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No.: 71167-9-1

**THE COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON**

In re the Marriage of:
BONNIE FAYE AuBUCHON
RESPONDENT
v.
VAN DENNIS AuBUCHON
APPELLANT

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COURT OF APPEALS
DIVISION ONE
STATE OF WASHINGTON

APPEAL FROM THE SUPERIOR COURT
FOR SNOHOMISH COUNTY
THE HONORABLE MICHAEL T. DOWNES

REPLY APPEAL BRIEF OF APPELLANT (Amended)

VAN D. AuBUCHON
Appellant Pro Se

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I. INTRODUCTION

As previously stated, there really is only one issue in this case to review. That is the fair, just and equitable valuation and disposition of the only major asset of the marriage which is the family residence. The Court got it wrong, based on flawed information, and its refusal to allow known existing certifiable information to be brought out. Instead it relied on information provided by the Respondent here, Bonnie, and her Counsel, which was flawed on the face of it. When this was brought out, the Court initially ordered a hearing to review, and then reversed itself at the hearing, citing it had other commitments to get to.

In reply to the Respondents Brief, the Appellant, Van, noted several inconsistencies referred to by Respondents Counsel, in her response brief. Van intends to be as efficient as possible in only citing those inconsistencies which directly relate to the issue at hand, i.e. the valuation and disposition the family residence, so as not to waste the time of The Appellate reviewer here.

II. REPLY ARGUMENT

1. The Trial Court Property Set the Value of the Marital Home at \$225,000.

Bonnie's Counsel states here (Respondents Brief , page 1), "Mr. AuBuchon states in his brief that the CMA offered by the Wife contained comparable sales of bank owned and otherwise distressed properties". The CMA referred to here was in fact Bonnie's Exhibit at Trial #11. Counsel introduced it and Bonnie testified about it. The exhibit clearly lists "a bank owned property to be sold As-Is." (See Trial Exhibit #11, page 5)

The author of the CMA, dated May 1, 2013, under "Pricing Recommendations", page 1, is very specific as "to complete some repairs and fix up the house". However she makes no mention of any pest infestations, at that time.

2. The Trial Court Property Divided the Share of Assets by 55/45 Split and recognized the Marriage of the Parties as Long Term at Greater than 30 Years.

Under this point Bonnie's Counsel, on Page 5 of her Respondents Brief, "No new evidence may be presented at the appellate case level; the case is reviewed on the evidence presented only at trial." This is in fact included in the attorney's Trial Evidence Exhibit #20, presented and

testified to by Bonnie at trial. (Report of Proceedings, September 26, 2013, page 43, lines 6-20)

Further, Bonnie's Counsel goes on to state on pg. 5 of her response.....

"Mr. AuBuchon mischaracterizes the testimony regarding the rat infestation. Appellant brief pg. 6. Ms. AuBuchon testified at trial that it did not simply begin 6 months prior to Mr. AuBuchon vacating the marital home. (Report of Proceedings, September 26, 2013, page 83, lines 10-12)

Mr. AuBuchon in his brief attempts to introduce and argue points that were not presented at trial. Appellant's brief, pg. 6-7 The rat infestation was found when the CMA assessment was performed in anticipation of trial. (Report of Proceedings, September 26, 2013, page 62, lines 17-19)"

Van has read and re-read both citations, (Report of Proceedings, September 26, 2013, page 83, lines 10-12) and (Report of Proceedings, September 26, 2013, page 62, lines 17-19) and could find no discussion of any infestation mentioned in that testimony. He would offer here that the mischaracterization would be that of Counsel's incessant characterization of the property as some urban blight, which clearly it is not.

Again on pg. 6 of Bonnie's Counsel Response Brief, is another nonsensical reference to the citing (Report of Proceedings, September 26, 2013, page 62, lines 17-19) when she states "Since the Wife is awarded the house in the present matter, it is reasonable for the debt associated with the asset she was awarded." The testimony in the citing has nothing to do with this.

6. The Trial Court Granted the Motion to Continue the Date for Presentation of Final Orders.

The Motion for Continuance was quite clear as to purpose. It clearly stated the facts for review and was agreed to by the Court (Clerk's Papers, Vol.II, page 32) at the hearing on the Motion but later at the Presentation Hearing denied it, as indicated on pg. 8 of the Response Brief. In that it was requested "the opportunity to be heard on evidence of fact in testimony which is not consistent with claims made by the Petitioner". The Court so ordered and signed the Continuance, (see Clerk's Papers, Vol.II, page 31).

Further on pg. 8, Bonnie's Counsel references a Certified Appraisal. She goes on to state "the Husband had ample opportunity to obtain an appraisal". What she fails to mention here is that some three weeks previous to trial, after the mediation meeting she was present at she had a member of the staff pass to Van a note with a name of an appraiser (see Clerk's Papers, Vol.II, pages 22-24). The staff person indicated that the attorney was going to use this appraiser and expected Van to pay some of the cost. Come the actual trial Van had every expectation that she would enter the appraisal into the proceeding. When Van asked about it at trial it became a "work product", and not disclosed (Report of Proceedings, September 26, 2013, page 62, lines 1-25). Van would suggest that it became "a work product" when the attorney saw it and realized the actual value was far greater than the informal CMA suggested, possibly greater by more than \$100,000.00.

Van felt that "discovery" was not necessary in that they already volunteered it and intentionally informed him that it was going to be done.

III. CONCLUSION

As stated at the beginning, the issue here is simply a fair and accurate determination of the value of the only real community asset and the equitable disposition of same.

In the final analysis, at trial, the Court concluded that it did not know what to do when it asked of Bonnie's attorney essentially can it do this? (Report of Proceedings, September 26, 2013, page 117, lines 13-25) The Court goes on to recognize that issues like credit card accounts and vehicle loans can be dealt with but this is real property valued at several hundreds of thousands of dollars!

Further as to disposition of the property the Court states (Report of Proceedings, September 26, 2013, page 117, lines 23-25) "We are not talking about a credit card. We are talking about real estate where one person - - well, the experiences that I have seen with things like this is someone will say Party A gets to keep the house, but Party B needs to make arrangements to have them bought out in six months or a year. You aren't asking for six months from me. You are asking for five or six years (Report of Proceedings, September 26, 2013, page 118, lines 1-6). Again the Court did not know what to do and stated so (Report of Proceedings, September 26, 2013, page 120, lines 24-25), "Well I don't know what I'm going to do."

To allow Bonnie to stay in the home for five years renting out rooms, which allows her to live, virtually rent free, will not solve the problem of her being in a position to re-finance and buy out Van. Her

credit situation will not be enhanced by her continuing to make the house payments, in that the Mortgage remains in Van's name. Should she stay under the current Court decision and is forced to sell at the end of five years she does stand to be substantially enriched by the very nature of the rise in property values over time.

Granted, it's an optimistic projection, but in five years the property could very well gain back its pre-recession value of \$425,000.00, should the property be properly maintained. Assuming that and an outstanding loan balance September 2018 at \$163,780.00. After selling costs estimated at \$42,500.00, the net proceeds could be as much as \$218,000.00. Under the current decree Van's portion would still be \$17,000.00 and Bonnie's portion could be in excess of \$200,000.00. How is this equitable?

The Court has the duty to avail itself of any and all facts pertinent to rendering any judgment. It must consider all available information when it is unsure of what actions to take. No matter what point in the proceeding it is at, when the possibility of additional pertinent information is brought forward it must at least review it and add it to its consideration.

Based on all this, Van still maintains that the Court got it wrong! The value was not properly ascertained by the Court, even though it had a certified appraisal available to it and denied the review. Decreeing that Van's portion of some future sale of the property be fixed, based on an estimate produced by a friend of Bonnie's sister, who offered no substantiating testimony at court, at best, stretches any acceptable definition of "equitable"!

Therefore, Van respectfully requests that this matter be sent back for review to include a proper certified appraisal and a disposition arrangement more closely representing an equitable financial outcome for both parties.

Signed and dated this 26th day of January, 2015 at Lynnwood, WA.

Respectfully submitted,

A handwritten signature in cursive script, reading "Van D. AuBuchon", written in black ink. The signature is fluid and somewhat stylized, with a horizontal line underneath it.

Van D. AuBuchon
Appellant Pro se