

No. 70918-6

WASHINGTON STATE COURT OF APPEALS, DIVISION I

DENISE E. FERRY, an individual,

*Respondent,*

v.

ROBERT L. EVANS, an individual,

*Appellant,*

and

ALLISON SHERMAN EVANS, an individual,

*Respondent.*

ON APPEAL FROM KING COUNTY SUPERIOR COURT  
(Hon. Jim Rogers)

**RESPONSE BRIEF OF ALLISON SHERMAN EVANS  
AND JOINDER IN RESPONSE BRIEF OF  
DENISE E. FERRY**

FILED  
COURT OF APPEALS  
STATE OF WASHINGTON  
2014 APR 16 PM 4:33

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## I. JOINDER AND GENERAL RESPONSE

Respondent Allison Sherman Evans (“Allison”), after review of Respondent Denise E. Ferry’s (“Denise”) response brief, joins in that brief (“Denise’s Response”). Allison specifically affirms the statement on page 6 and agrees that the Beach Property should be sold. Both she and Denise are entitled to receive their value from the property. Allison also specifically agrees that if Appellant Robert Evans (“Robert”) wants to retain the property, he can bid on it and be the ultimate purchaser if he has the high bid. No one is impeding his right to retain the property so long as he pays Allison and Denise fair market value for their shares. This litigation has occurred only because of his refusal to treat his sisters fairly in regards to the value of the property.

As noted in Denise’s Response, the standard of review for Judge Rogers’ decision is abuse of discretion. Response, p. 7, citing *Friend v. Friend*, 92 Wn. App. 799, 805, 964 P.2d 1219 (1998), *rev. den.*, 137 Wn.2d 1030 (1999). This highly deferential standard in favor of the trial court’s decision is appropriate here since the decision under review is an equitable remedy. Response, pp. 11-12.

The issues reviewed under that standard are: 1) did Judge Rogers reasonably reject Robert’s request to combine two separate properties as one for purposes of partition; and 2) did Judge Rogers reasonably conclude that partition of the Beach Property “in kind” would result in great prejudice to the Evans siblings?

Judge Rogers carefully reviewed the facts and arguments made by the parties and, after careful consideration, reasonably concluded that the two properties could not be treated as one for purposes of partition based on the unique facts of this case, given the nature of the properties and zoning. *See Denise's Response*, pp. 10-19. Indeed, not only was his conclusion reasonable, it was virtually the **only** conclusion that could be reached for these properties under the law. As explained in Denise's Response, had Judge Rogers accepted Robert's proposal to combine the two properties and award Robert the Beach Property under one theory or another, this Court would have been forced to reverse for an abuse of discretion because the result would have been so severely prejudicial to both Denise's and Allison's interests.

Robert is really asking the appellate court to make a different determination than did Judge Rogers, to exercise its own discretion on what it thinks is an appropriate equitable remedy in these circumstances and, thus, to "retry" the case on appeal, which it cannot do. **First**, Judge Rogers's explicit finding is that

As . . . established by evidence to the satisfaction of the Court, the property is so situated that partition in kind cannot be made without great prejudice to the co-owners.

FOF 2, CP 259. This court cannot substitute its view of the facts for those found by the trial court. *Knapp v. Hoerner*, 22 Wn. App. 925, 928-29, 591 P.2d 1276 (1979). **Second**, as *Knapp* points out, it is

fundamental that, even if the appellate court might decide the matter differently from the trial court (which Allison does not think would be the case here in any event), that difference in opinion does *not* constitute an abuse of discretion and does *not* permit the appellate court to substitute its remedy and reverse. *Id. Accord, In re Marriage of Croley*, 91 Wn.2d 288, 292, 588 P.2d 738 (1978) (“Whether we would have reached the same conclusion is not the question before us. Similarly, the wisdom of the trial court's decision is not at issue. The sole question is whether there is substantial evidence to support the court's award of custody.”).

The question on appeal here is whether the trial court made a decision that was within the range of decisions available to it under the facts and the applicable law. *Friend v. Friend, supra; Knapp; Croley*. So long as the decision is made within that context, it must be affirmed. *Id.* Here, as explained in Denise’s Response, Judge Rogers was well within his discretion in requiring the sale of the Beach Property under the facts and circumstances before him. This Court must affirm because there was no abuse of discretion and no cause for this Court to substitute any other judgment for that of Judge Rogers, who carefully considered all the facts and legal arguments.

## II. CONCLUSION

Respondent Allison Sherman Evans respectfully asks the Court to affirm the ruling and judgment of Judge Rogers in all respects so that the sale of the property can proceed as quickly as possible.

Dated this 16<sup>th</sup> day of April, 2014.

**CARNEY BADLEY SPELLMAN, P.S.**

By   
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WASHINGTON STATE COURT OF APPEALS, DIVISION ONE

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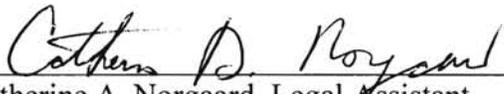
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DATED this 16<sup>th</sup> day of April, 2014.

  
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