

NO. 74207-8-I

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

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CAROLE LAROCHE, f/k/a CAROLE HOFFMAN,

Appellant,

v.

ALAN LOWELL HOFFMAN,

Respondent.

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

The Honorable Carol Schapira

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REPLY BRIEF OF APPELLANT

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Carole LaRoche f/k/a Hoffman  
*pro se*

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FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2016 JUN - 8 AM 9:43

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In addition to the issues and arguments presented in the Appellant's Opening Brief, Ms. LaRoche respectfully offers the following for the consideration of this Court.

A. Summary of Reply

Ms. LaRoche's appeal revolves around her post-trial discovery of Mr. Hoffman's pretrial assignment of SB 5177 to his personal estate. As explained in her Opening Brief, this trust, containing approximately \$10 million in assets, dwarfed the other assets at issue in the trial. Mr. Hoffman explicitly told the trial court that he did not possess this trust, and that it would essentially "skip" to his children, and the trial court divided the remaining assets accordingly. Unbeknownst to the trial court or to Ms. LaRoche, the trust was part of his personal property at the time of trial.

In his Response, Mr. Hoffman concedes Ms. LaRoche's argument that the large trust SB 5177 was part of his estate, countering with an attempt to redefine a person's "estate" as something that only exists once a person has died. His argument is directly contrary to long-established law and must be rejected.

Mr. Hoffman repeatedly concedes the reliance element of fraud in his Brief of Respondent. Finally, contrary to Mr. Hoffman's contention in his Response that the question of whether the trust was part of "my current estate" never arose at the divorce

trial, this issue arose repeatedly at trial.

As Mr. Hoffman does not repudiate the document assigning SB 5177 to his estate, he has conceded Ms. LaRoche's central argument on appeal. The trial court's denial of Ms. LaRoche's CR 60(b)(4) motion should be vacated and the case remanded for relief consistent with that requested in Ms. LaRoche's Opening Brief of Appellant.

Section 2.2 "Background" of Mr. Hoffman's brief should be stricken as it refers wholly to alleged facts and events outside the record of this case which are irrelevant to this appeal.

B. ARGUMENT

1. A PERSON'S "ESTATE" IS THE WHOLE OF THE PROPERTY OWNED BY ANY ONE, THE REALTY AS WELL AS THE PERSONALTY. ALL LIVING PERSONS WHO HAVE PROPERTY HAVE ESTATES; THUS WHEN MR. HOFFMAN ASSIGNED SB 5177 TO HIS ESTATE, IT BECAME HIS OWN PROPERTY. BY HIDING THIS FACT FROM THE TRIAL COURT, MR. HOFFMAN FRAUDULENTLY MISREPRESENTED THE NATURE AND EXTENT OF HIS PROPERTY AND PREVENTED THE TRIAL COURT FROM ARRIVING AT A JUST DISPOSITION OF ASSETS

In his Respondent's Brief at p. 5, Mr. Hoffman argues that "I would think that my 'estate' as referred to in my personal Will, wouldn't exist until I expire..." He continues to argue that the Appointment simply makes it possible for SB 5177 to pass to his children upon his death in his Will.

"The word estate means ordinarily the whole of the property owned by any one, the realty as well as the personalty." Hunter v. Husted, 45 N.C. 141 (N.C. 1853); In re Wright's Estate, 168 S.E. 664, 204 N.C. 465 (N.C. 1933). The Merriam-Webster's Learner's Dictionary defines "estate" as "the degree, quality, nature, and extent of one's interest in land or other property." While an "estate" is often discussed in the context of probate, its meaning is not limited to that which a deceased person owns. For instance, states must determine their definition of "estate" for purposes of Medicaid recovery from persons still living. See Darby v. Stinson, 68 So.3d 702 (Miss. 2011).

In light of this long-standing definition of an estate as something that encompasses the possessions of a person, living or dead, this Court must reject Mr. Hoffman's argument that his estate "wouldn't exist until I expire." To the contrary, Mr. Hoffman's estate at the time of trial, his possessions, included SB 5177. This is directly contrary to what he told the trial court. "My sister and I, we don't get the money ever." Appendix A of Opening Brief, dissolution trial testimony of Mr. Hoffman at 622.

Mr. Hoffman attempts to sidestep his failure to accurately inform the trial court of all his possessions by arguing that "all this information was available to her and her Counsel as evidenced by the documents she has submitted." Respondent's Brief at 7. This

argument ignores Mr. Hoffman's duty of truthfulness to the court. The fact that Ms. LaRoche did not find this document until after trial in no way undercuts Mr. Hoffman's separate duty to truthfully inform the court of the nature and extent of his possessions. The bald reality is that Mr. Hoffman misrepresented the nature and extent of his property; he fraudulently represented that he did not possess SB 5177. This fraud, this misrepresentation, prevented the trial court from arriving at a just disposition of the assets that took into account the true nature and extent of each party's possessions.

2. MR. HOFFMAN CONCEDES THE RELIANCE  
ELEMENT OF FRAUD IN HIS RESPONDENT'S  
BRIEF

On page 4 of the Respondent's Brief, Mr. Hoffman concedes the reliance element of fraud. He admits "Both my attorney and Ms. LaRoche's attorney always referred to the trust by its documented nature as a separate trust established by my mother through her Will, for which my sister and I are trustees." He repeats this concession again on page 6 when he writes "but Ms. LaRoche, through her second (and trial) attorney, Ted Billbe, agreed in our 2010 trial that it was an independent entity, with my sister and I as trustees and my children the eventual heirs." As noted in Ms. LaRoche's Opening Brief at p. 21, Ms. LaRoche's attorney conceded in closing that SB 5177 was not part of Mr. Hoffman's estate and that the trial court could not dispose of it.

Contrary to Mr. Hoffman's Response argument, the reliance element of fraud is firmly established here.

3. THE ISSUE OF WHETHER SB 5177 WAS PART OF MR. HOFFMAN'S CURRENT ESTATE WAS DIRECTLY ADDRESSED AT TRIAL

Mr. Hoffman tells this Court that "... the question of the trust being part of my current estate never even arose at our 2010 divorce trial." Respondent's Brief at 4. In fact, the opposite is true.

Mr. Hoffman was specifically questioned about whether he possessed the SB 5177 assets and his explicitly told the trial court that he did not possess them:

No my sister and I, we don't get the money ever. I have concerns that -- well, I don't even know what is legally allowed. I do not have the money to -- you know, I have about -- I think if I sold everything I'd have \$500,000. That's all I have. That's my sum total for working for 47 years of my savings, other than retirement and the house. That is it of mine.

Appendix A of Opening Brief at 622. (Emphases added.) Mr.

Hoffman also told the trial court that SB 5177 was not for him:

Q: So the terms of the nonexempt Trust that your mother set up, this Trust was -- although you've portrayed the Trust as for your children, the terms of the Trust are for you; aren't they?

A: No, I don't think so at all. I think the beneficiaries are my children. I'm entitled to take out a certain amount of money per month.

Appendix A of Opening Brief at 624. Mr. Hoffman also specifically disclaimed that there was any other relevant document regarding SB 5177:

Q: Would you also agree that the terms of this Trust as written by your mother on July 6th of 1990 are still the terms of the Trust, the terms that control the nonexempt --

A: Yes, that's the only other document that's available.

Appendix A of Opening Brief at 628.

In closing argument at the dissolution trial, Mr. Hoffman's attorney addressed this issue directly and explicitly told the trial court that the SB 5177 trust assets were not available to Mr.

Hoffman:

[H]e made it patently clear his interpretation, his understanding of the Trust accounts, and he indicated what he thinks [sic] the Trust account is for his children and his grandchildren.

CP 291. He reiterated the point:

Your Honor, my client has asked me -- and if I can find it -- to indicate to you that he does not believe and disagrees with Mr. Billbe and Ms. Hoffman that he's a rich man. He does not accept that premise. The money that he has is owned in Trust for his issue.

CP 295. Mr. Hoffman's attorney then specifically tied Mr. Hoffman's alleged lack of access to the trust monies to his argument on why Ms. LaRoche should receive a smaller property distribution than she had requested:

#### C. CONCLUSION

Ms. LaRoche respectfully requests this Court vacate the superior court's denial of her CR 60(b)(4) motion and instruct the trial court to have an evidentiary hearing to establish the nature and

extent of the assets possessed by the parties at the time of dissolution, including SB 5177. Ms. LaRoche further requests that based upon Mr. Hoffman's misconduct in hiding the fact that he had assigned the \$10 million SB 5177 to his own estate, SB 5177 be found to be held as tenants in common by the former spouses, and available for partition. Finally, Ms. LaRoche requests that this Court remand with instructions that the trial court fashion a dissolution disposition in keeping with the true extent of the parties' assets.

DATED this 31<sup>st</sup> day of MAY, 2016.

Respectfully submitted:

Carole LaRoche  
Carole LaRoche f/k/a Carole Hoffman  
*pro se*

IN THE IN THE COURT OF APPEALS, DIVISION I OF THE STATE OF WASHINGTON

**CAROLE LAROCHE, F/K/A CAROLE HOFFMAN**  
Plaintiff/Petitioner

Cause No.: **74207-8-1**  
Hearing Date:

vs.

**ALAN LOWELL HOFFMAN**  
Defendant/Respondent

**DECLARATION OF SERVICE OF  
REPLY BRIEF OF APPELLANT**

The undersigned hereby declares: That s(he) is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, and is competent to be a witness therein.

On the 1st day of June, 2016 at 4:45PM this declarant duly served the above described documents upon **ALAN L. HOFFMAN**, by depositing in the United States Mail Return Receipt Requested, one true and correct copy of the above described documents with proper postage attached and addressed to:

**ALAN LOWELL HOFFMAN 24109 NE 122ND ST, REDMOND, King County, WA 98053**

No information was provided or discovered that indicates that the subjects served are members of the United States military.

Service Fee Total: \$ 125.00

Declarant hereby states under penalty of perjury under the laws of the State of Washington that the statement above is true and correct.

DATED

*June 3, 2016*  
*Ramona Holmes*

Ramona Holmes

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2016 JUN -8 AM 9:43

ORIGINAL PROOF OF SERVICE

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For: Carole D Laroche  
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