

COURT OF APPEALS DIVISION TWO OF THE STATE OF
WASHINGTON

SANDRA HENDRICKS,)
Appellant,)
Vs.)
Dan Dison, as Personal Representative of,)
and Notice Agent for, The Estate of)
Joseph G. Dison, Et Al.,)
Respondent)

Appeal No. 37026-3-II
Superior Court No. 04-4-00300-9
and 04-2-05113-8

ON APPEAL FROM CLARK COUNTY SUPERIOR COURT
Clark County Cause No. 04-4-00300-9 and 04-2-05113-8
The Honorable Judge Barbara Johnson

APPELLANT OPENING BRIEF

Sandra Hendricks, pro se
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By: Sandra Hendricks, Appellant

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STATE OF WASHINGTON
COURT OF APPEALS
DIVISION II
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Filed in Washington Court of Appeals on April 23, 2009 by Sandra Hendricks.

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APPELLANT'S BRIEF

Hendricks #37026-3-II

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I. ASSIGNMENT OF ERROR

Did the court commissioner and trial court abuse its discretion in finding that Sandra Hendricks, the Plaintiff, Wife's Creditor's Claim against the estate establish adequate cause pursuant to RCW 11.54.010, .020, .030, and RCW 11.54.040.

Did the court commissioner and trial court abuse its discretion in finding to not allow documentation that was introduced during discovery pursuant to RCW 5.60.030.

Did the court commissioner and trial court abuse its discretion in basing their decision on and allowing documentation from a temporary order in a divorced proceeding that was never finalized establish adequate cause pursuant to RCW 26.04.010, and RCW 26.09.060.

Did the court commissioner and trial court abuse its discretion in judging that a divorce had settled Sandra Hendricks's injuries establish adequate cause pursuant to RCW 26.04.010, RCW 26.09.020, and RCW 26.09.060.

Did the court commissioner and trial court abuse its discretion in not allowing a written statement made by Joe Dison as not being admissible as evidence pursuant to RCW 11.54.040, RCW 26.09.030 and RCW 5.60.030.

Did the court commissioner and trial court abuse its discretion in ordering attorney fees to Defendant's Attorney Rylander and not for the plaintiff pursuant to RCW 11.96A.150.

Did the court commissioner and trial court abuse its discretion in not awarding Sandra Hendricks, the Plaintiff, the condo purchased by her husband after the marriage with the intent that it was to be her home pursuant to RCW 6.13.010, and RCW 6.13.030.

II. ISSUES

A. For purposes of RCW 11.54.010(1) can detriment and adequate cause be found based on the surviving spouses petition to the court for property of the decedent?

B. For purposes of RCW 11.54.010(2) can detriment and adequate cause be found based on the surviving spouses petition to the court for an award from community or separate property?

C. For purposes of RCW 11.54.010(3) can detriment and adequate cause be found based on the surviving spouses petition for an award within twelve months of the decedent's death?

D. For purposes of RCW 11.54.010 can detriment be presumed?

E. For purposes of RCW 11.54.020 can detriment and adequate cause be found based on the surviving spouses Wife's creditor's Claim to property that was intended as her homestead? Property that was not identified in the will.

F. For purposes of RCW 11.54.030 can detriment and adequate cause be found based on the need to pay medical or funeral expenses of the decedent?

G. For purposes of RCW 11.54.040(3) (b) can detriment and adequate cause be found based on the provision left to other parties in the will?

H. For purposes of RCW 11.54.040(3) (f) can detriment and adequate cause be found based on written statements made by the decedent that are otherwise admissible as evidence?

I. For purposes of RCW 11.54.040 can detriment be presumed?

J. For purposes of RCW 26.04.010(1) can detriment and adequate cause be found based on the legal union of the decedent and surviving spouse?

K. For purposes of RCW 26.09.030 can detriment and adequate cause be found based on legal divorce before ninety days have elapsed?

L. For purposes of RCW 26.09.30(b) can detriment and adequate cause be found based on written documentation in the decedents hand writing, filed in Wife's Creditor's Claim.be used as an exhibit in probate as offer of proof?

M. For purposes of RCW 26.09.30 can detriment be presumed?

N. For purposes of RCW 26.09.060(10) (c) can detriment and adequate cause be found based on temporary orders that terminate when final decree is entered?

O. For purposes of RCW 26.09.060(10) (a) can detriment and adequate cause be found based on temporary orders that do not prejudice the rights of a party at subsequent hearing in the same proceeding?

P. For purposes of RCW 26.16.050 can detriment and adequate cause be found based on decedent signed real estate sales agreement date 12/3/03 giving plaintiff property three days before marriage and letter from seller as to decedent's intention as being admissible exhibit of proof for purposes of probate?

Q. For purposes of RCW 6.13.010, RCW 6.13.030, and RCW 6.13.040 can detriment and adequate cause be found based on decedent Wife's Creditors Claim listing the condo known as Salmon Creek Estate's located at 13100 NW 8th Avenue, Vancouver, Washington as her homestead.

R. For purposes of RCW 11.96A.150 detriment and adequate cause be found based on awarding reasonable attorney fee to plaintiff and reversing attorney fees awarded to the estate's attorney.

III. STATEMENT OF THE CASE

Appellant, Sandra Hendricks was Married to Joseph Dison on December 16,2003 (CP 47, EX "A"). Joseph Dison died on April 2, 2004(CP 2). Sandra Hendricks lived with Joseph Dison in an unregistered domestic relationship for eight months prior to the marriage. Three days prior to Sandra Hendricks and Joseph Dison's marriage they both signed a real estate contract date 12/13/2003 for the Salmon Creek Condo (CP 47, EX "B"). After the marriage Joseph Dison completed the closing on the condo without having Sandra Hendricks sign, stating he was single. Appellant, Sandra Hendricks, filed a creditors claim against the estate of her deceased husband Joseph Dison (CP 13). In the wife's creditor's claim Sandra Hendricks claimed the Condo as her homestead and she intended to live in it, she asked for the proceeds, if it was sold (CP13(1). She was not notified when it was sold. Although, Joseph Dison expressed to friends and family that he was purchasing the Salmon Creek Condo for his wife, Sandra Hendricks, witness testimony was not allowed due to Dead Man's Statute (RP 16). At the beginning of the trial Sandra Hendricks offered written testimony relating to conversations between the previous owner that was selling the condo and Joseph Dison (CP 13 EX "B") this was part of the Wife's Creditor's Claim, but it was not allowed during the trial due to Dead Man's Statue.

Sandra Hendricks was denied her claims in Superior Court proceeding. Appellant was instructed that the petition for divorce temporary orders were admitted into the probate trial(RP 50,52, and RP116). Denial in probate court was based on temporary orders during divorce proceedings that awarded Joseph Dison proceeds from the sale of a condo purchased after their marriage (RP 116). In fact the temporary order stated that he could sell the condo and was to notify other party of the proceeds.

Sandra Hendricks was served divorce papers on January 9th, 2004. Sandra Hendricks and Joseph Dison reconciled on February 27, 2004 (CP 13,EX C) although divorce proceeding continued they were never finalized as he died only 83 days into the divorce. No final orders or settlements were signed. Sandra Hendricks did not receive a settlement in divorce proceedings. Sandra Hendricks did not have a divorce and documentation on any temporary agreements should not be considered in probate court (RP 116). Temporary orders did not take away Sandra Hendricks's rights to have the order modified or revoked at subsequent hearing in the divorce proceedings. There was no final hearing due to Joseph Dison's death.

Provisions for Joseph Dison's children and grandchildren were provided for through his will (CP 3). Detail of the property was listed for each property that was willed to the his adult children and grandchildren in the will. The First Codicil To The Last Will And Testament signed January 16, 2004, did not list the property purchased

after the marriage located at Salmon Creek Estates, 13100 NW 8TH Ave., Vancouver, WA.(CP 3). Sandra Hendricks and Joseph Dison reconciled after the will on February 24th 2004 as evidenced by a letter in Joseph Dison's hand writing contesting to his children's interference in the marriage and his intent toward his wife, Sandra Hendricks (CP 13, EX C). In his own hand writing stating he was never legally married to his children's mother that Sandra Hendricks was his only legal wife (CP13, EX C).

As to the issue of proving that the estate is in possession of Sandra Hendricks's personal property, the main witness as to the property had signed an affidavit through Sandra Hendricks's previous attorney (RP 7). This was not accepted by the court. Articles on the weather was offered as proof to try to prove that It would have been impossible to take an U-Haul truck to Amboy. It could not be possible have been back to the container in Amboy on January 9, 2009 as the respondents witnesses tried to imply (RP 21,22,74). The weather was still severe in Amboy Washington on that date and Dan Dison admitted that the last time Sandra Hendricks was on the property was at the closing of severe weather (RP 76) . In the questioning of Genna Thur she stated that in February 11, 2004, the day prearranged by the attorney for Sandra Hendricks to pick up her furniture that the U-haul truck had gotten stuck in the mud (RP 99). Had a U-haul truck tried to be there on January 9, 2004 during a storm it could not happen. Amboy Washington had one of the worst winters and on January 8, 2004 Sandra Hendricks spent 10 hours digging out of the snow(RP 27) at the Amboy, WA home returning to the Amboy home once.

No one was at the container to meet Sandra Hendricks on 2/11/2004 the only other witness was Shonda Kelley. Shonda Kelley was not able to attend court. Sandra Hendricks tried to submit an affidavit from Shonda Kelley but it was not allowed. Had Sandra Hendricks been back to the property in Amboy to get y property the Dison's would have called the police as at that time Joseph Dison and Sandra Hendricks both were restrained from each other. The only key Sandra Hendricks had was for the second storage container in Battleground WA where they had the other half of her personal belongings. On February 11, 2004 Sandra Hendricks rented a unit to put her things in at Iron gate Storage first she went to the Battleground unit and took that property to the Iron gate Storage because as her appointment to meet her husband in Amboy was not till 4:00pm on 2/11/04 where she was hoping to pick up the remainder of her property. One of the witnesses, Jonnie Allen, her stepdaughter, said that she followed Sandra Hendricks to Iron gate Storage after she left Amboy(RP .86,87,89). The only furniture Sandra picked up in Amboy was a coffee table and porch swing she had to take it somewhere. Why they were making a case out of her going to Iron gate Storage I cannot understand. What it shows is the extent they go to stock her when she was trying to get her things by arrangement by the attorneys. They talk about putting the other half of her belonging in the Battleground unit without giving me a key. Sandra Hendricks was at the Battleground storage in town on 1/9/04 at the same time Jonny Allen served divorce papers on me(RP 84). They did not explain why from 1/9/04 through February 11, 2004 that they kept her property at the Battleground storage unit. Or why they thought they had

a right to hold it hostage. Jonny Allen admitted going back to the storage unit on 1/10/04 (RP 83). The court stopped her from finishing her statement as to why she would go back when only Sandra Hendricks's property was in the unit. Dan Dison states that prior to January 9th, 2004 all Sandra Hendricks's belongings were still in the Amboy storage unit(RP 75) He admits that the furniture was there December 23, 2004 (RP 77). Sandra Hendricks's list of items in her Wife's creditors claim disputes the estates list of inventory (CP 13).

Attorney fees were awarded to the attorney for the estate (CP 85) in the amount of \$5,000.00. Plaintiff did not receive any relief.

ARGUMENT

RCW 11.54.010(1),(2),and (3) provides the rights of the surviving spouse to petition for an award from the decedent from community property or from separate property of the decedent:

- (1) The surviving spouse or surviving domestic partner may petition the court for an award from the property of the decedent. If the decedent is survived by children of the decedent who are not also the children of the surviving spouse or surviving domestic partner and all or any such children as it deems appropriate. If there is not a surviving spouse or surviving domestic partner, the minor children of the decedent may petition for an award.
- (2) The award may be made from either the community property or separate property of the decedent. Unless otherwise ordered by the court, the probate and no probate assets of the decedent abate in accordance with chapter 11.10 RCW in satisfaction of the award.
- (3) The award may be made whether or not probate proceedings have been commenced in the state of Washington. The court may not make this award unless the petition for the award is filed before the earliest of:
 - (a) Eighteen months from the date of the decedent's death if within 12 months of the decedent/s death either:
 - (i) A personal representative has been appointed; or
 - (ii) A notice agent has filed a declaration and oath as required in RCW 11.42.010(3)(a)(ii); or
 - (b) The termination of any probate proceeding for the decedent's estate has been commenced in the state of Washington; or
 - (c) Six years from the date of the death of the decedent.

The court is able to grant an award to surviving spouse after funeral expenses and the

expenses of the last sickness have been paid. These expenses were paid. Sandra Hendricks filed her petition for an award on August 24, 2004. The children of the decedent did not file a creditor's claim against the estate.

RCW 11.54.020 provides a basic award for surviving spouse with the amount being increased or decreased in accordance with RCW 11.54.020:

The amount of the basic award shall be the amount specified in RCW 6.13.030(2) with regards to lands. If an award is divided between a surviving spouse or surviving domestic partner and the decedent's children who are not the children of the surviving spouse or surviving domestic partner, the aggregate amount awarded to all the claimants under this section shall be the amount specified in RCW 6.13.030(2) with respect to lands. The amount of the basic award may be increased or decreased in accordance with RCW 11.54.040 and 11.54.050.

RCW 11.54.040 (1), (2) and (3) Sandra Hendricks presented during the court trial written documentation by the decedent as evidence not only of the interference of his children but of his feeling toward his only wife, Sandra Hendricks. Written documentation by a third party, the previous owner of the Salmon Creek Estate's Condo as to his wishes to provide a home and security for his wife, Sandra Hendricks. Joseph Dison's will list provision left to his children and other family members. Although the marriage was a short duration they lived together in a domestic relationship for eight months prior to the marriage. During temporary divorce proceeding they reconciled as evidenced by his love letter dated February 27, 2004. RCW 11.54.040

(1) If it is demonstrated to the satisfaction of the court with clear, cogent, and convincing evidence that a claimant's present and reasonably anticipated future needs during the pendency of any probate proceedings in the state of Washington with respect to basic maintenance and support will not otherwise be provided for from other resources, and that the

award would not be inconsistent with the decedent's intentions, the amount of the award may be increased in an amount the court determines to be appropriate.

(2) In determining the needs of the claimant, the court shall consider, without limitation, the resources available to the claimant and the claimant's dependents, and the resources reasonably expected to be available to the claimant and the claimant's dependents during the pendency of the probate, including income related to present or future employment and benefits flowing from the decedent's probate and non probate estate.

(3) In determining the intentions of the decedent, the court shall consider, without limitation:

(a) Provisions made for the claimant by the decedent under the terms of the decedent's will or otherwise;

(b) Provisions made for third parties or other entities under the decedent's will or otherwise that would be affected by an increased award;

(c) If claimant is the surviving spouse or surviving domestic partner, the duration and status of the marriage or the state registered domestic partnership of the decedent to the claimant at the time of the decedent's death;

(d) The effect of any award on the availability of any other resources or benefits to the claimant;

(e) The size and nature of decedent's estate; and

(f) Oral and written statements made by the decedent that are otherwise admissible as evidence.

RCW 6.13.030 Sandra Hendricks in her Wife's Creditors Claim specified the land known as Salmon Creek Estates, 13100 NW 8th Ave., Vancouver, Washington was

to be her homestead that she intended to live there and if sold she was to be notified and proceeds forwarded to her. She had lived in the Salmon Creek Estate Condo for a time during her marriage to Joseph Dison. She was denied access to the home after decedent's death by Respondent's attorney. The Respondent would not let her occupy the homestead. This left her to live with friends and family. 6.13.030 provides:

A homestead may consist of lands, as described in RCW 6.13.010, regardless of area, but the homestead exemption amount shall not exceed the lesser of (1) the total net value of the lands, manufactured homes, mobile home, improvements, and other personal property, as described in RCW 6.13.010, or (2) the sum of one hundred twenty-five dollars in the case of lands, manufactured homes, mobile home, and improvements, or the sum of fifteen thousand dollars in the case of other personal property described in RCW 6.3.010, except where the homestead is subject to execution, attachment, or seizure by or under any legal process whatever to satisfy a judgment in favor of any state for failure to pay that state's income tax on benefits received while a resident of the state of Washington from a pension or other retirement plan, in which event there shall be no dollar limit on the value of the exemption.

RCW 26.04.010 (1) Provides protection to the institution of marriage.

Sandra Hendricks and Joseph Dison were married on December 16, 2003. As provided in RCW 26.04.010 (1):

(1) Marriage is a civil contract between a male and a female who have each attained the age of eighteen years, and who are otherwise capable.

RCW 26.09.060 provides the only statutory authority for dispute resolution in divorce or validity in marriage. The trial court should not base their decision that a court

had ruled on community property in a temporary order during divorce action that was never finalized. Joseph Dison was legally married at the time of his death to Sandra Hendricks. As provided in RCW 26.09.060(10):

- (10) A temporary order, temporary restraining order, or preliminary injunction:
 - (a) Does not prejudice the rights of a party or any child which are to be adjudicated at subsequent hearing in the proceeding;
 - (b) May be revoked or modified;
 - (c) Terminates when the final decree is entered, except as provided under Subsection (11) of this section, or when the petition for dissolution, legal separation, or declaration of invalidity is dismissed;
 - (d) May be entered in a proceeding for the modification of an existing decree.

There was no legal separation between Joseph Dison and Sandra Hendricks. The final decree was never entered. Joseph Dison died 83 days after filing the petition. Joseph Dison and Sandra Hendricks reconciled once during the divorce proceedings. Sandra Hendricks was his legal wife at the time of his death.

RCW 11.96A.150 provides for cost of attorney fees which Sandra Hendricks incurred due to the estate denying her Wife's Creditors Claim:

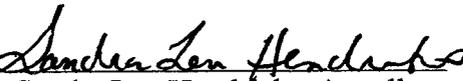
- (1) Either the superior court or any court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party; (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate

asset that is the subject of the proceedings. The court may order the costs, including reasonable attorneys' fees to be paid in such amount and in such manner as the court determines to be equitable. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefit's the estate or trust involved.

V. CONCLUSION

RCW 11.54.010, 020, 030, and RCW 11.54.040 provides relief for surviving spouses. Sandra Hendricks and Joseph Dison were legally married at the time of Joseph Dison's death. Temporary transaction during divorce proceeding should not be allowed in probate. Sandra Hendricks did not receive relief of any kind during divorce proceedings. There was no divorce. Sandra Hendricks has not recovered her personal property from the estate, which she listed in the Wife's Creditors Claim, and has been denied a share of the estate due to divorce proceedings. Sandra Hendricks has not received any settlement from any other court proceeding from her husband Joseph Dison. Sandra Hendricks prays the court to give her relief she may have rights to by law Under RCW 11.54.010, 020, 030, and RCW 11.54.040. She also prays for relief under RCW 6.13.010, RCW 6.13.030, Sandra Hendricks prays the court to reverse the \$5,000.00 attorney fees that were awarded at trial to the defendant's attorney. Sandra Hendricks prays the court to award her with attorney fees she incurred prior to probate trial of \$3,300.00 and the cost of the appeal. Sandra Hendricks prays for any other relief she may be entitled to.

RESPECTIFULLY SUBMITTED this 23 day of April, 2009.

By: 
Sandra Len Hendricks, Appellant

CERTIFICATE OF SERVICE

Sandra Hendricks, Appellant declares under penalty of perjury under the laws of the state of Washington and the State of Oregon that the following is true and correct:

I certify that on the 23 day of April, 2009, I caused a true and correct copy of Appellants Brief, Appeal #37026-3-II, to the Court of Appeals and at the same time to the law office of Kurt Rylander. A true and correct copy was served on the following and in the manner indicated below:

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Signed *Sandra Len Hendricks* Dated April 23, 2009
Sandra Len Hendricks

STATE OF WASHINGTON
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DIVISION II
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BY *Sm*
DEPUTY