

NO. 63719-3-1

King County Superior Court Cause No. 06-4-02161-1 SEA

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

ESTATE OF SHIRLEY A. HARTY, J. PATRICK HARTY,
BENJAMIN HARTY AND JASON HARTY,
Plaintiffs/Appellants

v.

GREG HARTY,
Defendant/Respondent

2010 SEP -2 AM 10:04

COURT OF APPEALS
STATE OF WASHINGTON
FILED

REPLY OF APPELLANTS TO
SUPPLEMENTAL RESPONSE BRIEF OF GREG HARTY

Attorneys for Plaintiffs/Appellants Harty
Charles E. Watts
Oseran Hahn Spring Straight & Watts, P.S.
10900 NE Fourth Street #850
Bellevue, WA 98004
425-455-3900

ORIGINAL

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I. INTRODUCTION

Greg Harty asks the court to accept the proposition that Christine Harty, by making her community interest in the family home available to her husband to allow him to pay his attorney's fees already incurred, somehow makes her a party to the lawsuit in which those fees were incurred, and also makes her liable for any monetary awards against her husband arising out of that separate-asset TEDRA lawsuit. This is a bootstrap argument.

II. NEITHER CHRISTINE HARTY NOR THE COMMUNITY OF CHRISTINE AND PAT HARTY ARE NOW OR EVER WERE PARTIES TO THE TEDRA LAWSUIT

The court imposed CR 11 sanctions, apparently on the basis that Christine or Pat Harty had a duty to disclose a post-trial and post-judgment execution by Christine Harty of a security interest in the community-asset family home to enable her husband to pay previously incurred attorney's fees. In actuality, what Christine did was to help her husband out with his separate attorney's fee obligation as an act of charity and as a loving spouse might do. It was a gift of the community interest that Christine made to her husband to enable him to pay his attorney's fees incurred in litigation to secure his separate-property inheritance from his mother and to assist his children in obtaining their separate-property inheritance from

their grandmother. Christine Harty would not have benefitted from the litigation and was not a party to the TEDRA litigation.

Greg Harty claims that Pat and Christine Harty had some duty to disclose this security interest given by Christine as a member of the marital community. Greg Harty fails to identify where that duty arises and completely blurs the fact that the security interest was given after the litigation was over at the trial level except for the decision on a motion for reconsideration. Christine Harty had never agreed to participate in or fund the litigation commenced by her husband and her two sons to secure their inheritance from Pat Harty's mother. Christine would not have benefitted from it and had no reason to commit the community resources to that TEDRA litigation.

Where is the duty to disclose? How could it have made any legal difference to the question of Christine Harty's responsibility as a party to the TEDRA action commenced by her husband and her sons for the court to know that after the litigation was concluded at the trial court level (except for a pending motion for reconsideration), she assists her husband in paying his attorney's fees already incurred.

Of what evidentiary value is the fact that after the attorney's fees had been incurred, Christine as a loving spouse agrees to help her husband pay those fees with her interest in the community home? To use that

loving act to claw back to the commencement and conduct of the litigation and draw Christine Harty and the marital community into the litigation as parties, places the cart before the horse. Nothing about the post-trial gift transaction bears any relation to the undisputed legal fact that only Pat Harty and his two sons were the beneficiaries of the TEDRA litigation, and any awards they received would have been their sole and separate property by virtue of statute. The community of Pat and Christine Harty would not have benefitted from the TEDRA action, and Christine's willingness to help her husband pay his separately incurred attorney's fees does not change that fact.

III. CONCLUSION/RELIEF SOUGHT

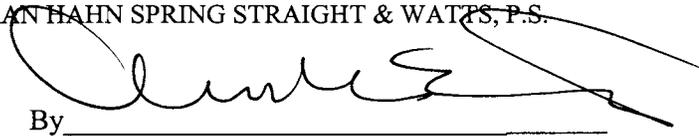
At page 6 of his reply, Greg Harty argues that the gift from Christine to her husband of her community interest in the family home without notification to the court created a "misleading atmosphere." There is nothing misleading about after conclusion of a trial a wife helping her husband pay his attorney's fee obligation which would otherwise be his separate obligation. This transaction occurred after the trial was completed, and therefore, has no probative value on any issue before the court. It was a gift, not a contract. It proves nothing to support the claim of Greg Harty and the award of the court of attorney's fees against the marital community and against Christine Harty individually. That award

remains without any legal or factual basis, and the post-trial gift does not change that.

The award of sanctions should be reversed. CR 11 was not violated.

DATED: August 31, 2010.

OSERAN HAHN SPRING STRAIGHT & WATTS, P.S.

By 

CHARLES E. WATTS, WSBA #2331
Attorney for Appellants Harty

CERTIFICATE OF MAILING/SERVICE

The undersigned, Joy Griffin, certifies that on the 31st of August, 2010, she caused to be served via e-mail and U.S. Mail, postage prepaid, a copy of the foregoing Reply of Appellants to Supplemental Response Brief of Greg Harty to the Court of Appeals/ Division I, Cause No. 63719-3-I and to the following:

VIA US MAIL

David Lawyer
Inslee, Best, Doezie & Ryder, P.S.
Attorneys at Law
Symetra Financial Center, Suite 1900
777 108th Avenue NE
Bellevue, WA 98004
dlawyer@insleebest.com

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

Dated at Bellevue, WA this 31st day of August, 2010.


Joy Griffin