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

**BRIEF OF APPELLANT
(Amended)**

VAN D. AuBUCHON
Appellant Pro Se

PO Box 121
Lynnwood, WA 98046
425-210-8538

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I. INTRODUCTION

There is really only one issue in this case to review. That is the valuation and disposition of the only major asset of the marriage which is the family residence. Van and Bonnie AuBuchon were married in 1971. The AuBuchon's purchased the house in 1983, raising a family of three sons, none of whom were dependent at the time of the dissolution. There are no issues of retirement/savings accounts, stock options, or interests in any enterprise, no children...just a single residential property!

In 2006 the mortgage on the property was refinanced in order to consolidate some debts and do some upkeep and improvements on the house, including a new roof, remodeled kitchen and bathrooms to include new hard flooring, cabinetry and fixtures. The only way to get the financing was for Van to apply alone, in that Bonnie had failed to properly repay her personal credit cards on a timely basis. The mortgage remains in Van's name only, to this date.

II. ASSIGNMENTS OF ERROR

No. 1. The trial Court erred in entering Findings of Fact, valuing the Community Property at \$225,000.00 based on the Petitioners Exhibit No. 11. (CP Vol. I, page 9, lines 19-23, and CP Vol. II, page 26, lines 11-14)

No. 2. The trial court erred in awarding a disproportionate split, 55/45 in favor of Bonnie, in the equity of the Community Property. (CP Vol. I, page 4, lines 3-5, CP Vol. II, page 26, lines 12-14)

No. 3. The trial court erred in assigning the payment of the Mortgage on the Community Property to Bonnie. (CP Vol. II, page 26, lines 22-25)

No. 4. The trial court erred in allowing Bonnie to remain in possession of the house for five years. (CP Vol. II, page 27, lines 3-6)

No. 5. The trial court erred in declining to hear all of the Statements of Facts (CP Vol. II, page 32) as duly agreed to and ordered in The Order of Continuance (CP Vol. II, page 31).

III. STATEMENT OF THE CASE

No. 1. The trial court based its valuation of the residence at \$225,000.00 on the Petitioner's Exhibit No. 11, presented at trial, and dated May 1, 2013, (Report of Proceedings, September 26, 2013, page 37, lines 5-11). This was a Comparative Market Analysis done by a friend of Bonnie's sister, a real estate agent in Seattle, some four and a half months before trial. (Report of Proceedings, September 26, 2013, page 32, lines 1-2)

No. 2. The trial court recognized this was in fact a long term marriage of some 42 years (Report of Proceedings, October 1, 2013, page 2, lines 9-11) and the couple had owned the property for some thirty years at the time of trial.

No. 3. The trial court arbitrarily assigned the payment of the mortgage on the property to Bonnie, which was in Van's name, as indicated in Trial Exhibit 10 (Report of Proceedings, September 26, 2013, page 31, lines 4-22)

No. 4. The trial court invented the process, at the bench, to fit the case that it did not know how to handle in allowing Bonnie to remain in possession of the house for five years. (Report of Proceedings, September 26, 2013, pages 117-118, all lines)

No. 5. The trial court declined Van's request to be heard on evidence of fact in testimony which is not consistent with claims made by Bonnie.
(CP Vol. II, pages 31-32)

IV. ARGUMENT

No. 1. It is hard to find case law to quote in reference to this matter in that the Court essentially invented the process to deal with the property, doing so by its own admission, that it did not know what to do, when it inquired of the petitioner's attorney, ..." *THE COURT: Let me ask you another question. These people are here to get divorced. Can the Court, in a divorce situation where only one person's name is on the mortgage, require that person's name to stay on the mortgage for x period of time while the other person pays the mortgage?*" (Report of Proceedings, September 26, 2013, page 117, lines 13-17) The attorney goes on to attempt to compare the issue to that of a credit card debt or an auto loan, both of which seem pale in comparison to a \$185,000.00 Mortgage. Further it would be suggested here that credit cards and auto loans do not fall under Federally Insured Lending Laws such as Fannie-Mae.

The Court goes on in its Decision, (Report of Proceedings, October 1, 2013, page 3, lines 9-14), to indicate it was to base the value of the property on Trial Exhibit No. 11, which was a four and a half month old Comparative Market Analysis (CMA) contrary to the citation indicated in The Washington State Community Property Deskbook where it states in Section 4.16, "Generally, property is to be valued at the date of the trial rather than the date of the separation of spouses". *Lucker v. Lucker* 71 Wn.2d 165, 426 P2d 981 (1967).

Further, it is noted that this CMA contained **Comparable Sales of Bank owned**, and otherwise distressed property.

Further, testimony at trial by Bonnie and her Counsel indicated the existence of a professional Certified Appraisal that was done on the property just prior to the trial (Report of Proceedings, September 23, 2013, page 62 lines 24-25). Van later asked that this be brought forward to clarify the actual value and was denied. (See No. 5 following).

To summarize this error:

- a. The Court admitted it did not know how to deal with the issue of the mortgage being solely in Van's name.

- b. The Court used a Comparative Marketing Analysis (CMA) that was over four months old.
- c. The CMA was flawed on the face of it.
- d. The Court refused to avail itself of a Certified Appraisal done by a state certified professional, and readily available.

No. 2. Even though the trial court was very aware of the long term of the marriage it chose to disregard this in assigning a 55/45 split, again quoting the Community Property Handbook, Section 5.6, “The Court of Appeals stated in 2007 that ‘[i]n a long term marriage of 25 years or more, the trial court’s objective is to place the parties in **roughly equal financial positions** for the rest of their lives.’ “

No. 3. Further the trial court failed to consider the requirements for allowing Bonnie to assume the mortgage. The lending institution does not allow assume ability of loans in dissolution actions when the individual cannot qualify for the loan, which Bonnie could not.

No. 4. There has been much discussion of a pest infestation befalling the residence before the trial in September 2013, which Bonnie testified to, (Report of Proceedings September 26, 2013, page 33, lines 7-24). Albeit a factor of urban living, this type of rodent intrusion is very manageable in a

structure the like of houses built in the later Twentieth Century in that they are set on poured concrete foundations that are accessible for maintenance reasons from within the house only, i.e. no exterior access except for metal vents. Over the years these vents can become breached by intruding animals. But this is a maintenance issue and is simply rectifiable by seeing that these vents are kept in sound statuses, which are easily replaceable with simple tools. This was discovered six months after Van was forced to vacate the property. Without ongoing regular inspection and maintenance, the future value of the residence in five years, is a serious concern.

No. 5. On October 10, 2013, Van filed a Motion for Continuance (CP Vol. II, page 32) and a duly signed Order of Continuance (CP Vol. II, page 31) was issued by the court for among other things “to be heard on evidence of fact in testimony which is not consistent with claims made by the Petitioner”, to be heard on October 23, 2013.

Then at the hearing on October 23, 2013, the court reversed itself and denied the discussion of the Motion in total (Report of Proceedings, October 23, 2013, page 10, lines 14-16).

The court went on to address other issues for presentation, at some length (Report of Proceedings, October 23, 2013, pages 10-17). Finally in

the closing minutes of the hearing the court revealed a **key factor** in denying a complete discussion, when it stated "*I have to get down the hall. I have a legion of people waiting for me down there*", (Report of Proceedings, October 23, 2013, page 17, lines 3-4). Evidently, pressed by more immediate issues, the court denied Van a reasonable request to have the true value of the property brought, doing so in an arbitrary and capricious manner.

The Court was allowed to be misled in fixing the valuation of the property based on a CMA verses a Certified Appraisal that existed and was ordered by Bonnie's attorney, an officer of the Court, who got it ruled out when it must have become apparent that a much higher value, by as much \$100,000.00 (Total \$325,000.00) or more was appropriate.

Too many issues/questions are left open in the Courts decision in this case. As it stands Bonnie is left with control of the asset which she can and has turned into an income producing vehicle virtually living rent free (\$1,490.00/mo.). Van on the other hand remains strapped with the Mortgage on his credit report, unable to access his equity for five years, unable to buy another home and denied of any tax advantage. Further it remains unclear from the Court's Decision, as to the details of the final sale of the property. Should Bonnie fail to be able to re-finance in five

years, and without proper maintenance, the effects of a rising housing market values in a very sought after neighborhood, she quits making the payments, what happens then? Van would still have to face the repercussions of a foreclosure? Too many questions are left unanswered.

V. CONCLUSION

To conclude, it is indicated in The Washington State Community Property Deskbook, regarding the VALUATION OF ASSETS in Section 5.16. "...The value of property is usually defined 'as its fair market value,' that being the 'price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.' Treas. Reg. 20.2031-1(b)."

Based on the foregoing conclusions Van respectfully requests a final solution in the matter to include the following:

1. Remand the case back to the Court to set a specific date to put the property on the market. It would be reasonable to assume that this would be set within 60 days of remand, considering renters are now involved.

2. The listing price to be set by the listing agent, who would be chosen by mutual agreement of the owners.
3. Equity would then be calculated by the final selling price, less normal costs and fees, less the outstanding mortgage balance.
4. Equity to be divided on a 50/50 basis.
5. Bonnie would be compensated, at the time of sale, for any expenditure for labor and materials she has spent in the upkeep, repair or maintenance of the residence, since the date of separation. Van would pay this compensation out of the proceeds of his share of the equity from the sale of the residence on a 50% basis of the total expenditure.

Amendment respectfully submitted this 29th day of December, 2014

By: 

Van D. AuBuchon
Appellant Pro Se

PROOF OF SERVICE

I. STATEMENT

The undersigned states:

I am Van D. AuBuchon

I served Bonnie F. AuBuchon with the following documents:

1. Appeal Brief of Appellant (Amended)

Date, Time and Place of service:

Date: December 29, 2014

Address: 18224-71 Avenue West, Lynnwood, WA 98037

Service was made as indicated below:

By Mailing: Regular US Postal Service

II. CERTIFICATE OF STATEMENT

I certify under penalty of perjury under the Laws of The State of Washington that the foregoing statement is true and correct. (RCW 9A.72.085)

Dated at Lynnwood, Washington, on December 29, 2014



(Signature)

2014 DEC 29 10:05 AM
LAWSON COUNTY WA

PROOF OF SERVICE

I. STATEMENT

The undersigned states:

I am Van D. AuBuchon

I served Tresa Sadler, Atty. with the following documents:

1. Appeal Brief of Appellant (Amended)

Date, Time and Place of service:

Date: December 29, 2014

Address: 16708 Bothell-Everett Hwy., Ste.104, Mill Creek, WA 98012

Service was made as indicated below:

By Mailing: Regular US Postal Service

II. CERTIFICATE OF STATEMENT

I certify under penalty of perjury under the Laws of The State of Washington that the foregoing statement is true and correct. (RCW 9A.72.085)

Dated at Lynnwood, Washington, on December 29, 2014

Van D. AuBuchon

(Signature)

STATE OF WASHINGTON
COUNTY OF SNOHOMISH
SUPERIOR COURT
CLERK OF COURT
JAN 2 2015