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SUPREME COURT
STATE OF WASHINGTON

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NO. 78321-7

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SUPREME COURT OF THE STATE OF WASHINGTON

MICHAEL L. OLVER, Special Administrator of the Estate of
Thuy Thi Thanh Nguyen Ho, Respondent/Cross-Appellant,

Respondent,

vs.

JULIE K. FOWLER, Special Administrator of the Estate of
Cung Van Ho,

and

VU NGUYEN, Guardian ad Litem for Dianna Nguyen, a minor child,
Intervenor/Appellant,

Petitioners.

SUPPLEMENTAL BRIEF OF RESPONDENT OLVER

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TABLE OF AUTHORITIES

Cases

Creasman v. Boyle, 31 Wn.2d 345 (1948)..... 2

Humphries v. Riveland, 67 Wn.2d 376 (1965)..... 2

In re Brenchley's Estate, 96 Wash. 223 (1917)..... 2

In re Estate of Thornton, 81 Wn.2d 72 (1972)..... 2

In re Marriage of Lindsey, 101 Wn.2d 299 (1984)..... 2

Kreidler v. Eikenberry, 111 Wn.2d 828 (1989) 4

Latham v. Hennessey, 87 Wn.2d 550 (1976)..... 2

Peffley-Warner v. Bowen, 113 Wn.2d 243, 253 (1982)..... 2, 3

Poole v. Schrichte, 39 Wn.2d 558 (1951)..... 2

Vasquez v. Hawthorne, 99 Wn. App. 363 (2000)..... 2

Vasquez v. Hawthorne, 145 Wn.2d 103 (2001)..... 2

MISCELLANEOUS

Opinion, p. 12, n.41 3

Opinion, p. 10 3

1. The Court of Appeals Correctly Noted that No Washington Court Has Ever Refused to Apply the Meretricious Relationship Doctrine to Equitably Divide Property Where One Or More of the Parties Has Died.

The opinion below compiles decades of Supreme Court cases where this Court was not troubled by the death of one or more partners. Vasquez v. Hawthorne, 145 Wn.2d 103 (2001); Creasman v. Boyle, 31 Wn.2d 345 (1948) (overruled as to presumption by In re Marriage of Lindsey, 101 Wn.2d 299 (1984)); Vasquez v. Hawthorne, 99 Wn. App. 363 (2000); Latham v. Hennessey, 87 Wn.2d 550 (1976); Peffley-Warner v. Bowen, 113 Wn.2d 243 (1982); In re Brenchley's Estate, 96 Wash. 223 (1917). (The court also cited Poole v. Schrichte, 39 Wn.2d 558 (1951), which did not involve the death of a party although the court extensively discussed the effect of death on the Creasman analysis.)

To this list, the Thuy Ho Estate would add In re Estate of Thornton, 81 Wn.2d 72 (1972), and Humphries v. Riveland, 67 Wn.2d 376 (1965), for the proposition that equitable division of property between unmarried partners in committed intimate relationships is appropriate even where one partner is deceased.

2. Creditor Nguyen Should Have No Equitable Priority Over the Orphaned Harry Ho.

In oral argument, Chief Judge Ronald E. Cox asked why an estate creditor should receive equitable priority to Thuy Ho's separate property over her orphaned son, Harry Ho. This remains a fair question.

3. The Relief Requested Was Not Ruled Upon Below.

The liability of Thuy Ho's separate property for Cung Van Ho's tort is raised in a separate lawsuit as noted by the Court of Appeals. The issue was not framed by the pleadings in the Contradiction of Inventory lawsuit nor ruled upon by the trial court or the court of appeals. Opinion, p. 12, n.41.

4. Thuy Ho Cannot Share In Cung Van Ho's Assets Under Equitable Principles.

As pointed out by the Court of Appeals below, Thuy Ho was not a "spouse," which limits the application of the meretricious relationship doctrine in that she cannot claim a share of Cung Van Ho's estate under the intestate succession doctrine. Opinion, p. 10. A widow would be entitled to fifty percent of her intestate husband's separate property,¹ while a meretricious partner would be entitled to none.²

As a policy matter, no equitable goal nor public policy problem is solved by surcharging a single person's separate property with the separate debts of another single person, where the same equitable principles do not allow them to reciprocally acquire separate assets. The converse is, of course, marriage.

¹ RCW 11.04.015(1)(b).

² Peffley-Warner v. Bowen, 113 Wn.2d 243, 253 (1989).

5. No Showing is Not a Good Showing.

The Court of Appeals dismissed the Thuy Ho argument that post-judgment intervention should not have been allowed with a reference to “liberal construction.”

When no showing is made by movant and the case law requires a “strong showing,”³ such liberal construction makes the rule and philosophy of Kreidler v. Eikenberry, 111 Wn.2d 828 (1989) a nullity *ab initio*.

6. Conclusion

An insolvent estate is subject to the direction of the probate court. The Cung Van Ho Estate was ordered into binding arbitration with retired judge, Gerard Shellan. Creditor did not attend the earlier summary judgment motion, the insolvency hearing, or the arbitration. He consulted with Ms. Fowler throughout the proceedings while the Estate fought his legal battle for free.

The arbitrator could have allocated the accumulated assets 70-30, 60-40, or in any other manner that the evidence led him. In extensive findings, he ruled that Thuy Ho owned fifty percent of the assets.

Thuy Ho could have willed her assets to a charity or children from a prior relationship. That was her right under dozens of Supreme Court cases cited by the Court of Appeals.

³ Kreidler v. Eikenberry, 111 Wn.2d 829 (1989), citing Martin v. Pickering, 85 Wn.2d 241, 243-44 (1975).

There has been no showing to the trial court, the probate court, the arbitrator or elsewhere, why creditor's cries of equity should trump established precedent and the legislature prerogative to create new public policy.

RESPECTFULLY SUBMITTED this 21 day of November, 2006.

BETTS, PATTERSON & MINES, P.S.

By _____
Michael L. Olver, WSBA #7031
Special Administrator of the Estate of Thuy Thi
Thanh Nguyen Ho

CERTIFICATE OF SERVICE

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I certify that on the date noted below, I mailed copies of this pleading to:

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DATED this 27th day of November, 2006.


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