

FILED

NOV 14 2013

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

CASE NO. 316718

ASOTIN COUNTY CAUSE NO. 05-2-00016-9

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STEVE HEITSTUMAN,

Appellant,

v.

WAYNE HEITSTUMAN, et al.,

Respondents.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR ASOTIN COUNTY

The Honorable John W. Lohrmann, Judge

BRIEF OF RESPONDENTS

Presented by:

Roger Sandberg
Esser & Sandberg, PLLC
520 East Main Street
Pullman, WA 99163
(509) 332-7692

TABLE OF CONTENTS

A. INTRODUCTION 1

B. ISSUES..... 1

C. STATEMENT OF THE CASE 2

D. ARGUMENT..... 8

 1. The Court’s division of real property was well
 within its discretion 8

 a. The Court properly concluded that the land
 should be divided equally. 8

 b. The Court’s specific division of real property
 was proper, and well within its discretion. 13

 c. It was unnecessary to appoint referees, as the
 parties agreed to use the appraiser’s report..... 14

 2. The division of farm equipment was requested by
 Appellant. 18

E. CONCLUSION..... 20

TABLE OF AUTHORITIES

CASE LAW

<u>Anfinson v. FedEx Ground Package Sys., Inc.</u> , 174 Wn.2d 851 (2012).....	17
<u>Carr v. Harden</u> , 34 Wn.App. 292, 296 (Div. III 1983).....	15
<u>Carson v. Willstadter</u> , 65 Wn.App. 880, 830 P.2d 676 (1992).....	15
<u>Cummings v. Anderson</u> , 22 Wn.App. 634, 590 P.2d 1297 (1979).....	8
<u>Friend v. Friend</u> , 92 Wn.App. 799, 964 P.2d 1219 (Div. II 1998).....	9

STATUTES

RCW 7.52.080.....	14
RCW 7.52.090.....	15, 18
RCW 7.52.100.....	15

A. INTRODUCTION

Following a lengthy trial in which the Court was presented extensive evidence regarding the values of various parcels of real property, and after considering each party's proposed recommendations for partitioning those parcels, the Court adopted the Respondents' proposal, and rejected the Appellant's. This decision was soundly within the Court's discretion. Appellant's main complaint is simply that the Court did not partition the property according to Appellant's liking.

Appellant also claims that he paid more into the partnership than the other partners, and that he was not given credit for those payments. But the Court specifically considered this argument, and found the Appellant's arguments to be unpersuasive. Therefore, the Court divided the property in equal shares.

Finally, the Appellant argues that the Court was without authority to divide personal property. But at trial, the Appellant specifically asked the Court to divide the personal property, so this argument is barred by the doctrine of judicial estoppel.

The Court's decision should be affirmed in all respects.

B. ISSUES

1. Whether the partition of real property was within the trial court's broad discretion?

2. Whether judicial estoppel bars Appellant from claiming that the Court was without authority to divide personal property?

C. STATEMENT OF THE CASE

1. Three brothers, Steve Heitstuman, Wayne Heitstuman, and David Heitstuman, jointly purchased real property located in Asotin County, Washington, in 1979 (the "Floch" Place), 1980 (the "Hendrickson" Place), and 1981 (the "Barkley" Place). CP 141.

2. The names of Steve, Wayne, and David Heitstuman, appear on the deeds to the aforementioned properties, the name "Heitstuman Brothers" does not appear on any of the deeds. CP 141, Exhibits P-21, P-22 and P-23.

3. Steve Heitstuman stated in his Affidavit signed May 4, 2006, that he owned the property with his brothers as tenants in common. CP 224. His Answer to the Complaint for Partition admitted those paragraphs which alleged that the properties were owned as tenants in common. CP 24; CP 113.

4. The Floch property consists of both farmland and rangeland, as does the Barkley property. Exhibit P-25, pages 68-69. The Hendrickson property is accessible only through the Floch property (RP 96), and consists solely of rangeland. Exhibit P-25, pages 68-69.

5. Wayne and Becky Heitstuman presently live on the Floch property, and have lived there since 1985. RP 368.

6. David and Tracie Heitstuman live just a couple of miles away from the Floch property, and David Heitstuman is primarily responsible for the farming operation that occurs on the Floch property. CP 91, 370, 411, 416.

7. Steve Heitstuman lived on the Barkley property for 25 years. RP 101. At the time of trial, he had his cattle on that property. RP 369.

8. The Floch and Hendrickson properties are contiguous; the Barkley property is about 20 miles away from those properties. RP 365-366.

Litigation; Capital Accounts

9. After a disagreement arose between Wayne and Steve Heitstuman, Steve filed suit against Wayne in January 2005, seeking monetary relief. CP 1-3.

10. Wayne on May 30, 2006, filed a Counterclaim for partition of the real property described above. He was joined in this counterclaim by his wife Becky, and his brother David Heitstuman and his wife Tracie.

11. Steve Heitstuman eventually answered the Counterclaim. In that Answer, he admitted that the partnership's capital accounts could not be accurately reconstructed:

“9. Plaintiff/Counter-Defendant admits that an accurate determination of each partner's partnership capital and income accounts is preferred for partition but denies that an accurate determination can be had.

10. Plaintiff/Counter-Defendant admits that the partners of Heitstuman Brothers do not have a current, accurate partnership accounting....”

CP 113.

12. Steve Heitstuman even filed a Motion for Summary Judgment (which was denied) in which he stated:

“Each party’s capital contributions to the partnership cannot be reconstructed using generally accepted accounting principles because the partnerships records are insufficient to allow a forensic audit.”

CP 38.

13. Steve Heitstuman now claims as Assignment of Error #1:

“The trial court erroneously found that “[a]ll parties agree that capital accounts for either the cattle partnership or for the Heitstuman Brothers partnership cannot be accurately reconstructed.”

Brief of Appellant, page 1.

14. At trial Steve Heitstuman asked the Court to review a few hand-selected records – about 41 check stubs and deposit slips covering a 26-year period – and find that he had a substantial capital account balance relative to his other partners. Exhibit P-20.

15. Steve admitted that Wayne also made substantial financial contributions. RP 168.

16. Steve did not present expert testimony to establish his capital account. CP 142.

17. All of the Heitstuman Brothers tax returns showed that the brothers had equal capital accounts. Exhibit D-503.

18. The Court rejected Steve’s argument that he had a larger capital account than his brothers, and divided the property equally. CP 148.

Partition of Properties

19. At trial, Steve Heitstuman called as a witness in his case-in-chief Steve Rynearson, a certified appraiser who had done an appraisal of the subject properties. RP 116-117. Steve Heitstuman's counsel offered into evidence Mr. Rynearson's appraisal concerning the properties at issue. RP 117, Exhibit P-25.

20. Mr. Rynearson had been hired by both sides to the litigation, specifically by Wayne and Steve Heitstuman. RP 117.

21. The appraisal concluded that the Floch and Hendrickson properties were worth a combined total of \$1,328,000, or approximately 67% of the value of the total properties. Exhibit P-25, pages 68-69.

22. Mr. Rynearson estimated the value of the Barkley place to be \$646,800, or approximately 33% of the value of the total properties. Ibid. Steve Heitstuman testified that he agreed with that estimate. RP 311-312.

23. The Floch, Hendrickson, and Barkley properties, and the property acquired in 2009, were acquired by separate deed, and have separate legal descriptions. Exhibit P-25.

24. The Court rejected Steve Heitstuman's argument that he should be awarded a larger share of the property than anyone else, and instead ordered that the real and personal property should be divided in equal shares. CP 148.

25. Specifically, the Court ordered that Steve Heitstuman should be awarded the Barkley property, which was the property that Steve had lived on for 25 years, presently had his cattle on, and was approximately 1/3 of the total value of the properties. The court also ordered a small owelty to Steve so that the division of properties would be exactly equal. CP 148.

26. The Court awarded the Floch and Hendrickson properties – approximately 2/3 of the total value – to the other two partners Wayne and David Heitstuman, and their wives, in undivided shares. CP 148. Those parties were not seeking for the Court to further partition the property between them.

27. Although Steve Heitstuman was awarded approximately 850 acres, and Wayne and David Heitstuman were awarded a combined 4,776 acres, Steve's acreage contains a higher percentage of farm land (90%) relative to range land (10%) than the land awarded to Wayne and David. Exhibit P-25, pages 68-69. Farm land is more valuable than range land, so the land awarded to Steve is more valuable on a per-acre basis than the land awarded to Wayne and David. Ibid.

28. Steve Heitstuman did not ask for appointment of a referee at trial, or in any post-trial motions. At trial, he proposed that the Court award him the Barkley Place and the Campbell Place. RP 344. No referee would have been necessary for such a division, because those properties have separate legal descriptions.

29. The Court rejected Steve's proposal, and instead adopted the Respondents' proposal, awarding each brother an equal 1/3 share of the property. CP 148.

Division of Personal Property

30. The parties agreed that Heitstuman Brothers owned farming equipment worth approximately \$25,000. RP 87-88, 414.

31. Both sides submitted written closing arguments. Steve Heitstuman's closing argument specifically argued in favor of the Court dividing Heitstuman Brothers' personal property, i.e., the farming equipment:

“Pleadings are to be construed liberally. If a complaint states facts entitling the plaintiff to some relief, it is immaterial by what name the action is called. Here, the pleadings state facts entitling the parties to a division of Heitstuman Brothers' property – real **and personal**. Moreover, evidence shows that **several pieces of farming equipment** and the Floch, Barkley, and Hendrickson properties are Heitstuman Brothers' partnership property.... This court, then, has jurisdiction to divide Heitstuman Brothers' real **and personal** property regardless of the cause of action asserted.”

Closing Argument for Plaintiff/Counter-Defendant Steve Heitstuman,

page 9 (Clerk's Papers _____). (Citations omitted, emphasis added.)

32. Indeed, Steve proposed a specific division of the personal property:

“Steve also requests that he be awarded Heitstuman Brothers' D-6 Caterpillar and grain drills and disc. Steve's requests result in an unequal partition of land: Steve would receive 1,705 acres and some equipment and Wayne and David would each receive 1,955.5 acres and the remaining equipment, including the combine.” Ibid, pages 10-11.

33. Based on the parties' arguments, the Court divided the farming equipment. It was divided in equal shares. CP 148.

34. However, on appeal Steve Heitstuman argues directly contrary to his argument at trial. The Brief of Appellant argues, "The trial court lacked authority to partition Heitstuman Brothers' farming equipment under Chapter 7.52 RCW." Brief of Appellant, page 11.

D. ARGUMENT

1. The Court's division of real property was well within its discretion.

Appellant makes three arguments regarding the Court's division of real property:

- It was error for the Court to conclude that Steve was not entitled to a larger share than his brothers;
- It was error for the Court to give Steve the Barkley Place and not also give him the Campbell Place, and;
- It was error for the Court to not appoint referees.

These arguments will be addressed in turn.

a. The Court properly concluded that the land should be divided equally.

Partition is an equitable action in which the court has great flexibility in fashioning appropriate relief for the parties. Cummings v. Anderson, 22 Wn. App. 634, 590 P.2d 1297 (1979), rev'd on other grounds, 94 Wn.2d 135, 614 P.2d 1283 (1980). The standard of review

for a trial court's order partitioning property is abuse of discretion. Friend v. Friend, 92 Wn. App. 799, 805, 964 P.2d 1219 (Div. II 1998). Here, the trial court's conclusion that the real property should be divided equally was well within its discretion.

All parties agreed that capital accounts could not be accurately reconstructed. For example, Steve Heitstuman in his Answer to Respondents' Complaint for Partition stated:

"9. Plaintiff/Counter-Defendant admits that an accurate determination of each partner's partnership capital and income accounts is preferred for partition but denies that an accurate determination can be had.

10. Plaintiff/Counter-Defendant admits that the partners of Heitstuman Brothers do not have a current, accurate partnership accounting...."

CP 113.

On appeal, however, Steve Heitstuman argues as Assignment of Error #1, that:

"The trial court erroneously found that "[a]ll parties agree that capital accounts for either the cattle partnership or for the Heitstuman Brothers partnership cannot be accurately reconstructed."

Brief of Appellant, page 1.

Given his clear admission that capital accounts cannot be reconstructed, this assignment of error is without support.

But although capital accounts could not be reconstructed, Steve Heitstuman tried to convince the Court that he was entitled to a larger share of the property than his brothers. At trial, he presented limited

evidence – Exhibit P-20 containing 41 hand-picked check stubs and deposit slips over a 26-year period – which he claimed showed that he had a substantial capital account. He now argues that Wayne and Steve did not produce similar evidence at trial, so he should be awarded a substantial judgment. Brief of Appellant, pages 19-20.

But Wayne and David recognized the futility of attempting to partially reconstruct capital accounts. It is meaningless to partially reconstruct capital accounts, because if one shows only payments, but does not accurately show reimbursements for those payments, then the capital account would appear artificially inflated.

That is exactly what Steve Heitstuman did. He only showed his payments for expenses, but did not accurately show his reimbursements. Respondents pointed this out at trial through the admission of Exhibit D-517, certain bank statements that showed large checks that were unaccounted for, and which Steve Heitstuman possibly wrote to himself. For example, the fifth page of Exhibit D-517 shows a check for \$90,801.26. Concerning that check, the following exchange took place:

Q. Do you see a check -- check number 5028 for \$90,801?

A. Yes.

Q. What's the date of that?

A. Ah, October 27th.

Q. And that's about four days, maybe five days before you wrote a check for the Barkley payment; correct?

A. Yes.

Q. Is it possible that that check is to you to cover these payments?

A. It's possible it is.

RP 264.

Exhibit D-517 is only a small example – one month out of nearly 30 years of history – of the futility of Steve's approach. A partial capital accounting showing only expenses without accurately accounting for reimbursements results in an inaccurate, inflated capital account.

Steve makes a blatantly false statement in the Brief of Appellant. He states, “[Steve] also paid the entire Floch mortgage debt payment from 1998 to 2002. No evidence shows he did not make these payments, and no evidence shows he was reimbursed these extra payments.” Brief of Appellant, page 18. To the contrary, the evidence showed that Wayne raised Steve's cows during that time period, and Wayne made the Floch mortgage payment (approximately \$75,000 per year) through the sale of his and Steve's cows. CP 143, paragraph 23. In exchange, Steve received the Heitstuman Brothers farming income and made the annual payments on the Barkley property (approximately \$55,000 per year). Ibid., paragraph 24. Neither of those findings are challenged on appeal. In other words, Steve did not make the Floch payment, it was the combined sale of his and Wayne's cows that made the Floch payment, and Steve was reimbursed by receiving all of the farming income. To

claim that Steve made the Floch payment and was not reimbursed is blatantly false.

To demonstrate why Steve's contention that he was not reimbursed for his payments was false, Respondents introduced Exhibit D-521. Extensive testimony was taken regarding that Exhibit. RP 207-217, 243-245, 325-327. The Exhibit is a summary of the income received by Heitstuman Brothers (as reflected on their tax returns) minus the expenses that were paid by Steve Heitstuman during the years that Steve Heitstuman alone was receiving the farming income. Exhibit D-521 shows that between 1998 and 2002, inclusive, Steve Heitstuman would have netted – i.e., *after* making the Barkley payment and any other farming-related expense payments –approximately \$442,000. Steve Heitstuman admitted that those figures were correct. RP 327, lines 16-18. So to say that Steve was not reimbursed for his payments is blatantly false.

Wayne and David argued from the outset that all parties' capital accounts were equal. Wayne and Steve produced evidence in support of that argument: they presented the tax returns of Heitstuman Brothers from 1990 to 2004, Exhibit D-503. In each of those years, the tax returns showed that all partners had equal capital accounts. The Court found that evidence to be more persuasive than Steve Heitstuman's evidence. Thus, there is substantial support for the Court's finding that all partners had

equal shares in the partnership, and that finding should not be disturbed on appeal.

b. The Court's specific division of real property was proper, and well within its discretion.

Steve Heitstuman next argues that it was error for the Court to have awarded him only 840 acres, and to have awarded Wayne and David 4,776 acres. Brief of Appellant, p. 21. He claims the trial court's division was "drastically lopsided in favor of Wayne and David." Ibid.

This argument ignores the fact that not all land is equal. Farm land is more valuable than pasture land. Exhibit P-25. The land awarded to Steve – the Barkley Place – consists of a much higher percentage of farm land (nearly 90%) than the land awarded to Wayne and David (approximately 23%). Therefore, the land awarded to Steve is much more valuable on a per-acre basis.

The court divided the land in exactly equal shares according to Steve Rynearson's appraisal of the value of the land. The parties testified that they agreed with the appraised values. RP 311-312, 367. Therefore, the division was well within the Court's considerable discretion in a partition action.

Steve Heitstuman complains that he is a cattle rancher, not a farmer, so the Court should have awarded him more rangeland. But Wayne Heitstuman is also a cattle rancher, and giving Steve more rangeland would have taken rangeland away from Wayne. These types

of decisions are squarely within the discretion of the trial court, and should not be disturbed on appeal. Steve's solution, if he finds the Barkley Place to be unusable for cattle ranching, is to sell that land and purchase land that better suits his needs.

c. It was unnecessary to appoint referees, as the parties agreed to use the appraiser's report.

Steve Heitstuman disingenuously argues that the Court was required to appoint referees, despite the fact that the parties agreed to use the appraiser's report, that Steve Heitstuman called the appraiser as a witness and offered his report into evidence, and despite the fact that Steve Heitstuman agreed with the appraiser's conclusions. Furthermore, he misrepresents to the Court that referees are actually required to divide the land, not the trial court.

Steve Heitstuman relies on RCW 7.52.080 for his contention that the Court is required to appoint referees. In full, that statute reads:

If it be alleged in the complaint and established by evidence, or if it appear by the evidence without such allegation in the complaint, to the satisfaction of the court, that the property or any part of it, is so situated that partition cannot be made without great prejudice to the owners, the court may order a sale thereof, and for that purpose may appoint one or more referees. Otherwise, upon the requisite proofs being made, it shall decree a partition according to the respective rights of the parties as ascertained by the court, and appoint three referees, therefor, and shall designate the portion to remain undivided for the owners whose interests remain unknown or are not ascertained.

Steve argues that, under RCW 7.52.090, referees are charged with, “(1) dividing property, (2) allotting the several portions thereof to the respective parties, (3) designating the several portions by proper landmarks, (4) employing a surveyor as an aid, and (5) making a report of their proceedings, describing the property divided and the shares allotted to each party, with a particular description of each share.” Brief of Appellant, page 16. But he ignores that part of RCW 7.52.090 which says the referees duties shall be performed “according to the respective rights of the parties as determined by the court....”

In essence, Steve argues that the referees have greater power than the trial court itself. But in Washington, it is the trial court which determines the ultimate division of property in a partition action.

There are two basic statutory approaches to the use and reliance to be placed on referees’ reports. In one, the referees or commissioners submit the report which has the effect of a jury verdict. In the other, the report is viewed as an aid to the court, but the court is not bound by it.

The Washington statutes adopt the second approach: “The court may confirm or set aside the report in whole or in part,....” RCW 7.52.100. **The report is for the use of the court to aid in the exercise of its discretion.**

Carr v. Harden, 34 Wn. App. 292, 296 (Div. III 1983) (citations omitted, emphasis added).

In Carson v. Willstadter, 65 Wn. App. 880, 883, 830 P.2d 676 (1992), the court stated a trial court “**may** appoint three referees to

determine the rights of the owners,” implying such appointment is discretionary. (Emphasis added.)

The purpose of appointment of referees is simply to prepare a report to aid the Court in determining the relative value, quality, and general makeup of the land. Such a report was presented in this case, through the testimony of Steve Rynearson, a certified appraiser.

Indeed, Mr. Rynearson was called as a witness by Steve Heitstuman, and Steve Heitstuman offered Mr. Rynearson’s report into evidence. RP 116-117. Mr. Rynearson had been hired by both sides in the litigation, specifically by Wayne Heitstuman and Steve Heitstuman. RP 117-118. Both Wayne and Steve Heitstuman testified that they agreed with the appraiser’s values. RP 311-312, 367.

There is no reason that Mr. Rynearson should not be considered a referee. RCW 7.52 does not define “referee” but it would seem that a certified appraiser jointly hired by the parties to prepare a comprehensive report regarding the values of the several properties subject to partition would fit the bill.

Steve Heitstuman never asked the Court to appoint a referee (if Mr. Rynearson is not considered as such), not at trial nor in any post-trial motions. Instead, Steve Heitstuman proposed a specific division of the real property: that he be awarded the Barkley Place and Campbell Place, both of which had separate legal descriptions. RP 344. Steve’s own proposal, therefore, would not have required any referee.

Steve's new argument that referees were are required is barred by the doctrine of judicial estoppel. "Judicial estoppel is an equitable doctrine that precludes a party from asserting one position in a court proceeding and later seeking an advantage by taking a clearly inconsistent position." Anfinson v. FedEx Ground Package Sys., Inc., 174 Wn.2d 851, 861 (2012). Steve's position on appeal is clearly inconsistent with his position at trial.

To the extent that Steve had a right to have referees appointed, he waived that right by not raising the issue at any stage of the litigation – the lawsuit had been pending for nearly 8 years before going to trial – and instead agreeing to rely upon the report of Steve Rynearson.

The Court is not required to unilaterally and wastefully appoint a referee when all of the information necessary to make a decision has been presented. The typical scenario contemplated by RCW 7.52 is the partition of a single, undivided parcel of real property. But here, there were multiple parcels of real property that were capable of division without the necessity of a survey or the creation of new legal descriptions. And a comprehensive report had been prepared which detailed the relative size and value of the various parcels, a report with which both sides testified they were in agreement. So it was unnecessary to appoint referees after the Court had determined the respective rights of the parties.

Under RCW 7.52.090, “the referees shall divide the property, and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties as determined by the court...” (Emphasis added.) Here, the Court determined the respective rights of the parties to be that the property would be divided in equal shares, that Steve Heitstuman would be awarded the Barkley Place, and that Wayne and David would be awarded the Floch and Hendrickson Places. Those properties have separate legal descriptions. What is left for a referee to do?

It is clear that Steve Heitstuman’s claim that the Court was required to appoint referees is simply a belated attempt to be awarded a second bite at the apple. This argument is barred by judicial estoppel, and should be rejected.

2. The division of farm equipment was requested by Appellant.

On appeal, Steve Heitstuman argues, “The trial court lacked authority to partition Heitstuman Brothers’ farming equipment under Chapter 7.52 RCW. ... RCW 7.52 governs partition of only real property.” Brief of Appellant, page 11.

This argument is also barred by judicial estoppel, as it is directly contrary to the argument that he made at trial, when he unequivocally asked the Court to divide the farming equipment. At trial, Steve argued:

“Pleadings are to be construed liberally. If a complaint states facts entitling the plaintiff to some relief, it is immaterial by what name the action is called. Here, the pleadings state facts entitling the

parties to a division of Heitstuman Brothers' property – real **and personal**. Moreover, evidence shows that **several pieces of farming equipment** and the Floch, Barkley, and Hendrickson properties are Heitstuman Brothers' partnership property.... This court, then, has jurisdiction to divide Heitstuman Brothers' real **and personal** property regardless of the cause of action asserted.”

Closing Argument for Plaintiff/Counter-Defendant Steve Heitstuman,
page 9. (Clerk's Papers _____.) (Citations omitted, emphasis added.)

He also argued:

“Steve also requests that he be awarded Heitstuman Brothers' D-6 Caterpillar and grain drills and disc. Steve's requests result in an unequal partition of land: Steve would receive 1,705 acres and some equipment and Wayne and David would each receive 1,955.5 acres and the remaining equipment, including the combine.” Ibid, pages 10-11.

For Steve to now argue that the Court was without authority to divide the farming equipment is clearly barred by judicial estoppel.

Steve also complains that the Court's actual division of the farming equipment was inequitable. Brief of Appellant, p. 14. But the Court's decision in this regard was well within its broad discretion in these matters. The Court divided the equipment equally in three shares. CP 148. He ordered Wayne and David to pay Steve for his share, but gave Steve the option of retaining any of the equipment that was currently in his possession and ordinarily used by him. Ibid. Steve never exercised that option.

Steve argues that since he was awarded farm land, he should have been awarded farm equipment. But the property awarded to Wayne and

David also contains hundreds of acres of farm land, and David has been primarily responsible for the farming operation. CP 91, 370, 411, 416. As Steve made clear to the trial court, he is a cattle rancher, not a farmer, and he planned to continue to be a cattle rancher. CP 342. Therefore, the Court's division of the farming equipment was based on specific evidence in the record, and was well within its discretion.

Finally, Steve argues that although the agreed value of the farming equipment was \$25,000, Steve is prejudiced because he cannot replace all of the equipment for \$8,333. Brief of Appellant, p. 14. This argument makes no sense. Steve did not own all of the equipment, he owned a 1/3 share in the equipment. Of course he cannot replace all of the equipment for 1/3 of the value of the equipment, but that does not make the Court's decision inequitable.

Steve's arguments that the Court was without authority to divide the farming equipment, and that the actual division of farming equipment was inequitable, should be rejected.

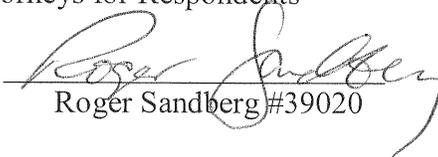
E. CONCLUSION

The trial Court's decision should be affirmed.

RESPECTFULLY SUBMITTED: This 13th day of November
2013.

Esser & Sandberg, PLLC
Attorneys for Respondents

By


Roger Sandberg #39020

ATTORNEY'S CERTIFICATE OF SERVICE

I certify that on the 13th day of November 2013, at my direction, the foregoing Brief of Respondents was served on the following:

Court:

Renee Townsley, Clerk
Court of Appeals
500 North Cedar St.
Spokane, WA 99201

Mailed, postage
prepaid (original +
one copy)
 Hand Delivered
(original + one copy)
 Faxed to:

Counsel for Appellant:

Law Offices of David Gittins
Attn: Hailey Landrus
PO Box 191
Clarkston, WA 99403

Mailed, postage
prepaid (copy)
 Hand Delivered
 Faxed to:

Defendant/Counter-Plaintiffs:

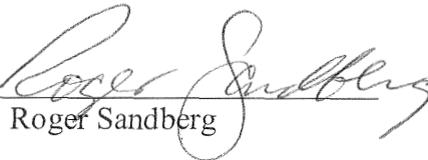
Wayne & Becky Heitstuman
10542 Montgomery Ridge Road
Anatone, WA 99401

Mailed, postage
prepaid (copy)
 Hand Delivered

David & Tracie Heitstuman
4874 Montgomery Ridge Road
Anatone, WA 99401

Mailed, postage
prepaid (copy)
 Hand Delivered

DATED: This 13th day of November 2013.



Roger Sandberg