

65606-6

65606-6

No# 65606-6-1

**COURT OF APPEALS
DIVISION I OF THE STATE OF WASHINGTON**

WALTER PAGE

Appellant,

v.

RAYMOND HOVICK and JACQUELINE HOVICK,

Respondents

APPELLANT'S BRIEF

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JAN 11 2011
COURT OF APPEALS
DIVISION I
STATE OF WASHINGTON

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26 pages

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ASSIGNMENTS OF ERROR

1. Court overlooked Respondents admission of guilt for not possessing a valid Title or Statutory Warranty Deed.
2. Court continually fails to establish legal ownership of Lot A and Lot 14 of Lake of the Woods properties.
3. Court erred by reference of RCW 6.28.030 would convey Lot A and Lot 14. The Decree and Settled by Parties / Agreement, is contrary to RCW 6.28.030.
4. Court erred Appellant was compelled to sign a Deed. Decree and Settlement section 3.13 offers two choices. Execute or return to court for resolution.
5. Court erred that the Decree /Settlement ordered Appellant signature and title could be legally transferred without Appellants acknowledgement.
6. Court erred by issuing a summary judgment (Quiet Title) against vested owner (Appellant), in favor of Contempt of Court Order, - Respondent, who begs the court for a Quit Claim Deed from Appellant.
7. Court erred by stating it would be the responsibility of Appellant to “it’s not that hard to get one...” (Deed) or “join in” the transfer of Lot A and Lot 14.
8. Court erred by Ordering Les Pendens to be removed on Lot A and Lot 14, whereas Appellants ownership would be affected.
9. Court erred by granting a summary judgment. removal of Les Pendens, Attorney fees in contrast and violation of the previous Orders signed on November 5, 1999.
10. Court erred by not recusing her Honor from Case #09-2-00492-1 although she previously recused herself from Case # 97-3-00436-3. Judge Churchill would be

bias to preside over Case# 09-2-00492-1, whereas her business, Churchill Real Estate, does business on a daily manner with the Respondents, - Chicago Title, who are relying on a favorable verdict.

11. Court Erred by allowing a Quiet Title Action against a vested owner of deed, whereas Quiet Title is reserved for Bona fided purchases of property where an unidentified heir or like, - becomes revealed. Plaintiff's / Respondents are not Bona fided purchasers for the reason Appellant's name is clearly on the preceding deeds, tax assessments, mortgage, etc.
12. Court erred whereas Plaintiff's / Respondents are required **(RCW 7.28.120)** 'The plaintiff in such action shall set forth in his complaint the nature of his 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 shall prevail. Plaintiff does not have a legal deed to present, nor presented any deed or ownership, therefore cannot maintain an action of quiet title.
13. Court erred in maintaining an action for Quiet Title beyond the Statute of Limitations, RCW 7.28.050, 'the limitation shall begin to run from the time of acquiring title.' Date of Respondent acquiring (what ?) title, 9/27/2000.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Respondent has admitted to the court, they do not possess a valid and legal deed, required under Washington State Law, RCW 64.04.010. The court overlooked this most obvious admission and the omission of a deed. RCW 19.40.061 (1) (i), (3), (4).

The Respondent has already admitted their Guilt: The court failed to inquire the most obvious question.

On 4/23/2010 *Verbatim Report*, (Motion to Release Lis Pendens, Attorney's Fees) Page 21 Line 16.

Ms. Johnson: (Attorney for Respondent) "We would be willing to settle this case through the preparation of a quitclaim deed to be signed by Mr. Page and filed within Island County recorder's office. We would, of course deliver that to the title company."

This statement speaks volumes of the fraud that has transpired. If the deed that the title company secures and is on record and file; WHY would you need a quitclaim deed signed by Mr. Page to "Bolster" your incandescent files? The Respondent has admitted guilt in this most obvious conclusive admission. Respondents title is of no value - without a quitclaim from the owner, Appellant. This court would ask the same Paramount question. How is it possible to transfer a deed, without a conveyance from the owner? And why would you request 'a settlement' for a quitclaim deed signed by Mr. Page - 10 years later? (**APPENDIX A**, Summons, 6/13/2009, 09-2-00492-1, pg. 25) Appellant stood upon this 'rock' since 9/22/2000, and Respondent now comes before the court and

begs and admits he needs a quitclaim deed to make his title 'Whole.' The Respondent drags the Appellant through the courts of law, to raise it's demonic head. If the Respondent followed the laws of Washington State, Respondent surely would not be begging this court for a Quit Claim Deed. A large red flag was waved before the court, and the Island Superior Court looked the other way. (RCW 19.40.061 (1) (i), (3), (4), RCW 9.38.020.

Kesinger v. Logan 113 Wn 2nd, 320,779, P.2d (1989) "Because there was no conveyance of the original interest by deed as required by statute, (RCW 64.04.010) no interest was effectively conveyed."

Cassidy v. Holland, 27 S.D 287, 130 N.W. 771. "To constitute a delivery the grantor must part with legal possession of the deed and all the right to retain it.'

Nelson v. Nelson, 293 N.W. 2nd 463, 466 (SD 1980) 'The delivery of a deed must be unconditional in nature and no delivery can be accomplished without the grantor relinquishing possession of the deed as well as all the power and control over it."

2. September 22, 2000: This is the date that the Fraudulent conveyance transpired. All proceedings from this date forward, were just an attempt to cover-up fraud. UFTA Act. (1 year) Court has erred for the reason there has never been a conveyance of deeds. Island County Superior Court continually fails to examine this fundamental issue first. A priority, - to establish the truth.

Prior to the entrance of a 'Settled by Parties' (settlement,) signed by Judge Vickie Churchill on 11/05/1999, dividing the community property of Walter and Debra Page, - two Attorney's got together and divided up the assets of the community. Neither Attorney held a 'Power

of Attorney,' "designed to convey real estate." This is the "most critical instrument," to divide land. This is the paramount reason for the verbiage in the Decree of Dissolution; Section 3.13 ©

"Both parties shall execute whatever documents are necessary to carry out the transfers and distributions order herein. Any disputes concerning the requirements of this order shall be presented to the court for resolution."

It is an 'imperative duty' under Washington State Law, (RCW 64.04.010, .020) *attorneys*, cannot convey property *without* a 'Power' to do the same. (i.e. wrong property, wrong division, unspoken or documented liens, trusts, wills, etc.) For that reason, (and that reason only) "Both" (2) owners of the community property would have to execute a deed to the other including unspoken or unwritten commitments, communications, trusts, wills etc, (or return to court as outlined in decree) before a legal deed can be conveyed "to another." The question at hand, first and foremost: Was the deed conveyed to the Respondent, a legal transfer of land, under RCW 64.04.010, .020? (UFTA – Litigation began 11/01/2000, Fraud) The Superior Court of Island County, has tip-toed around this issue, for fear of stepping on guilty toes of Associates. Island County Superior Court refuses to address this critical issue.

(See *Seals v. Seals*, 590 P. 2d 1301 – Wash: Court of Appeals, 3rd Div. (1979) (See *Burkey v. Burkey*, 36 Wn App. 487, 675 P. 2d 619, 3rd Div. (1984) *McMaster v. Farmer*, 886 P 2nd 240 Wash. Court of Appeals.

Once the 'issue' of 'vested owner' by this Honorable Body, the remainder of the puzzle, 'falls into place.' Respondents Attorneys can only present "smoke and mirrors," a diversion, - for a deed from Appellant, clearly Ordered, they do not possess. One simple question to the Respondents; Do you possess a conveyance signed by Mr. & Mrs. Page, as required by the decree, agreement, and Washington State statute? Yes or No?

3. Court erred in declaring RCW 6.28.030 would allow conveyance of the property that lies in Question before the Court.

Judge Churchill erred in her decision on the same day and trial in reference to an Agreed Judgment or decree;

04/23/2010 Verbatim Report, (Motion to Release Lis Pendens, Attorney's Fees Page 22, Line 11.

Court: "Under the statute that has just been cited by Ms. Johnson (RCW6.28.030) the decree is a judgment on the property.

Page 22, Line 22.

Court: You don't –

Walter Page: Your Honor –

Court: have any right to the property. I will sign the Orders.

The decree, states; "Both (2) parties shall execute whatever documents are necessary to carry out the transfers and distributions order herein." Judge Churchill was EXACTLY CORRECT in only one half of her statement. The 'Decree IS a judgment on the

property,' and Chicago Title and the Respondents are in Contempt of Court for ignoring the written Order from the Court.

(RCW 6.28.030) *'The effect of conveyance pursuant to judgment.'* The Summary Judgment is in contrast, and clear violation of the Order & Agreement (signed 11/05/1999) whereas only (1) party has executed the documents, therefore Respondent holds an invalid deed. The courts 'teeth' is contrary and in violation of the previous Order & Agreement (signed 11/05/1999,) and makes no sense in a court of law, or in the transfer of estates and deeds. The court has become 'polarized' to imagine Appellant 'has to transfer a deed,' whereas Appellant contends; (as does the Decree & Agreement) if refusal to transfer, then be compelled to "resolve in court." Not visa-versa, and certainly not transfer a deed to the Respondent *first and then* beg the court for a quitclaim from Appellant. **(RCW 6.28.030, RCW 64.04.010, .020, 030) including (CR 54 (2) CR 11 (a) CR 60 (a)**

The Supreme Court of Washington, En Banc describes this settled fact in *Presidential Estates APT v. Barrett*, 917,P 2d 100 (1996)

"A more helpful analysis begins with understanding what CR60(a) does and does not allow. CR60(a) does not allow a trial court to correct what it intentionally did, but it does allow the trial court to correct a judgment which through oversight or omission that does not reflect the courts original intent. This principle is clearly articulated in federal decisions interpreting the analogous federal provision. Fed.R.Civ.P.60(a)."

The trial courts original intention of Case # 97-00436-3 was:

Without an existence of 'Power,' or acknowledgments - that both parties shall convey to one or the other - including wills, trusts etc, or resolve any disputes in court. Without an "Executed Power or Acknowledgment" there is hardly a way to describe it other than 'Both parties shall....'

Appellant does not claim to be a Counsel of the Law, however, it's highly doubtful that RCW 6.28.030 could trump CR60(a) in this particular instance.

4. Court erred that Appellant was compelled to sign a deed or instrument for conveyance.

Pg. 16, Verbatim Report of Proceedings, April 23, 2010, Line 12,

THE COURT: So you were under a requirement to sign a deed, didn't do so, and believe that because you didn't do so that stopped everything?

WALTER S. PAGE: No. I was never required to sign a deed.

THE COURT: It says that you shall doesn't it?

WALTER S. PAGE: No, it does not say that I'm required to sign a deed.

THE COURT: All Right.

WALTER S. PAGE: There is no – nothing in this decree that requires me to sign a deed. However there is something in this decree that compels them to have my signature.

THE COURT: And if you failed to sign it, then you're saying that this decree means nothing?

WALTER S. PAGE: I was never asked to sign a deed. A deed was never – was never presented for me to sign.

THE COURT: It's not that hard to get one.

WALTER S. PAGE: I'm sorry?

THE COURT: It's not that hard to get one yourself and sign it if that's what the Court orders. And that's what the Court orders. And the Court says, "This property belongs to her. That property belongs to you." or

whatever it says, then that's what your supposed to have done.

WALTER S. PAGE: (LINE 22)It says, "Any disputes concerning the requirements of this order shall be presented to the Court for resolution."

So we would have went back to court---

COURT: All right.

Appellant has never been Ordered to sign a deed, nor has Appellant been ordered to go 'downtown' and secure a deed. This act would have had to transpire BEFORE a legal title and deed is conveyed. The Decree is crystal clear; 'Both parties shall execute...' Not just Walter shall execute & Not just Debra shall execute. Rather; "BOTH PARTIES." See (APPENDIX A, Pg. 25) for clarity.

5. Appellant was never requested to sign a deed or conveyance to Respondents.

Within the State of Washington, all conveyances of land must be signed by the owners of the property. (RCW 64.04.010, .020) (CR 11 (a)) In this case, Appellant never signed any conveyance of property and was never asked to sign a conveyance, deed, nor any disputes from the transferor's, Chicago Title or Debra Page, or Transferee's (Respondent) were never presented to the Court for resolution. Appellant's signature or acknowledgment was never requested, - as Ordered, Agreed & Decreed.

"Washington enacted its present conveyances law in 1929, based on laws of prior years dating as far back as 1854. See Ch. 64.04 RCW *et seq.* The present statute sets out two fundamental rules for transferring real property in this State. First, every conveyance of a real property interest (including any contract creating or evidencing a real property lien or encumbrance) must be by deed. RCW 64.04.010. Second, every deed must be in

writing, signed by the grantor and acknowledged before a notary public. (Emphasis added) **RCW 64.04.020**
Section 32.2, Conveyances, Statutory Provisions, Washington Real Property Deskbook, Third Ed.

6. Summary Judgment was issued against the Vested Owner, with title and deed, unlike Respondent who begs the court for a “Settlement” in exchange of ‘quitclaim deed’ from the Owner/Appellant. It is clear Respondents deed is void.

The Decree of Dissolution clearly shows Appellant as the owner and mortgagee, with obligation to make mortgage payments to the bank, including insurance payments,

***EXHIBIT H1, (Decree of Dissolution)* LIABILITIES AWARDED TO HUSBAND “...respondent shall pay the house payments to InterWest Bank until the mortgage is paid off.”**

(3)“Respondent shall also be responsible for paying the insurance payments on said property for 18 months or until the property is sold whichever occurs first.”

EXHIBIT D, (Decree of Dissolution,) displays the ownership of Appellant showing the payoff figures of the mortgage including: **“2ND HALF TAX AND MML.”** Appellant is clearly the mortgagee, insurer, and registered tax payer of these properties, therefore required by law to have his conveyance and acknowledgment, before a deed is passed to another as Decreed. It is hard for Respondent to grasp these brazen facts. Appellant, is clearly the owner of the **Two** Properties discussed in this case.

Property # 1: 4280 South Deer Lake Road, (Homestead) was held

by title as, Walter S. Page and Debra M. Page, Husband and Wife.
(Tenants by Community)

Property # 2, (Known as: Lake of the Woods Div. No 1, Lot 14) was held by title as, Walter S. Page and Debra M. Page, husband and wife, Steven M. Gutzmer and Penny J. Gutzmer, husband and wife, as Tenants In Common.

Property # 1, Community Home and Homestead, - Washington State Law.

(RCW Homesteads: (RCW 6.13.060) The homestead of a spouse or domestic partner cannot be conveyed unless the instrument by which it is conveyed is executed and acknowledged by both spouses.

“Tenancy by Community was that there is a single, though concurrent, estate in the community tenants as a unit. From this basic concept there arose the doctrine that the four “**unities of time, title, interest and possession**” were essential; i.e., that all the community tenants must acquire their interests the same time and by the *same instrument*; and that the interests of the community tenants must be identical as to the individual fractional shares, quantum of estate, and quality of estate, carrying with them equal rights of possession and enjoyment. An express conveyance or devise of an undivided interest to each of two or more persons would not create a joint tenancy or community tenancy at common law, even if the undivided interests were equal, because the transfer was to them as separate individuals rather than as a unit, which violates the fundamental requirement that all community tenants must hold “**per tout**” as well as “**per my**.” *Law of Property, Lawyers Edition Ch. 5.3.*”

Community tenancy by the entirety can, of course by agreement, be terminated by a conveyance of the entire interest of one spouse to the other spouse. An **agreed settlement**, (as documented by this court docket) would terminate a Tenancy of community, (entirety) and convert (by operation of law) to a Tenancy in Common. However, a divorce (unlike an agreed settlement) brings into operation a statutory provision for

“equitable distribution” of the property. Where an “agreed settlement” converts a Community Tenancy into a Tenancy in Common, either co-tenant may, of course compel a partition, but that ‘partition’ (or conveyance) does not exist on these two separate properties. Appellant, therefore remains the Tennant in Common, of Property # 1, and Property # 2, (by operation of law) until such time that HE signs a Deed to another as Agreed and Decreed.

Appellant, was issued a Deed of Full Reconveyance on August 8, 2000 from Land (Island-Chicago)Title Company, secured by the Deed of Trust reads as;

‘a written request to reconvey, reciting that the obligations secured by the Deed of Trust have been fully satisfied, does hereby grant, bargain, sell and ‘reconvey,’ unto the parties entitled thereto all right, title and interest which was heretofore acquired by said trustee(s) under said deed of trust.’

The Respondents Title Company issued Walter Page, Appellant, a deed full reconveyance on August 8, 2000. Respondent (including His Title Company) had ample time to request a Signature, Quitclaim Deed, or “return to Island County Superior Court,” prior to issuing Respondents invalid title, if that is what they so desired. Now they come to this court begging for relief in the form of a quit claim deed, 10 years later, after ignoring requests and issuing numerous restraining orders, against Appellant.

7. Court erred by demanding it would be the responsibility of the Appellant to secure a deed to the Respondent.

The court erred in her decision that; Verbatim Report, 4/23/2010,
Page 17, Line 3.

Court: “And you failed to sign it, then your saying that this decree means nothing?”

Walter Page: “I was never asked to sign a deed. A deed was never – was never presented for me to sign.”

Court: “It’s not that hard to get one.”

Walter Page: “I’m sorry?”

Court: “It’s not that hard to get one yourself and sign it if that’s what the court orders.”

A simple gleaning of the decree proves there is no direction from the court to; “It’s not that hard to get one yourself and sign it if that’s what the court orders.” The Judge seems to be making new rules,...as she goes along, to “justify” the Respondents Contempt of a Court Order.

The Statutory Warrantee Deed issue to the Respondent (**Appendix A**, pg. 25,) is stupendous proof contrary to the courts order. Warrantee Deed issued to the Respondent does not even carry a signature line for the Appellant to sign. The document does not even mention Appellant’s name. Most certainly, if in fact, Appellant was invited to sign, (or requested a conveyance) Appellant’s name would be listed on the Deed issued to the Respondent. It is very apparent that the parties involved in the drafting of this deed, didn’t give a damn if Walter Page was alive or

dead. Their 'sights were set' and 'to hell' with the Courts.

The Superior Court of Island County has never "Ordered" Appellant to sign a Statutory Warrantee Deed or Deed of Partition to former spouse, nor has any dispute been brought before the Court by Respondents. This "Order" would have had to transpire, - "**BEFORE**" a Legal Statutory Warrantee Deed **could** be issued to the Respondents.

RCW 19.40.061 (1) (i)

"A title traced through a judicial or other legal proceeding is *unmarketable* if it was conducted without jurisdiction or without compliance with statute. A fiduciary's deed (Chicago Title) will not convey a marketable title if he acted outside his authority or in violation of his duty." *The Law of property, Lawyers Edition, Section 10.12, 'Title Quality.'*

8. Court erred by ordering the Lis pendens to be removed. Property # 2 is held by deed as tenants in common in the names of 4 separate individuals, who share "title and time."

Property # 2 (Lake of the Woods, Div. No. 1, Lot 14) "Statutory Warrantee Deed" explains in essential format; "Walter Page, Debra Page, Steven Gutzmer, Penny Gutzmer, as tenants in common. Therefore; *Not per tout*, (entirely) but *per my*, (singular). (A deed can only possess one meaning, never two.) Every person named herein, holds an equal share, unless expressed by deed.

Nelson v. Hotchkiss, 601 SW 2d 14 Mo Supreme Court, En Blanc which held: "A voluntary partition may be affected by an exchange of deeds among the co-tenants, with all the co-tenants joining in each deed in order

to set off a parcel of the common property.”

In short, ALL deeded owners are required by Law, for conveyance of Deed, (re-deed) whereas all owners, withhold every molecule of the entirety, (unless stipulated by deed) and all owners are required to (re-deed,) so that all owners of record remain to be owners of equal value unless stated within Deed. It is unlawful (Tortious) to simply add or erase owners from a deed without all owners in common, joining in the acknowledgement of a new deed. **RCW 64.04.010.** A Lis pendens is recorded within Island County, on this property also, effecting all owners and future owners of said property.

9. Court erred by granting a Summary Judgment, removal of Les Pendens, Attorney fees, against a Vested Owner, in direct violation of an Order issued on 11/05/1999, which falls in violation of CR60 (a).

Judge Churchill erred in her decision to grant a Summary Judgment, removing two Lis pendens, award Attorney fees against the Appellant, who has demonstrated by clear deed, owner as tenant in common, of Parcel #1 and Parcel #2. Appellant is the owner by title, until he signs a deed to another, or a court of law orders him to do the same. The Laws of Washington State do not allow Title Companies to simply erase an owners name. The instrument of conveyance used in this particular instance (Decree, ‘Both parties’) does not comply with

Washington State Law, whereas a 'title traced through a judicial or other legal proceeding is unmarketable if it was conducted without jurisdiction (Both parties) or compliance with statute. **RCW.64.04.010, 020.** Judge Churchill has awarded a Summary Judgment in contradiction to the previous Order issued on 11/05/1999 in Case # 97-3-00436-3. **(CR 54 (2) CR 60(a))**

10. Court erred by not recusing herself in Case # 09-2-00492-1.

Judge Churchill would be bias to order a Summary Judgment upon the owner of property Appellant, in favor of contemptuous non-owners, - Respondents. Judge Churchill has ordered to remove a Lis pendens needed to protect the value of Owner/Appellants property. Judge Churchill would be bias to oversee more proceedings on this case, and has knowledge and presided over Case # 97-3-00436-3. She has personal knowledge of all the parties involved including herself and business partners, and did not require signatures or verified decree required under **CR11(a).** Judge Churchill ignores the fact that the instrument for conveyance used in this miscarriage (Judgment/Order) reads: "Both parties shall execute..." however it is blatantly obvious the Statutory Warrantee Deed to Respondents, - that Appellant (owner) was never allowed or requested to join in a deed on Parcel # 1 or Parcel # 2.

(APPENDIX A, pg. 25.) Judge Churchill has never requested to see the see the Respondents deed, nor requested to read the decree which she signed. Judge Churchill has become bias to the fact, since she was lax in her duties as Judge, continually failed to use sound Judicial discretion.

Judge Churchill's prior miscarriage of law in case # 97-3-00436-3, (RCW 26.09.015) CR 54, CR 11 (a) (just to name a few,) would not allow her to preside in an unbiased manner on an action which she would rather see go away or disrupt the manner her associate partners do business of Real Estate in Island County, (Churchill & Associates Real Estate, Oak Harbor WA) which she presides.

VERBATUM REPORT OF PROCEEDINGS, Motion to Release Lis Penders, Attorney Fees, April 23, 2010 Pg. 12, Line 9.

COURT: And the title companies pick up all decrees and show that on pieces of property as to what the Court did with the house located at 4280 South Deer Lake Road and described as Lot A, Island County. In other words, this becomes part of the information on the property.

Perhaps the Respondents (Chicago Title) should choose their researchers of records more carefully and not be in such haste while the owner is away & located in Alaska, for the decree clearly points the direction of the information concerning the transfer of properties. (Both parties.)

11. Court erred by allowing Quiet Title Action against vested owner.

Quiet title actions are reserved to remove a cloud on a title for a bona fide purchaser, where the purchaser was not aware of ownership or ownership did not show upon research of said title. Appellant has always owned the disputed properties and has retained ownership since 1988. Appellant has paid taxes, mortgaged, and subdivided the properties. Respondent finds that he did not legally purchase Appellants property, but now comes to the court begging for a Quit Claim or Quiet Title. Respondent is barred from both. Respondent had ample opportunity to research Assessors/Auditor's files prior to his purchase, or Respondent could have requested a Deed or Quit Claim prior to his purchase, however now he begs for another bite of the apple instead.

12. RCW 7.28.120 Pleadings - Superior Title Prevails. "The plaintiff in such action shall set forth in his complaint the nature of his estate, claim or title to the property...and the superior title shall prevail."

Plaintiff / Respondent has not demonstrated to the court their title to their claim of property, nor has the court required plaintiff / Respondent to reveal his title (if any) or if equitable title exists. Plaintiff continues to conceal or reveal his ownership of title - if any, whatsoever. Respondent has the 'Burden of Proof' his title (if any) is Superior to Appellant - owner. Appellant is more than willing to reveal his ownership, however Respondent has venomously petitioned the Superior Court and the

Appeals Court, NOT to reveal Appellants Superior Title. Respondent has NO EVIDANCE at all, to prove his ownership of properties, except that “We would be willing to settle...for a Quit Claim Deed and deliver that to the Title Company.”

13. RCW 7.28.050 Limitation of actions for recovery of real property, “That all actions brought for the recovery of any lands, tenements....and notorious possession for seven successive years, having a connected title in law....shall be brought within seven years next after possession...”

Appellant has held title to property before this court since April 11, 1988 and Respondent has been meekly squatting on said property since August 27, 2000. Respondent now begs this court and Appellant for Quit Claim Deed or in the alternative, Quiet Title. Appellant would be the rightful litigant to request Quiet Title from “Respondent,” not visa-versa.

STATEMENT OF THE CASE

This case and issues presented, concern the fraudulent transfer of deeds, a Summary Judgment, Attorney Fees, Removal of Lis pendens, all based on the principle underlying issues of those actions – A Foundation of Fraud, Forgery and Contempt.

SUMMARY OF ARGUMENT

There are many facets of this case, and none have adhered to the law. A petition for dissolution was entered on 10/16/1997, which was stricken for

non-appearance. Another petition was drafted on 4/30/1999. It will later be documented, that the wife had the community home appraised on 4/21/1999, but failed to share documents with the spouse (Appellant.) A 'settled by parties' decree/agreement was drafted, (again, unshared or viewed with the spouse) and a settled by parties decree was entered into the court on 11/05/1999 (again, unsigned/unviewed by Appellant.) Judge Churchill signed the (unsigned by Appellant, - decree) and upon the Judges signature, became law. Appellant came home to discover, - everything was gone. Appellant has struggled to find Case Law, where 'this' or anything close, has ever happened before. Divorce law has tentacles which are very hard to untwine, however real estate laws are adhered and seldom change, throughout the centuries of time. The case before this body is about real estate, conveyances, tenancy, titles and deeds. This body will witness, fraud, manipulation, desire, and devise. Appellant is only a layman, entering as Pro Se, however one can smell a dead fish, from a mile away. The action before this court has been 'evasive' by Respondents and now, a decade 'old.' A stormy sea upon the stern. Searching for a light.

This case before this court is directly in conjunction to a Decree of Dissolution unilaterally signed in November of 1999, contrary to **CR 11(a)**

(Case # 97-3-00436-3) Walter Page, Appellant, was represented (ineptly) by Attorney Clark Harvey of Island County and Debra Page, Petitioner, was represented by Attorney Jacob Cohen. Appellant, pursued a part/full time occupation (commercial fishing) in Kenai, Alaska and Debra Page resided in the community home in Clinton, WA. Respondent, has admitted in a court of law, on the record, under oath, and speaks volumes of the fraud that this court cannot ignore. The Respondent does not hold valid title/deeds to the property whom the Lis pendens are filed upon. The Respondent is squatting on property that belongs to Appellant and now begs the mercy of the court to favor him for the ineptness of his Title Co.

09-2-00492-1, Verbatim Report of Proceedings 4/23/2010 (Motion to Release Lis Pendens, Attorney Fees) Page 21, line 16

Ms. Johnson, (Attorney for Respondent) : “We would be more than willing to settle this case through the preparation of a quitclaim deed to be signed by Mr. Page and filed with the Island County recorder’s office. We would, of course, deliver that (quitclaim) to the title company.”

This court will ask the Paramount Question; Why are the Respondents volunteering to prepare a ‘quitclaim deed,’ for (conveyance) they propounded to POSSESS? A quitclaim deed or joiner, ‘is required,’ PRIOR to the transfer of a deed? Why would the Respondents be proposing a settlement if their deed was in fact,- valid? The Respondents are begging the courts, for a quitclaim to “deliver to the title company” –

they 'do not' have, or any "legal" conveyance whatsoever. Respondents have admitted in a court of law that their deed is void, unless they can secure a conveyance from Appellant. The question that should have begged the courts full attention; 'Why is the Respondent allowed to squat on this property and Restraining the Appellant, without a valid deed?'

There is only One question this court needs to ask the Respondents. 'Do you possess a deed executed by both Mr. and Mrs. Page, as Ordered by the Court and the Decree of Dissolution, and required under Statute RCW 64.04.010?' (**Court Rule 54 (2)**)

Furthermore, Ms. Johnson, (Attorney for Respondent) goes on to say; Verbatim Report 4/23/2010, Page 21, line 21,

"However, honestly, based on the order of the court initially in 1999, which, under RCW 6.28.030, effectively is a conveyance pursuant to judgment we're not actually convinced that a quitclaim deed is necessary."

This court should not be deceived to decipher Ms. Johnson's one-sided reasoning. The order of the court in 1999, (Decree) reads as follows:

"Both parties shall execute whatever documents are necessary to carry out the transfers and distributions order herein." "Any disputes...."

At question in this court are two parcels of community property in Island County that a Lis Pendens has been filed and recorded, on each.

The properties were held by deeded title:

1. Walter S. Page and Debra M. Page, husband and wife, as to Lot A of Island County Short Plat No. 85/29. (Tenants by Entirety/Community.

Community Home/Homestead, **5.3 acres**) (now - tenants common)

2. Walter S. Page and Debra M. Page, Stephen M. Gutzmer and Penny J. Gutzmer, husband and wife, as Tenants in Common, as to Lot 14, Lake of the Woods, Division.

It will be well established in this Brief, and within the laws of Washington State and the United States, that a Decree of Divorce dissolves a tenancy by the entirety (or community) in real estate formally vested in the husband and wife, and by operation of law creates in them a tenancy in common so that thereafter the former wife or husband may maintain with the respect thereto, or petition for partition, in a court of law.

“The nature of tenancy in entirety/community is thoroughly established within the courts of law. It creates one indivisible estate in them both and in the survivor, which neither can destroy by any separate act. Both husband and wife are seised of such an estate, ‘*per tout et non per my*’ as one person, and not as joint tenants or tenants in common. There can be no severance of such estate by the act of either alone without the assent of the other.” emphasis added (*Bernatavicius v. Bernatavicius*, 259 Mass.486, 1927)

This court will witness the severance of the family homestead by ONE SPOUSE, (or tenant) without the assent of the other.

“Divorce is not an act of the parties. It is an act of the law. That act of the law creates a new legal status, both for the husband and for the wife. It divides the common law unity hitherto. When persons who have been tenants by entirety cease to be husband and wife, the legal factors necessary to create that tenancy have gone out of existence. A tenancy by the entirety cannot be created by the most explicit words in a legal instrument, unless the man and the woman are in truth husband and wife.” (*Morris v. McCarty* 158 Mass. 11, 32 N.E. 938 (1893) *Id.* 491, 243, A.2d

“It is more in harmony with the principles governing such tenancies to hold that they cannot continue after the tenants have become divorced and thus have ended the legal relationship to each other, which constitutes the essence of that tenancy. The great weight of authority supports this conclusion.” *Lopez v. Lopez* 250588 (1968)

A Decree of Dissolution (Settled by parties and/or Agreed Judgment) (Settlement) was entered in Island County on November 5, 1999, contrary to **CR 11 (a)**. The decreed settlement divided the community property, awarding the homestead (wrongly) and other property in question to Debra Page, however was not acknowledged, viewed, or agreed by Appellant who was “At Sea” at this time. Appellants attorney, (without authority) signed the decree entered into court, (Decree was never verified) however the attorney did not possess a Power of Attorney (or authority) to convey real estate property. The “reasoning” of the wording (Section 3.13 ©) being, both parties shall hold title to the estate until sold or divided to the other, however - ‘Respondent will pay the mortgage and insurance, until paid in full.’ (See Liabilities Awarded to Husband - H1) The wordage of Agreement precisely states: ‘Both parties shall execute whatever documents are necessary...’

It is evident the spirit of this act would have been a conveyance (by Appellant) or a partition (in court.) Either way, both parties had had knowledge and are required by law to execute as Agreed, and the Attorney

had knowledge he could not convey without a PoA. Judge Vickie Churchill signed the Decree, therefore becoming an Order and Judgment. Debra Page sold the Homestead and Lot 14 Lake of the Woods, to Respondents, on September 22, 2000, conveyed as, "The Grantor Debra Page, an unmarried individual as to her separate estate," without the assent, acknowledgment, of Appellant. Appellant has never conveyed his estate.

"There can be no severance of such an estate by the act of either alone without the assent of the other," (*Bernatavicius v. Bernatavicius.*)

Appellant contends, and the law confirms, that upon divorce or separation, under the operation of law, the community property becomes tenancy in common, (with reference to the children) and therefore it is imperative that either a petition for partition exists or Appellant conveys his tenancy in common to Debra Page (or children) prior to her sale to the Respondents. This fundamental act is a 'Documented Right,' Appellant was given in the Decree of Dissolution, a Statutory Right given by Law, Right of Conveyance, and a unalienable Constitutional Right. This confirms that the Respondents Deed issued on 9/22/2000, was void upon it's conception, by not following the Decree or Agreement or the Laws of Washington State, - conveyance of property. **RCW 64.04.010**

"Tenancy by entirety is dissolved by divorce, whereas either party

may seek a partition. By operation of law, title transforms into tenants in common. Either party may convey to another, however without absolute conveyance or partition, one tenant in common, cannot sell the whole - without the other tenants joining in the deed. All tenants in common enjoy an undivided interest, and the transferee obtains only the transferor's concurrent right of possession and use. Any attempt to exclude the other co-tenants from possession or to interfere with their use and enjoyment of the entire property would be tortious." (*Miller v. Gemricher*, 191 Iowa 992, 183 N.W. 503 (1921) *Cook v. Boehl*, 188 Md. 581, 53 A.2d 555 (1947) *Howard v. Manning*, 79 Okl. 165, 192 P. 358, 12 A.L.R. 819 (1920)

VI. Argument

A. Island County Superior Court Entered Decree in Violation LCR 11

On 11/05/1999 a Decree of Dissolution was entered and signed by Judge Vickie Churchill of Island County Superior Court. 'Resolution of Case' reads: (*see court docket*) "Settled by Parties and/or Agreed Judgment." The verbiage directly above the Judge's signature;

3.13 (c) "Both parties shall execute whatever documents are necessary to carry out the transfers and distributions order herein. Any disputes concerning the requirements of this order shall be presented in court for resolution."

On September 22, 2000 (**Appendix A** pg. 25) one (Singular) Statutory Warranty Deed (unlawfully) was issued to Respondents on two separate properties. Two separate and distinctly different Titled Properties, - on the *same deed*. The remaining Owners in Common were not allowed to join in "Their" conveyance of property. Note: Lot 14, Lake of the Woods, - describes on its "face" - Tenants in Common.

B. The Law of Property Is Unique. Six Legally Protected Expectations.

1. A right of possession, 2. a right of exclusion, 3. a right of disposition, 4. a right of use, 5. a right to enjoy fruits or profits, 6. a right of destruction.

1. Right of possession: With respect to a “power of sale” or more broadly, “a power of alienation” there is a further difficulty whether the “power” is vested in the owner or another: the owner or other person can only transfer an interest in the land with the consent of the transferee, since no person can be forced to accept a transfer of property against his or her will. Thus there is no single person (Attorney) who has a “power” *by unilateral act*, to transfer any property interest to another. Power is defined as “an ability on the part of a person to produce a change in a given *legal relation* by doing *or not doing* - a given act. i.e. Appellant holds ‘paramount title’ until he transfers (conveys) to a transferee. Appellant holds the Power and ability to produce the “*change*” - in the legal document. ‘*Decree says the same.*’

2. Right of Exclusion: Appellant has sent Respondent numerous letters and Notices to Quit, of which he has ignored. Appellant has filed and recorded, Lis Pendens’s upon each of the properties (**APPENDIX A** pg. 19) pursuant to (**RCW 4.28.320**) until such time this lawsuit, 97-3-00436-3 (Page v. Page) and the existing lawsuit 09-2-00492-1 (Hovick v. Page &

Page v. Hovick *countersuit*) is resolved.

5. Right to Enjoy the Fruits or Profit: The Homestead not only belongs to the spouses of a marriage, but rather to all the domestic participants which belong and build to the properties values. The children of a twenty-five year marriage also have the right to enjoy their homes in which they grew upon. A child retains a domestic relationship to the properties (parents and friendships) prior to puberty and after puberty. (18 years of age) One could argue the Rights of a sibling, (before & after 18 years of the domestic 5 acre farm/homestead) rather than the court tossing them into the streets. A 'Parenting Plan' which is well established in WA Law, was never implemented as mandated April 1, 1997. **(LR 13, (a))**

(RCW 6.13.060) "Conveyance or Encumbrance by Spouses or Domestic Partners: The Homestead of a spouse or domestic partner cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered, is executed and acknowledged by **both** parties." (Emphasis added)

C. Bill of Rights, 5th Article, 14th Article.

*"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with **certain unalienable rights...***

As previously stated, the Law of Property is Unique. Property was protected by our founding fathers, within our Constitution, Ratified on September 17, 1787, and the laws of property have been refined and

defined later in the 14th Amendment. Our property laws date back to the 16th Century, whereas Conveyance has largely been the same; By Deed of the previous owner. The Constitution of the United States protects those rights of citizens and land owners (estates) so that property cannot be unlawfully removed from possession of the owners, unless by Deed or Due Process of Law. The 5th Article of the U.S. Constitution (Sept. 17, 1787) includes the wording, “No person shall be held to answer....nor be deprived of Life, Liberty **or Property, without Due Process of Law.**” (Emphasis added) Again, to remove all doubt about the constitutionality of the new Civil Rights Act, which was justified as implementing freedom under the Thirteenth Amendment, a new amendment (14th Amendment) was passed in Congress on June 16, 1866 and was ratified on July 28, 1868. The 14th Amendment had broad impact on subsequent laws and litigation. The 14th Amendment abridged the “privileges and immunities” of citizens; to deprive any person of life, liberty, **or property** without “due process of law” or deny any person, - “the equal protection of the laws.” By denying Appellant his Rightful Due Process to execute (or not) a conveyance of the homestead, described by law, Chicago Title also denied Appellant his Right to a trial, *prior* to Chicago Title executing a deed to Respondents. By executing a deed to the Respondents, Chicago Title also

denied the children and grandchildren of a 25 year marriage the Right to enjoy the fruits of income, generated by the Family Farm. The heirs (children) were “By Will,” granted the Estate of Appellant. Chicago Title merely wiped my children -grandchildren from their inheritance that they diligently worked for, by the flick of a pen! Only the courts can decide the estate of the community, and not Chicago Title. Naturally the quality of the estate continues until it is changed by deed of ‘both parties,’ or one to the other, or in a court of law. It is not Chicago Titles ‘rank’ to divide this estate, but rather the owners of the estate, the children and their labors or through due process of law (courts.) The “due process clause” has come in the twentieth century to mean that the State as well as Federal power, is subject to the Bill of Rights. Chicago Tile is not above these laws. Appellant’s property, including the property of **his heirs**, cannot be removed from *their possession*, without a trial, without due process. without privileges and immunities, without equal protection of the law. without a conveyance, without acknowledgement, without a Notary. without a Power of Attorney of Property, and lastly however, - first and foremost...without a deed signed by both parties. Comes now, 10 years later, the Respondent begging for the mercy of the court, for a quit claim deed from Appellant which would have been mandatory prior to

possession. This requirement is elementary, well established, and tons of Authority rests and relies upon this Principle.

D. Statutory Warrantee Deed Signed on 9/22/2000 Transferring Two Separate Parcels of Property, Was Void Upon Conception.

“As to the real property located on Deer Lake Road in Island County, Washington. The respondent shall pay the house payments to InterWest Bank until the mortgage is paid off.”(Exhibit H-1 Decree, - Liabilities Awarded to Husband)

“Every direction of a court or judge, made or entered in writing, not included in a judgment, is denominated an order.” (Court Rules, Rule 54, (2.)

This is a significant and paramount, concession, (Contempt of Court) whereas if the mortgage was not paid-in-full, (at time of ‘closing’ to Respondents) Appellant would have been required by Lending Institution to attend “closing with InterWest Bank” or “performed conveyance” to Debra Page or the Respondents which was known by all parties involved - Appellant would **not agree** to do so, without consideration of his children’s’ estate. (or due process) This was a scheme to deprive the children of the Family Farm and property which was valued over \$500,000.00, by Debra Page. (See *Seals v. Seals, Burkey v. Burkey.*) On 7/18/2000, Respondents made an offer to purchase the two properties, that was accepted by Debra Page on 7/19/2000. Miscellaneous paperwork was exchanged during the following months, although Appellant was never

notified of the pending sale or requested for his acknowledgement and conveyance of properties to Debra Page. On 8/08/2000, Appellant was issued a Deed of Full Reconveyance from InterWest Bank and Island / Chicago Title. Appellant is clearly the vested owner, and holds Warrantee Deed and Full Reconveyance - for the mortgage of obligation.

E. September 22, 2000 Transfer of Invalid Deed.

On 9/22/2000, a Statutory Warrantee Deed and Commitment For Title Insurance was issued to Respondents, by Island Title / Chicago Title, listing the two properties on the same Deed, with reference to the Decree of Dissolution, “Debra Page...as her separate estate” The Deed and the Decree of Dissolution – which is used as ‘instrument’ of conveyance, - are recorded in Island County on 9/27/2000, at 3:34:49. This Deed is void upon it’s conception, for the Deed was “unmarketable” at the time of the sale. You cannot sell what you do not wholly own. *Law 101.*

“Due to the homestead law...conveyance...must be executed by both parties“...RCW 6.13.060, 6.13.010.

This court should not disguise these blatant disregards, - from a fiduciary of public trust. In Short: Island/Chicago Title, - had knowledge, of their ‘short-comings’ never-the-less, threw the Respondents ‘under the bus.’

The fraud lies within the execution of the Deed. Appellant was never notified of any sale or offer of sale, concerning his properties. Appellant is

in possession of a valid Court Order/Judgment, demanding ‘Both parties shall execute... **Court Rules; Rule 54 (2), & Decree**

“Fraud in the execution is usually treated like forgery, making the deed absolutely void.” *Nixon v. Nixon*, 260 N.C. 251, 132 S.E. 2nd 590 (1963). (“This sort of fraud is also known as fraud in the factum.” Also (grantor and her heirs were barred by prescription from seeking to set aside deed obtained by fraud in the execution, where they had known of the fraud for thirty-five years.) *Reed v. Thomas*, 355 Ao.2d 277 (La. App.1978) If “extrinsic” fraud is practiced on the court in a proceeding leading to a judicial sale, the sheriff’s deed or other conveyance is void even against a BFP. *Law of Property, Lawyers Edition Ch. 11.1*

F. Community Property

In community property jurisdictions, each spouse has statutory power to dispose by will of all his or her separate property and one-half of the community property.

“It essentially a “joint tenancy” modified by the common law theory that husband and wife are one person, and survivorship is the predominant and distinguishing feature of each.” *United States v. Jacobs, Ill. & N.Y.*, 306 U.S. 363, 59 St. Ct. 551,555,83 L.Ed.763

“Neither party can alienate or encumber the property without the consent of the other. It is inherited by the survivor of the two, and a dissolution of marriage, by operation of law, transforms the property to tenancy in common.” *Lyon v. Lyon* 670 P. 2d 272 Wash: Supreme Court (1983)

“(u)pon dissolution of the marriage, whether by divorce or death, the non-titled spouse cannot be completely deprived of the accumulated wealth because he/she already owns half of it” Where divorce converts a tenancy by entirety into a tenancy in common, either co-tenant may, of course, compel a partition. *Law of Property, Lawyers Edition, Ch. 5.5* also see *Heath v. Heath*, 189 F.2d 697 (Court of Appeals D.C. Cir. 1951) (also holding that a divorce leaves the status of a former tenancy by the entirety undefined till a court determines it;) also E.g., *Bernatavicius v.*

Bernatavicius, 259 Mass. 486 (1927) supra note 23.

As in *Heath v. Heath*, “ that the property settlement agreement must contain terms which show not only that the property rights are to be preserved but that the parties contemplate a divorce.” “Consequently any agreement which preserves these property rights of the parties is sufficient.” emphasis added (see Decree/Settled Agreement, 3.13, “Both parties shall execute..”)

Appellant preserves the rights; ‘Both parties shall sign,’ *but clearly written* within *the Decree* and **signed by a Judge. The Right of Due Process.**

In *Bernatavicius v. Bernatavicious*, 259 Mass. 486 (1927)“The quality of an estate by the entirety is established by the deed of conveyance upon it’s delivery and acceptance,...” “Naturally the quality of that estate continues until it is changed by deed of both parties, or possibly of one party directly or indirectly to the other or by the death of one of the parties.” “When persons who have been tenants by the entirety cease to be husband and wife, the legal factors necessary to that tenancy have gone out of existence. These considerations lead us to the opinion that the operation of divorce of the parties upon a tenancy by the entirety, creates a tenancy in common. The decisions hitherto cited are to that effect.” emphasis added

Dissolution proceedings are *always* contentious and Title

Researchers are constantly warned to carefully glean Decrees, heirs, estates, liens, etc. etc. As per the transfer of these two particular properties, the Decree of Dissolution / Settled by Parties was used as the instrument for ‘conveyance,’ and filed on record within Island County Auditor. The wording and location of the instructions for *legal conveyance* could not be more precise. 3.13, © “ Both parties shall execute....” For Researcher of Records, Section 3.13 © should ***scream***

“RED FLAGS” to their attention. This is NOT an ambiguous statement. Nevertheless, Chicago Title ignored its meaning and comes now to beg the mercy of the court (incorrectly) for RCW 6.28.030 or a quitclaim deed, whereas *either* requests would be mandatory Before a legal deed could convey. The more appropriate law in view of Respondents previous actions, would be ‘False representation concerning title; **RCW 9.38.020**.

RCW 65.12.200 Decree-Contents-Filing “Every decree of registration... It shall contain a description of the land as finally determined by the court and shall set forth the estate of the owner, and also in such a manner as to show their relative priority, all particular estates, mortgages, easements, liens, attachments, **homesteads**, and other encumbrance, **including the rights of husband and wife, if any, which the land or the owners estate is subject, and shall contain any other matter or information properly to be determined by the court** in pursuance of this chapter.” (Emphasis added)

Island Title, Chicago Title, Attorney’s, Real Estate Agents, and Recorders of Title have distinct knowledge of RCW 65.12.200, and practice it’s meaning – everyday. They are cognizance of the consequences and consistently caution their underwriters:

‘In regard to title insurance, the safest rule of practice is to assume that the joinder or consent of the other spouse is necessary.’ Homesteads: ‘The statutes impose a strict requirement that every deed or mortgage of the family home or principle residence be signed by both spouses. There are no exceptions. It is not technically proper to avoid this requirement by either power of Attorney or quit claim from one spouse to the other. The deed or mortgage instrument itself should be signed by both parties.’ - Stewart Title Guaranty Company.

G. Powers of Attorney

This Court knows that an Attorney cannot Deed property without a Power of Attorney prescribed by Washington State Law. **RCW 26.16.070, .080, .090.** An Attorney cannot maliciously grant real property without a Certificate of Power **RCW 64.08.050**, showing Lot, Block, Hector, of the prescribed real estate, for which the Power is freely given.

“This instrument is required to be; dated, acknowledged, witnessed by two, and notarized. Such certificate shall be prima facie evidence of the facts therein recited. The officer or person taking the acknowledgment shall have satisfactory evidence that a person is the person whose name is signed on the instrument if that person: (1) Is personally known to the officer or person taking the acknowledgment; (2) is identified upon the oath or affirmation of a creditable witness personally known to the officer or person taking the acknowledgment; or (3) is identified on the basis of identification documents.”

The Attorney of Appellant, (Mr. Clark Harvey) did not possess a Power of Attorney in which to deed real property or Homesteads. Therefore, it is critical, documented (and mandated) that “Both parties shall execute....” “Any disputes shall be resolved....” This was the opportunity for the Superior Court to discover the Fraud, and **“not after.”**

An Attorney has to physically hold a Power (as described above) otherwise communication, hand-jotted notes, or failed memory are of no value. (Paramount in a long distance legal matter.) If this were not the case in point, Attorneys could transfer (convey) property to anyone of their desire. Without a Power of Attorney, we have removed the **most** “Critical

Link” - in a “chain of title.” Without a Power, (or deed) two Attorneys could literally ‘get together’ and “Pluck the Turkeys.” At the very minimum – an Attorney would be required to have an acknowledgement (by the owner) of property he intends to convey, even so, an acquired acknowledgement, does not comply with the law or deeds. An Attorney is required to have a Power, - *before* he can even purport to convey Homesteads or a Deed. (RCW 64.04.010) (CR 11, (a). As Officers of the Court, this is a legal requirement. Without this stop/gap Attorneys could run ‘Wild.’ There is *no such thing* as an “implied” P.o.A., or “She gets the farm and He gets the shaft,” in a - “Settled By Parties, - Agreement.”

H. Island County Superior Court To Resolve Any Disputes:

‘As per **RCW 64.04.010** leaves no doubt as to ‘every conveyance of a real property interest shall be by deed,’ and the Decree of Dissolution is crystal clear in following the Laws of Washington State, “Both parties shall execute...” The proper course of action would have been for Debra Page, Island Title, or Chicago Title, to simply request Appellant to sign (or join) in a Deed to Debra or Respondents on September 22, 2000. If Appellant *would not* sign a Deed, then the Decree of Dissolution *clearly* directs the path the Respondents are ORDERED, - to have taken. “Any disputes concerning the requirements of this order shall be presented to the

court for resolution.” Very clear and precise, - equal protection of law.

There are many possibilities the Court could have suggested or “Ordered,” however, contrary to the Decree, this did not happen. The Court could have “Ordered” Appellant to “Sign a Deed,” however this scenario did not happen either. This Court has to ask the obvious question, Why Not?

Now, before this Court, stand the Respondents, asking the same question as this Honorable Body. Where is Appellant’s signature or why didn’t the Court have the opportunity to resolve this issue prior to sale or ‘listing.’?

This is not a difficult lawsuit. Respondent either has a deed prescribed by law or by the court, - or his deed remains worthless. Appellant is not responsible for Respondents failures or lack of inquiry. *Caveat emptor, Laidlaw v. Organ* 15 U.S Supreme Court, 178 (1817)

I. Divorce By Trial vs. Settled By Parties and /or Agreed Judgment

Because Appellant was not privileged to communication as to the sale of his homestead and properties, one can only surmise how the Decree was presented to Island Title or Realtors. If this was a Divorce by Trial, both parties with representing Attorney’s would attend and argue the pros and cons of the proposed Decree, and a Judge would issue a decision dividing the community property in a fair and equitable way. This was not the case in this particular instance. As explained previous, Appellant was

never privileged to view this Decree, rather Appellants Attorney signed the Decree without authority as required by CR 11, (a) and *mailed* the Decree to Petitioners Attorney, who “entered” the Decree, *Exparte*, with no verification as required by law.

If there *was* a trial, then title could transfer or convey as per the Court’s Orders, including due process. However, a ‘Settled by Parties or Agreed Judgment,’ is a different nature. The Title or Conveyance would have to precisely follow the wording of the Decree. If Someone? *misrepresented* a ‘Settled by Parties, Agreed Judgment,’ cloaked as a ‘Award by Trial - Judgment,’ this would be considered, - as “Forgery.”

A person commits forgery if: ‘Makes any false document or any part of it, with an intent to: support any claim or title, cause any person to part with property, cause any person to enter into express or implied contract, in any material part of the instrument whereby a new operation is given to it, for the purpose of fraud or deceit.’ (RCW 9.38.020) “Fraud in the execution, is usually treated as forgery, making the deed absolutely void.” (See RCW 9a.60.020, .030, .050, RCW 9.38.020) & *Law of Property, Lawyers Edition, Ch 11.1*

POST -- SEPTEMBER 22, 2000

The Deed promoted by the Respondents, was void in the conception. Any attempts to secure the transaction, are merely attempts to cover-up Fraud, Forgery, or a Title that was unmarketable due to the lack of conveyance as Ordered in the Decree. The Respondents are merely ‘pawns’ thrust to the forefront of this Court, by Island Title/Chicago Title,

who are paying for his defense. (**Appendix B, Declaration of Zosia Stanley, Billing Records**, “Client: Fidelity National Title Group”) They should be ashamed to stand in the shadows, and subject their client to this abuse. Because they are a Professional Corporation and transfer titles of deeds everyday, Island Title/Chicago Title knew of their culpability the moment Respondents signed their names. This conveyance (contempt to a court order) and post practice to stonewall, shows this Court of their defiance.

Upon knowledge of the community homestead being unlawfully deeded to Respondents, Appellant flew immediately to Island County, Whidbey Island and filed to vacate the Decree of Dissolution, based on Fraud. A Final Order has never been entered in Case # 97-3-00436-3.

**Post - September 22, 2002, A Stipulation IS NOT a Deed.
(Stipulation and Order)**

Opposing counsel will wave this forged and withdrawn document before this court. This was a stipulation that was drawn to facilitate the sale of commercial property known as “Motorola,” who’s lease expired by it’s terms on April 28, 2002. (**Exhibit C of Decree**) As previously explained, the property (Motorola) was to be held as Tenants in Common, but made no mention of (who) would be responsible for the taxes, improvements, maintenance, electrical, insurance, leases, etc. It is imperative that the

functions of this tower, remain operational, (with leases) for reason the 120' tower held the services of Fire Departments, Police Dispatch, 911, Oil Spill Response, Doctor's Pagers, Telephonic communications, etc. etc. - far and wide. Because the unapproved/unviewed Decree failed to mention any responsibilities of a 25 year 'Community Licensed Business,' these critical 'public services' were on the verge to 'collapse.' (These two Yahoo Attorneys from Island County must have figured it was 'just a little' "Cell Site??" –unheard of in Alaska at this time.)

On 8/12/2002, Appellant withdraws his signature, terms, and cashiers check, in a letter to Chris Skinner and Jacob Cohen, (opposing counsel.) "1. As of 9:00 AM Pacific Time, Monday, August 12, 2002, the Offer and Stipulation signed by myself (Appellant) on August 1, 2002, is hereby withdrawn, and the Cashiers Check for \$20,000 held in your trust, is to be returned..." 4. "I am presenting no other offers or alternatives." Attorney Christon Skinner, withdrew his representation on 7/25/2002, as revealed by the Court Docket. This document is a Forgery, as evidenced by multiple unwitnessed signatures, multiple dates, Attorney's not of Record, a voided document, (8-12-2002) designed to veil a Fraudulent transfer of Deeds. **RCW 9.38.020.**

VERBATIM REPORT OF PROCEEDINGS, (Motion to Release Lis Pendens, Attorney Fees) April 23, 2010, Page 19, Line 20.

COURT: All right. Since you're the moving party, you have the right to close.

MS. JOHNSON: I think I'll just do that from here, Your Honor. So, just for the record, under the original decree from 1999, Section 3.13 reads, ©, "Both parties shall execute whatever documents are necessary to carry out the transfers and distribution ordered herein. Any disputes concerning the requirements of this order shall be presented to the court for resolution."

VERBATIM REPORT OF PROCEEDINGS, (Motion to Release Lis Pendens, Attorney's Fees) April 23, 2010. Page 21 Line 1.

MS JOHNSON: "Section 8 reads--Or Section 6. Sorry. 'The respondent agrees that he will assert no claims against the petitioner or any third parties in connection with the respondents sale of the Island County Deer Lake Road real property that was awarded to her in the decree.'

This is a Moot Point, for Appellant (*respondent*) did not sell any property that was awarded to *respondent*, - which would be the Offices and Property of Kenai Steel , and the Tenancy in Common that encompasses 50% of the properties (including Lake of the Woods) that Appellant would not - convey.

"Because there was no conveyance of the original interest by deed as required by statute, RCW 64.04.010, no interest was effectively conveyed." *Kesinger v. Logan.*)

Only a deed will stipulate property.

This Stipulation is a Forgery (documented within the record) and was null and void on 8/12/2002. Respondents intention is to divert attention. Respondent either has a deed conforming to Courts Order

issued 11/05/1999, or he does not. Comes Now, Respondent, - begging the mercy of this court for another bite of the apple. A forged stipulation is a far, far reach, from a Deed.

“To constitute a delivery, the grantor must part with legal possession of the deed and of all the right to retain it.” *Casidy v. Holland*, 27 S.D. 287, 130, N.W. 771.

L. Lis Pendens Filed, Lot A, Lot 14.

After many Notices to Quit were delivered to the Respondents, and many letters to Chicago Title, Appellant filed Lis pendens of each of his two properties, with declaration of the pending lawsuit, 97-3-00436-3.

RCW 4.28.320. (APPENDIX A, pg. 19) This action remains pending in the Island County Superior Court, (Both parties shall execute, ...or resolve in court) which would greatly effect Respondents “*unlawful Void Deed.*” Only the Courts of Washington State can find restitution of the property Rights that were conveyed unlawfully in Case # 97-3-00436-3. The titles will become greatly effected from the resolution of that partition, for Appellant is relatively positive the outcome will be far different, and Appellant cannot be withheld due process as granted under Constitutional Law. A partition can only be derived from Appellant and Debra Page and their heirs. The Lis Pendens needs to remain, to minimize future unsuspecting parties.

M. Quality of Title

As previously determined by many courts of law, the operation of a divorce of parties upon a tenancy in community, creates a tenancy in common and that there can be no severance of such estate “by the act of either alone without the assent of the other.”

“Chain of title problems which can affect marketability include conveyances known by the purchaser to be forged, undelivered, procured by fraud or duress, or executed by a minor. A title traced through a judicial or other legal proceeding is unmarketable if it was conducted without jurisdiction or without compliance with statute. A fiduciary’s deed will not convey a marketable title if he acted outside his authority or in violation of his duty.” *Law of Property, Lawyers Edition, sec 10.12, Title Quality.*

“Fraud in the execution is usually treated like forgery, making the deed absolutely void,” *Law of Property, Ch. 11.1*

“A divorce leaves the status of a former Tenancy by Entirety undefined till a court determines it.” (*Heath v. Heath, D. C. Cir. 1951*) and

RCW 64.04.010 ‘Every conveyance of real property interest....must be by deed. & **RCW 64.04.020**, “Every deed must be in writing, signed by grantor and acknowledged before a notary public...”

see Ch. 64.04 RCW et seq “Washington enacted it’s present conveyances law in 1929, based on laws of prior years dating as far back as 1854.”

“A defect in a deed is one which effects the essential formalities of the deeds execution and delivery or which casts doubt on the grantors capacity. The grantor *or his successors* may rely on this defect to have the deed canceled or set aside.” “The courts generally label the deed void or voidable depending which particular defect exists. *Law of Property, Ch 11.1 720.*

‘The deed is void where there is clear absence of authorization from the

grantor.” *Robinson v. Bascom*, 85, N.M. 453, 513 P.2d 190 (App.1973)

“A deed is void until the grantees name is actually inserted. The rule seems to be well settled that a deed duly executed and acknowledged and shown to be in the possession of the grantee is self proving and the burden is upon the party claiming it was not delivered.” *Karlin v. Karlin*, 89 S.D. 523, 235, N.W. 2d 269 (1975.) also in *Kesinger v. Logan*, 113 Wn 2nd, 320, 779, P.2d (1989)

Respondents cannot maintain a lawsuit for Quiet Title, ***without*** exposing their Title or Deed. **RCW 7.28.120**. Respondents have the burden of proof to reveal what title or claim they can show to the court, ***before*** a Summary Judgment could be entered against the Appellant. The Laws of Washington State do not allow the Respondents to merely claim ownership because they paid moneys, but rather the Respondents have the burden of proof to exhibit a legal and equitable Deed as required by Law. **RCW 64.04.010, .020. RCW 7.28.120.**

N. Recusal of Judge Vickie Churchill

Judge Churchill omitted many requirements administered by the State of Washington Judicial Council. Upon entry and review of a Decree of Dissolution,/ Settled by Parties – Agreed Judgment, a Judge has the responsibility to glean the entered documents for signatures, and conformance, as per Washington State Law requires. **(CR 11, (a)** Most importantly, if minor children are to be ordered by the court, for scheduled events, transportation, and health care expenses. Wills. Order of Child

Support etc. pursuant to criminal violations, and/or arrest, **(RCW 26.18.)**

then it is the Judges requirement to confirm that both parties have attended mandated seminars and acknowledged related documents. (CR11(a) Judge Churchill was lax on her duties as Judge in Island County concerning these matters. Because Judge Churchill was negligent as to her duties on matters described, and knowledge of previous Attorney's unethical practices, Judge Churchill respectfully recused herself from the remainder of the proceedings of Case #97-3-00436-3, on 8/31/2001. A Judge has the same responsibilities as an Officer of the Court (Attorney) whereas 'Conflict of Interest' would be *determinable* to the Courts. Judge Churchill is also owner of a Real Estate Brokerage in Oak Harbor Washington since 1972 and does business on a daily basis with Chicago Title Company, who are paying for the Respondents legal fees, and stand to lose a considerable amount of money should Respondents not prevail. **(APPENDIX B, Declaration of Zosia Stanley, Exhibit E, pg. 1 of 4.)**

"Client Information: Fidelity National Group, Omaha Claims Center." Originating: - Billing: - Supervising: - Gregory Ursich." It "seems" that our Officers of the Court are being less than truthful, of their intended clients.

Also consider: **Rules of Court, Judicial Conduct, 2.11 (A) (1), (6) (d).**

VERBATIM REPORT OF PROCEEDINGS, March 28, 2011
Motion for Reconsideration, Motion for Recusal
Page 3, Line 6.

Walter Page: "The second motion is a motion to request that you recuse yourself from this case. I have been notified and found out that you are the owner of a real estate brokerage."

The Court: "No, I'm not. That's separate property of my husband's."

Walter Page: "Your livelihood is derived from the plaintiffs, Chicago Title. And your business relies on the plaintiffs securing a judgment in this case. Your business would probably dissolve without a title company and the plaintiffs to underwrite your clients."

Page 10, Line 4.

Walter Page: "Are you insinuating that this --

The Court: "I'm denying--

Walter Page: "--Court does not care about fraud?"

The Court: "I'm denying your motion. I'm allowing the -- I'm denying both motions. And I'm allowing a new, updated cost bill to be provided to me."

"Fast Forward,- 10 years later." The issues presented to this court are the Same Issues as presented in the Case #97-3-00436-3, only that the "Parties Involved" have been replaced with 'new replacements.' By presiding over this Case #09-2-00492-1, Judge Vickie Churchill is presiding over the same issues she has Honorably Recused herself from, - on 8/31/2001.

Verbatim Report of Proceedings; Motion for Summary Judgment, Quiet Title, Attorney Fees; June 17, 2010, Page 8, Line 18:

Court: "All right. Mr. Page, you continue to mix up this particular proceeding with the dissolution proceeding. You very well may have some remedies in your dissolution action if, as you believe, the -- your wife or ex-wife has sold the property without proper authority."

“But we have a purchaser that relied on the sale of the property; has – has done that. And if you, as you well believe, that this is not valid, then the Court of Appeals is waiting for you.”

Appellant would humbly disagree with this ruling. Just because there is a purchaser that relied on the sale of the property, does not make the purchasers conveyance of the property or deed, - Valid, - compared to buying a vehicle, boat, snow machine, business, licenses, etc. - with a forged title. Chicago Title does not issue Title, ONLY the previous OWNERS, - can issue a “Valid Title” or licenses.

Kesinger v. Logan, 113 Wn 2nd, 320, 779, P.2d (1989). “Because there was no conveyance of original interest by deed as required by statute, no interest was effectfully conveyed.”

Daly v. Rizzutto, 59 Wash. 62, 65, 109, P276 (1910) “It is a well settled rule that where a purchaser has knowledge or information of facts which are sufficient to put an ordinary man upon inquiry, if followed with reasonable diligence would lead to the discovery of defects in title.”

“A bona fide purchaser can rely upon the record chain of title as shown in the office of the county Auditor.” *Biles-Coleman v. Lesamiz* 302 P 2d 198 Wash: Supreme Court Dept. 2.

‘Someone,’ has hoodwinked the unwary Respondents, - favored his money and trust, and now display his nakedness as their shield of protection, against the honest truth.

“We would be **more than willing** to settle this case through preparation of a quit claim deed to be signed by Mr. Page” (emphasis added)

2.Verbatim Report of Proceedings; Motion to Release Lis Pendens, Attorney Fees; April 23, 2010, Page 16. Line 12

Court: So you were under a requirement to sign a deed, didn't do so, and believe that because you didn't do so that stopped everything?

Walter Page: No. I was never required to sign a deed.

Court: It says that you shall doesn't it?

Walter Page: No, it does not say that I'm required to sign a deed.

Court: All right.

Walter Page: There is no – nothing in this decree that requires me to sign a deed. However there is something in this decree that compels them to have my signature.

It is crystal clear (**APPENDIX A**, - Summons, 6/13/2009, 09-2-00492-1, pg. 25) that Chicago Title, Debra Page, did not favor the Appellant to sign a Deed. You will take notice that my signature line is not even present on this deed. It was *their intention* to unlawfully convey Appellant's property, and never to even contact Appellant to tell him "We are going to sell your homestead and there is nothing you can do." Perhaps Respondent's didn't consider a Lis Pendens. Only then, - did they react with a Summons for Quiet Title, on property which they were squatting. (May this court note: Even if *requested*, Appellant **would not have** signed a Deed or Conveyance to remove his Families Farm on 9/22/2000) Judge Churchill, wants to penalize the Appellant Tens of Thousands of Dollars, 'because he will not sign a deed!' The Decree is crystal clear in resolve; 'Return to Court.' It is obvious that the Island Superior Court is reluctant to remove it's head from the sand. Judge Churchill had the opportunity to correct her previous mistakes in case # 97-3-00436-3, by

simply reciting the decree, and/or recuse herself knowing she had knowledge of her previous involvement in the dissolution action, a Conflict of Interest, however she has granted a Summary Judgment in violation to Court Order (Decree, Agreement) which she previously signed and became a Judgment. Judge Churchill is speaking from two sides of her mouth at once. One side; is saying that a dissolution action exists and that she has signed a standing Order (Decree) requiring two signatures for transfer or return to court, on the other side she is saying she will sign Summary Judgment that is in violation and *in contrary*, - to the Order she signed on 11/05/1999. Judge Churchill would be bias and in conflict to sign a Summary Judgment (including Attorney fees) contradictory to a Final Judgment (Decree) that lies in (contempt of court) of Judge Churchills' previous ruling, **RCW 7.21.010 (b)** and filed in Olympia WA, - by Her Honor on 11/05/1999. Judge Churchill fails to view the law from equal sides. "Walter SHALL sign!" (says the Judge) - is only one, whereas 'Her Honorable *Order*' contains - Two, ("resolve in court").....which NEITHER ONE, was adhered.

VII. Conclusion

The citizens of this Great Land, are protected by the Constitution of Law, Bill of Rights, Courts, States, to abide within the Laws of the

United States of America. I refuse to be left limb-less, and no man nor law, has ever been created, allowed to steal from my loins or the dirt that derives the income of my family, - until the soil is placed firmly upon me.

1. Chicago Title deserves to be punished for issuing a deed in direct conflict to a Court Order and 'casting' the unworthy - Respondents, "into the pits" - with a "Vested by Title, Owner" - *as Me*. They continue to defy the Laws of Property and the Laws of Washington State.

2. Since Respondents do not possess a Deed conveyed as Ordered and Agreed in the Decree of Dissolution signed on 11/5/1999, or as required under Washington State Law RCW 64.04.010, RCW 7.28.120, Respondents should be ordered to remove their Lock, Stock, and Barrel, and pay Appellant for the prior use of his property, including fees, to be determined in Island County Superior Court.

3. The Lis Pendens (2) needs to stand, to protect future mortgagers, easements, divisions, heirs, etc. until such time as the disposition of the estate is resolved.

4. Judge Churchill would be 'respected' to recuse herself from these proceedings, and her decisions stricken from the record and the files.

5. This action should be dismissed as per RCW 7.28.050, - 7 years.

6. Appellant requests fees and costs determined by this court, to bring this decade action to trial.

Dated 5/20/11

Respectfully Submitted.

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Walter Sterling Page Pro se
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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of May, 2011, I caused to be served true and correct copies of the foregoing: APPELLANT'S BRIEF, and this Certificate of Service, on the court and counsel by First Class

Mail as follows:

Court of Appeals
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One Union Square
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Seattle WA 98101

Inslee, Best, Doezie & Ryder P.S.
Anneliese E. Johnson
Mark S. Leen
Gregory L. Ursich
777 - 108th Avenue NE
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Bellevue, WA 98004

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 20th day of May, 2011.



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APPENDIX B, Declaration of Zosia Stanley, Inslee, Best,
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LAW OF PROPERTY, Lawyers Edition,
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