73367-2

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No. 73367-2-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

FOSTER JONES,

Respondent,

v.

MASHAWNA AUSLER,

Appellant.

RESPONSE BRIEF

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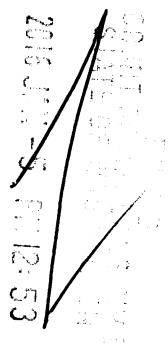

TABLE OF CONTENTS

I. TABLE OF AUTHORITIES

Cases

Revised Code of Washington

Rules of Appellate Procedure

Federal Cases

II. STATEMENT OF THE CASE

The parties to this matter were in a romantic relationship off and on for approximately 13 years from 2002 through April 5, 2014. CP at 1-4. Both parties agree that they were never involved in a committed intimate relationship; during the relationship, Mr. Jones lived off and on with another woman, Tracey Ellis, and was married to Ms. Ellis for some time.[1] CP at 5-6, 12. Mr. Jones is a longshoreman and also spent a significant amount of time away from the property at issue for work. *See* CP at 62; RP 4/9/15 at 15.

During their relationship, Mr. Jones purchased the house at issue in this case, located at 7414 South 114th Street, Seattle. CP at 5; RP 4/9/15 at 16. Mr. Jones also owns two rental houses in Seattle. CP at 6, 62-63. Ms. Ausler allowed her daughter to live in one of the rental houses and signed a two year lease with two of her friends for the other rental. CP at 62-63; RP 4/9/15 at 55, 58; Ex. 11, at 7-10; Ex. 12, at 3-6. She did not require her daughter to pay rent and collected rent from her friends without paying it to Mr. Jones. RP 4/9/15 at 55-58. Mr. Jones was ultimately forced to evict the tenants from both houses. *See* Exs. 11-12.

In August 2012, Ms. Ausler physically assaulted Mr. Jones. She was arrested and served five days in jail. CP at 6.

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[1] That marriage was later annulled. CP at 5-6. Mr. Jones remarried Ms. Ellis on December 20, 2014.

The relationship ended after a second assault on April 4, 2014, when Ms. Ausler again assaulted Mr. Jones. CP at 6. Mr. Jones filed the petition for dissolution that commenced this case the next month. CP at 1-4.

On October 22, 2014, the matter was converted to a quiet title action. CP at 59-60. The parties agreed that there was no committed intimate relationship and that the only issue was resolution of title to the property they held in common. *See* CP at 12 ¶¶ 3, 6; CP at 41 ¶ 6.

In December 2014, while this matter was pending, Ms. Ausler lured Mr. Jones to the property at issue on the pretext of an emergency at the house. Ex. 10, at 2-3. Ms. Ausler's daughter and her daughter's boyfriend then assaulted Mr. Jones while Ms. Ausler watched and cheered them on. *Id.*

The parties appeared for a bench trial on April 9, 2015. CP at 66-67. Both parties testified and the court admitted 16 exhibits offered by Mr. Jones. *Id.* The court made written findings of fact, conclusions of law, and entered judgment quieting title to the Seattle property in Mr. Jones. CP at 70-80. The court equally divided the equity in the house and awarded Mr. Jones approximately $8,000.00 for utilities and legal fees related to Ms. Ausler's misuse of Mr. Jones' rental properties. The net

cash award was $399.19 to Ms. Ausler, which Mr. Jones paid in open court. CP at 70-74.

III. ARGUMENT

A. Ms. Ausler does not assign error to a single finding of fact, conclusion of law, or trial court order and the judgment should be affirmed on those grounds alone

On appeal, any unchallenged findings of fact, conclusions of law, and orders are considered conclusively established. The appellant must designated "a separate concise statement of each error a party contends was made by the trial court, together with the issues pertaining to the assignments of error." RAP 10.3(a)(4); *Burback v. Bucher*, 56 Wn.2d 875, 877, 355 P.2d 981 (1960). Findings of fact that are not specifically designated in the assignments of error become verities on appeal. *Jensen v. Lake Jane Estates*, 165 Wn. App. 100, 110, 267 P.3d 435 (2011); *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). Trial court orders and conclusions of law in the judgment that are not similarly designated in the assignments of error are waived and become law of the case. *In re Estate of Campbell*, 87 Wn. App. 506, 512 n.1, 942 P.2d 1008 (1997); *Goldberg v. Sanglier*, 27 Wn. App. 179, 191, 616 P.2d 1239 (1980), *rev'd on other grounds by* 96 Wn.2d 874, 639 P.2d 1347 (1982); *see* RAP 10.3.

The appellant must then discuss each alleged error in the argument section of her brief. RAP 10.3(a)(6); RAP 12.1(a); *Burback*, 56 Wn.2d at 877. Any issue not both identified in the statement of error and discussed in the argument section, with citation to the record and supporting authority, is waived and will not be considered by the appellate court. *Weyerhaeuser Co. v. Comm. Union Ins. Co.*, 142 Wn.2d 654, 692–93, 15 P.3d 115 (2000).

Ms. Ausler's assignments of error do not designate a single finding of fact, conclusion of law, or trial court order that contain error. Opening Brief, at 1. Instead, her assignments of error are a rambling list of grievances that are, at best, characterized as issue statements. This is made more clear by the fact that each issue statement corresponds directly with an "assignment of error."

Ms. Ausler's failure to properly designate a single finding of fact as error means that the findings of fact are verities on appeal. *Jensen*, 165 Wn. App. at 110. Ms. Ausler's failure to designate a single conclusion of law or any of the trial court's various orders as error mean that the conclusions of law and orders are law of the case. *In re Estate of Campbell*, 87 Wn. App. at 512 n.1.

Ms. Ausler's failure to properly identify errors creates an unreasonable burden on Mr. Jones as the respondent because the scope of

Ms. Ausler's appeal is not clear. To properly raise and preserve his defenses, Mr. Jones has to brief issues and arguments that Ms. Ausler may not actually be appealing.

This court can affirm the appeal on the doctrine of waiver and law of the case, without addressing the merits of the issues. The judgment should be affirmed on this basis.

B. Ms. Ausler raises numerous arguments for the first time on appeal and those arguments should be rejected

This court will not generally consider an argument raised for the first time on appeal. RAP 2.5(a); *E. Gig Harbor Improvement Ass'n v. Pierce County*, 106 Wn.2d 707, 709, 724 P.2d 1009 (1986); *Shelton v. Powers*, 111 Wash. 302, 303, 190 Pac. 900 (1920). Preserving an issue does not mean merely raising it in some passing manner, but with sufficient detail to allow the trial court to know the issues and legal precedent before deciding the issue. *E. Gig Harbor Improvement Ass'n*, 106 Wn.2d at 709 n.1.

Ms. Ausler raises a variety of arguments for the first time on appeal.

i. It was uncontested below that this matter is a quiet title action, not an equitable division of property

Ms. Ausler objects for the first time in her opening brief to the court's October 22, 2014, order converting the case to a quiet title action. CP at 59-60. Invited error occurs when a party "takes affirmative and voluntary action that induces the trial court to take an action that party later challenges on appeal." *Lavigne v. Chase, Haskell, Hayes & Kalamon, PS*, 112 Wn. App. 677, 681, 50 P.3d 306 (2002).

Prior to filing her opening brief, Ms. Ausler's position was that her relationship with Mr. Jones "does not meet the standard for a 'committed intimate relationship' or a 'meretricious relationship.'" CP at 12, ¶ 3; *see id.* at 12 ¶ 6; CP at 41 ¶ 6. In two sworn declarations, Ms. Ausler testified that the parties were not in a committed intimate relationship. CP at 12, ¶ 3; *see id.* at 12 ¶ 6; CP at 41 ¶ 6.

Ms. Ausler received relief based on these positions. On the family law ex parte calendar, Ms. Aulser requested that the court maintain the status quo until she could bring an additional motion. CP at 14 ¶ 15. She received her requested relief. The family law commissioner denied Mr. Jones' motion for a temporary order based on the parties' agreement that there was no committed intimate relationship. CP at 22.

Later, before the trial court, Ms. Ausler again denied there was a committed intimate relationship. CP at 41 ¶ 6. At this hearing, she requested "some resolution to our joint ownership of the property." *Id.* at 42 ¶ 11. She also received that relief. The trial court denied Mr. Jones' motion for a temporary order and converted the matter to a quiet title action. CP at 59-60. This order granted the relief Ms. Ausler requested by dismissing the committed intimate relationship issue, allowing Ms. Ausler to remain in possession of the property pending trial, and resolving the issue of possession and title by means other than a temporary order.

Ms. Ausler cannot reverse her legal position on appeal and claim it was error to dismiss the committed equitable relationship claim to obtain a new trial.

ii. Ms. Ausler did not object to the trial court judge until after receiving an unfavorable judgment

For the first time on appeal, Ms. Ausler objects to the trial court judge, argues the judge was biased, and that she should not have heard this case. A litigant who objects to a particular trial judge must timely raise that objection or the objection is waived. *Williams & Mauseth Ins. Brokers v. Chapple*, 11 Wn. App. 623, 626, 524 P.2d 431 (1974). If she learns of disqualifying information during trial, she must immediately make an objection. *Id.* A litigant may not proceed to trial with full

knowledge of potentially disqualifying information, wait for an adverse ruling, and then claim unfair prejudice. *Id.*

Ms. Ausler relies on the Ninth Circuit case *Ellis v. United States District Court*, 356 F.3d 1198 (9th Cir. 2004), for the proposition that, if this court remands the case for a new trial, this court should direct that the case be heard by a different trial court judge. Opening Brief, 31-32. Washington requires that a case be reassigned on remand when there is actual bias or the appearance of bias. *GMAC v. Everett Chevrolet, Inc.*, 179 Wn. App. 126, 153-54, 317 P.3d 1074 (2014). The party seeking disqualification must "submit proof of actual or perceived bias." *Id.* The court makes a determination based on the evidence's appearance to a reasonably prudent, disinterested person. *Id.*

To attempt to show bias, Ms. Ausler points to the trial judge's ruling in a separate case between the parties entering a protection order in favor of Mr. Jones. Opening Brief, at 33. Ms. Ausler never presented this evidence or argument to the trial court, it is not in the record, and it is not properly before this court.

Ms. Ausler failed to timely raise these issues before the trial court. These rulings were entered over nine months before the trial in this case. *See* Opening Brief, Appendix B. Ms. Ausler was fully aware of this possible bias and chose to proceed to trial without raising any objection

before the trial judge. As in *Williams & Mauseth*, Ms. Ausler raised her objection on this basis only after receiving an unfavorable ruling at trial. *See Williams & Mauseth Ins. Brokers*, 11 Wn. App. at 626. The argument is waived.

Ms. Ausler's other evidence of bias is the court's oral rulings at trial, which are not specifically identified with citation to the record, where the judge ruled consistently with her earlier order that the case would be tried as a quiet title action, not a committed intimate relationship. Opening Brief, at 32. As set out above, Ms. Ausler both invited this error and failed to raise it at any time before the trial court. This argument is waived.

Even if this court were to consider these arguments and this evidence, the evidence presented does not show bias. At trial, the judge stood by her prior rulings and admonished both parties to limit their evidence and argument to the title question at issue. *E.g.* RP 4/09/15, at 6. The judge did not limit her instructions to Ms. Ausler or put a different burden on her. Rather, the trial judge consistently applied its earlier rulings to both parties. There is no evidence of bias.

iii. Ms. Ausler's request for a new trial was based on evidence available, but not offered, at the original trial

Ms. Ausler brought a variety of motions for a stay of the judgment, reconsideration, and relief from judgment following trial. *See* CP 86-148. Ms. Ausler alleges Mr. Jones lied at trial and she produces new, unauthenticated evidence in support of her claim. *E.g.* CP at 86-87, 140, 148. These arguments were all based on evidence available to Ms. Ausler at trial and were waived when she chose not to raise them at trial. *See* CR 59(a)(4); *E. Gig Harbor Improvement Ass'n*, 106 Wn.2d at 709 n.1.

Credibility was a central aspect of the trial because it was a two witness case where each witness testified to a different set of facts. Ms. Ausler did not argue credibility in her closing statement at trial, instead resting on her own testimony. RP 4/9/15 at 68-71. As set out below, the trial court reasonable accepted Mr. Jones' testimony and exhibits and rejected Ms. Ausler's testimony.

Assuming for the sake of argument that Ms. Ausler's new exhibits are genuine, they were both available to her before trial and are not properly offered for the first time in a post-trial motion. The trial court informed Ms. Ausler of what she would need to provide at trial and of the consequences if she failed to do so. CP at 59-60; RP 10/22/14 at 9-20. Ms. Ausler's doctor's note references a February 12, 2015, appointment,

two months prior to the April 9, 2015, trial. CP at 140. The information contained in this note was available to Ms. Ausler prior to trial. The facing page for a deed of trust is dated November 14, 2007, seven and a half years prior to trial.[2] CP at 148. The document was available to Ms. Ausler prior to trial. This evidence was not timely presented and should not be considered.

C. The judgment is supported by substantial evidence

This court's review of a bench trial is limited to determining whether the findings of fact are supported by substantial evidence and whether the findings of fact support the conclusions of law. *Standing Rock Homeowners Ass'n v. Misich*, 106 Wn. App. 231, 242–43, 23 P.3d 520 (2001).

Substantial evidence is the "quantum of evidence sufficient to persuade a rational fair-minded person the premise is true." *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 879, 73 P.3d 369 (2003). The appellate court must make all reasonable inferences in the light most favorable to the judgment. *Korst v. McMahon*, 136 Wn. App. 202, 206, 148 P.3d 1081 (2006). There is a presumption in favor of the judgment

[2] The attached document is the facing page for a deed of trust, the recorded instrument that creates a voluntary lien on real property. *See* RCW 61.24.005(3), (8), .020. The parties to a deed of trust do not need to be the same parties as the loan agreement or other debt that the deed secures. *Id.* at .005(3), (8). This document was neither offered nor admitted at trial. Mr. Jones offered, and the court admitted, a deed of trust on the property at trial. Ex. 14.

and the party alleging error has the burden of showing a finding of fact is not supported by substantial evidence. *Fisher Props. v. Arden-Mayfair, Inc.*, 115 Wn.2d 364, 369, 798 P.2d 799 (1990). Though the trier of fact is free to believe or disbelieve any evidence presented at trial, "[a]ppellate courts do not hear or weigh evidence, find facts, or substitute their opinions for those of the trier-of-fact." *Quinn v. Cherry Lane Auto Plaza, Inc.*, 153 Wn. App. 710, 717, 225 P.3d 266 (2009). Unchallenged findings are verities on appeal. *Hill*, 123 Wn.2d at 644.

i. The trial court correctly awarded the house to Mr. Jones

At trial, the parties agreed that this was a quiet title action. The role of the trial court was to determine who had superior title. In a quiet title action,

> Any person having a valid subsisting interest in real property, and a right to the possession thereof, may recover the same by action in the superior court of the proper county, to be brought against the tenant in possession; if there is no such tenant, then against the person claiming the title or some interest therein, and may have judgment in such action quieting or removing a cloud from plaintiff's title.

RCW 7.28.010. The parties must set out their claim for title, whether legal or equitable, and the superior claim prevails. RCW 7.28.120.

Ms. Ausler contends that the parties owned the house as joint tenants with right of survivorship. Opening Brief, at 17. To create a joint

tenancy with right of survivorship requires explicit language in a deed or other valid written instrument. RCW 64.28.010. Without that language, the interest is that of tenants in common. *Id.* Either party may voluntarily and unilaterally sever the survivorship right at any time. *Id.* Additionally, the four unities of time, title, interest, and possession must exist to create a joint tenancy. *In re Domestic Partnership of Walsh*, 183 Wn. App. 830, 854, 335 P.3d 984 (2014). If the property is mortgaged and only one party is liable on that lien, the necessary unities do not exist. *Id.* at 854-55. Mere possession does not create any right. RCW 7.28.320.

At trial, both parties agreed that *record* title to the house was held by both of them.[3] RP 4/9/15 at 16 (Jones); *see id.* at 7 (Ausler). Both parties agree that Mr. Jones made the down payment and every mortgage payment. *Id.* at 16-28, 65-66; Exs. 1-4. The parties disputed who performed or paid for the utilities, maintenance, and upkeep of the house. RP 4/9/15 at 43 ll. 10-11. The parties also disputed the purpose of putting Ms. Ausler's name on the house: Mr. Jones claimed it was a mere convenience in the event of a default on the mortgage, RP 4/9/15 at 16; Ms. Ausler claimed it was because they viewed the house as a joint asset. *Id.* at 65-66.

[3] The deed was not admitted into evidence at trial, but was submitted as an exhibit at the October 22, 2014, hearing before the trial court. CP at 50-53.

Substantial evidence supports the trial verdict awarding the house to Mr. Jones. In his opening statement at in his trial brief, Mr. Jones alleged that he was the owner of the house, but that all equity, after his $10,000.00 down payment, should be divided equally. RP 4/9/15 at 3; CP at 63-64. Unchallenged finding of fact 2.4 held that the house was a joint asset of both Mr. Jones and Ms. Ausler. CP at 71. Unchallenged finding of fact 2.5 found that each party had a 50% equity interest in the property. CP at 72. In support of this claim, Mr. Jones offered his testimony and numerous exhibits showing that he had made all financial contributions to the home.

The only evidence Ms. Ausler offered in support of her claim that only she owned the house was her testimony, which was inconsistent and, at times, agreed with the trial verdict. *See* RP 4/9/15 at 65 (testifying she was Mr. Jones' secretary and property manager); *id.* (testifying she never made a mortgage payment); *id.* at 66 (testifying her basis for title is her residence in the house).

Substantial evidence supports the trial court's acceptance of Mr. Jones' argument and evidence that he was the owner of the house and that Ms. Ausler was on title as a mere convenience. Both parties testified that Mr. Jones made all payments toward purchase of the house. RP 4/9/15 at

17, 18-28, 65-66. Mr. Jones testified and provided exhibits showing he paid utilities and other expenses for the house. RP 4/9/15 at 18-28; Ex. 4.

If anything, the trial court provided *more* relief to Ms. Ausler than what she was entitled. The trial court rejected Ms. Ausler's testimony that she was the sole owner of the house. RP 4/9/15 at 71-73. Ms. Ausler cites nothing in the record that would allow this court to overturn that credibility ruling. Ms. Ausler offered none of the documentary evidence in support of her claim that she was ordered to produce on October 22. CP at 59-60.

Ms. Ausler should be glad she received as much as she did. On review of the record, the only reason the court awarded Ms. Ausler 50% equity in the house was that Mr. Jones offered it to her. Viewed in the light most favorable to the verdict, the findings of fact, conclusions of law, and judgment should be affirmed.

ii. The trial court's determination of value is supported by substantial evidence

Ms. Ausler received a judgment for 50% of the equity in the house based on a $350,000.00 appraised value. CP at 71. For the first time on appeal, Ms. Ausler challenges that value as too low. Opening Brief, at 19-20. As set out above, a party may not raise this issue for the first time on

appeal. Even if properly preserved, the unchallenged $350,000.00[4] valuation is supported by substantial evidence. CP at 72.

At trial, Ms. Ausler did not offer any testimony or documentation from which the court could determine the value of the house. At the October 22 hearing before the trial judge, both parties were ordered to obtain appraisals to support their valuation of the house. CP at 59-60. At trial, Mr. Jones offered two exhibits showing the house's value. Exs. 5-6. Ms. Ausler did not object to these exhibits or offer contradictory evidence.

The trial court adopted the appraiser's undisputed estimate of the house's value. Finding of fact 2.5 is supported by substantial evidence and should be affirmed.

iii. The trial court's decision not to award Ms. Ausler additional compensation for her actions as "property manager" is supported by substantial evidence

Where the trial court does not make a finding of fact, that is treated as a finding against the party bearing the burden of proof on that issue. *Xieng v. Peoples Nat'l Bank*, 120 Wn.2d 512, 526, 844 P.2d 389 (1993). It is axiomatic that Ms. Aulser bears the burden of proving both that Mr. Jones caused her lost wages and the amount thereof. *E.g. Sutton v.*

[4] The findings of fact do not go into detail about the calculation, but the equity determination in finding of fact 2.5 is consistent with Mr. Jones' opening statement calculation of a $350,000.00 assessed value, less the mortgage balance and down payment. *See* RP 4/9/15 at 3. This calculation is also adopted in the judgment. CP at 76.

Shufelberger, 31 Wn. App. 579, 581, 643 P.2d 920 (1982) (burden in personal injury context).

In her closing statement, Ms. Ausler requested compensation for her work as a property manager at $15.00 per hour for 24 hour per day continuously for 12 years. RP 4/9/15 at 69. In support of this request, she testified that she was available all that time for Mr. Jones and that she arranged for maintenance and utility work to be done at Mr. Jones' two rentals. *Id.* at 65.

Ms. Ausler did not offer any evidence or third-party testimony from which the court could establish whether this number of hours or rate was reasonable. Ms. Ausler did not offer any evidence on how property managers are compensated: hourly, as a percentage of rents, contingent, in kind, et cetera.

The trial court's failure to make any findings that could support Ms. Ausler's claim must be treated as a finding against both the reasonable amount of her work and a reasonable rate for compensation.[5] *See Xieng*, 120 Wn.2d at 526. Without any findings to which Ms. Ausler can point to overturn the verdict, the trial court must be affirmed.

[5] Ms. Ausler was effectively compensated with free rent. *See* RP 4/9/15 at 73.

D. The trial court was within its discretion when it denied Ms. Ausler's motion for a continuance

A request for a continuance must be based on admissible evidence. *McClellan v. Gaston*, 18 Wash. 472, 473, 51 P.1062 (1898). Granting or denying a continuance is done within the sound discretion of the trial court. *Chamberlin v. Chamberlin*, 44 Wn.2d 689, 705, 270 P.2d 464 (1954). A denial of a motion for a continuance will not be reversed except for manifest abuse of discretion. *In re Recall Charges Against Lindquist*, 172 Wn.2d 120, 130, 258 P.3d 9 (2011). The trial court considers many factors when ruling on a motion for a continuance, including diligence, materiality, due process, orderly administration of its docket, prejudice, and the potential impact on the trial. *Id.*

Ms. Ausler had adequate notice and time to prepare for trial. The court set the trial date and instructed Ms. Ausler specifically what evidence to prepare five months in advance. CP at 59-60; RP 10/22/14 at 9-20. As Ms. Ausler's brief and exhibits demonstrate, she was aware of her need for a continuance in advance of the trial date, but did not properly note a motion for a continuance. *See* Opening Brief, Appendix A. Ms. Ausler's post-trial filings still do not contain the documents the court requested in its October 22, 2014, order. *E.g.* CP 116-32. Ms. Ausler

does not identify any evidence or argument that the court abused its discretion when it denied her motion.[6]

The trial court's denial of Ms. Ausler's motion for a continuance was within its discretion and should be affirmed.

E. The trial court was within its discretion when it extended Ms. Ausler's occupancy by seven days after trial

In a quiet title action, the party proving the superior right to possession of the premises is entitled to a judgment for the same. RCW 7.28.010. Chapter 7.28 RCW does not prescribe a method of returning the prevailing party to possession, leaving it instead to the trial court's discretion. The most analogous statute is the unlawful detainer act, Chapter 59.18 RCW, which provides that, when the plaintiff prevails "execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment." RCW 59.12.170.

The trial judge provided Ms. Ausler seven days to vacate the property before the judgment for possession would be enforced. CP at 76 ¶ 3.1. Ms. Ausler filed numerous motions, and a bankruptcy, to delay her eviction from the property. *E.g.* CP at 136-37, 151-52. The judgment for possession was not actually enforced for roughly four months. *See* Court

[6] Ms. Ausler's cited cases relate to default judgments, *Showalter v. Wild Oats*, 124 Wn. App. 506, 510, 101 P.3d 867 (2004), and involuntary non-suits. *Buss. Svcs. Of America II, Inc. v. WaferTech, LLC*, 159 Wn. App. 591, 598, 245 P.3d 257 (2011).

of Appeals Order dated 7/6/15, at 2. Mr. Jones has been returned to possession and the issue is now moot. *Id.* To the extent it is not moot, the trial court was within its discretion when it afforded Ms. Jones *more time* to vacate than the most analogous statue provides. The judgment should be affirmed.

F. Ms. Ausler's request for attorney's fees should be denied

Ms. Ausler requests an award of her attorney's fees on appeal. A party who request attorney's fees must identify the basis for the request in her opening brief. RAP 18.1. Non-attorneys are not entitled to attorney's fees. *West v. Thurston County*, 168 Wn. App. 162, 194-95, 275 P.3d 1200 (2012), *citing Mitchell v. Dep't of Corr.*, 164 Wn. App. 597, 608, 277 P.3d 670 (2011). Regardless of whether Ms. Ausler identifies a basis for an award of attorney's fees, she is not entitled to them as a pro se party.

Ms. Ausler cites RCW 26.09.140 as one basis for an award of attorney's fees. This statute applies to dissolution proceedings. Before the trial court, Ms. Ausler alleged this case was not a dissolution and obtained relief based on that legal position. As discussed above, she cannot revise that position on appeal.

Alternatively, Ms. Ausler cites to RCW 7.52.480 as a basis for an award of attorney's fees. This statute applies to partition actions where the fees sought to be divided are incurred for common benefit. *Hamilton*

v. Huggins, 70 Wn. App. 842, 851-52, 855 P.2d 1216 (1993). This is a quiet title action, not a partition. Additionally, Ms. Ausler's litigation is for her pecuniary benefit, not for the common good of her and Mr. Jones' interest in the Seattle property. This statute does not apply.

The court of appeals should follow the trial court and require each party to bear its own costs & fees

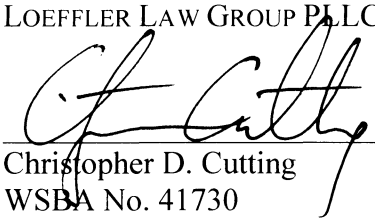
IV. CONCLUSION

This is a quiet title action to remove the cloud of Ms. Ausler's name from title to Mr. Jones' house. Mr. Jones suffered extensively at the hands of Ms. Ausler, as the trial court succinctly summarized. Speaking to Ms. Ausler, the trial judge stated in her oral ruling that "At best, you were a property manager. At worst, you stole from Mr. Jones over and over again." RP 4/9/15 at 71.

Ms. Ausler continues to abuse Mr. Jones with this appeal based on improperly identified and unpreserved issues. The judgment should be affirmed.

Respectfully submitted this 4th day of January, 2016.

LOEFFLER LAW GROUP PLLC



Christopher D. Cutting
WSBA No. 41730
Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of January, 2016, I caused the foregoing to be served on the following parties by delivering to the following address:

Mashana Ausler
8606 46th Avenue South
Seattle, WA 98118

By: [X] U.S. Postal Service, ordinary first class mail
[ ] U.S. Postal Service, certified or registered mail
[ ] return receipt requested
[ ] legal messengers
[ ] facsimile
[ ] electronic service
[ ] other (specify) _____

DATED at Seattle, Washington, this 4th day of January, 2016.

Printed Name: Christopher D. Cutting