

COA No. 30903-7-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

FILED

MAY 28 2013

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

CRAIG J. KELSEY, aka CRAIG KELSEY and
DONNA KELSEY, husband and wife,

Respondents,

v.

DENNIS E. KELSEY, aka DENNIS KELSEY,

Defendant,

and

JANICE N. KELSEY, aka JANICE KELSEY,

Appellant.

REPLY BRIEF OF APPELLANT

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I. ARGUMENT

A. Substantial evidence failed to support the court's finding that Janice Kelsey was not entitled to a discount on property awarded to her because it was not undivided property at the time the property was partitioned.

Ms. Kelsey had an undivided interest in parcels 9 and 9A. (CP 238). At the time of partition, the referee's report as well as the Adams County Assessor's record reflected fractional ownership of parcel 9 with $\frac{1}{4}$ interest in Arlyne Stine and Craig and Dennis Kelsey each having a $\frac{9}{24}$ interest. (CP 81). The same fractional ownership interests are shown for parcel 9A. (*Id.*). Contrary to the court's finding, Ms. Kelsey's undivided fractional ownership in those parcels existed before the order for partition. (10/19/11 RP 201). Substantial evidence does not then support the court's finding. *Thorndike v. Hesperian Orchards, Inc.*, 54 Wn.2d 570, 575, 343 P.2d 183 (1959).

The referee recognized Ms. Kelsey's undivided fractional ownership interest and stated she should receive "the same fractional ownership discount would apply for Janice Kelsey as it does for Craig Kelsey." (CP 250). In its letter opinion denying the discount to Ms. Kelsey, it stated "[t]he discount [for Craig Kelsey] applied to property that remained undivided at the time of the partition." (CP 261). But the record shows parcels 9 and 9A were

also undivided at the time of the partition. Ms. Kelsey was therefore entitled to a discount for her undivided fractional ownership interest and the court erred by denying her the discount because those parcels remained undivided at the time of partition.

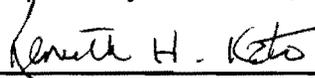
B. As for all other issues, Ms. Kelsey rests on her opening brief and the record before this Court.

II. CONCLUSION

Based on the foregoing, Ms. Kelsey respectfully urges this Court to reverse the order on partition, the order awarding costs and value of discounted property due to undivided interest and the judgment, and the court's decision denying her a discount for her undivided interest, and remand for further proceedings.

DATED this 28th day of May, 2013.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on May 28, 2013, I served a copy of the reply brief of appellant by postage prepaid mail on L.R. "Rusty" McGuire, Attorney at Law, PO Box 1187, Davenport, WA 98122-1187.

