997	PTDSS	PETITION FOR DISSOLUTION OF MARRIAGE	
	10/16/1997	SM	SUMMONS	
	10/16/1997	MTAF	MT & DECLR FOR TEMPORARY ORDER & ORD TO SHOW CAUSE	
	10/16/1997	ORTSC	ORDER TO SHOW CAUSE	10-31-1997LG
		COM02	COMMISSIONER MARILEE BLACK	
		ACTION	SHOW CAUSE	
	10/31/1997	HSTKNA	HEARING STRICKEN:IN COURT NONAPPEAR	
		JDG01	JUDGE ALAN R. HANCOCK	
		CTR01	COURT REPORTER MARGARET LEGGETT	
	04/30/1999	MTAF	MOTION & DCLR FOR EXPARTE RESTRAIN ORDER AND FOR ORDER TO SHOW CAUSE	
	04/30/1999	ORTSC	EXPARTE RESTRAINING ORD/ORD TO SHOW	05-28-1999LG

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of October, 2014, I caused to be served true and correct copies of the foregoing: **APPELLANT'S REPLY TO RESPONDENTS BRIEF** and this Certificate of Service, on the court and counsel by First Class Mail as follows:



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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.

Dated this 10th day of October, 2014.

Walt Page

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