

CASE #: 72601-3

WASHINGTON COURT OF APPEALS
DIVISION ONE

RUSSELL JAMES JENSEN, JR. A/K/A JAMIE JENSEN,

Appellant

v.

THERESE BROWN JENSEN

Respondent

APPEAL

from Washington Superior Court
for Snohomish County
No. 13-3-02117-1

APPELLANTS' REPLY BRIEF

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2A Karl B. Tegland, Washington Practice; Rules Practice RAP 2.2, at 103
(7th ed. 2011). 8

SUMMARY OF REPLY

This case is so sad. Therese Brown Jensen (Therese) never wanted the Washington home sold. Therese, having little money, did not want to see her brother and sister spend over \$100,000 in attorney's fees seeking the sale that generated no money for either party. She had no interest in harassing her husband, Russell James Jensen, Jr. (Jamie) and no desire to cause chaos in her family. Yet her attorney, Sabrina Layman, made the forced sale of the family home the focal point, the only contested point, of the divorce. No other part of the divorce was disputed. Therese, a profoundly handicapped woman living in a care facility in Omaha, Nebraska, relied solely on her attorney's direction in this matter.

Now that Ms. Layman is being pressed to defend her actions in this appeal it appears that she has abandoned Therese. She put in only a short brief with only four pages dedicated to arguing the case, and only about procedure. There is no argument on the merits. She has effectively defaulted on the appeal. Perhaps she hopes that this court will do her

work for her.

For his part, Jamie bears no animosity for Therese and believes that she bears none for him. While this appeal is written in her name, as the respondent, it is offered that the appeal is really against Sabrina Layman and not against Therese, herself.

Jamie is asking that the Orders of the Superior Court that allowed the sale of the home against Jamie's fervent wishes be overturned and to declare the deed given by Therese alone to be void.

FACTS IN REPLY

Therese is severely handicapped with multiple sclerosis. In the fall of 2013 she was undertaking a massive change in her life. She was moving away from her husband of 33 years, away from her children in Seattle and Portland, and away from friends she had made over seven years in Mukilteo. She was moving to an uncertain future in a care facility in Omaha, Nebraska where she would be cared for by hired strangers. She never had any desire to engage in this protracted and expensive effort that gained her nothing and lost her so much.

Jamie did everything he could to protect his rights to his home. Jamie had expected the courts to uphold the laws in court. Yet, every motion that was brought by Ms. Layman was heard by only one commissioner, Susan Gaer of Snohomish County. Commissioner Gaer

granted every element of every motion ever brought by Ms. Layman, including motions where Commissioner Gaer did not even know the nature of the motion (limiting access to bank accounts), and a motion to enforce a CR 2A agreement that is out of a commissioner's jurisdiction and untimely. She granted every dollar of attorney's fees requested by Ms. Layman. Commissioner Gaer also denied each and every element of any motion or defense brought by Jamie.

In her brief in this appeal Therese fails to argue or even to address the statutes and the long history of laws that prohibit the sale of community property by one party. Instead, she argues only procedure, that Jamie only addressed the interlocutory orders of the trial court and did not address his second and third bases for appeal, the June 30, 2014 Order and the October 2, 2014 Order.

The Order of June 30 was issued by Commissioner Gaer who was construing a CR 2A agreement. Such an act is outside the jurisdiction of a commissioner. She was construing a document that had not been presented to the court. This Order is important because it purports to affect a development project in which Therese has no interest.

The October 2, 2014 Order speaks for itself. Jamie was seeking to enforce the exact language of the Decree and was denied for no apparent purpose.

There are abundant errors in this case, as can be seen by the size of the file alone. Jamie has presented some of those errors but has focused his efforts, and his arguments, on regaining ownership of his home. The court can address or not address the other errors as it sees fit.

Jamie brought this appeal to ask this court to overturn all of the Orders that lead to the loss of his house, including the final Decree. All of the Orders that affected the loss of the home were made part of the appeal.

STATEMENT OF THE CASE IN REPLY

The respondent's lawyers present only two issues for the court to consider, plus one request for sanctions against Jamie. They are:

1. Jamie only appealed interlocutory Orders;
2. Jamie cannot appeal interlocutory Orders unless he also appeals the decree; and
3. Attorney's fees and sanctions should be awarded against Jamie.

ARGUMENT

Jamie brought this appeal and argued the facts of the case, the law of the case, and the equities that can sometimes cause a singular result in a case. Therese has not responded to the bulk of the facts. She has presented alleged facts that Jamie was a poor care giver and flip-flopped on the sale of the home, but she does not argue any of the facts. She only argues that Jamie only appealed the interlocutory orders and that Jamie did

not appeal the final decree. Therese is trying to direct the court away from the realization that she has no support in facts, law, or equity, for her actions.

The Interlocutory Orders

Therese's first argument is nothing more than an observation. She states that Jamie is appealing the interlocutory orders. The interlocutory orders are where the damage was done by Ms. Layman and the Snohomish County Court.

Jamie should be appealing the interlocutory orders. It was those orders that resulted in the final decree. By the time the decree was issued on September 23, 2014, the deed that was given by Therese on July 3, 2014, was already almost three months old. The judge that issued the decree had no real choice left, but knew that this appeal was expected.

This appeal was brought in a timely fashion after the final decree was issued and seeks the review of all orders leading up to the decree as they pertain to the sale of community assets by one spouse against the will of the other spouse.

“An appeal from the final judgment brings up for review all interlocutory decisions, including previously appealable decisions.”

2A Karl B. Tegland, *Washington Practice; Rules Practice RAP 2.2*, at 103 (7th ed. 2011).

It was the double act of selling and deeding the home,

- a. based only on interlocutory orders, and
- b. based only on one spouse's signature,

that caused the problems in this case. The sale of the home should either have waited for a final decree or been done with the negotiated consent of both spouses. Instead, Therese raced to the sale. The race to the sale denied Jamie the chance to be heard in opposition to the court's actions.

The court held that "[o]ne cannot execute on a claim absent a final judgment as to that claim." Otherwise, the court explained, "a prevailing party could, under court authority, seize the property, garnish the proceeds, or sell the assets (family home) of the losing party without the latter having any immediate avenue available for challenging the underlying interlocutory judgment. (Parent. added)

Fluor Enterprises, Inc. v. Walter Const., Ltd., 172 P.3d 368, 141 Wn.App. 761 (Wash.App. Div. 1 2007) (Quoting *State ex rel. Electrolert, Inc. v. Lindeman*, 650 N.E.2d 137, 99 Ohio App.3d 154 (Ohio App. 2 Dist. 1994) See also *Samuel's Furniture, Inc. v. State, Dept. of Ecology*, 54 P.3d 1194, 147 Wn.2d 440 (Wash. 2002), *Fox v. Sunmaster Products, Inc.*, 798 P.2d 808, 115 Wn.2d 498 (Wash. 1990).

Jamie had no avenue for challenging the underlying interlocutory orders.

Therese argues that Jamie appealed the interlocutory orders after the issuance of the final decree. That is correct and the proper action to take in this case. Therese's first argument is not an argument at all.

The Final Decree

The second and last argument by Therese states that Jamie cannot

appeal the order that allowed her to sell the home “after he has agreed to the entry of final orders awarding her (the) family home, and he does not appeal those orders.” Resp. Brief at p. 14.

Both of those assertions are not only wrong but are clearly known to be wrong by Therese and her attorneys. The first one states that Jamie agreed to the final orders. But even Therese states the opposite, and on the same page. Lower on page 14 of her brief Therese says “Jamie Opposed Therese's motion to enforce the CR 2A.” On the same page Therese says that Jamie agreed to the orders and also opposed the orders. But only the second one cites to the court record showing Jamie's pleadings opposing the entry of orders based on the CR 2A, as the CR 2A no longer represented the parties positions and had been violated so many times by Therese prior to the sale of the home and prior to the motion for the decree. Jamie did not agree to the final orders. He did participate in the proper drafting of the documents to preserve them for this appeal.

The second assertion is that Jamie did not appeal the final orders. This court's record shows the Notice of Appeal filed by Jamie. In that Notice, in the very first line, Jamie states “The respondent, Russell James Jensen, Jr., seeks review of the Decree of Dissolution between the parties.” A copy of the Decree is listed as item 12 in the list of orders that are being appealed. This assertion just flies in the face of the documented facts.

In the final paragraph on the merits Therese argues that Jamie was estopped from appealing because he had “availed himself of the benefits of the final orders.” Jamie did not appeal the whole decree, just the parts that concerned the sale of the home against his objections, as stated in the Notice of Appeal and his Brief of Appellant. He did not appeal the award of property to himself.

Appeals are taken of only so much of the decree as requested by the appealing party. “A notice of appeal must . . . (3) designate the decision **or part of the decision** which the party wants reviewed” Rule 5.3 RAP. (Bold added) The rest of the decision is enforceable. “The City does not appeal that part of the judgment” *International Ass'n of Firefighters, Local No. 2088 v. City of Tukwila*, 591 P.2d 475, 22 Wn.App. 683 (Wash.App. Div. 1 1979)

Jamie appealed that part of the decision that he wanted reviewed and was free to seek enforcement of the balance.

Therese's second argument, like the first, is no argument at all, has no basis in law, fact, or equity.

Argument for Sanctions

Therese is seeking \$15,000 for presenting four pages of argument on procedure. Jamie makes no response to this section other than to say that he is appealing the taking of his home in violation of three statutes,

without purpose or benefit to any party. This is a proper use of the appellate court system.

CONCLUSION

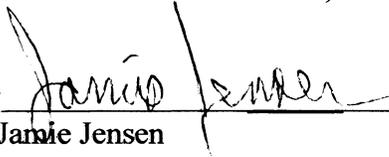
Sabrina Layman got the Snohomish County court to allow her client to sell the family home with just the wife's signature, in violation of decades of Washington law. The husband fought every step of the way. Now, having wrought her damage, Ms. Layman defaults on the appeal by failing to support her actions in any way. This court is left to pick up the pieces.

This court is asked to uphold the state law in the way that the Snohomish County court failed to uphold the law.

DATED this 17th day of March, 2015.

MUKILTEO LAW OFFICE, PLLC

By


Jamie Jensen

WSBA No. 40475

IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION I

In Re the Marriage of
Russell James Jensen, Jr.

Appellant, Respondent
and
Therese Brown Jensen,

Respondent, Petitioner

NO. 13-3-02117-1
APPLT CT. 72601-3-1

DECLARATION OF SERVICE

I, Jamie Jensen, declare and say that I am a citizen of the United States and resident of the State of Minnesota; I am over the age of 18 years. I declare under penalty of perjury that on the **17th day of March, 2015**, I mailed to counsel for the respondent, petitioner, Sabrina Layman and Karen D Moore, Brewe Layman, 3525 Colby Avenue, Everett, Washington 98201 the following documents:

1. **Appellant's Reply Brief**
2. **This Declaration of Service**

This 17th day of March, 2015



Jamie Jensen

FILED
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