65378-4 65378-4

IN THE WASHINGTON COURT OF APPEALS
DIVISION 1

Christine Olivieri,	)	
	)	
Respondent ("Olivieri")	)	Court of Appeals No. 65378-4-1
	)	
vs.	)	From the Superior Court
	)	County of King,
Ryan Lurie,	)	Cause No. 07-3-02651-1 SEA
	)	
Appellant ("Lurie")	)	
	)	
	)	
	)	

FILED
COURT OF APPEALS
STATE OF WASHINGTON
2010 SEP 17 PM 1:04

APPEAL TO THE WASHINGTON COURT OF APPEALS
DIVISION 1
FROM THE SUPERIOR COURT,
KING COUNTY, STATE OF WASHINGTON

APPELLANT'S REPLY BRIEF

RESPECTFULLY SUBMITTED

Ryan Lurie
Appellant Pro Se
15831 12th Ave. NE
Shoreline, WA 98155
Telephone: 206-359-5514
E-mail: ryanlurie@hotline.com

TABLE OF CONTENTS

A. Reply Argument: Page

Issue No. 1.....2
Issue No. 2.....2

B. Extraneous Commentary.....6

C. Conclusion.....6

REPLY ARGUMENT

Issue No. 1: Section 3.2 of the Decree separately, independently, specifically, expressly and unambiguously awards sole ownership of the House to Lurie. Olivieri does not deny this fact but merely argues that Lurie owes her $17,000.00+ interest and specifically states that "she was due [such amount] from her share of the equity earned in the house" (Brief of Respondent, p. 3). Lurie does not deny this. However, there exists no requirement in the Decree which in any manner provides that Lurie's right to a quit claim deed from Olivieri is contingent upon his paying her the amount she is due (hereafter Lurie's "Equity Obligation"). Nor is there a requirement in the Decree which provides that Lurie must assume Olivieri's half of their joint mortgage in order to receive full title to the house.

Notwithstanding the Superior Court's statement to the contrary that title to the House is an issue that needs to be addressed, and notwithstanding the Superior Court's opinion that Title to a home and the Mortgage Obligation are one and the same issue (Transcript of March 16th, 2010 hearing, p.27) the unconditional award of the House to Lurie in Section 3.2 is a separate, independent and distinct issue from both his Equity Obligation and the Mortgage Obligation. By that Section 3.2 award, title to the House is vested solely in Lurie and Lurie is entitled to receive from Olivieri a quit claim deed transferring to him her 1/2 joint ownership interest in the House to clear up any questions in this regard.

Issue No. 2: Section 3.4 of the Decree, by its specific omission to unequivocally state otherwise, unambiguously provides that Lurie has not assumed Olivieri's Mortgage Obligation and that, consequently, Olivieri

remained and continues to remain liable for payment of her Mortgage Obligation

Olivieri has cited no law contrary to the substantial law previously cited by Lurie in his Opening Brief in support of his assertions regarding Olivieri's Mortgage Obligation nor does she even contradict his assertions. Olivieri only argues that there was a "mistake" in the Decree because "they forgot to list the mortgage" (Brief of Respondent, p.3). She argues that she was supposed to be relieved of her Mortgage Obligation and asks the Court to require Lurie to assume that obligation now because in her opinion she and Lurie agreed all along that he would do so. She supports her subjective understanding by pointing to various e-mails written after the Decree was issued in which Lurie subsequently **offered** to assume her Mortgage Obligation and/or refinance the House.

The "suggestive e-mails" are neither an amendment to the Decree nor do they contain anything close to an unequivocal expression that Lurie was assuming Olivieri's Mortgage Obligation. If anything, they only express subsequent **offers** by Lurie which were never accepted by Olivieri or attempts which were unsuccessfull to remove her name from the mortgage. In fact, their subsequent actions evidence that both Olivieri and Lurie knew that Olivieri was still liable on her Mortgage Obligation. Olivieri's Exhibit 4 (the Chase assumption package) even shows that in 2008 Lurie informed Chase that his divorce awarded him the house and asked Chase to remove Olivieri's name from the mortgage precisely because the Decree did not affect their joint mortgage obligation. Chase was unwilling to do so. As a consequence Lurie even then offered to enter into a hold harmless agreement for Olivieri's benefit. That subsequent offer was, totally inexplicably, not accepted by Olivieri.

None of this, however, is relevant as regards the terms of the Decree as unambiguously written. If Lurie was to have relieved Olivieri of her Mortgage Obligation there must have existed in the Decree his unequivocal expression to that effect and clear and convincing evidence to that effect. Neither of these requirements are satisfied by the Decree as written (refer Lurie's Opening Brief for legal support of this point). The Superior Court ruled as much when it ordered, "the issue of the mortgage for the house AWARDED to respondent is not determined in the Decree." (Exhibit E from Lurie's Opening Brief)

Olivieri's reference to Sec. 3.5 of the Decree further acknowledges this fact. That section is consistent with Sec. 3.4 and together they provide that neither party was relieving the other of their independent obligations. They were leaving them untouched and in their "status quo." That is the only reasonable interpretation for checking the block "does not apply".

Finally, Olivieri's request to enforce Judge Canova's (and in turn Commissioner Smith's) rulings by stating that such rulings provide that Lurie "... has to assume 100% of the mortgage since 2007 and that Christine doesn't have to give Ryan a quit claim deed until Ryan takes full ownership of the house by assuming the financial responsibilities attached to it..." (Respondent's Brief, Conclusion, p.6) is totally false. Neither Judge Canova nor Commissioner Smith ever issued any ruling that even remotely suggests any of this. Olivieri's misrepresentation of the Superior Court's Orders is indicative of her self-serving understanding of the issues. Lurie's right to receive a quit claim deed from Olivieri regarding the House and the issue of Olivieri's Mortgage Obligation were left unanswered in the Superior Court. That is why this Appeal has been filed. Nor did the Superior Court rule that Lurie is not entitled to contribution reimbursement from Olivieri. The Superior Court erred in not holding Olivieri responsible for her Mortgage

Obligation despite its failure to find an unequivocal expression of an assumption of that liability by Lurie within the Decree as written.

Again, Lurie does not deny his Equity Obligation; but that obligation is separate and independently distinct from Olivieri's Mortgage Obligation. Lurie's Equity Obligation has no affect upon Olivieri's Mortgage Obligation. Nor does the Decree in any manner obviate or relieve Olivieri from her Mortgage Obligation or obviate Lurie's right to receive from Olivieri reimbursements for his prior and continuing payments on her behalf of her Mortgage Obligation.

Finally, Olivieri appeals to the Court to amend the Decree to "correct" what she perceives to be a "mistake" that she and Lurie made when they divorced. Olivieri fails to mention, however, that other "mistakes" were made which would need to be taken into consideration if the Court were to ultimately decide to amend or vacate the Decree. It was a "mistake" that Lurie and Olivieri never took into consideration, when determining the amount of equity that Olivieri was entitled to receive, the fact that Lurie made a down payment of $55,000 when they purchased the House in 2003 with money he had inherited from his deceased grandmother. It was a "mistake" that they failed to consider the fact that Lurie spent thousands of dollars from his inheritance to pay for medical treatment for Olivieri or that Lurie gave Olivieri a cash gift of $20,000 in 2002 with money from his inheritance. It was a "mistake" that the $34,000 he gave to Olivieri in 2007 at the time of their divorce, the last of his inheritance, were monies which, unbeknown to Lurie at that time, were monies to which she was not otherwise legally entitled. If it was a "mistake" to not list their mortgage obligation as a liability to be paid by Lurie, it was also a mistake to not consider and account for these other facts as well. The point is this: If the Court grants Olivieri's request to

remedy one alleged "mistake", then all the "mistakes" of their "lawyer-less" divorce need to be remedied, not just those that favor Olivieri. And if that is the case, then the Decree should be vacated and all monies previously paid by Lurie to Olivieri should be returned so that negotiations might begin anew.

Extraneous Commentary:

Olivieri's reference to Lurie's father is not only, and most importantly, irrelevant to the legal issues before this Court but is also vindictive and prejudicial. It is also, in addition, illustrative, reflective, and representative of Olivieri's true nature and character, of which Lurie unfortunately (but fortunately) only became belatedly aware. Lurie's father's prior misconduct (crime) was an aberration which occurred over 15 years ago. Lurie's father long ago paid in full his debt to society and regrets his misconduct to this day. Lurie as well openly acknowledges and openly regrets what his father did, and has spent years coming to terms with the mistake his father made. Lurie certainly does not need the likes of an Olivieri referencing a wholly unrelated long ago act of misconduct regarding a person who is not even a party in this matter. Olivieri has referenced it for the sole purpose of attempting to prejudice this Court in the hope of obtaining relief to which she is not legally entitled under the Decree.

Conclusion:

For the foregoing reasons and the reasons, assertions and legal citations contained in Lurie's Opening Brief, Lurie again respectfully requests this Court to correct the Superior Court's erroneous ruling and to enforce the Decree as unambiguously written and order or confirm, as the case may be,

that: (1) Olivieri execute a quit claim deed in favor of Lurie regarding her proportionate 1/2 share ownership in the House, (2) Lurie has not assumed and is not personally liable for Olivieri's Mortgage Obligation, (3) Olivieri remained and still remains liable for the payment of her Mortgage Obligation, (4) Olivieri pay Lurie a contribution in the amount of $29,479.19 to reimburse him for his payment in satisfaction on her behalf of her Mortgage Obligation during the period January 2007 – June 30th 2010 (plus such greater amount as above set forth if for such additional payments by Lurie of her Mortgage Obligation past June 30th) and (5) Lurie be granted such other and further relief as this Court deems just and proper.

Ryan Lurie
Appellant Pro Se
15831 12th Ave. NE
Shoreline, WA 98155
Telephone: 206-359-5514
E-Mail: ryanlurie@hotmail.com

Certificate of Service

The undersigned hereby certifies that on the 17th day of September 2010 the above document was sent by first class U.S. Mail, postage prepaid, as follows:

Christine Olivieri
8735 Dayton Ave N
Seattle, WA 98103

Ryan Lurie

FILED
COURT OF APPEALS
STATE OF WASHINGTON
2010 SEP 17 PM 4:04