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WASHINGTON STATE
SUPREME COURT

No. 94129-7

SUPREME COURT OF THE STATE OF WASHINGTON

No. 73408-3

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

OVERLAKE FARMS B.L.K. III, LLC,
Respondent-Plaintiff,

v.

BELLEVUE-OVERLAKE FARM, LLC,
Petitioner-Defendant.

2017 FEB 10 PM 4:21
COURT OF APPEALS DIV I
STATE OF WASHINGTON

PETITION FOR REVIEW

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ORIGINAL

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I. IDENTITY OF PETITIONER

Petitioner is Bellevue-Overlake Farm, LLC, a family LLC that is the minority owner of property held in co-tenancy with the majority owner, Overlake Farms B.L.K. III, LLC, also a family LLC. Petitioner was the defendant and respondent in the trial court and Court of Appeals.

The members of Petitioner are two sisters, Lisa and Linda Sferra, and their children. For brevity and clarity, each family LLC is referred to in this brief by its affiliated surname: Bellevue-Overlake-Farm, LLC as the Sferras, and Overlake Farms B.L.K. III, LLC as the Kapelas.

II. THE COURT OF APPEALS OPINION

The Sferras seek review of the opinion issued in *Overlake Farms B.L.K. III, LLC v. Bellevue-Overlake Farm, LLC*, No. 73408-3-L, 2016 WL 7077139 (Dec. 5, 2016) (the "Opinion"). The Opinion reversed the trial court's order confirming a unanimous referee recommendation and ordering partition of the property by sale. Opinion ¶ 39. On January 11, 2017, the Court of Appeals denied the Sferras' motion for reconsideration.

III. ISSUES PRESENTED

Partition actions[1] in Washington are governed by RCW chapter 7.52. This dispute arises under RCW 7.52.130, which authorizes sale

[1] Partition is a means to end co-tenancy and dispose of co-tenants' interests in land. 17 William B. Stoebuck et al., *Washington Practice Series Real Estate: Property Law* § 1.32 (2d ed. & 2016 Supp.). Absent voluntary partition agreed to by all co-tenants,

when there is a finding that physical partition "cannot be made without great prejudice to the owners." RCW 7.52.130. The parties disagree over what the legislature meant by the words "great prejudice to the owners."

This petition presents the following questions for review:

1. Does RCW 7.52.130 authorize sale when physical partition will result in great prejudice to at least one owner?

2. Can a court award an owelty payment[2] to an owner to cure great prejudice caused by physical partition?

3. Can a court authorize a physical partition that exceeds an owner's pro rata share of the property to cure great prejudice to the owner caused by physical partition?

IV. STATEMENT OF THE CASE

A. The Kapelas and the Sferras Own the Property as Tenants in Common.

Overlake Farm (the "Property") is a nearly forty-acre parcel of land located just north of downtown Bellevue and just southwest of downtown Redmond. CP 229. As a very large tract of undeveloped,

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one or more co-tenants may bring a partition action in court against the others. *Id.* If partition is warranted, the court may order partition in kind (*i.e.*, physical division of the land amongst the co-tenants) or, under specific circumstances, partition by sale (*i.e.*, sale of the land with the proceeds distributed to the co-tenants). *Id.*

[2] When real property cannot be easily divided equally, the court may use a legal device known as "owelty" to order a co-tenant to pay the other co-tenant a sum of money to equalize an otherwise inequitable physical partition of land. *Adams v. Rowe*, 39 Wn.2d 446, 447, 236 P.2d 355 (1951).

usable land with many desirable characteristics, the Property has a unique appeal to real estate developers. 2/19 RP 166.

Two family LLCs own the Property as tenants in common with undivided interests in the entire 40 acres: the Kapelas, 75 percent ownership; the Sferras, 25 percent ownership. CP 228–29. The Property was originally purchased by Army and Betty Seijas in 1947. CP 229. Army and Betty had two daughters whose respective bequests gave rise to the current 75/25 split. CP 229.

The highest and best use of the Property is a 38-lot development of very high-end homes. 2/19 RP 165–167; 2/25 RP 11–15. The Kapelas prefer to keep the Property in its current state. CP 943. The Sferras prefer to monetize their interest in the Property. CP 943–44. At trial, the Sferras testified that they would be pleased to sell their 25-percent interest to their cousins for fair market value. 2/21 RP 110–11, 123–24.

B. The Kapelas Sue the Sferras.

During years of a dysfunctional relationship, and despite attempts at mediation and intervention by the family matriarch, the Kapelas and the Sferras have never been able to agree on basic issues related to the use and management of the Property. CP 144, 230, 845–47.

On July 28, 2011, the Kapelas sued the Sferras seeking physical partition of the Property. CP 1–5. Because physical partition would make

any physical one-fourth of the Property worth far less than one-fourth of the value of the whole, the Sferras responded by asking the trial court to authorize partition by sale. CP 6–11.

Of the several reasons why physical partition would result in a value of any one-fourth parcel far below one-fourth of the value of the whole, the main problem is that, to realize its highest and best use of residential development, the one-fourth parcel would bear the entire $1.4 million cost of installing a sewer extension required if ***any*** part of the Property is to be developed. CP 230. Using septic as an alternative is not available under the Bellevue City Code. CP 930–33. Because the Kapelas prefer to retain the bucolic quality of their three-quarters, there is no reason to believe the Sferras could recover three-fourths of the sewer extension cost in the foreseeable future even though the extension will benefit the entire Property. CP 944 ("While latecomer agreements are authorized . . ., where one property owner constructs sewer facilities that benefit other properties, a latecomer agreement only provides the *potential* for cost reimbursement. There is no certainty under a latecomer agreement whether or when such reimbursement might occur.").

C. The Trial Court Appoints Referees to Determine if Physical Partition Is Feasible Without Great Prejudice.

At trial, the main issue was whether physical partition would result in great prejudice (*i.e.*, material economic loss). 2/27 RP 73–84; CP 231–32. The debate focused on whether the sum realized by developing one-fourth of the Property (resulting from physical partition) would be materially less than one-fourth of the sale price of the entire developed Property. CP 231–32. No one argued that the value of ***both*** parties' interests had to be materially diminished.

After a bench trial, Judge Yu ruled that the evidence available at that point did not "convince the Court that it is not possible to carve out an equitable partition without material pecuniary loss to [the Sferras]." CP 234. Judge Yu thus declined to award partition by sale "subject to" a report by three court-appointed referees (the "Referees"). CP 234. Under RCW 7.52.080, Judge Yu tasked the Referees with "recommending a specific partition in kind of the Property, or stating that, under the provisions of RCW 7.52.130, partition cannot be made without great prejudice to ***one*** or both Parties." CP 240–41 (emphasis added).[3]

[3] Judge Yu made clear that "this is not the final resolution of the parties' dispute since the issue—the determination of an appropriate partition and of whether such a partition will result in material economic loss—is to be submitted to three referees and is then subject to further review." CP 234.

D. The Referees Unanimously Conclude That Physical Partition Is Not Possible Without Great Prejudice.

After their appointment on July 17, 2013, and after considering hundreds of pages of information presented by the parties; making multiple Property visits; and holding numerous meetings with the parties, consultants, counsel, and the City of Bellevue, the Referees issued a unanimous Draft Referees' Report and Recommendation ("Initial Report") on February 5, 2014. CP 287, 717–50. The Referees outlined their view of the best physical partition of the Property should it occur, but the Referees rejected physical partition, finding that it would produce great prejudice because the one-fourth owner would have to build the sewer extension at a cost of about $1.4 million. CP 725–28, 733. The Referees then made a creative effort to induce the parties to reach a settlement that included the Kapelas' reimbursing the Sferras three-fourths of the sewer cost to avoid great prejudice, payment to be "in cash upon partition of the Property" with certain other covenants to effectuate what amounted to a settlement. CP 737–38.

No such agreement was reached. The Kapelas filed objections to the Referees' estimated costs, the timing of initial funding, the timeline for later payments, and the "enormous burden" placed on them. CP 807.

In short, the parties' historic inability to agree on any aspect of dealing with the Property persisted. CP 845–47. The Referees found great prejudice and, after failing on a creative attempt to induce the parties to settle, the Referees unanimously recommended that the trial court order partition by sale:

> [C]onnection to a sanitary sewer is actually required and the smaller parcel cannot be subdivided without provision for sanitary sewer service . . . . Assuming the smaller nine-lot parcel . . . were platted first, the upfront cost of sewer extension — approximately $1.4 million, . . . would impose great prejudice on the value of the smaller parcel by almost any definition. If the smaller parcel [were] required to carry the entire sanitary sewer service burden as an up-front cost, not only would it sustain great prejudice, but provision of sanitary sewer service to the Property as a whole would provide disproportionate benefit to the remaining parcel.

CP 943–44.

Therefore, the Referees unanimously determined that, "due to the cost of the required sewer extension, a partition in kind would impose great prejudice on the smaller parcel." CP 947. And, under "these circumstances, the Referees [were] not persuaded that a combination of owelty and a mandatory agreement between uncooperative parties can or should play a role in addressing the issue of great prejudice." CP 947.

The Referees recommended the cousins be given a final 90 days to reach an agreement on the disposition of the Property, absent which the

Referees recommended that the Property be sold with the proceeds split between the cousins. CP 947. At no time during the entire proceedings to this point had the Kapelas suggested that the issue was great prejudice to both owners—years of effort of the trial court, the parties, and the Referees focused on the issue of great prejudice to the Sferras.

E. The Trial Court Adopts the Referees' Unanimous Recommendation.

After the Referees issued their unanimous recommendations, the parties were given an opportunity to respond. Following oral argument and consideration of the parties' briefs and evidence, Judge Chung[4] adopted and confirmed the unanimous findings and recommendations of the Referees with modifications. CP 918–19. Once their motion for reconsideration was denied, the Kapelas appealed. CP 965, 1006.

F. The Court of Appeals Reverses and Holds that RCW 7.52.130 Requires a Showing of Great Prejudice to Each and Every Owner, Rather Than Just to One Owner.

In December 2016, the Court of Appeals reversed the trial court and summarized its holding as follows:

> The Kapelas argue that the trial court erred in basing its decision upon a showing of prejudice to one owner, rather than all owners. The Sferras respond that a showing of great prejudice to one owner is sufficient to force a partition by sale. We agree with the Kapelas that Washington requires a showing of great prejudice to the

[4] The case was reassigned to Judge Chung in June 2014 following Judge Yu's appointment to the Supreme Court.

> owners, rather than just to one owner, before the court can order a partition by sale . . . . The statute does require a showing of prejudice to all the owners. The trial court abused its discretion by ordering a sale without that showing.

Opinion ¶¶ 13, 24.

According to the Court of Appeals, "[t]he trial court, and the referees, should have determined whether partitioning the property would create two parcels whose aggregate value was materially less than the value of the whole property." *Id.* ¶ 38. Therefore, the Court of Appeals "remand[ed] to the trial court to consider the facts under the correct legal standard and take any further action necessary to achieve an equitable result." *Id.* ¶ 39.

V. ARGUMENT

Under RAP 13.4, this Court will accept a petition for review if, insofar as relevant here, (1) the decision of the Court of Appeals is in conflict with a decision of this Court; or (2) the petition involves an issue of substantial public interest that should be determined by this Court. RAP 13.4(b)(1), (4). Both grounds for review are present here.

A. The Petition Should Be Granted Because the Opinion Is in Direct Conflict with Two Express Holdings of this Court.

1. Express Language in *Williamson Investment Co. v. Williamson* Confirms that the Touchstone Is "Great Prejudice" to at Least One Owner.

This Court's decision in *Williamson Investment Co. v. Williamson* provides the controlling test to determine when "great prejudice to the owners" has been established. 96 Wash. 529, 534–35, 165 P. 385 (1917). The parties' briefs and the Opinion confirm as much. *See* Sferras' Br. at 22–23 (Dec. 28, 2015); Kapelas' Reply Br. at 13–14 (Feb. 26, 2016); Opinion ¶ 31.

The *Williamson* court expressly confirmed that the appropriate inquiry is focused on the impact on ***each*** owner individually, not ***all*** owners in sum:

> 'The law favors partition of land among tenants in common, rather than a sale thereof and a division of the proceeds, and it is only when the land itself cannot be partitioned that a sale may be ordered.' It is still recognized that an owner has the right to retain his inheritance or investment in the form in which he has it, so long as it can be done without great prejudice to ***his cotenant***.

96 Wash. at 535 (emphasis added and citations omitted).

This individually focused inquiry of "great prejudice to the owners" is consistent with how the highest courts of other states have interpreted substantially similar statutory language. *See Fike v. Sharer*, 280 Or. 577, 581 n.1, 571 P.2d 1252 (1977) ("The use of the plural 'owners' in ORS 105.210, contrasted with the use of the singular 'owner' in ORS 105.205, raises the question whether the 'prejudice' which the trial

court must find under ORS 105.210 must extend to all owners. We think not. ***Prejudice will rarely exist equally as to all parties. It is enough that great prejudice would occur as to one of them.*** We have previously upheld a private sale where there was prejudice to only one of the parties." (emphasis added and citation omitted)); *In re Estate of McKillip*, 284 Neb. 367, 377, 820 N.W.2d 868 (2012) ("Whether partition in kind will result in great prejudice to the parties requires comparing two amounts. The first is the amount ***an owner*** would receive if the property were divided in kind and the owner then sold his portion of the property. The second is the amount ***each owner*** would receive if the entire property were sold and the proceeds were divided among the owners. ***If the first amount is materially less than the second amount, great prejudice has been shown.***" (emphasis added and citations omitted)).

In *Williamson*, one owner contended that physical partition would cause him great prejudice. 96 Wash. at 537–39. This Court did not dismiss this issue as irrelevant—which it would have done under the rule adopted by the Court of Appeals—but instead examined it carefully and determined no such prejudice to ***that owner*** would result. *Id.* This Court also determined that a sale in the depressed real estate market would be unwise in general but only after upholding the trial court finding that the

objecting owner would not suffer great prejudice for specific reasons unrelated to market conditions. *Id.* at 539.

2. Subsequent and Controlling Supreme Court Case Law in *Falk v. Green* Further Confirms that "Great Prejudice" to One Owner Suffices.

Subsequent and controlling case law interpreting *Williamson* has also held that "great prejudice to the owners" is met when there is evidence of prejudice to ***the*** owner opposing partition in kind.

In *Falk v. Green*, this Court upheld an order to partition in kind, explaining: "Before the appellant could successfully object to the partition, it was necessary for him to show that great prejudice would result ***to him*** from dividing the property." 154 Wash. 340, 342, 282 P. 212 (1929) (emphasis added). Citing *Williamson*, this Court further explained: "The evidence in this case fails to show that prejudice would result ***to the appellant*** in a division of the property. The trial court properly ordered a division of it." *Id.* (emphasis added).

3. The Opinion Conflicts with *Williamson* and *Falk*.

The *Williamson* statement is clear. *Falk* confirms its meaning. Both pronouncements corroborate that great prejudice to at least one owner suffices for an order of partition by sale under RCW 7.52.130.

The Opinion conflicts with *Williamson* and *Falk* in two ways: it (1) fails to recognize that the touchstone is "great prejudice" to at least one

owner, and (2) misconstrues *Williamson* as holding that "great prejudice" is met only when the aggregate value of partitioned parcels would be substantially less than the value of the whole property. It is undisputed that the Sferras will suffer great prejudice; under *Williamson* and *Falk*, that is the end of the inquiry. The Court of Appeals misread *Williamson.*

The Opinion states that the *Williamson* court "base[d] its decision on the value of the property if sold as a whole, compared to the aggregate value of the parcels." *Id.* ¶ 31. In so holding, the Opinion suggests that the ***dispositive*** test for "great prejudice to the owners" is whether the aggregate value of all of the partitioned parcels is materially less than the value of the property sold as a whole. *But cf. Hegewald v. Neal*, 28 Wn. App. 783, 785 n.2, 626 P.2d 535 (1981) ("[T]he disparity in property values between a partition in kind and a partition sale ***was not the only consideration*** in our affirming the order of sale. Of paramount importance was the evidence of the impracticality of partitioning in kind the waters from the hot springs." (emphasis added)).

To the contrary, the *Williamson* court first analyzed whether there was great prejudice to the objecting owner and rejected each argument of great prejudice on the facts. This inquiry would have been beside the point if the rule were as the Court of Appeals interpreted it. The *Williamson* court then reinforced its conclusion in noting that an

immediate sale would actually prejudice both owners by reason of market conditions. But these observations were made simply to demonstrate that not only had the objecting owner not shown great prejudice but that both owners would benefit from delay in any sale of either parcel.

Specifically, the objecting owner in *Williamson* first argued that great prejudice existed because the building could not be "advantageously divided." 96 Wash. at 537. This Court concluded from the record that the building was "an old wooden shell" "negligible" in value and therefore should be considered "as if it were not there" for the purposes of partitioning. *Id.* at 538.

The objecting owner further argued that great prejudice existed because the building could not be removed without imposing on the owner of the other half the burden of building a sustaining wall. *Id.* This Court also rejected this argument because there was no evidence of a "continuing party wall agreement of any kind." *Id.* Instead, this Court held that a party desiring to remove his half of the building was only obligated to notify the other owner of this intention and exercise reasonable care in removing the structure. *Id.*

In these two instances, the *Williamson* court did not say, "These issues are irrelevant because they address only prejudice to one owner." It did the opposite. It recognized that the issue ***was*** prejudice to one owner

but rejected the arguments advanced by the objecting owner in the absence of supporting evidence.

Finally, the objecting owner argued that great prejudice existed because the aggregate value of the halves would be materially less than the sum a sale of the whole would produce. *Id.* at 539. The *Williamson* court also rejected this argument as contrary to the overwhelming evidence that, whatever the aggregate value would be, in the then-depressed real estate market, the aggregate value of the halves would nevertheless be higher than the sale price of the property as a whole. *Id.*

In sum, the *Williamson* court upheld the order to partition the property in kind because (1) the evidence did not support a showing of great prejudice to ***the objecting owner***; and (2) the objecting owner's claim that the value of two parcels would be less than the value of the whole was unsupported given that a sale would actually prejudice both owners in the then-depressed real estate market.

The Opinion conflicts with *Williamson* and *Falk.* This Court should grant the petition for review to correct these errors.

B. The Petition Should Be Granted Because the Petition Involves an Issue of Substantial Public Interest that Should Be Determined by this Court.

"A decision that has the potential to affect a number of proceedings in the lower courts may warrant review as an issue of

substantial public interest if review will avoid unnecessary litigation and confusion on a common issue." *In re Flippo*, 185 Wn.2d 1032, 1032, 380 P.3d 413 (2016) (ruling granting review).

First, the petition involves an issue of substantial public interest—the statutory guarantee of the right to separate ownership of property, even if the guarantee must be accomplished through a partition by sale. *See Friend v. Friend*, 92 Wn. App. 799, 803, 964 P.2d 1219 (1998) ("If partition in kind is not practicable, the statute authorizes a court to order partition by sale. That is, the owner's right to separate ownership of property is guaranteed by statute, 'even though it can be accomplished only through the channel of a sale.'" (citation omitted)); *cf. Price v. Price*, 174 Wn. App. 894, 903, 301 P.3d 486 (2013) (trial court's order "prohibiting [co-owner] from the use or enjoyment of her real property[] raises an issue of continuing and substantial public interest").

Partition by sale exists to enforce this statutory guarantee where physical partition produces a materially inequitable outcome. The Opinion removes this critical right and will confound Washington courts in applying RCW 7.52.130 in light of express language in *Williamson* and *Falk*. The clear holdings of these cases were the basis of four years of proceedings below with no claim that great prejudice to both owners was

required. Future partition proceedings will go forward in a state of uncertainty absent clarification from this Court.

Second, the petition involves an issue of substantial public interest because the Opinion contravenes the legislative intent in enacting RCW 7.52.130. "When the legislature enacts laws, it speaks as the chosen representative of the people." *Wash. State Farm Bureau Fed'n v. Gregoire*, 162 Wn.2d 284, 302, 174 P.3d 1142 (2007) (citation omitted).

In *Williamson*, this Court recognized the intent reflected in the history of RCW 7.52.130:

> In the original jurisdiction of equity[,] there was no such thing as partition by means of sale, except where all parties were sui juris and consenting. Wanting such capacity and consent, the division was always in kind, and where the land was incapable of exact or fair division, compensation for the inequality was made by an award of "owelty of partition."
>
> The ***practical inconvenience and frequent inadequacy*** of this method led to the enactment in England, and in nearly all of the states of the Union, of statutes conferring upon the courts power to make partition by sale of the land, when not partible in kind without greater injury than a sale would cause, independently of the consent of the parties.

96 Wash. at 534–35 (citations omitted and emphasis added).

Through RCW 7.52.130, the legislature addressed the limitations of a system where owelty could not rectify an inequitable result arising from physical partition when the injury would be too great. The Opinion

is overly fixated on the use of the plural form of "owner" and fails to reconcile its reading with the statutory purpose and limitations on owelty. Instead, the Court of Appeals held:

> [T]here are two kinds of prejudice, but only one kind forces a partition by sale. First, there is great prejudice to both parties, meaning that a partition in kind would reduce the value of the whole property. As the Kapelas have argued, this type of prejudice occurs when the value of the partitioned parcels would be materially less than the value of the undivided property. Second, there is prejudice to one party but not the other. In the first case, the court should order a partition by sale. In the second, the court should order a partition in kind and order the party who receives a disproportionately high value to compensate the other.

Opinion ¶ 28.

The Court of Appeals states that where fewer than all owners are greatly prejudiced, "the court should order a partition in kind and order the party who receives a disproportionately high value to compensate the other." *Id.* This conclusion is contrary to the legislative intent behind RCW 7.52.130 ***and*** requires a redefinition of owelty.

Under the Opinion, even if four owners would suffer material economic loss but one would realize a great benefit, so long as the partitioned property results in a total value equal to the pre-partition value of the whole, the criteria for sale adopted by the Court of Appeals would not be met. That very condition is present here—the Sferras will pay $1.4 million for a sewer and lose most of their equity; the Kapelas will own a

large parcel that is now served by a sewer for which they did not pay. That would be a grossly inequitable result under a statute that calls for partition by sale to achieve equity: to require a sale where the loss from physical partition is too great to be cured by owelty.

That the inquiry must focus on whether there is material economic loss of value of any resulting parcel is clear from the historical limits on "owelty," which was designed, in case of physical partition, to provide for modest discrepancies in value to be rectified. *See, e.g.*, 7 Richard R. Powell, *Powell on Real Property* § 50.07[4][c] (Michael Allan Wolf ed., LexisNexis Matthew Bender 2016) ("If partitioning in kind produces minor inequalities in owners' shares, the court may award money payments (owelty) to offset the differences."). Where the discrepancy in value from physical partition amounts to material economic harm, the remedy is sale. It makes no sense to interpret the statute to require a payment to cure modest prejudice from physical partition while allowing great prejudice to be imposed on an owner with no compensation.

This inconsistency could be rectified if "owelty" were redefined to allow a court to order payment to cure "great prejudice." But the Referees and the court were constrained by the limits on owelty. In fact, the Referees tried to remove great prejudice by encouraging the Kapelas to agree to pay three-fourths of the sewer cost. If owelty in that sum were

allowed, no agreement would have been necessary. But the parties, the trial court, and the Referees all believed that owelty could not be used to correct material economic loss. The Kapelas do not challenge this view.

Properly interpreted, the statute creates a fork in the road: ***either*** partition in kind is permissible because owelty can cure minor prejudice to one owner, ***or*** partition by sale is necessary to avoid great prejudice to at least one owner from an inequitable physical partition. Requiring that there be great prejudice to all owners is contrary to the fundamental intent of the statute and is particularly inequitable here, where the entire cost of a sewer needed to realize the highest and best use of the Property falls on the one-fourth owner with no assurance of eventual, much less immediate, compensation. Only if this Court determines that owelty or non-pro rata physical partitioning may be used to cure great prejudice would the Opinion effectuate the underlying legislative intent.[5]

Because this petition raises an issue of substantial public interest, for this independent reason, this Court should accept review.

VI. CONCLUSION

The Opinion conflicts with this Court's decisions and involves an issue of substantial public interest. This Court should accept review.

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[5] Pursuant to RAP 13.7(d), if review is granted, the Sferras will submit a supplemental brief on the Court of Appeals' error in refusing to judicially estop the Kapelas from taking inconsistent positions before the trial and appellate court. Opinion at ¶¶ 16–23.

Respectfully submitted this 10th day of February, 2017.

HARRIGAN LEYH FARMER & THOMSEN LLP

By: _____

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CERTIFICATE OF SERVICE

I, Florine Fujita, declare that I am employed by the law firm of Harrigan Leyh Farmer & Thomsen LLP, a citizen of the United States of America, a resident of the state of Washington, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

On February 10, 2017, I caused a true and correct copy of the foregoing document to be served on the parties listed below in the manner indicated:

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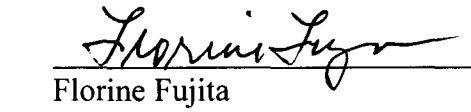
DATED this 10th day of February, 2017.



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APPENDIX A

RICHARD D. JOHNSON,
Court Administrator/Clerk

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December 5, 2016

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CASE #: 73408-3-I
Overlake Farms B.L.K. III LLC, App. vs. Bellevue-Overlake Farm, LLC, Resp.
King County, Cause No. 11-2-25877-7 SEA

Counsel:

Enclosed is a copy of the opinion filed in the above-referenced appeal which states in part:

"We reverse and remand for further proceedings consistent with this opinion."

Counsel may file a motion for reconsideration within 20 days of filing this opinion pursuant to RAP 12.4(b). If counsel does not wish to file a motion for reconsideration but does wish to seek review by the Supreme Court, RAP 13.4(a) provides that if no motion for reconsideration is made, a petition for review must be filed in this court within 30 days.

In accordance with RAP 14.4(a), a claim for costs by the prevailing party must be supported by a cost bill filed and served within ten days after the filing of this opinion, or claim for costs will be deemed waived.

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

CMR

Enclosure

c: The Honorable Samuel Chung

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

OVERLAKE FARMS B.L.K. III, LLC, a Washington limited liability company,	)	No. 73408-3-I
Appellant,	)	DIVISION ONE
v.	)	PUBLISHED OPINION
BELLEVUE-OVERLAKE FARM, LLC, a Washington limited liability company,	)	
Respondent.	)	FILED: December 5, 2016

COURT OF APPEALS DIV. I
STATE OF WASHINGTON
2016 DEC -5 AM 8:59

TRICKEY, A.C.J. — Two related families, the Kapelas and the Sferras, own a large undeveloped property in Bellevue, Washington as tenants in common. The Kapelas, who had sought to partition the property in kind, appeal from the trial court's order to partition by sale.

Unless a partition in kind will cause great prejudice to the owners, the court may not order a partition by sale. Because the trial court ordered a partition by sale based on prejudice to one owner, not the *owners*, we reverse.

FACTS

Army and Betty Seijas purchased a 60-acre farm in Bellevue in 1947. The Seijases had two daughters, Betty Lou Seijas Kapela and Gloria Seijas Sferra. The Seijases deeded 20 acres of the farm to their daughter, Betty Lou Seijas Kapela. They also gave each of their daughters a 25 percent interest in the remaining 40 acres.[1] Betty Lou Seijas Kapela inherited her parents' remaining 50 percent interest in the 40 acres after her mother's death. The 40-acre farm is the

[1] The property is actually 39.25 acres.

subject of this appeal.

Currently, two limited liability companies share ownership of the 40-acre farm (the property). Overlake Farms B.L.K. III, LLC, which is beneficially owned by Betty Lou Seijas Kapela's descendants, owns a 75 percent interest in the 40-acre farm. Bellevue-Overlake Farm, LLC, whose members are Gloria Seijas Sferra's descendants, holds the remaining 25 percent interest. For clarity, we adopt the parties' convention of referring to Overlake Farms B.L.K. III, LLC as the Kapelas, and Bellevue-Overlake Farm, LLC as the Sferras.

The property lies in the Bridle Trails area of Bellevue. The Kapelas board horses on their 20-acre farm and use the property for grazing. They also operate a summer camp on the property. The property is zoned for private residences, and both parties agree that the highest and best use of the property is residential subdivision.

There is currently no sewer serving the property. Extending the sewer to the property would cost approximately $1.4 million. It may be possible, as an alternative, to develop the property with on-site septic systems. Installing septic systems would cost substantially less than extending the sewer but would require the city of Bellevue's approval. Even if the city would grant a variance authorizing on-site septic systems, the use of septic systems instead of connecting to sewer could lessen the value of the property.

In 2011, the Kapelas filed an action to partition the property. They sought partition in kind. The Sferras counterclaimed, requesting a partition by sale.

In early 2013, the case proceeded to a bench trial. The court ruled that the

Sferras had not shown that a partition in kind would create great prejudice. The trial court appointed three referees to report on how to partition the property in kind, or to state that, "partition cannot be made without great prejudice to one or both [p]arties."[2]

The parties agreed that the property would yield 38 lots. The referees determined that, if the court ordered a partition in kind, the most reasonable approach would be to award the Sferras a parcel of land capable of subdivision into nine lots plus an owelty payment equivalent to the value of one-half lot. The court would award the remaining land, capable of subdivision into 29 lots, to the Kapelas. The referees concluded there was "little difference, if any, between the value of a nine-lot short plat and the first nine-lot phase of a broader subdivision of the entire [p]roperty."[3]

But the referees also concluded that connecting to the sewer was required. They determined that, unless the parties entered into a cost-sharing agreement, whichever property developed first would bear the entire cost of extending the sewer. They assumed the smaller parcel would develop first because the Kapelas expressed no current interest in developing their land. The referees concluded that imposing the entire cost of the sewer extension on the smaller parcel would result in great prejudice to the Sferras.

In their draft report, the referees outlined provisions of a covenant to share the cost of the sewer development. They solicited responses from the parties to their proposed covenants. But, after receiving the parties' responses, they were

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[2] Clerk's Papers (CP) at 241.
[3] CP at 940.

"not persuaded that a combination of owelty and a mandatory agreement between uncooperative parties can or should play a role in addressing the issue of great prejudice."[4]

Accordingly, in their final report, they recommended a partition by sale if the parties could not come to an agreement about the sewer covenant. The Kapelas agreed to pay for their share of the sewer extension, "if it were necessary to develop any portion of the [p]roperty."[5] The Kapelas moved to confirm in part and set aside in part the referees' recommendation. The trial court affirmed the referees' recommendation in all respects relevant to this appeal and ordered the sale of the property. The Kapelas appeal.

ANALYSIS

Prejudice to Owners

The Kapelas argue that the trial court erred in basing its decision upon a showing of prejudice to one owner, rather than all owners. The Sferras respond that a showing of great prejudice to one owner is sufficient to force a partition by sale. We agree with the Kapelas that Washington requires a showing of great prejudice to the owners, rather than just to one owner, before the court can order a partition by sale. Contrary to the Sferras' assertions, the Kapelas properly preserved this argument below and are not estopped from arguing that there must be great prejudice to the owners.

Preservation of the Issue

The Sferras maintain that this court should not consider the issue because

[4] CP at 947.
[5] CP at 944.

the Kapelas did not argue it below. Because the Kapelas raised the issue to the trial court, we disagree.

We generally will not review issues raised for the first time on appeal. RAP 2.5(a). But the Kapelas did make this argument below. The Kapelas articulated this argument best at the hearing on their motion to confirm in part and set aside in part the referees' final report:

> This prospective sewer burden isn't great prejudice to the owners; it's prejudice to one owner if they go first and if there's not some protection for them. So great prejudice legally is a larger concept than great prejudice to their particular interest.
>
> And it's worth reading the cases. The cases talk about great prejudice to the "owners." Because the original idea is if you divide property up, are you creating a situation where the sum of the two parts is materially less than the sum of the whole? They've never proven it. All they've proven is that if they got stuck paying for the entire sewer tab, it would be unfair to them.[6]

This was sufficient to preserve the issue for appellate review.

Judicial Estoppel

The Sferras also argue that the Kapelas are judicially estopped from contending that the statute requires great prejudice to all owners because they advanced an inconsistent position below. Again, we disagree.

"Judicial estoppel is an equitable doctrine that precludes a party from gaining an advantage by asserting one position in a court proceeding and later seeking an advantage by taking a clearly inconsistent position." Cunningham v. Reliable Concrete Pumping, Inc., 126 Wn. App. 222, 224-25, 108 P.3d 147 (2005). The purposes of the doctrine include to "'avoid inconsistency, duplicity, and . . .

[6] RP (Mar. 13, 2015) at 31. In their written motion, the Kapelas argued that the referees' decision put them "at the mercy of the minority interest-holding" Sferras. CP at 826.

waste of time.'" Cunningham, 126 Wn. App. at 225 (alteration in original) (internal quotation marks omitted) (quoting Johnson v. Si-Cor, Inc., 107 Wn. App. 902, 906, 28 P.3d 832 (2001)).

The main factors for the court to consider are "(1) whether 'a party's later position' is 'clearly inconsistent with its earlier position'; (2) whether 'judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled'; and (3) 'whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.'" Arkison v. Ethan Allen, Inc., 160 Wn.2d 535, 538-39, 160 P.3d 13 (2007) (internal quotation marks omitted) (quoting New Hampshire v. Maine, 532 U.S. 742, 750-51, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (2001). The inconsistent positions "must be diametrically opposed to one another." Kellar v. Estate of Kellar, 172 Wn. App. 562, 581, 291 P.3d 906 (2012).

Here, the Kapelas currently argue that, under RCW 7.52.130, the court cannot order a partition by sale unless a partition in kind would cause great prejudice to the owners, plural. Below, they acquiesced in both the trial court's and the Sferras' view that the statute required partition by sale if the Sferras could prove that they would suffer great prejudice from a partition in kind.

These competing interpretations of the statute are not diametrically opposed. For example, the Kapelas' main argument at trial was that the trial court had to order a partition in kind because it would not cause *either party* great prejudice. That argument fits within both interpretations.

Additionally, it is not clear that the Kapelas took the position that great prejudice to the owners meant great prejudice to the Sferras, let alone mislead the trial court about their position. Both parties started by describing the question of great prejudice as whether partition in kind would cause "great prejudice to both parties."[7] They discussed "great prejudice" in terms of reduction to the aggregate value of the properties. In their trial brief, the Kapelas claimed that, "if the [p]roperty were partitioned . . ., the combined value of the two partitioned parcels would actually exceed the value of the unsegregated [p]roperty."[8] The Sferras claimed that any partition would "result in a material loss of value" to both parcels.[9]

The Sferras were the first to narrow the question to whether a partition in kind would cause great prejudice to them. When addressing the role of owelty, they stated, "But owelty cannot be used to short circuit the required initial inquiry into whether partition in kind of the [p]roperty would cause 'great prejudice' to the *Defendants*."[10] The Sferras applied the same reasoning in their closing argument at trial.[11] The trial court also phrased the question narrowly in its summary decision, noting that the "primary consideration is the measure of economic loss to the party objecting to partition."[12]

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[7] CP at 8.
[8] CP at 19-20.
[9] CP at 39.
[10] CP at 47 (emphasis added).
[11] "There is clearly a material economic harm from the cost of $1.35 million to put in a sewer for one-fourth of the property." Report of Proceedings (RP) (Feb. 27, 2013) at 107. "And the sewer is clearly great prejudice to the one-quarter owner." RP (Feb. 27, 2013) at 109.
[12] CP at 195.

In their proposed findings of fact and conclusions of law, and proposed order appointing referees, the Kapelas framed the question of "great prejudice" as whether the Sferras would suffer great prejudice.[13] But this was after both the Sferras and the trial court had already framed the question that way. It does not appear that the Kapelas attempted to mislead the trial court. Overall, the factors weigh against applying judicial estoppel. Accordingly, we consider the merits of the Kapelas' argument.

Statutory Requirement for Partition by Sale

The Kapelas argue that the trial court erred by misinterpreting the statute to allow a partition by sale upon a showing that a partition in kind would cause great prejudice to just one of the owners. The Sferras counter that this interpretation contradicts the equitable purpose of the statute and would produce "nonsensical results."[14] The statute does require a showing of prejudice to all the owners. The trial court abused its discretion by ordering a sale without that showing.

We review a trial court's partition decisions for an abuse of discretion. Friend v. Friend, 92 Wn. App. 799, 803, 964 P.2d 1219 (1998). The trial court abuses its discretion if it bases its ruling on "an erroneous view of the law." Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 339, 858

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[13] Conclusion of Law 6: "Defendant did not meet its burden of proof to convince the Court that it is not possible to carve out an equitable partition *without material pecuniary loss to Defendant*—i.e., such that the relative value of the share would be materially less than the sum Defendant would realize from a one-fourth share of the proceeds of a sale of the whole." CP at 234 (emphasis added); Order Regarding Appointment of Referees: "[T]he Referees shall submit a report . . . stating that, under the provisions of RCW 7.52.130, partition cannot be made *without great prejudice to one or both [p]arties.*" CP at 241 (emphasis added).

[14] Br. of Resp't Bellevue-Overlake Farm, LLC at 48.

P.2d 1054 (1993). In order to determine whether the trial court erred in this case, this court must conduct a de novo analysis of the statute authorizing partition by sale. Lake v. Woodcreek Homeowners Ass'n, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010).

Statutory analysis begins with the statute's plain meaning. Lake, 169 Wn.2d at 526. This court determines plain meaning "'from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.'" Lake, 169 Wn.2d at 526 (quoting State v. Engel, 166 Wn.2d 572, 578, 210 P.3d 1007 (2009)).

Here, the trial court ordered a sale of the property under the authority granted to it by RCW 7.52.130. It authorizes a trial court to order a partition by sale when there is great prejudice to the owners, plural:

> If the referees report to the court that the property, of which partition shall have been decreed, or any separate portion thereof is so situated that a partition thereof cannot be made without great prejudice to the *owners*, and the court is satisfied that such report is correct, it may thereupon by an order direct the referees to sell the property.

RCW 7.52.130 (emphasis added). Other sections of the partition chapter that contemplate a sale of the property also use the plural "owners." See RCW 7.52.010, .080. By contrast, the section of the chapter that authorizes owelty distinguishes between owners:

> When it appears that partition cannot be made equal between the parties according to their respective rights, without prejudice to the rights and interests *of some of them*, the court may adjudge compensation to be made by *one party to another* on account of the inequality of partition.

RCW 7.52.440 (emphasis added).

Thus, there are two kinds of prejudice, but only one kind forces a partition by sale. First, there is great prejudice to both parties, meaning that a partition in kind would reduce the value of the whole property. As the Kapelas have argued, this type of prejudice occurs when the value of the partitioned parcels would be materially less than the value of the undivided property. Second, there is prejudice to one party but not the other. In the first case, the court should order a partition by sale. In the second, the court should order a partition in kind and order the party who receives a disproportionately high value to compensate the other.

Washington courts have followed this approach. In Hegewald v. Neal, the trial court ordered a partition by sale when the referees reported that a partition in kind would "destroy the usefulness of the property." 20 Wn. App. 517, 522-23, 582 P.2d 529 (1978) (emphasis omitted). The court noted that the aggregate value of partitioned parcels would be less than if the land were sold as a unit. Hegewald, 20 Wn. App. at 526. The Court of Appeals upheld the decision because the property would have lost one third of its value if partitioned in kind. Hegewald, 20 Wn. App. at 526-27.

Washington's Supreme Court affirmed an order of partition by sale when an entire property was covered with one building. Huston v. Swanstrom, 168 Wash. 627, 628-30, 13 P.2d 17 (1932). The court also noted that a mortgage encumbered the entire property and that, if partitioned, "each tract would remain subject to the entire incumbrance." Huston, 168 Wash. at 631.

Even when the court orders partition in kind, as it did in Williamson Investment Co. v. Williamson, it bases its decision on the value of the property if

sold as a whole, compared to the aggregate value of the parcels. 96 Wash. 529, 537-39, 165 P. 385 (1917). There, the court set out the test for great prejudice to the owners as "'whether the value of *the share of each* in case of a partition would be materially less than his share of the money equivalent that could probably be obtained for the whole.'" Williamson, 96 Wn. at 536 (emphasis added) (quoting Idema v. Comstock, 131 Wis. 16, 110 N.W. 786 (1907)).

Washington's strong policy in favor of partitions in kind supports the Kapelas' interpretation. See, e.g., Friend, 92 Wn. App. at 803 ("Partition in kind is favored wherever practicable."); Williamson, 96 Wash. at 535 ("'The power to convert real estate into money against the will of the owner, is an extraordinary and dangerous power, and ought never to be exercised unless the necessity therefor is clearly established.'") (quoting Vesper v. Farnsworth, 40 Wis. 357, 362 (1876)).

The Sferras argue that partition by sale is appropriate whenever a physical partition cannot be done equitably. They argue that Hegewald supports their position because there the court could have avoided prejudice to the majority tenant by awarding that tenant a parcel containing all the hot springs. Thus, the court ordered a partition by sale even though a partition in kind would prejudice only one of the owners. This argument ignores the finding in that case that the hot springs were "an unusual amenity" with "substantial value if used in connection with the rest of the land, but not otherwise." Hegewald, 20 Wn. App. at 519. It is impossible to tell from the case whether dividing the minority tenant's one-fifth of the land would impact "the rest of the land" enough to diminish the hot springs

value. Hegewald, 20 Wn. App. at 519. Instead, the trial court and Court of Appeals properly found great prejudice to the owners based on the referees' finding that a partition in kind would "destroy the usefulness of the property." Hegewald, 20 Wn. App. at 523 (emphasis omitted). We reject the Sferras' interpretation of Hegewald.

The Sferras also rely on several out of state cases where a partition for sale was ordered when prejudice was not shown to all parties. They are not persuasive.

The Sferras cite Georgian v. Harrington and Sung v. Grover, but the statutes governing partition by sale in those cases are too dissimilar to Washington's to support the Sferras' position. 990 So.2d 813, 816 (Miss. Ct. App. 2008); No. CV020815521S, 2003 WL 1962830, at *3 (Conn. Super. Ct. Mar. 27, 2003).[15] Both allow partition by sale under much broader circumstances than Washington does.

In the two cases the Sferras cite with statutes similar to Washington's, the parties seeking a partition in kind sought to carve out for themselves the most valuable portion of the land. Haggerty v. Nobles, 244 Or. 428, 431-34, 419 P.2d 9 (1966) (a cotenant with a one eighth undivided share of a 680-acre farm sought to set apart the 85 acres that contained the dwellings and other farm buildings, "'the heart'" of the farm, for himself); Keen v. Campbell, 249 S.W.3d 927, 929-30 (2008) (a cotenant with a one fifth undivided share of a 41-acre farm sought to have seven or eight acres of the more valuable farmland set aside for himself).

In both cases, it is reasonable to assume that partitioning the property in the

[15] Georgian relies on Mississippi Code Annotated § 11-21-11 (Rev. 2004), which allows a partition by sale whenever it would "'better promote the interest of all parties than a partition in kind.'" 990 So.2d at 816. Sung relies on Connecticut General Statutes § 52-500, which also allows the sale of the property when it will "better promote the interests of the owners." 2003 WL 1962830, at *3 n.8.

way suggested by the minority cotenants would have greatly diminished the value of the majority cotenants' parcels. We cannot tell whether that would have meant that the aggregate value of the parcels would have been materially less than the value of the whole property. Also, neither case discusses what role owelty could have played. These cases are not persuasive enough to dictate a broader interpretation of Washington's partition by sale statute.

In short, RCW 7.52.130 requires a showing of great prejudice to the owners, plural, before the court may order a sale. Here, the trial court adopted the referees' conclusion "that a partition-in-kind would cause great prejudice to the one-fourth owner."[16] It did not evaluate how the need for a sewer extension would impact the value of the entire property or the value of the Kapelas' property.[17] This was an error. The trial court, and the referees, should have determined whether partitioning the property would create two parcels whose aggregate value was materially less than the value of the whole property.

We remand to the trial court to consider the facts under the correct legal standard and take any further action necessary to achieve an equitable result. But we reach the Kapelas' remaining arguments to a limited extent because they are likely to recur on remand.

Sewer Extension

The Kapelas argue that the court abused its discretion by considering the impact of the need for sewer once it had determined that the property is physically

[16] CP at 1008.
[17] The Sferras concede in their brief that the court did not make any findings about prejudice to the Kapelas.

capable of division. This was not error.

As discussed above, the test for when a partition in kind causes great prejudice is "'whether the value of the share of each in case of a partition would be materially less than his share of the money equivalent that could probably be obtained for the whole.'" Williamson, 96 Wash. at 536 (quoting Idema, 131 Wis. at 16). The "value of a piece of property is its fair market value: 'Fair market value has been defined as the price [that] a well-informed buyer would pay to a well-informed seller, where neither is obliged to enter into the transaction.'" Carson v. Willstadter, 65 Wn. App. 880, 884, 830 P.2d 676 (1992) (internal quotation marks omitted) (quoting State v. Sherrill, 13 Wn. App. 250, 255, 534 P.2d 598 (1975)). "[F]air market value necessarily takes into consideration present uses and speculative future uses." Carson, 65 Wn. App. at 886. A well-informed buyer may consider the development potential of the property. Carson, 65 Wn. App. at 884-86 (in that case, the development depended on whether the parcel could be subdivided and whether a sewer district would serve the area in the future).

Here, extending the sewer line to the property would cost approximately $1.4 million. The possibility of having to pay over a million dollars in order to develop land might impact a well-informed buyer's valuation of the property. The trial court did not abuse its discretion by considering the needs of future developers.

The Kapelas also argue that, even assuming the need for a sewer extension is a proper consideration, the trial court erred by relying on the referees' speculation that a sewer extension would be necessary. We reject this argument

because the referees' finding was supported by facts, not mere speculation.

"A presumption exists in favor of trial court's findings of fact [in partition action], and the party claiming error has the burden of showing findings are not supported by substantial evidence." Carson, 65 Wn. App. at 883.

The referees concluded that the sewer extension would be necessary for two reasons. First, they did not believe that the city of Bellevue would allow the parties to develop the land with an on-site septic system instead of a sewer. Second, they believed that on-site septic systems were incompatible with high-end residential development. The Kapelas do not challenge the referees' basis for the second reason:

> [T]he use of on-site septic systems is inconsistent with high-end, large lot development as would be proposed with development of the [p]roperty. On-site systems can interfere with an owner's desire to locate patios, sports courts, pools, and other site amenities typically associated with this type of development. Furthermore, on-site disposal of domestic sewage may be perceived as inconsistent with the high-end nature of any proposed development.[18]

Regardless of whether the referees' conclusion that the city of Bellevue would require a variance is correct, it was appropriate for the referees to determine that a sewer extension would be necessary to develop the property according to its highest and best use. And it was not an abuse of discretion for the trial court to rely on that determination.

Equitable Power to Impose a Covenant

The Kapelas argue that the trial court abused its discretion by relying on the parties' inability to cooperate as a basis for refusing to impose a detailed covenant

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[18] CP at 933.

for future development of the sewer. They also argue that the trial court's decision not to impose the covenant was an abdication of its equitable powers, and thus, an abuse of discretion. We reject both of these arguments and hold that the decision whether to impose the covenant was within the trial court's discretion.

Partition "'contemplates an absolute severance of the individual interests of each joint owner, and, after partition, each has the right to enjoy his estate without supervision, let, or hindrance from the other. Unless this can be accomplished, then the joint estate ought to be sold, and the proceeds divided.'" Hegewald, 20 Wn. App. at 523 (quoting Brown v. Cooper, 98 Iowa 444, 454, 67 N.W. 378 (1896)). In Hegewald, one reason that the court found that a partition in kind was not feasible was because it would have required retaining the hot springs in common, assessing the costs of improvements to the owners proportionately, and then distributing the waters and charging for them on a monthly basis. 20 Wn. App. at 523.

Here, the covenant, as drafted by the referees, required both parties to place funds for sewer development into an escrow account, and then contemplated the parties working together on developing the sewer line over years. While the covenant would not require the permanent entanglement described in Hegewald, it would still require substantial cooperation in the future. The referees concluded that the parties had difficulty cooperating and that "[p]redicating a solution on such cooperation would only place [the trial court] in the position of having to police a difficult process of partition and land development over a long period of time."[19]

[19] CP at 947.

Because of the nature of the proposed covenant, the parties' ability to cooperate was a proper consideration.

The Kapelas cite several out-of-state cases in which an appellate court reversed a trial court's decision when the trial court relied on adversarial parties' disagreements or hostility. These cases are not persuasive because none of them involve a decision to force the parties to cooperate in the future. Myers v. Myers, 176 W. Va. 326, 329, 342 S.E.2d 294 (1986) (partition of two parcels); Brown v. Brown, 402 S.C. 202, 209, 740 S.E.2d 507 (S.C. Ct. App. 2013) (partition of two parcels); Dewrell v. Lawrence, 58 P.3d 223, 227 (Okla. Civ. App. 2002) (amount and propriety of owelty in partition action); In re Estate of McKillip, 284 Neb. 367, 378, 820 N.W.2d 868 (2012) (partition).

We also reject the Kapelas' argument that the trial court abdicated its equitable powers. The record demonstrates that the trial court and the referees considered the propriety and effectiveness of ordering the development covenant sought by the Kapelas and decided against it.

The Sferras, on the other hand, argue that, once the trial court determined that they would suffer great prejudice, it lacked the authority to impose a development covenant. The Sferras' position is inconsistent with the broad scope of the court's equitable power.

It is well established that the trial court has "great flexibility in fashioning relief" in partition proceedings. Cummings v. Anderson, 94 Wn.2d 135, 143, 614 P.2d 1283 (1980). "[A] court in the exercise of its equitable powers may fashion remedies to address the particular facts of each case, even if the partition statute

does not strictly provide for such a remedy." Kelsey v. Kelsey, 179 Wn. App. 360, 369, 317 P.3d 1096, review denied, 180 Wn.2d 1017, 327 P.3d 54, cert. denied, 135 S. Ct. 451, 190 L. Ed. 2d 330 (2014).

As just explained, the trial court did not abuse its discretion by failing to impose a development covenant. But it has the power to impose one. On remand, the trial court may consider whether a development covenant would be appropriate and what the terms of that covenant might be.

We reverse and remand for further proceedings consistent with this opinion.

Trickey, ACJ

WE CONCUR:

Cox, J.

APPENDIX B

RICHARD D. JOHNSON,
Court Administrator/Clerk

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of the
State of Washington

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CASE #: 73408-3-I
Overlake Farms B.L.K. III LLC, App. vs. Bellevue-Overlake Farm, LLC, Resp.

Counsel:

Enclosed please find a copy of the Order Denying Motion for Reconsideration entered in the above case.

Within 30 days after the order is filed, the opinion of the Court of Appeals will become final unless, in accordance with RAP 13.4, counsel files a petition for review in this court. The content of a petition should contain a "direct and concise statement of the reason why review should be accepted under one or more of the tests established in [RAP 13.4](b), with argument." RAP 13.4(c)(7).

In the event a petition for review is filed, opposing counsel may file with the Clerk of the Supreme Court an answer to the petition within 30 days after the petition is served.

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

CMR

Enclosure

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

OVERLAKE FARMS B.L.K. III, LLC, a Washington limited liability company, Appellant, v. BELLEVUE-OVERLAKE FARM, LLC, a Washington limited liability company, Respondent.	)	No. 73408-3-I ORDER DENYING MOTION FOR RECONSIDERATION

The respondent, Bellevue-Overlake Farm, LLC, has filed a motion for reconsideration. The court has taken the matter under consideration and has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

Done this 11th day of January, 2017.

FOR THE COURT:

ACJ

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COURT OF APPEALS DIV I
STATE OF WASHINGTON
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APPENDIX C

Chapter 7.52 RCW

PARTITION

Chapter Listing

Sections

NOTES:

*Real property and conveyances: Title **64** RCW.*

*Termination of condominium: RCW **64.34.268**.*

7.52.010
Persons entitled to bring action.

When several persons hold and are in possession of real property as tenants in common, in which one or more of them have an estate of inheritance, or for life or years, an action may be maintained by one or more of such persons, for a partition thereof, according to the respective rights of the persons interested therein, and for sale of such property, or a part of it, if it appear that a partition cannot be made without great prejudice to the owners.

[Code 1881 § 552; **1877 p 117 § 557**; **1869 p 133 § 505**; RRS § 838.]

7.52.020
Requisites of complaint.

The interest of all persons in the property shall be set forth in the complaint specifically and particularly as far as known to the plaintiff, and if one or more of the parties, or the share or quantity of interest of any of the parties be unknown to the plaintiff, or be uncertain or contingent, or the ownership of the inheritance depend upon an executory devise, or the remainder be a contingent remainder, so that such parties cannot be named, that fact shall be set forth in the complaint.

[Code 1881 § 553; **1877 p 117 § 558**; **1869 p 133 § 506**; RRS § 839.]

7.52.030
Lien creditors as parties defendant.

The plaintiff may, at his or her option, make creditors having a lien upon the property or any portion thereof, other than by a judgment or decree, defendants in the suit. When the lien is upon an undivided interest or estate of any of the parties, such lien, if a partition be made, is thenceforth a lien only on the share assigned to such party; but such share shall be first charged with its just proportion of the costs of the partition, in preference to such lien.

[**2011 c 336 § 221**; Code 1881 § 554; **1877 p 117 § 559**; **1869 p 133 § 507**; RRS § 840.]

7.52.040
Notice.

The notice shall be directed by name to all the tenants in common, who are known, and in the same manner to all lien creditors who are made parties to the suit, and generally to all persons unknown, having or claiming an interest or estate in the property.

[Code 1881 § 555; **1877 p 117 § 560; 1869 p 133 § 508;** RRS § 841.]

7.52.050
Service by publication.

If a party, having a share or interest in, or lien upon the property, be unknown, or either of the known parties reside out of the state or cannot be found therein, and such fact be made to appear by affidavit, the notice may be served by publication, as in ordinary cases. When service is made by publication, the notice must contain a brief description of the property which is the subject of the suit.

[Code 1881 § 556; **1877 p 117 § 561; 1869 p 134 § 509;** RRS § 842.]

NOTES:

*Publication of legal notices: Chapter **65.16** RCW.*

7.52.060
Answer—Contents.

The defendant shall set forth in his or her answer, the nature, and extent of his or her interest in the property, and if he or she be a lien creditor, how such lien was created, the amount of the debt secured thereby and remaining due, and whether such debt is secured in any other way, and if so, the nature of such other security.

[**2011 c 336 § 222;** Code 1881 § 557; **1877 p 118 § 562; 1869 p 134 § 510;** RRS § 843.]

7.52.070
Trial—Proof must be taken.

The rights of the several parties, plaintiffs as well as defendants, may be put in issue, tried and determined in such suit, and where a defendant fails to answer, or where a sale of the property is necessary, the title shall be ascertained by proof to the satisfaction of the court, before the decree for partition or sale is given.

[Code 1881 § 558; **1877 p 118 § 563; 1869 p 134 § 511;** RRS § 844.]

7.52.080
Order of sale or partition.

If it be alleged in the complaint and established by evidence, or if it appear by the evidence without such allegation in the complaint, to the satisfaction of the court, that the property or any part of it, is so situated that partition cannot be made without great prejudice to the owners, the court may order a sale thereof, and for that purpose may appoint one or more referees. Otherwise, upon the requisite proofs being made, it shall decree a partition according to the respective rights of the parties as ascertained by the court, and appoint three referees, therefor, and shall designate the portion to remain undivided for the owners whose interests remain unknown or are not ascertained.

[Code 1881 § 559; **1877 p 118 § 564; 1869 p 134 § 512;** RRS § 845.]

7.52.090
Partition, how made.

In making the partition, the referees shall divide the property, and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties as determined by the court, designating the several portions by proper landmarks, and may employ a surveyor with the necessary assistants to aid them therein. The referees shall make a report of their proceedings, specifying therein the manner of executing their trust, describing the property divided and the shares allotted to each party, with a particular description of each share.

[Code 1881 § 560; **1877 p 118 § 565; 1869 p 134 § 513;** RRS § 846.]

7.52.100
Report of referees, confirmation—Effect.

The court may confirm or set aside the report in whole or in part, and if necessary, appoint new referees. Upon the report being confirmed a decree shall be entered that such partition be effectual forever, which decree shall be binding and conclusive:

(1) On all parties named therein, and their legal representatives who have at the time any interest in the property divided, or any part thereof as owners in fee, or as tenants for life or for years, or as entitled to the reversion, remainder or inheritance of such property or any part thereof, after the termination of a particular estate therein, or who by any contingency may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof, as tenants for years or for life.

(2) On all persons interested in the property to whom notice shall have been given by publication.

(3) On all other persons claiming from or through such parties or persons or either of them.

[Code 1881 § 561; **1877 p 118 § 566; 1869 p 135 § 514;** RRS § 847.]

7.52.110
Decree does not affect tenant.

Such decree and partition shall not affect any tenants for years or for life, of the whole of the property which is the subject of partition, nor shall such decree and partition preclude any persons, except such as are specified in RCW **7.52.100**, from claiming title to the property in question, or from controverting the title of the parties between whom the partition shall have been made.

[Code 1881 § 562; **1877 p 119 § 567; 1869 p 135 § 515**; RRS § 848.]

7.52.120
Costs.

The expenses of the referees, including those of a surveyor and his or her assistants, when employed, shall be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by law to the referees, shall be paid by the plaintiff and may be allowed as costs.

[**2011 c 336 § 223**; Code 1881 § 563; **1877 p 119 § 568; 1869 p 135 § 516**; RRS § 849.]

7.52.130
Sale of property.

If the referees report to the court that the property, of which partition shall have been decreed, or any separate portion thereof is so situated that a partition thereof cannot be made without great prejudice to the owners, and the court is satisfied that such report is correct, it may thereupon by an order direct the referees to sell the property or separate portion thereof.

[Code 1881 § 564; **1877 p 119 § 569; 1869 p 135 § 517**; RRS § 850.]

7.52.140
Estate for life or years to be set off.

When a part of the property only is ordered to be sold, if there be an estate for life or years in an undivided share of the property, the whole of such estate may be set off in any part of the property not ordered sold.

[Code 1881 § 565; **1877 p 119 § 570; 1869 p 136 § 518**; RRS § 851.]

7.52.150
Lien creditors to be brought in.

Before making an order of sale, if lien creditors, other than those by judgment or decree, have not been made parties, the court, on motion of either party, shall order the plaintiff to file a supplemental complaint, making such creditors defendants.

[Code 1881 § 566; **1877 p 119 § 571**; **1869 p 136 § 519**; RRS § 852.]

7.52.160
Clerk's certificate of unsatisfied judgment liens.

If an order of sale be made before the distribution of the proceeds thereof, the plaintiff shall produce to the court the certificate of the clerk of the county where the property is situated, showing the liens remaining unsatisfied, if any, by judgment or decree upon the property or any portion thereof, and unless he or she do so the court shall order a referee to ascertain them.

[**2011 c 336 § 224**; **1957 c 51 § 13**; Code 1881 § 567; **1877 p 119 § 570**; **1869 p 136 § 520**; RRS § 853.]

7.52.170
Ascertainment of liens—Priority.

If it appear by such certificate or reference, in case the certificate is not produced, that any such liens exist, the court shall appoint a referee to ascertain what amount remains due thereon or secured thereby respectively, and the order of priority in which they are entitled to be paid out of the property.

[Code 1881 § 568; **1877 p 119 § 571**; **1869 p 136 § 521**; RRS § 854.]

7.52.180
Notice to lienholders.

The plaintiff must cause a notice to be served at least twenty days before the time for appearance on each person having such lien by judgment or decree, to appear before the referee at a specified time and place to make proof by his or her own affidavit or otherwise, of the true amount due or to become due, contingently or absolutely on his or her judgment or decree.

[**2011 c 336 § 225**; Code 1881 § 569; **1877 p 120 § 572**; **1869 p 136 § 522**; RRS § 855.]

7.52.190
Proceedings and report of referee.

The referee shall receive the evidence and report the names of the creditors whose liens are established, the amounts due thereon, or secured thereby, and their priority respectively, and whether contingent or absolute. He or she shall attach to his or her report the proof of service of the notices and the evidence before him or her.

[**2011 c 336 § 226**; Code 1881 § 570; **1877 p 120 § 573**; **1869 p 136 § 523**; RRS § 856.]

7.52.200
Exceptions to report—Service of notice on absentee.

The report of the referee may be excepted to by either party to the suit, or to the proceedings before the referee, in like manner and with like effect as in ordinary cases. If a lien creditor be absent from the state, or his or her residence therein be unknown, and that fact appear by affidavit, the court or judge thereof may by order direct that service of the notice may be made upon his or her agent or attorney of record, or by publication thereof, for such time and in such manner as the order may prescribe.

[2011 c 336 § 227; Code 1881 § 571; 1877 p 120 § 574; 1869 p 137 § 524; RRS § 857.]

7.52.210
Order of confirmation is conclusive.

If the report of the referee be confirmed, the order of confirmation is binding and conclusive upon all parties to the suit, and upon the lien creditors who have been duly served with the notice to appear before the referee, as provided in RCW **7.52.180**.

[Code 1881 § 572; 1877 p 120 § 575; 1869 p 137 § 525; RRS § 858.]

7.52.220
Distribution of proceeds of sale.

The proceeds of the sale of the encumbered property shall be distributed by the decree of the court, as follows:

(1) To pay its just proportion of the general costs of the suit.

(2) To pay the costs of the reference.

(3) To satisfy the several liens in their order of priority, by payment of the sums due, and to become due, according to the decree.

(4) The residue among the owners of the property sold, according to their respective shares.

[Code 1881 § 573; 1877 p 120 § 576; 1869 p 137 § 526; RRS § 859.]

7.52.230
Other securities to be first exhausted.

Whenever any party to the suit, who holds a lien upon the property or any part thereof, has other securities for the payment of the amount of such lien, the court may in its discretion, order such sureties to be exhausted before a distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property on account thereof.

[Code 1881 § 574; 1877 p 121 § 577; 1869 p 137 § 527; RRS § 860.]

7.52.240
Lien proceedings not to delay sale.

The proceedings to ascertain the amount of the liens, and to determine their priority as above provided, or those hereinafter authorized to determine the rights of parties to funds paid into court, shall not delay the sale, nor affect any other party, whose rights are not involved in such proceedings.

[Code 1881 § 575; **1877 p 121 § 578; 1869 p 137 § 528;** RRS § 861.]

7.52.250
Distribution at direction of court.

The proceeds of sale, and the securities taken by the referees, or any part thereof, shall be distributed by them to the persons entitled thereto, whenever the court so directs. But if no such direction be given, all such proceeds and securities shall be paid into court, or deposited as directed by the court.

[Code 1881 § 576; **1877 p 121 § 579; 1869 p 138 § 529;** RRS § 862.]

7.52.260
Continuance of suit to determine claims.

When the proceeds of sale of any shares or parcel belonging to persons who are parties to the suit and who are known, are paid into court, the suit may be continued as between such parties, for the determination of their respective claims thereto, which shall be ascertained and adjudged by the court. Further testimony may be taken in court, or by a referee at the discretion of the court, and the court may, if necessary, require such parties to present the facts or law in controversy, by pleadings as in an original suit.

[Code 1881 § 577; **1877 p 121 § 580; 1869 p 138 § 530;** RRS § 863.]

7.52.270
Sales to be by public auction.

All sales of real property made by the referees shall be made by public auction, to the highest bidder, in the manner required for the sale of real property on execution. The notice shall state the terms of sale, and if the property, or any part of it is to be sold, subject to a prior estate, charge or lien, that shall be stated in the notice.

[Code 1881 § 578; **1877 p 121 § 581; 1869 p 138 § 531;** RRS § 864.]

7.52.280
Terms of sale to be directed by court.

The court shall, in the order of sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises, of which it may direct a sale on credit; and for that portion of which the purchase money is required by the provisions hereinafter contained, to be invested for the benefit of unknown owners, infants or parties out of the state.

[Code 1881 § 579; **1877 p 121 § 583**; **1869 p 138 § 532**; RRS § 865.]

7.52.290
Referee may take security.

The referees may take separate mortgages, and other securities for the whole, or convenient portions of the purchase money, of such parts of the property as are directed by the court to be sold on credit, in the name of the clerk of the court, and his or her successors in office; and for the shares of any known owner of full age, in the name of such owner.

[**2011 c 336 § 228**; Code 1881 § 580; **1877 p 121 § 584**; **1869 p 138 § 533**; RRS § 866.]

7.52.300
Estate of tenant for life or years may be sold.

When the estate of any tenant for life or years, in any undivided part of the property in question, shall have been admitted by the parties, or ascertained by the court to be existing at the time of the order of sale, and the person entitled to such estate shall have been made a party to the suit, such estate may be first set off out of any part of the property, and a sale made of such parcel, subject to the prior unsold estate of such tenant therein; but if in the judgment of the court, a due regard to the interest of all the parties require that such estate be also sold, the sale may be so ordered.

[Code 1881 § 581; **1877 p 122 § 585**; **1869 p 138 § 534**; RRS § 867.]

7.52.310
Tenant for life or years may receive sum in gross—Consent.

Any person entitled to an estate for life or years in any undivided part of the property, whose estate shall have been sold, shall be entitled to receive such sum in gross as may be deemed a reasonable satisfaction for such estate, and which the person so entitled shall consent to accept instead thereof, by an instrument duly acknowledged and filed with the clerk.

[Code 1881 § 582; **1877 p 122 § 586**; **1869 p 139 § 535**; RRS § 868.]

7.52.320
Court to determine sum if consent not given.

If such consent be not given, as provided in RCW **7.52.310**, before the report of sale, the court shall ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be invested for the benefit of the person entitled to such estate for life, or years, and shall order the same to be deposited in court for that purpose.

[Code 1881 § 583; **1877 p 122 § 587**; **1869 p 139 § 536**; RRS § 869.]

7.52.330
Protection of unknown tenant.

If the persons entitled to such estate, for life or years, be unknown, the court shall provide for the protection of their rights in the same manner, as far as may be, as if they were known and had appeared.

[Code 1881 § 584; **1877 p 122 § 589**; **1869 p 139 § 538**; RRS § 870.]

7.52.340
Contingent or vested estates.

In all cases of sales in partition, when it appears that any person has a vested or contingent future right or estate therein, the court shall ascertain and settle the proportionate value of such contingent or vested right or estate, and shall direct such proportion of the proceeds of sale to be invested, secured or paid over in such manner as to protect the rights and interests of the parties.

[**1957 c 51 § 14**; Code 1881 § 585; RRS § 871. Cf. Laws 1881 § 586; **1877 p 122 § 590**; **1869 p 140 § 539.**]

7.52.350
Terms of sale must be made known.

In all cases of sales of property the terms shall be made known at the time, and if the premises consist of distinct farms or lots, they shall be sold separately or otherwise, if the court so directs.

[Code 1881 § 586; **1877 p 122 § 591**; **1869 p 140 § 540**; RRS § 872.]

7.52.360
Referees or guardians not to be interested in purchase.

Neither of the referees, nor any person for the benefit of either of them, shall be interested in any purchase, nor shall the guardian of an infant be an interested party in the purchase of any real property

being the subject of the suit, except for the benefit of the infant. All sales contrary to the provisions of this section shall be void.

[Code 1881 § 587; **1877 p 122 § 592; 1869 p 140 § 541**; RRS § 873.]

7.52.370
Referees' report of sale—Contents.

After completing the sale, the referees shall report the same to the court, with a description of the different parcels of land sold to each purchaser, the name of the purchaser, the price paid or secured, the terms and conditions of the sale, and the securities, if any, taken. The report shall be filed with the clerk.

[Code 1881 § 588; **1877 p 122 § 593; 1869 p 140 § 542**; RRS § 874.]

7.52.380
Exceptions—Confirmation.

The report of sale may be excepted to in writing by any party entitled to a share of the proceeds. If the sale be confirmed, the order of confirmation shall direct the referees to execute conveyances and take securities pursuant to such sale.

[Code 1881 § 589; **1877 p 123 § 594; 1869 p 140 § 543**; RRS § 875.]

7.52.390
Purchase by interested party.

When a party entitled to a share of the property, or an encumbrancer entitled to have his or her lien paid out of the sale, becomes a purchaser, the referees may take his or her receipt for so much of the proceeds of the sale as belong to him or her.

[**2011 c 336 § 229**; Code 1881 § 590; **1877 p 123 § 595; 1869 p 140 § 544**; RRS § 876.]

7.52.400
Investment of proceeds of unknown owner.

When there are proceeds of sale belonging to an unknown owner, or to a person without the state who has no legal representative within it, or when there are proceeds arising from the sale of an estate subject to the prior estate of a tenant for life or years, which are paid into the court or otherwise deposited by order of the court, the same shall be invested in securities on interest for the benefit of the persons entitled thereto.

[Code 1881 § 591; **1877 p 123 § 596; 1869 p 140 § 545**; RRS § 877.]

7.52.410
Investment in name of clerk.

When the security for the proceeds of sale is taken, or when an investment of any such proceeds is made, it shall be done, except as herein otherwise provided, in the name of the clerk of the court and his or her successors in office, who shall hold the same for the use and benefit of the parties interested, subject to the order of the court.

[2011 c 336 § 230; Code 1881 § 592; 1877 p 123 § 597; 1869 p 141 § 546; RRS § 878.]

7.52.420
Securities to parties entitled to share when proportions determined.

When security is taken by the referees on a sale, and the parties interested in such security by an instrument in writing under their hands, delivered to the referees, agree upon the share and proportions to which they are respectively entitled, or when shares and proportions have been previously adjudged by the court, such securities shall be taken in the names of and payable to the parties respectively entitled thereto, and shall be delivered to such parties upon their receipt therefor. Such agreement and receipt shall be returned and filed with the clerk.

[Code 1881 § 593; 1877 p 123 § 598; 1869 p 141 § 547; RRS § 879.]

7.52.430
Duties of clerk in making investments.

The clerk in whose name a security is taken, or by whom an investment is made, and his or her successors in office, shall receive the interest and principal as it becomes due, and apply and invest the same as the court may direct, and shall file in his or her office all securities taken and keep an account in a book provided and kept for that purpose in the clerk's office, free for inspection by all persons, of investments and moneys received by him or her thereon, and the disposition thereof.

[2011 c 336 § 231; Code 1881 § 594; 1877 p 123 § 599; 1869 p 141 § 548; RRS § 880.]

7.52.440
Unequal partition—Compensation adjudged.

When it appears that partition cannot be made equal between the parties according to their respective rights, without prejudice to the rights and interests of some of them, the court may adjudge compensation to be made by one party to another on account of the inequality of partition; but such compensation shall not be required to be made to others by owners unknown, nor by infants, unless in case of an infant it

appear that he or she has personal property sufficient for that purpose, and that his or her interest will be promoted thereby.

[2011 c 336 § 232; Code 1881 § 595; 1877 p 124 § 600; 1869 p 141 § 549; RRS § 881.]

7.52.450
Infant's share of proceeds to guardian.

When the share of an infant is sold, the proceeds of the sale may be paid by the referees making the sale, to his or her general guardian, or the special guardian appointed for him or her in the suit, upon giving the security required by law, or directed by order of the court.

[2011 c 336 § 233; Code 1881 § 596; 1877 p 124 § 601; 1869 p 142 § 550; RRS § 882.]

7.52.460
Guardian or limited guardian of incompetent or disabled person may receive proceeds—Bond.

The guardian or limited guardian who may be entitled to the custody and management of the estate of an incompetent or disabled person adjudged incapable of conducting his or her own affairs, whose interest in real property shall have been sold, may receive in behalf of such person his or her share of the proceeds of such real property from the referees, on executing a bond with sufficient sureties, approved by the judge of the court, conditioned that he or she faithfully discharge the trust reposed in him or her, and will render a true and just account to the person entitled, or to his or her legal representative.

[2011 c 336 § 234; 1977 ex.s. c 80 § 9; Code 1881 § 597; 1877 p 124 § 602; 1869 p 142 § 551; RRS § 883.]

NOTES:

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

7.52.470
Guardian or limited guardian may consent to partition.

The general guardian of an infant, and the guardian or limited guardian entitled to the custody and management of the estate of an incompetent or disabled person adjudged incapable of conducting his or her own affairs, who is interested in real estate held in common or in any other manner, so as to authorize his or her being made a party to an action for the partition thereof, may consent to a partition without suit and agree upon the share to be set off to such infant or other person entitled, and may execute a release in his or her behalf to the owners of the shares or parts to which they may respectively be entitled, and upon an order of the court.

[2011 c 336 § 235; 1977 ex.s. c 80 § 10; Code 1881 § 598; 1877 p 124 § 603; 1869 p 142 § 552; RRS § 884.]

NOTES:

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW **4.16.190**.

7.52.480
Apportionment of costs.

The cost of partition, including fees of referees and other disbursements including reasonable attorney fees to be fixed by the court and in case the land is ordered sold, costs of an abstract of title, shall be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the decree. In that case there shall be a lien on the several shares, and the decree may be enforced by execution against the parties separately. When, however, a litigation arises between some of the parties only, the court may require the expense of such litigation to be paid by the parties thereto, or any of them.

[**1923 c 9 § 1**; Code 1881 § 599; **1877 p 124 § 604**; **1869 p 142 § 553**; RRS § 885.]