93525-4

IN THE COURT OF APPEALS

OF THE STATE OF WASHINGTON--DIVISION I

NO. 73367-2-I

WASHINGTON SUPREME COURT NO. 93525-4

MASHAWNA AUSLER, PETITIONER APPELLANT

vs.

FOSTER JONES, RESPONDENT

AMENDED PETITION FOR REVIEW TO THE WASHINGTON SUPREME COURT

William Budigan, WSBA 13443
Attorney for Petitioner Appellant
2601 42nd Ave. West
Seattle, WA 98199

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Identity of Petitioner:

Mashawna Ausler, Appellant at Court of Appeals and Respondent in Superior Court.

Citation to Court of Appeals Decision

Division I Decision on Appeal Opinion dated 6/20/16; Order Denying Motion for Reconsideration dated 7/28/16. See Appendices.

Issues Presented for Review

1. In fairly and equitably or otherwise dividing assets and liabilities of parties, is it proper for a court to award a joint tenancy house, upon which both are co-borrowers on the mortgage, to one and leave the other liable on the loan indefinitely for 30 years but without any interest in the property, eliminating that person's ability to get another loan, and exposing their credit to the perils of the property-awarded one's ability and willingness to pay the mortgage?

2. Is it proper for a court to convert a Petition for Dissolution of Intimate Committed Relationship to only a Quiet Title Action (hereinafter "QTA"), when the couple meet all the requirements for committed relationship, thereby denying fair and equitable division of all the assets, including the couple's personal property, the joint tenancy titled property and the woman's interest in the man's separate property rentals?

3. Was a Quiet Title Action properly brought here where there was no dispute about title and the interests of the parties as joint tenants on the deed and co-borrowers on the mortgage and no QTA Petition was ever filed or served and no case schedule of discovery and trial date was ever issued or served?

4. Should a pro se who hires an attorney not formally appearing be awarded reasonable attorney fees supported by declaration of services provided?

STATEMENT OF THE CASE

This is review of a judge trial regarding a Petition for Dissolution of Committed Intimate Relationship (CP1-4), erroneously converted by the trial court to a Quiet Title Action (hereinafter "QTA"), which was void *ab initio* because the court ordered Jones to file a new Complaint for QTA and get a new case schedule and trial date and he never did, precluding jurisdiction in the case and voiding the Judgment/Orders at trial. **The trial was riddled with error. The lower courts both had motions before them to correct the fact that the man was awarded the family home of the joint tenant couple co-borrowers on the mortgage, but left the woman liable on the $322,000 30 year mortgage without requiring within a reasonable time refinance, sale or other cash out to release her from the mortgage.**

Petitioner/Appellant Ausler (hereinafter "Ausler") and Respondent Foster Jones (hereinafter "Jones") were in a committed intimate

relationship for over 12 years, 2002—2014, raising two children, and holding themselves out to the world as husband and wife.[1] However, in 4/14, they had an argument that ended their committed relationship and led Jones to file the Petition for Dissolution of Committed Intimate Relationship (CP1-4) and Ausler to get a protection order against Jones.

The court erred, converting their Petition For Dissolution of Committed Intimate Relationship to a QTA only and this led to numerous errors on appeal herein. The trial court erroneously relied on a 6/4/14 Order that *denied* Jones' request to restrain Ausler from going to her property, when the trial court ruled it needed to resolve the issue of who has title to the property in civil court instead of family law court (CP 22). Without

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[1] Jones worked full time and paid their mortgage. Ausler took care of the house, did all the shopping, cooking, cleaning, laundry, caring for Jones' two dogs, which essentially became hers, paid the utilities and solely managed Jones' titled 2 rental houses from before they started their union. This was no easy feat because Ausler worked full time and was cutting back to go back to school to become a paralegal, but had to give that up to run their household and their rental business. This required lots of time, with difficult tenants, handling all the maintenance, yards, tenant issues and the many City Code violation issues that would come up in this lower income South Seattle rental housing. This was a near full time job. Five years into the relationship, in 2007, Jones gave Ausler a wedding ring and a promise of marriage and they bought their own home, together on the original deed and both were borrowers on the new mortgage with almost nothing down. They moved into it and rented out their prior residence and the second rental. Two years later, in 2009, for two months (Ausler found out later) Jones re-married his former wife he had divorced from a marriage in the 1980s, but immediately returned to Ausler and filed for and received a Declaration of Invalidity, erasing this short mistake. Ausler forgave him, witnessed the other woman's promissory note/contract to pay Jones back $75,000. After this, Ausler and Jones went on living as husband and wife as they always had.

taking any evidence of committed relationship at all, the trial court ruled on 10/22/14 that the Dissolution of Committed Intimate Relationship matter would be converted to only a QTA and ruled that Ausler would not be able to request fair and equitable division of their assets but would be limited to only proven contributions to the one property Ausler was on title. RP 10/22/15. This is error because the trial court ruled on the ultimate issue of the Petition for Dissolution, denying a committed relationship without any trial or hearing on it, with no testimony and no In re Marriage of Pennington, 142 Wn.2d. 592 (2000) factors analysis. Then, in saying it would be a QTA, the judge erred and told Ausler that she had to prove what she put in for time and money and labor. That is absolutely incorrect because Ausler is a joint tenant and had equal interest with Jones in the property under Washington State property law regardless of contribution. After Ausler's requests for continuance of trial (due to medical problems and then-recently found attorneys who could work with her) were denied, a short trial occurred 4/9/15. The court awarded Jones the family home and left co-borrower Ausler on the 30 year $322,000 mortgage, ruining her borrowing for a place of her own. Ausler moved for reconsideration, new trial, for stay of enforcement, and then appealed, moved for a stay of enforcement in COA, and moved for reconsideration after the COA Opinion, but these were all denied.

SUMMARY OF ARGUMENT.

This is an appeal from a Dissolution of Committed Intimate Relationship trial erroneously converted by the trial court to a QTA and trial 4/2015, during which the court ignored that Ausler is on title to their family home and is the borrower on the mortgage and recorded deed of trust. The court did not follow the law, ignored the facts, and made a very biased decision against the "wife" and in favor of the "husband" in this 12 year committed relationship. The case should be remanded for a new trial and a new judge assigned, as this judge has made so many erroneous and biased rulings against Ausler that justice cannot be done here by this judge.

The court of appeals affirmed the lower court without addressing Appellant's argument that the matter was not properly a QTA, other than saying that pro se Ausler raised it for the first time on appeal and therefore "we need not address it." Opinion at 3. This is incorrect: she testified to facts of proper committed relationship and there was no title dispute at trial, precluding QTA because there was no question as to the title interests of the parties as joint tenants both on title and no QTA Petition was ever filed or served and no case schedule, discovery, or trial date ever ordered, in violation of the court's order to Jones to do so.

Significantly, the COA affirmed without even addressing Appellant's main argument that she was denied any interest in the family

home (both lower courts were silent on the timeshare and its debt), but refused to order the man to relieve her of the debt thereon through reasonable time re-finance, sale, or other payoff and left her liable on the 30 year, $322,000 debt, impairing her ability to get another loan and subjecting her credit to his payment history and risk of foreclosure—without having any interest in the property. Despite the COA not addressing these issues and Ausler arguing all this in supported detail, the COA denied reconsideration in one sentence. See Appendices. This case meets the requirement of RAP 13.4 (b) for granting review.[2]

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[2] **Here, Rule 13.4 (b) Considerations Governing Acceptance of Review.** A petition for review will be accepted by the Supreme Court:

(1) <u>If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court, OR (2) a Court of Appeals decision;</u>

The lower courts' decisions to not divide the liabilities of the parties for the home mortgage and timeshare here "fairly and equitably" (see also RCW 26.09.80), by awarding the man the property and leaving the woman appellant liable for the debts thereon is CONTRARY TO every decision of the WA Supreme Court, ALL WA Courts of Appeal, and RCW 26.09.80 regarding division of liabilities and is discriminatory and CONTRARY TO the 5th and 14th Amendments upheld by the US Supreme Court and this Court and CONTRARY TO Federal and State law.

The lower courts' decisions to proceed with or uphold this matter as simply an unmarried couple on title to property to be divided under a Quiet Title Action when there was no dispute whatsoever about title or interest in the property and no Complaint for Quiet Title was filed or served upon appellant and, most importantly, on any or all those with an interest in the properties CONTRARY TO and required by RCW 7.28 AND the lower courts' decisions not to categorize this as a committed intimate relationship and apply all the law that comes with that, is discriminatory and is CONTRARY TO every decision of the WA Supreme Court (See *Connell v. Francisco*, 127 Wn.2d 339, 898 P.2d 831 (1995), below), ALL WA Courts of Appeal, and RCW 26.09.80 regarding division of liabilities and is discriminatory and CONTRARY TO the 5th and 14th Amendments upheld by US Supreme Court and our court and CONTRARY TO Federal and State law.

(3) <u>If a significant question of law under the Constitution of the State of Washington or of the United States in involved;</u>

See (1) above. The lower courts' decisions are CONTRARY TO the US and WA Constitutions, every decision of the WA Supreme Court, ALL WA Courts of Appeal, and RCW 26.09.80 regarding division of liabilities; the QTA is improper under the requirements

ARGUMENT

Out of Ausler's many errors raised,[3] the following is the most egregious error that ***the COA failed to rule upon entirely*** in its Opinion of 6/20/16 and it demands review:

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of RCW 7.28; and the decision not to categorize this as a committed intimate relationship and apply all the law that comes with that is discriminatory and CONTRARY TO the 5th and 14th Amendments and our WA Constitution similar provisions and CONTRARY TO Federal and State law.

(4) <u>If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.</u>

This case impacts many thousands of cases and substantial public interest in justice warranting review by the Supreme Court. It is in the public interest to rule upon and fairly and equitably divide all debt associated with properties divided for all types of relationships of the parties involved "to secure the just... determination of every action", as required by CR 1.

There are about 40,000 marriages per year in Washington State (plus Washington residents married elsewhere) and about 25,000 divorces per year (Washington Department of Health website). There are thousands of intimate committed relationships active and terminated. There are about 3,200 active domestic partnerships and about 1,400 of the same terminated and there are thousands of Washington General Partnerships, LLCs and corporations active and dissolved. (Washington Secretary of State website). In all of these, when the parties involved own an interest in property together, usually the parties are joint debtors on a mortgage. Most of these end in dissolution of the relationship and the division of responsibility for the debt and the relief from debt of the one not getting the property is an issue of substantial public interest and needs clarification under WA law because in many cases the courts do not even address the issue, though they are to address division of liabilities, and equitable division requires addressing on-going required obligation for debt without any retention of interest in the property.

When one is awarded the property and the other is left as a joint debtor it affects that person's ability to take on other, new debt and subjects their credit to the timeliness of payment by the other and threat of foreclosure. The solution is to require the awarded party to refinance, sell, or cash out, within a reasonable time, to eliminate this debt for the co-borrower who has no interest in the property and courts should require this in fair and equitable or otherwise divisions of debt. This case on review is the opportunity for this court to clarify this area of law. We have many family law groups, mortgage and banker groups, and real estate groups interested in this issue and becoming Amicus Brief filers.

[3]At 6 of the 6/20/16 Opinion, the Court of Appeals makes errors of fact and law that Appellant allegedly "failed to assign error to any of the trial court's findings, so they are verities on appeal." This is just wrong. Appellant's opening Brief cites errors throughout and the Reply specifically argued error in many, many things and especially the trial Findings—as few as they were—and regarding mostly what they left out contrary to the

The Court of Appeals Failed to Rule on Ausler's COA Reply second listed ERROR of the trial court in failing to allocate to Jones the debt on their home and their Las Vegas time share, AND for leaving Ausler obligated on both for the life of the debts without retaining any interest in the properties, contrary to the law requiring fair and just division of the liabilities thereon.

The COA Opinion failed to even address the below from Ausler's Reply at 7:

> **The trial court erred at trial and on reconsideration in taking away the house, but leaving me on the mortgage.**
>
> The court erred and made no findings, conclusions, or decision about the mortgage. MOST IMPORTANTLY, the court erred and did not require respondent to get appellant off the mortgage so that Ausler would not be subject to Jones's bad credit affecting Ausler's due to risk of late or missing payments, foreclosure, etc. If Ausler were off the

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law of what a judge is to Find at trial and especially the failure to allocate the debts. See stated errors in Reply at 7 and throughout.
In the trial Findings and Conclusions (CP 75 - 79), ***Finding 2.5 found no liabilities to divide.*** **This was an error of Fact and Law: This was FALSE** and erroneously left out their joint tenant home mortgage and their timeshare debt and did not follow the law to allocate liabilities on properties awarded to another and to extinguish the debt for the one not awarded the property. There were only two Conclusions of Law (jurisdiction and restraining order) and ***no Conclusions regarding allocating the properties debts.*** Regarding the ***Quiet Title Order (CP75-79), it too was silent on debts.*** The Court of Appeals erred in NOT ruling on these major Errors of the trial court. Jones and the two lower courts here failed to establish substantial facts to support these Findings, Conclusions, and Orders and several of these erroneous decisions affect Ausler's WA and US constitutional rights to equal protection and due process. **The trial court and COA are wrong on the facts.** At 6 of the 6/20/16 Opinion, the COA makes errors of fact and law that Appellant "falsely contends the parties owned the house as joint tenants", but that "the record contains no such instrument" and "under these circumstances, the trial court correctly awarded the property to Jones." **This is just wrong.** See the Trial Exhibits 13 and 14. ***Appellant's opening Brief and Reply specifically cited the purchase title deed naming them both on title from the beginning and the purchase recorded Deed of Trust stating they are "joint tenants", thus there was no question about superiority of title and therefore no legal grounds for a Quiet Title Action.*** See deed and deed of trust in Appendix A to Ausler's COA Motion for Reconsideration, but already filed in CPs, cited in Appellant's Briefs and Motions therein, but appended there to make this crystal clear, countering the COA's erroneous Opinion statements.

> mortgage, Ausler's credit could be available for a loan of her own. This $322K debt precludes Ausler from getting a mortgage of her own. This is error because this must be dealt with by a court awarding a mortgaged property. The court also erred in completely ignoring the couple's jointly owned and joint debt time share in Las Vegas, Tahiti Village in collection past due $2,660.56 3/25/15 right before trial. Jones failed to disclose this to the court and it must be divided.

The Court of Appeals did not even address this issue at all and it is a significant issue affecting thousands of all types of partnerships and demands review by this Court.

It is undisputed and proven by the recordings with the King County Recorder that Appellant is a *joint tenant* with Jones since the time of purchase and a *co-borrower* on the Note and recorded Deed of Trust.

The recorded documents of 11/07 in COA Motion for Reconsideration, Appendix A, are undisputed: they purchased the Seattle home as joint owners on the original purchase deed (only deed at trial) as "Foster Jones and Mashana V. Ausler, both unmarried individuals." The recorded documents are also undisputed that they are **"co-borrowers"** on the original and only Note and Deed of Trust executed by both of them before a notary and recorded ("Foster Jones, an unmarried man and Mashana V. Ausler, an unmarried individual ***as joint tenants***." [4]

[4] **Jones lied to court:** he testified that he was the only one on the loan, RP 4/9/15 at 16 L23. From Reply at 5 : Tr. Ex. 14, the Deed of Trust, proves Jones lied when he stated, without any support whatsoever, that Ausler was not on the loan and Deed of Trust. Jones

After the trial, in motions for Reconsideration, to Vacate Judgment, and for Stay of Enforcement, Ausler brought this major error of fact and law to the trial judge because the judge gave Jones their properties and left Ausler obligated on the debts and the judge should have ordered Ausler relief from this debt, but *she denied Ausler's motions without explanation, just as the COA did without even addressing it in the 6/20/16 Opinion or one sentence denial of reconsideration in COA.*

The lower courts erred in refusing to acknowledge testimony that this 12 year relationship and joint investment of time and effort to justify equitable division of their rental properties and home makes this a committed relationship dissolution, as filed by Jones (CP 1), with equitable division of all joint and separate assets and liabilities and award of attorney fees (requested here below), as in a divorce (*Connell* case discussed below making dissolution law applicable to committed

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himself testified Ausler was on notice of Ausler's debt on the loan due by being on title. RP 4/9/15 at 16 L13. Jones testified that Ausler's being on title as joint tenant gave "her notification to make mortgage payments", RP 4.9.15 at L23. From Reply at 6 : Of course, Ausler is on the mortgage because Ausler is a ***"co-borrower"*** on the purchase recorded deed of trust secured against the property, executed by both of them before a notary. This is in several documents CPs (CPs 130 -245), but easiest location on appeal is COA-filed 7/6/15 Appellant's Supplement for Motion for Stay, which attached the full Deed of Trust. Jones is a liar. Ausler and Jones are both co- borrowers. They are not just surety/guarantor, but liable for all payments whatsoever and subject to foreclosure. Note: Jones never denies this in his COA Response Brief. No lender makes one sign a Deed of Trust securing property and calls one a ***"co-borrower" in the document*** without a promise to pay document. There is no allegation of refinance or loan modification document existing to extinguish Ausler's debt on the house. From Ausler's COA REPLY at 6: "I have always said we are both on the title, but that I should keep the house and he our two rentals as fair division." "Mr Jones stated that "the loan is in his name only, but my name is on the deed" Declaration for Reconsideration CP 91-92. Motion for Order Vacating Quiet Title Judgment CP 193-210 at 2: "Mr. Jones and I signed the deed for the house at the same time. We have always been joint tenants.... Mr. Jones and I bought the house together" "And then I cited RCW 64.28.010 Joint Tenants; see also CP 116-132, Motion to Vacate dated 4/24/15 CP 133-134."

relationships and no joint investment of time, labor, and money in properties required).

***Connell* says apply RCW 26.09.80 to committed intimate relationships**

Although RCW 26.09.080 (requiring just and equitable dissolution division of debt and assets) does not by its terms apply to disposition of property and liabilities accumulated during the course of a meretricious relationship (now labeled committed intimate relationship), the Washington Supreme Court has held that a trial court dividing property acquired during a meretricious relationship should apply community property principles and a common law rule that assimilates the provisions of RCW 26.09.080 (the statute is in Appendix here). The court here did not consider these because it was only thinking QTA and not fair division. The court in *Connell v. Francisco*, 127 Wn.2d 339, 898 P.2d 831 (1995) ruled that a court dividing property acquired during a meretricious relationship may treat the property as if it were community property even if the property was NOT acquired by joint effort or pooled funds. RCW 64.28.040 dictates that all joint tenancy interests are presumed to be community property.

RCW 26.09.080 requires the court to dispose of all property and liabilities of the parties, either separate or community. The law has long required that each party "lay down before the chancellor all that he or she has..." *Webster v. Webster*, 2 Wash. 417, 420, 26P.864 (1891) and it requires the court to make a disposition of the property and liabilities of the

parties "as shall appear just and equitable." **Here, under this law, the court was required (otherwise reversible error) to divide fairly and equitably *all* the separate and community assets *and liabilities* of this committed relationship, including provisions for extinguishing on-going liability to third parties. It erroneously failed to do so by converting the case from Jones' dissolution of committed relationship to quiet title.** If reasonable persons can honestly differ on the question of whether a trial court's disposition of property and liabilities is just and equitable, the appellate court will hold that the trial court did not abuse its discretion. See *Rehak v. Rehak*, 1 Wn.App. 963, 965, 465 P.2d 687 (1870). **No one here would say that sticking one with the debt for 30 years on a property one does not own is a just and equitable division of the liabilities, so this by definition it is an abuse of discretion AND a violation of the court's duty at law to divide fairly and equitably. It is a question of law requiring DE NOVO review** by this court, which the COA failed to do, whether committed relationship law applies to this couple (a question of law per *Rehak*, supra) and the requirement under the law that a court reasonably and fairly extinguish the on-going debt of a

party not awarded a property.[5]

The Need to Extinguish Debt for those not awarded property under any type of case; other remedies such as contribution inadequate.

The trial was not a meretricious relationship case, divorce, or partition action, but a quiet title action, because the trial court ordered it to be converted from dissolution of committed relationship. However, regardless of which of these four types of cases is involved, when the court awards the property to one and leaves a co-borrower on loan, but with no interest in the property, the court must order the receiver of the property to get the other off the loan within a certain, reasonable time to clear up their credit and borrowing ability, either by sale, re-finance, cash out, etc. Whether investment partners or spouses or domestic partners or committed

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[5] **Trial court erred because it was REQUIRED to allocate debt on awarded property and relieve the other of the liability and the parties have the right to have all interests finally determined. This is required at time of trial and reversible error on appeal.**

In In Re Marriage of Crosetto, 82 Wn. App. 545 (1996), the wife in a divorce appealed, claiming it was error for the trial court to list a community debt to the IRS, but fail to allocate that debt between the parties. The court of appeals found that this was error and remanded, with the instruction: "The trial court **must** also allocate the IRS debt." Of course, any court finding a debt on an awarded property (as it did here inquiring about how the mortgage payments were being made by this couple) **must** also allocate the debt between the parties. Just assuming one or the other will pay it or just assuming that it will get decided some day after the trial is not allowed. Provisions in a divorce decree regarding the payment of community indebtedness are dispositions of property rights that become fixed at the time of the decree. They are not a proper subject for modification and can be challenged only by appeal. *Sessions v. Sessions*, 7 Wn.App. 625, 501 P.2d 629 (1972). Of course, just hoping that the one will make the payments or agree to extinguish the debt later is also contrary to the concept that courts must bring finality to issues. The trial court has a duty to distribute all property brought to its attention and the parties have a right to have their property interests definitely and finally determined. *In re Marriage of Sedlock*, 69 Wn.App. at 498 (1993).

relationship persons are involved, joint debtors remain joint debtors if this is not changed by the court.[6] Payment of a joint debt by a joint obligor will sustain an action for contribution, so if one without the asset is forced to make a debt payment because the other fails to, one can sue the non-payer for "contribution" (reimbursement). *Proff v. Maley*, 14 Wn.2d 287, 128 P.2d 330 (1942). But contribution is a bad remedy because the non-contributing party often lacks the necessary solvency to make the right meaningful and the one who paid usually first went through collection action against her, hurting her credit and she still had to pay for something she did not get—the property. While a former spouse is entitled to bring an action to adjudicate the parties' rights to property and debts that was not distributed by the decree. (*Lambert v. Lambert*, 66 Wn.2d 503, 403 P.2d 664 (1965)), this is a costly and time consuming new lawsuit, perhaps without recovery of fees or prior outlays.

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[6] Community debts that are not disposed of by the decree become the joint debts of the parties. *Hanson v. Hanson*, 55 Wn.2d 884, 350 P.2d 859 (1960). After a divorce creditors can, of course, collect community debts from either party as joint obligors. A creditor's interest is undisturbed even though a community asset awarded to a spouse upon dissolution becomes that spouse's separate property. Upon dissolution, the court which by statute has jurisdiction over the spouses or state registered domestic partners and their property, disposes of all property and liabilities of the parties. RCW 26.09.080. Such a disposition, however, is valid only as between the spouses or state registered domestic partners who are parties to the dissolution. By statute, the dissolution court has no power over the property as to the rights of third parties. *In re Marriage of Soriano*, 44 Wn.App. 420, 722 P.2d 132 (1986), citing *Arneson v. Arneson*, 38 Wn.2d 99, 227 P.2d 1016 (1951).

If a court does not give mortgage relief through orders to a party in the final orders it becomes impossible for the other party to get off the loan.[7] It was error of the court not to order reasonable relief from the loan by Jones, as division of assets and liabilities regarding the property is required and necessary for meeting the court's goal of finality. **So the answer in the law is to order the one granted the property to extinguish the other's liability to third parties for the debt within a reasonable time.**

The Court has authority to order one to get another off a property loan debt and it was error of law reviewed DE NOVO here not to do so and only fair to relieve one of the debt.

The court can order creative dispositions of property and debts to benefit the parties. A trial court has authority to order **a forced sale or refinance of a home** and the homestead exemption does NOT apply. ***In re Marriage of Foley***, 84 Wn. App. 839, 930 P.2d 929 (1997). The court can order reasonable conditions to get the other party's liability extinguished in a reasonable time, SO that the party will not be left liable for 30 years on a

[7] No lender will release a co-borrower, as it is simply not in their interest: two "on the hook" are always better than one if payments are late or missing. There is also the situation a co-borrower without ownership of the property faces when the owner dies leaving the co-borrower liable for the loan without ownership of the property. And in this post-2007 Recession tightening of lender rules and credit, it is extremely difficult if not impossible for one party on the loan, but without the property, to get a new lender to lend on a new loan to them because they already have a 30 year mortgage at $322K (Ausler's situation here) so there is no more credit room, given a requirement of 30% or more of Ausler's monthly income for housing loans in total. Here, Ausler is stuck and cannot buy a house or get more loan credit because the court left her with a $322K outstanding loan already, but not the property.

property she does not even own. It is court error to not give the parties finality and incentives to extinguish the other's liability.[8] In short, not only can a court do this, it must to fulfill its obligation of dividing the debts fairly under the law. Keeping one on the debt is not in actuality dividing the debt. Here, the trial and COA courts erred in not requiring this.

The Lower Courts Failed to follow the law of quiet title and rule that it was error by the trial court to convert the case to, and hold a Quiet Title trial, when there was absolutely no dispute about the parties being joint tenants on title and neither having superior title over the other and no defect of title, no QTA Complaint filed or served, or new case schedule, discovery and trial date, as ordered of jones by the trial court AND THEREFORE the trial court lacked jurisdiction and its orders and judgments are VOID, requiring remand.

QTA Does Not Apply Because Interest Not In Dispute

QTA RCW 7.28.300 "is not a mechanism for the courts to determine competing ownership interests in the property" but authorizes the trial court to remove the bad encumbrance. *Bank of New York v. Hooper*, 164 Wn. App. 295, 303, 263, P.3d 1263 (2011) (stale lien). It is a mechanism for removing clouds on title. The Court of Appeals, in *Robinson v. Khan*, 89 Wn. App.418, 948 P.2d 1347 (1998), clarified what

[8] For example, in *Traverso v. Traverso*, Wn.2d 844, 210 P.2d 410 (1949), the court upheld the following contingent award: the wife had the first option to purchase the husband's share of the family home. If the wife failed to exercise her option, the husband could then purchase the wife's share of the family home. If the husband failed to exercise his option, the house was to be sold and the proceeds divided between the parties. Furthermore, the court may give to the creditor spouse a lien on the asset to secure the obligation. *In re Barnett*, 63 Wn.App. at 387-88 (1991),but a date of sale and interest on the lien must be specified in the court's order. *Byrne v. Ackerlund* 108 Wn.2d 445 at 451-52 (1987).

constitutes "a cloud on title": "A cloud upon a title is but an apparent defect in it." Here, no apparent defect existed at all and QTA simply does not apply.[9]

Lack Of Jurisdiction For QTA

By RCW 7.28, a plaintiff in a quiet title action must in the complaint plead "the nature of his estate, claim or title to the property...." This was

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[9] Jones argued in his COA Response that the role of trial court was to determine who had superior title. This is absolutely untrue. There was no question regarding superiority of title. The court ruled at the outset of trial RP 4/9/15 First pages, and Jones agreed (Rsp. BR. at 13 and footnote 3) that both parties were on title as joint tenants from the very beginning without change. The trial court made the unchallenged Findings at 2.1 that (CP 70-74) parties have the following real or personal jointly owned property: House at 7414 S. 114th St, Seattle, WA 98178. Rsp. BR. at 13 and footnote 3. The originating statutory warranty deed has them both on the title from the beginning. Ausler's title was not superior to Jones's title and vice versa. Quiet Title Action does not apply because in that action the court looks at the claims to title and allows to prevail only the superior claim, as respondent correctly argues. Rsp. BR. at 12. RCW 7.28.120 states: "The plaintiff in such action shall set forth in his or her complaint the nature of his or her estate, claim, or title to the property, and the defendant may set up a legal or equitable defense to plaintiff's claims ***and the superior title, whether legal or equitable, shall prevail.***" There is no superior claim here and no title to quiet against clouding claims, as in the statutory Quiet Title Actions for adverse possession (RCW 7.28.070-100) and tenants (RCW 7.28.250). **THE REAL REASON JONES WANTED QTA:** The court could only look at money contributions, favoring Jones. Jones wanted it to be a quiet title action, so the judge would take the erroneous position that she only had to look at who put what money in to it and NOT the equities of the parties and could, as the judge stated for short hand, "take the romance" out of the equation ---i.e no examination of committed relationship and equitable division of all and separate assets. "Get the romance out of it, sorry to say, get the meretricious relationship characterization out of it, and let's just call this is a quiet title action and then I can -- I can do the math very easily." Id at 8 L16. Mr. Jones's attorney agreed: "Okay. And then we'll just make a financial decision." The court: "I am gonna convert this to a quiet title action. And what that means is, you two are like business people who own the same piece of property, you both are on the Statutory Warranty Deed. It has nothing to do with whether you were boyfriend or girlfriend, whether there was romance and it was on and off; it has nothing to do with that. You were business owners. You both are on the Statutory Warranty Deed. And when you quiet title, what you're asking the Court to do is to divide the property." Id. at 9 L12.

not pled, as no Complaint was even filed. If it had been it would have said there was no dispute about joint tenants on title and it would have precluded the QTA. No such Complaint was served on Ausler. WA Practice, Quiet Title Actions section 11.4 states: "Any statute that purports to allow a defendant to be deprived of substantial property rights upon notice less positive than that afforded by personal service raises a constitutional question of procedural due process"—state and federal fifth Amendment. **The QTA was void *ab initio* because the court ordered Jones to file a new Complaint for QTA and get a new case schedule and trial date and he never did, precluding jurisdiction in the case and voiding the Judgment/Orders at trial and requiring remand.** [10]

Appellant is Entitled to Attorney Fees

Appellant was pro se at the trial level through trial and thereafter hired an attorney who billed monthly for hours and services provided

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[10] The Judge at the 10/22/14 hearing five months before the 4/9/15 original committed relationship trial ruled in the first minute of the hearing without any argument that "this kinda is a hybrid case. And it doesn't look like it's a family law case. It kind of looks like it's a quiet title case." RP 10/22/14 at 2 L15. Then she ruled: "Well, it has to be refiled as a quiet title... and then it has a different Case schedule than a family law matter... They're both on the deed equally from what I can tell." Id at 3 L11-24. When his attorney asked about the new case schedule, the court stated: **"Refile it; you'll get a new case schedule and you'll see that quiet title... actions... they have a whole different case schedule."** Id. at 7 L13. Jones failed to do so ***(there are no filings in the docket between this 10/22/14 hearing and the 3/16/14 Joint Status Report or 4/9/15 trial).*** The old trial date came as a shock to Ausler, who asked for a continuance because she kept waiting for a new schedule, but the court erroneously denied it.

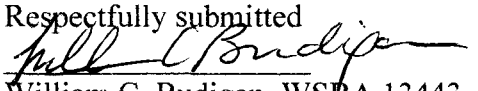
including preparation of all pleadings, without formally appearing until the COA Motion for Reconsideration phase and on this Petition. The COA denied fees. It is time for this court to end the Draconian penalty of denying pro se access to the courts by not letting their hired attorneys be awarded reasonable fees for work actually incurred and supported by declaration and subject to review by opposing parties. There is absolutely no reason a person whose attorney files a Notice of Appearance is compensated, but another party's attorney who does not file the Appearance does not get paid. Here, attorney fees should be awarded under equitable principles and RCW 26.09 et seq (applicable here under Connell) and under all statutes, court rules, and case law applicable to all review here or available through the court's equitable powers or at least reserve this for remand for here having to get the trial court to allocate fairly and equitably all property of the committed relationship and the debt on the subject property.

Conclusion

This court needs to clarify the law about fair division on-going debt without an interest in a property, committed relationships determining factors, and QTA applicable facts and jurisdiction. The court should grant review and remand this matter for re-trial and award reasonable attorney's fees and costs to appellant.

Dated this 9th day of September, 2016.

Respectfully submitted



William C. Budigan, WSBA 13443
Attorney for Petitioner

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of FOSTER JONES, Respondent, and MASHAWNA AUSLER, Appellant.	)	NO. 73367-2-I DIVISION ONE UNPUBLISHED OPINION FILED: June 20, 2016

LEACH, J. — Mashawna Ausler appeals several trial court decisions in this quiet title case. She challenges the conversion of the case from one seeking dissolution of a committed intimate relationship to a quiet title action. In addition, she argues the trial court erroneously awarded the house to Foster Jones, failed to award her sufficient compensation by miscalculating the value of the house and denying wages Jones allegedly owed her, and abused its discretion when it denied her request for a trial continuance. Finally, she attacks the continuing restraining order entered against her and the order requiring her to vacate the property within seven days. Finding no error, we affirm.

FACTS

Foster Jones and Mashawna Ausler were romantically involved sporadically between 2002 and 2014. In 2007, Jones purchased a house on South 114th Street in

Seattle, Washington. He added Ausler to the title later that year. The relationship ended in 2014 after Ausler assaulted Jones. In May 2014, Jones filed a petition for dissolution of committed intimate relationship. Jones asked the court to declare him the sole owner of the house.

In October 2014, the trial court converted the matter to a quiet title action. Both parties agreed that no committed relationship ever existed between them. This left as the only issue resolution of title to the house. Specifically, Ausler stated in her declaration that her relationship with Jones "does not meet the standard for 'committed intimate relationship' or a 'meretricious relationship.'" She emphasized that she and Jones never married, they did not live together continuously, their relationship was "not stable or committed," and that "Foster was not monogamous and was even married to another woman during the time [they] were together." At the October hearing, the court elected to convert the dissolution action to a quiet title action because Ausler and Jones shared title to a house but were not in an intimate relationship. Ausler did not object.

In April 2015, the parties appeared for a bench trial. Both parties testified, and the court admitted 16 exhibits offered by Jones. The court made written findings of fact, conclusions of law, and entered a judgment quieting title to the house to Jones. The court equally divided the equity in the house and awarded Jones approximately $8,000.00 for utilities and legal fees related to Ausler's misuse of Jones's other rental properties. The court made a net cash award of $399.19 to Ausler, which Jones paid immediately.

Ausler appeals.

ANALYSIS

Ausler raises several arguments on appeal. Finding no error, we affirm.

Conversion to Quiet Title Action

Ausler contends the trial court erred when it converted Jones's action for dissolution of a committed intimate relationship to a quiet title action. But because Ausler raises this argument for the first time on appeal, we need not address it.

Ausler conceded in two separate declarations that she was not in a committed relationship with Jones. At the October 2014 hearing, the trial court stated that both parties conceded the dispute was not a domestic matter. The court proposed the action be converted to a quiet title action. Ausler did not object. Ausler signed the trial court's order recharacterizing the matter as a quiet title action without objection. We generally will not consider issues raised for the first time on appeal.[1] Similarly, the invited error doctrine prohibits a party from setting up an error at trial and then complaining of it on appeal.[2] Here, Ausler conceded there was no committed relationship to dissolve, inducing the court to recharacterize the dissolution as a quiet title action. She then failed to object to the recharacterization and disputes it for the first time on appeal. We therefore need not address Ausler's claim that the trial court erred when it recharacterized the action.

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[1] RAP 2.5(a); Roberson v. Perez, 156 Wn.2d 33, 39, 123 P.3d 844 (2005).

[2] Lavigne v. Chase, Haskell, Hayes & Kalamon, P.S., 112 Wn. App. 677, 681, 50 P.3d 306 (2002).

Request for Continuance

Ausler challenges the trial court's denial of her request for a continuance. Ausler has failed to show the trial court abused its discretion here.

We review a trial court's decision to deny a continuance for abuse of discretion.[3] A trial court abuses its discretion only if it makes a manifestly unreasonable decision or bases it on untenable reasons.[4] A trial court may consider many factors when deciding a continuance request, including diligence of the moving party, materiality of the evidence sought, due process, orderly administration of its docket, prejudice to the parties, and the potential impact on the trial.[5] Typically, a motion for a continuance should be supported by an affidavit showing the materiality of the evidence obtained and that the moving party acted with due diligence to obtain the evidence.[6]

Ausler has failed to show the trial court abused its discretion here. The trial court notified Ausler of the trial date and the specific evidence she needed to provide five months in advance. Ausler e-mailed the court requesting a continuance on April 1, 2015, roughly one week before the trial was to start on April 9. She told the court that she was not "trial ready" but did not specify what evidence she sought to obtain during the proposed continuance. On appeal, Ausler fails to cite any authority demonstrating the trial court abused its discretion. She cites two cases for the proposition that

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[3] Harris v. Drake, 116 Wn. App. 261, 287, 65 P.3d 350 (2003).
[4] In re Marriage of Littlefield, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997).
[5] In re Recall of Lindquist, 172 Wn.2d 120, 130, 258 P.3d 9 (2011).
[6] CR 40(e); Odom v. Williams, 74 Wn.2d 714, 717, 446 P.2d 335 (1968).

Washington courts strongly prefer to resolve disputes on the merits.[7] This authority does not apply. The trial court here resolved the dispute on the merits when it divided equity in the property, made an award in favor of Ausler, and quieted title in Jones.

Under these circumstances, the trial court did not abuse its discretion when it denied Ausler's request for a continuance.

Property Award, Valuation, and Order to Vacate Property

Ausler contends the trial court erred when it awarded the property to Jones and that it miscalculated the value of the property and other liabilities owed to her. Substantial evidence supports the trial court's findings of fact and that those findings support the trial court's legal conclusions.

We limit our review of a bench trial to determining whether substantial evidence supports the trial court's findings of fact and whether those findings support the trial court's legal conclusions.[8] Substantial evidence is the "quantum of evidence sufficient to persuade a rational fair-minded person the premise is true."[9] In a quiet title action,

> [a]ny person having a valid subsisting interest in real property, and a right to the possession thereof, may recover the same by action . . . to be brought . . . against the person claiming the title or some interest therein, and may have judgment in such action quieting or removing a cloud from plaintiff's title.[10]

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[7] See Showalter v. Wild Oats, 124 Wn. App. 506, 510, 101 P.3d 867 (2004); Bus. Servs. of Am. II, Inc. v. WaferTech LLC, 159 Wn. App. 591, 245 P.3d 257 (2011).

[8] Standing Rock Homeowners Ass'n v. Misich, 106 Wn. App. 231, 242-43, 23 P.3d 520 (2001).

[9] Sunnyside Valley Irrig. Dist. v. Dickie, 149 Wn.2d 873, 879, 73 P.3d 369 (2003).

[10] RCW 7.28.010.

The trial court correctly awarded the property to Jones. We note that Ausler failed to assign error to any of the trial court's findings, so they are verities on appeal.[11] Regardless, substantial evidence supports the trial court's findings of fact, and those findings support the trial court's legal conclusions.

The parties agreed that both Ausler and Jones held record title to the house. But Ausler does not dispute that Jones made the down payment on the house and that he made every mortgage payment. The parties did dispute the purpose of putting Ausler's name on the deed. Jones claimed it was a mere convenience in the event of a default on the mortgage. Ausler claimed it was because they viewed the house as a joint asset. But Jones provided several exhibits demonstrating he had made all financial contributions to the house. Ausler provided only her own testimony. She conceded that she never made any mortgage payments and testified that the basis for her claim of title was her living in the house. Ausler falsely contends the parties owned the house as joint tenants with right of survivorship. But a joint tenancy is created only by a written instrument expressly declaring the interest to be a joint tenancy. The record contains no such instrument, and Ausler failed to demonstrate the requirements for a joint tenancy. Under these circumstances, the trial court correctly awarded the property to Jones.

When the trial court awarded the property to Jones, it also awarded Ausler 50 percent of the equity in the property based on a $350,000 appraised value. Ausler

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[11] See Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 808, 828 P.2d 549 (1992).

contends this value is too low. Because Ausler raises this argument for the first time on appeal, we need not address it.[12] But even if Ausler properly preserved this argument, substantial evidence supports the trial court's valuation of the property. Jones submitted two exhibits showing the property's value. Ausler did not object and did not offer contradictory evidence. The trial court adopted the appraiser's undisputed opinion of the property's value, reflected by the calculation of equity in its findings of fact. Not only are these findings verities due to Ausler's failure to assign any error, but they are also supported by substantial evidence. The trial court did not miscalculate the property's value.

Nor did the trial court err when it declined to award additional compensation for Ausler's actions as property manager. In addition to her share of the equity in the property, Ausler argued Jones owed her wages for her work as a property manager of the property. She claimed she was available 24 hours per day to arrange for maintenance and utility work at Jones's other rental houses. Ausler testified her due compensation amounted to $15 per hour for 24 hours per day continuously for 12 years. She offered no evidence to support her claim other than her own testimony.

The trial court declined to include Ausler's alleged wages in the calculation of Jones's liabilities. The lack of any written finding of fact relating to this compensation demonstrates the trial court found Ausler's testimony not credible. We treat a trial court's decision not to make a finding of fact as a finding against the party bearing the

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[12] See RAP 2.5(a); Roberson, 156 Wn.2d at 39.

burden of proof on that issue.[13] Indeed, the trial court's oral ruling shows it found Ausler's testimony not credible and that Ausler was compensated with free rent:

> You've just claimed that you were . . . entitled to $15 an hour, full-time work, five days a week, seven days a week, 24 hours, and you're also working full-time for the Seattle School District. Both cannot be true. At best, you were a property manager. At worst, you stole from Mr. Jones over and over again.
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> . . . .
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> You've essentially lived rent-free there for years, and that's your compensation, and that's—that's all that the Court can do for you based on the information that's been provided to the Court. The rent is considerable considering that you were working full-time in the last eight years for [the] Seattle School District as a secretary. I can accept that on its face, but you don't get double salary when you've absolutely provided no information or the documentation to the Court.

When a trial court's written order is inadequate, we may look to the trial court's oral ruling to interpret that order.[14] The trial court's oral statement shows that Ausler failed to meet her burden to prove Jones owed her additional compensation. Ausler provided no evidence supporting her claims other than her own testimony, and the trial court found her testimony not credible. We do not weigh the credibility of evidence or substitute our opinions for those of the trier of fact.[15] Thus, the trial court did not err when it declined to award Ausler additional compensation.

Finally, Ausler disputes the trial court's order insofar as it required her to vacate the property within seven days following the judgment. But ejectment is the proper remedy following a quiet title action, and the trial court has broad discretion in granting

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[13] Xieng v. Peoples Nat'l Bank, 120 Wn.2d 512, 526, 844 P.2d 389 (1993).

[14] Wallace Real Estate Inv. Inc., v. Groves, 72 Wn. App. 759, 770, 868 P.2d 149 (1994).

[15] Quinn v. Cherry Lane Auto Plaza, Inc., 153 Wn. App. 710, 717, 225 P.3d 266 (2009).

this relief.[16] Ausler has cited no authority demonstrating the trial court abused its discretion here. Further, the issue is now moot. Because the trial court correctly awarded Jones sole ownership of the property, we cannot grant Ausler any meaningful relief even if the trial court erroneously required her to vacate the property within seven days following the judgment.

Restraining Order

Ausler argues the trial court erroneously granted a continuing restraining order against her. She contends that the record lacks sufficient evidence to support the restraining order. Again, we disagree.

A trial court has broad discretion to grant or deny a request for a continuing restraining order.[17] Ausler cites no authority supporting her argument that the trial court abused its discretion when it granted Jones's request for a continuing restraining order. We typically do not consider arguments unsupported by citation to authority.[18] Regardless, the record shows the trial court acted within its discretion here. The trial court entered a finding indicating a continuing restraining order was proper due to domestic violence. Because Ausler did not assign error to this finding, it is a verity on appeal.[19] Moreover, substantial evidence supports the trial court's finding of domestic violence. Jones argued in his pleadings that Ausler had twice assaulted him, once in August 2012 and again in April 2014. Jones also submitted an exhibit containing a

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[16] See RCW 7.28.010; Corp. of Catholic Bishop of Nesqually v. Gibbon, 1 Wash. 592, 21 P. 315 (1889).

[17] In re Marriage of Stewart, 133 Wn. App. 545, 550, 137 P.3d 25 (2006).

[18] RAP 10.3(a)(6); Cowiche Canyon, 118 Wn.2d at 809.

[19] Cowiche Canyon, 118 Wn.2d at 808.

sheriff's report detailing a third assault Ausler orchestrated in December 2014, while the quiet title action was pending. Ausler lured Jones to the property by claiming there was an emergency. When he arrived, Ausler's daughter and her daughter's boyfriend assaulted Jones while Ausler watched and cheered them on. A separate exhibit contained photos of the injuries Jones sustained during that assault. The trial court therefore did not abuse its discretion when it granted Jones's request for a continuing restraining order.

Posttrial Motions and Attorney Fees

Ausler filed several motions after the judgment seeking reconsideration or a new trial.[20] She claimed that Jones lied and misrepresented facts during the trial. She also argues the trial court judge was biased against her. These arguments fail.

We review a trial court's denial of a motion to reconsider for an abuse of discretion.[21] The trial court did not abuse its discretion here. Ausler argued Jones lied during trial, and she submitted declarations allegedly supporting her claims. But she based these arguments on evidence available and known to Ausler before trial. She therefore waived these arguments by failing to raise them during trial.

Ausler's claim that the trial court judge was biased is similarly untimely. A litigant who objects to a particular trial judge must timely raise that objection or the objection is waived.[22] A litigant may not proceed to trial with full knowledge of potentially

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[20] Appellant filed a motion to allow appendices to appellant's brief. Appellant's motion is denied.

[21] Barret v. Freise, 119 Wn. App. 823, 850, 82 P.3d 1179 (2003).

[22] Williams & Mauseth Ins. Brokers v. Chapple, 11 Wn. App. 623, 626, 524 P.2d 431 (1974).

disqualifying information, wait for an adverse ruling, and then claim unfair prejudice.[23] To show bias, Ausler relies on the trial judge's ruling in another case between the same parties where the judge entered a temporary protection order in favor of Jones. She knew about this evidence during trial and yet did not make any claim of bias until after receiving an unfavorable ruling from the court. Ausler has therefore waived her claim that the trial court judge was biased against her.

Finally, we deny Ausler's request for attorney fees. Pro se litigants are generally not entitled to attorney fees for their work representing themselves.[24] Further, neither of the statutes Ausler cites applies. RCW 26.09.140 addresses fees in dissolution proceedings. As discussed above, the trial court converted this action to a quiet title action. For the same reason, RCW 7.52.480, providing fees in a partition action, does not apply.

CONCLUSION

For the foregoing reasons, we affirm.

Leach, J.

WE CONCUR:

Schindler, J.

Becker, J.

[23] Williams & Mauseth, 11 Wn. App. at 626.
[24] In re Marriage of Brown, 159 Wn. App. 931, 939, 247 P.3d 466 (2011).

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of FOSTER JONES, Respondent, and MASHAWNA AUSLER, Appellant.	NO. 73367-2-I ORDER DENYING MOTION FOR RECONSIDERATION

The appellant, Mashawna Ausler, having filed a motion for reconsideration herein, and the hearing panel having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion for reconsideration be, and the same is, hereby denied.

Dated this 28th day of July, 2016.

FOR THE COURT:

Leach, J.
Judge

RCW 26.09.080 requires the court to:

make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including, but not limited to:

(1) The nature and extent of the community property;

(2) The nature and extent of the separate property;

(3) The duration of the marriage; and

(4) The economic circumstances of each spouse at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse with whom the children reside the majority of the time.