

No. 65994-4-I

COURT OF APPEALS, DIVISION I  
STATE OF WASHINGTON

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DENNIS JORDAN, Appellant

vs.

PATRICIA JORDAN, Respondent

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APPELLANT'S REPLY BRIEF

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Dennis Jordan  
Dennis Jordan & Associates,  
Inc., P.S.  
Appellant Pro Se

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COURT OF APPEALS, DIVISION I  
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JL

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**Abbreviations**

CP - Clerk’s Papers

RP - Record of Proceedings

NOTE: Volume I and Volume III of the Record of Proceedings contains two page numbers on each page. For purposes of the Appellant’s citations to Volume I and III, only the page numbers at the bottom of the page are used.

## 1. ASSET CHARACTERIZATION:

The Respondent argues that the trial court's characterization of the LLC and/or the properties within the LLC as community property was correct:

Even if there was error assigned to the community property findings, there is sufficient evidence to support the trial court's characterizations.<sup>1</sup>

\* \* \*

The trial court's characterizing the Mt. Baker Cabin as community property was, therefore, not error.<sup>2</sup>

The Appellant does not disagree. In fact, the trial court's community property characterization of the LLC and the assets owned by the LLC is solely attributable to a pre-trial stipulation that the Appellant and the Respondent entered into:

Prior to trial, the parties entered into an Agreed Stipulation under which this LLC and its assets were to be awarded to the Appellant while another property, located in Panama, was to be awarded to the Respondent. (CP 242) **Under that same Agreed Stipulation, it was also acknowledged that the LLC, its assets and the Panama property constituted community property.** (CP 242)<sup>3</sup>

Therefore, contrary to the implication of the Respondent's Brief, the

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<sup>1</sup> Respondent's Brief, page 10.

<sup>2</sup> Respondent's Brief, page 11.

<sup>3</sup> Appellant's Brief, page 3; See also Respondent's Brief, pages 3-4.

characterization of the assets is not at issue in this appeal as to either the LLC or the assets owned by the LLC (including the Cabin).

## 2. RELIEF SOUGHT BY APPELLANT:

Respondent characterizes the Appellant's position on appeal to be as follows:

Prior to trial, Dennis Jordan stipulated the LLC was community property. Now on appeal, he insists that the trial court was required to give him a special credit for his separate property contribution to the LLC. (Emphasis supplied.)<sup>4</sup>

To the contrary, the Appellant does not seek a ruling from this Court that the *Nuss* principles are "mandatory." Clearly, their "applicability" depends on the "appropriate" case:

We hold that the origin of community property as one party's separate property may still be considered in appropriate cases as a reason for awarding all or a disparate share thereof to that party.<sup>5</sup>

It is believed by the Appellant that the facts of this case present an appropriate case for the application of the *Nuss* principles.

However, in this case the trial court specifically held that "[t]he case of In re Marriage of Nuss with respect to the Mt Baker Cabin, does not apply."<sup>6</sup>

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<sup>4</sup> Respondent's Brief, page 1.

<sup>5</sup> *In re the Marriage of Nuss*, 65 Wash. App. 334, 341 (1992)

<sup>6</sup> CP 314 (Finding "F".)

In other words, the trial court appears to have concluded that it had no discretion to apply the *Nuss* principles. This determination appears to arise from two factors. First, Finding of Fact F (CP 314):

F. The LLC agreement was drafted by the Husband. The Husband is an experienced real estate attorney with decades of experience drafting LLC documents. The LLC agreement lists the parties' ownership interests in the LLC at 50% each.

Presumably, as a result of that Finding, the trial court felt that the Appellant "should have known better." However, whether the Appellant "knew better" or not doesn't differentiate the facts from *Nuss* where the husband in that case also made a voluntary transfer.<sup>7</sup> (Alternatively, the trial court's Finding of Fact F could be read to mean that the fact that the property was owned by an entity that also owned other properties would prevent the application of *Nuss*, an issue discussed on pages 14-16 of Appellant's Brief.)

Second, the trial court expressed in its oral opinion at least a second factor that resulted in a determination that *Nuss* did not apply<sup>8</sup> – that is that the loan against the Cabin was eventually incorporated into the loan for the

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See also In Re Marriage of White, 105 Wash. App. 545, 551 (2001) which held as follows: "When exercising its discretion, a trial court is permitted to consider, as one relevant factors, a spouse's unusually significantly contributions to (or wasting of) the assets on hand at trial.

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This second factor was not incorporated into the trial court's written Findings.

condominium owned by the LLC but, then, prior to trial, again segregated back out to the Cabin only.<sup>9</sup> As previously expressed, this arrangement existed for the benefit of the Appellant. (See pages 6 and 10 of Appellant's Brief.) This temporary arrangement, however, does not distinguish *Nuss* in a manner that would result in its principles not being applicable. In fact, given the stronger facts that this case presents over the facts of *Nuss*, and lacking any proof from the Respondent that she was somehow damaged by this temporary arrangement or that the temporary use of a community asset as security for a debt associated with a separate property asset somehow enhanced the value of the Cabin property, there is no justifiable reason preventing the origin of the property from being considered by the trial court should still be considered by the trial court<sup>10</sup>:

**Facts Under *Nuss*:**

1. Short term marriage (5 years).

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<sup>9</sup>

During the marriage of the parties, both before and after conveyance of the Cabin to the LLC, interest only was paid on that portion of the Cabin debt that was secured by the condominium and, during that time period when the condominium equity was being used to secure that debt, the community had exclusive use, occupancy and enjoyment of the Cabin.

<sup>10</sup>

Contrary to the statement of the Respondent, the Appellant did not ask the trial court to award him the Baker Cabin as his separate property. Rather, the Appellant asked that there be a disparate allocation of the value of the LLC based upon the origin of the Baker Cabin.

2. Real estate held under community ownership since beginning of marriage
3. Community efforts reasonably enhanced the value of the property.

**Facts Under Jordan v Jordan**

1. Shorter term marriage (3 years 5 months).
2. Real estate transferred 7- 9 months prior to end of marriage.
3. Community efforts did not enhance the value of the property in any measurable way either before or after the conveyance.
4. Transfer made with sole motive of “saving” the marriage following threat by Respondent that she would develop second life in Seattle on the weekends if transfer was not made.

In conclusion, it is clear that the facts of this case are even stronger than the facts of *Nuss*. The reasons given by the trial court that the principles of *Nuss* “with respect to the Mt Baker Cabin” did “not apply” in either its oral decision or as set forth in its Findings are simply not sufficient to distinguish *Nuss*. Therefore, given the facts outlined above, the trial court, in reaching its decision allocating the value of the LLC should have engaged in a disparate value allocation in acknowledgment of the separate property contribution of the Appellant to the value of the Cabin. Under the facts, to have not done so was manifestly unreasonable. Under the law, to have

rejected the principles of *Nuss* for the reasons given constituted an error of law. (See page 14 of Appellant's Brief.)

**3. RESPONDENT'S REQUEST FOR ATTORNEY FEES:**

At the trial court, the Respondent requested an award of attorney fees while the Appellant did not. (Vol. III, RP 4) Respondent's request for attorney fees was denied. On appeal, the Respondent again seeks the recovery of attorney fees and costs under and pursuant to RAP 18.1. The Appellant denies that the Respondent has a Financial Need or that the Appellant, not knowing the amount of fees claimed, has the ability to pay. Appellant also denies that this appeal is not well taken, that it constitutes excessive litigation or that it is nothing more than a vexatious attempt for force the Respondent to expend substantial sums in order to keep her equalizing payment. (Respondent offers no evidence other than conclusionary opinions.)

Further, and in any event, RCW 26.09.140 provides that any award of attorney fees is discretionary with the Court. The Appellant requests that this Court follow the lead of the trial court, which also had such discretion, but which declined to exercise it in favor of the Respondent.

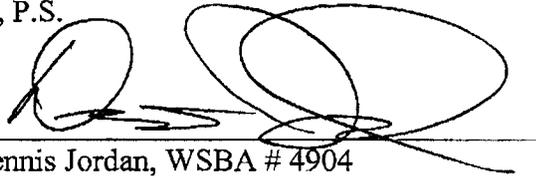
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Respectfully submitted this 26<sup>th</sup> day of September, 2011.

DENNIS JORDAN & ASSOCIATES,  
INC., P.S.

By



Dennis Jordan, WSBA # 4904  
Appellant Pro Se

DECLARATION OF SERVICE

I declare under the penalty of perjury of the laws of the State of Washington that a copy of the Brief of Appellant was on this day transmitted via email as well as arrangements were made with ABC Legal Messengers to deliver a copy to:

Dennis John McGlothin  
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Executed at Everett, Washington on this 26th day of September, 2011.

  
Barbara J. Olson

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COURT OF APPEALS  
STATE OF WASHINGTON  
EVERETT DIVISION