

65604-0

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No. 65604-0

**COURT OF APPEALS, DIVISION ONE  
OF THE STATE OF WASHINGTON**

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Jamie Jensen, Appellant,

vs.

Fredric B. Anderson, et al, Respondent

2011 MAR -3 AM 10:11  
COURT OF APPEALS  
DIVISION ONE  
STATE OF WASHINGTON

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**REPLY BRIEF OF APPELLANT**

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## **I INTRODUCTION**

Rule 11 sanctions were ordered by the trial court on the claim that Jensen's client was not the owner of property, as claimed in the complaint that initiated this case. Jensen appealed, showing that the client was the owner, that the error would have been harmless error anyway, that the Andersons used improper evidence, and failed to give due process.

The respondents have failed to contest Appellant Jensen's assertion of harmless error. Proper pleadings cannot be the basis for Rule 11 Sanctions. Therefore, on this point alone Jensen's appeal must be granted.

Andersons continue to assert their claim that Todd Chase had to be an owner of the subject property at the time the pleadings were filed. They are in error on these contentions.

## **II. ASSIGNMENTS OF ERROR**

Jensen continues his Assignments of Error contained in his brief.

## **III. STATEMENT OF THE CASE**

Jensen continues his Statement of the Case contained in his brief.

## **IV. ARGUMENT**

### **1. FACTS**

Jensen has attempted to present only those matters on appeal that are pertinent to the appeal. The Andersons have not joined him in this effort. In their statement of the case the Andersons make extensive reference to the underlying facts of the case that the Chase's brought against the Andersons, including reference to a temporary restraining order. These items are not part of the appeal, were not addressed by Judge Kurtz in his order, and were not reserved by the Andersons at any point in this litigation.

### **2. LEGAL ARGUMENT**

The Andersons present several matters on appeal, some of which can be ignored as they present no issue for this court. The Andersons have seven sections in their responsive argument. Two of the sections, A, Standard of Review, and C, Inherent Authority, are bare recitations of the rules and provide no issue for the court. Two of the sections, E and F, deal with Attorney's Fees on an appeal and will be dealt with separately. One section, B.1., addresses Due Process. Jensen will rely on his initial brief and the service documentation on this point.

Of the two remaining issues, the first addresses one of the pivotal issues in the case, Todd Chase's ownership of the subject real property.

2. (a) **Decree as Deed:** The Andersons allege that when Todd Chase got divorced his divorce decree awarded the subject land to his former wife and that such an award divested Todd of each and every element of ownership in the property. This assertion is opposite to statutory law and has no case law support. A deed is necessary to change legal ownership. However, in support of their argument the Andersons cite In Re the Marriage of Kowalewski 163 Wn.2d 542, 182 P.3d 959 (2008), which quotes Arneson v. Arneson, 38 Wn.2d 99, 227 P.2d 1016 (1951). The Kowalewski case is unhelpful as the quoted language is dicta and therefore not controlling. (The Kowalewski case dealt with an award of property in Poland.) The Arneson case is not only unsupportive of the Andersons position, but is supportive of Jensen's argument. That case holds that the divorce court powers are broad but not all encompassing. "Nowhere in the (divorce) act is the court empowered to exercise the prerogatives peculiar to other statutory proceedings," at p101. RCW 64.04.010 is a statutory proceeding which states that "Every conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by

deed". Real property is transferred by deed, a proceeding that cannot be circumvented by the act.

In this state a divorce decree can award property to a spouse but the act of transfer must be done by deed. Until the deed is executed and delivered the property is still owned by both spouses. A decree may not take the place of a deed.

Since Todd Chase did not give a deed to his former wife until January of 2010, he was still the legal owner in November, 2009, his November, 2009 pleadings were correct and there is no basis for a Rule 11 sanction.

2. (b) **Standing to Sue.** While this particular point, regarding the decree acting as a deed, has been the basis for all of the procedure in this case since December 4, 2009, it is also harmless error even if Todd Chase was wrong in the pleadings. Todd Chase owned the damaged property at the time of the damage, along with his former wife. He had standing to bring his action immediately following the damage to his property in June and July, 2009. The damage was done and his rights were set on that date. The subsequent alienation of the property either by sale, forfeiture, abandonment, or by divorce decree, does not reduce his right to claim trespass and damage to his property.

The Andersons have chosen not to oppose this argument. If the Andersons do not prevail on this point they cannot prevail on the whole appeal. If Todd Chase had standing to bring his action, regardless of his divorce, then his pleadings were correct and Rule 11 sanctions would be unavailable and must be overturned.

2. (c) **Violation of Rule 404 ER.** The third issue on this appeal is indeed a significant one to Jensen. The Andersons placed Jensen's disciplinary history from Minnesota into evidence in direct and facial violation of Rule 404, Rules of Evidence. The rule prohibits the introduction of character evidence to prove actions in conformity therewith. And Andersons brought this evidence against counsel and not against the parties to the claim. Andersons also presented not only a citation to the cases but entered full copies of Jensen's Minnesota decisions. The Andersons did the most they could to prejudice the court and improperly gain the most advantage they could from Jensen's irrelevant history.

In their brief the Andersons present no evidence or argument whatsoever that their actions were proper, but rather claim that this issue is moot since the trial court stated that the evidence did not make a difference to the court. First, Jensen asserts that the trial court could not help but be prejudiced by the evidence despite the court's apparent effort

to avoid prejudice. Second, the Anderson's error was in the violation of the rule and the presentation of the evidence, not in its effect. The trial court's response to the evidence is not an element of the violation.

Then the Andersons state that Jensen did not preserve this issue. But since the Andersons made no argument to support this statement there can be no reply.

2. (d). **Future Cases.** The second point presented by the Andersons on the evidentiary issue is an argument about evidentiary rulings in later cases. Jensen makes no reply to this point.

### **3. ATTORNEY'S FEES:**

Rule 18.1 governs the award of attorney's fees and expenses on appeal. Jensen understands that a portion of his initial brief is supposed to be devoted to any argument on fees. Jensen only filed a reservation regarding attorney's fees so he is not in compliance with the rule. At the same time, Jensen found himself in a quandary on this issue. The trial court did not award Andersons any fees and Jensen was not the prevailing party so he could not request fees at that time. The only request for fees would be at the appellate level. However, Jensen had not yet seen Andersons brief so he could not know whether fees should be claimed or not. For his part, Jensen would have to file his brief and wait to see if

Andersons response merited an award of attorney's fees. Jensen is not sure how he could argue this point in his initial brief. Regarding the trial court, Jensen will have to prevail on this appeal before he could return to the trial court for a motion to award trial court fees as the prevailing party.

With this in mind Jensen still moves this court to award him all of his attorney's fees on this appeal under Rule 18.9 RAP. The Andersons and their counsel have brought a frivolous response to this appeal. The Andersons and their trial counsel, John Dippold, invented the rule that a litigant must own and have possession of a damaged item at the time of pleading. This alleged rule was completely dispelled in Jensen's initial brief. Jensen showed that the operative date was the date of injury. The Andersons have chosen not to oppose Jensen on this point on appeal. But without prevailing on this point the Andersons cannot prevail on the appeal. Therefore, the balance of their actions on appeal are frivolous and time consuming.

The Andersons, and their trial counsel, John Dippold, also invented the idea that a decree transfers real property. It does not. Real property is transferred by deed only. The Andersons continue that frivolous argument in this court.

The Andersons, and their trial counsel, John Dippold, presented Jensen's disciplinary history in evidence to prejudice the court against Jensen, then argue in this court that the trial court reported that it did not rely on the evidence and it is therefore harmless error. However, the violation is in the act, not the trial courts reaction. The Andersons make this same frivolous argument in this court.

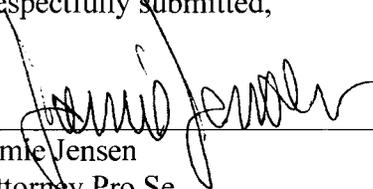
To the extent that this court would consider an award of attorney's fees on appeal Jensen asks that the court entertain this motion for such fees or to award fees on its own initiative pursuant to Rule 18.9 RAP.

#### V. CONCLUSION

Jensen appeals on five points. A decision on any one of the five points would require that Jensen's appeal be granted. The court is asked to rule on all five points but especially on the violation of evidentiary Rule 404 and to find in Jensen's favor on all five points.

Dated this 1<sup>st</sup> day of March, 2011

Respectfully submitted,

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

Jamie Jensen	)	Case No.: 65604-0
Appellate	)	
vs.	)	PROOF OF SERVICE
Fredric B. Anderson, et. al.	)	
Respondent	)	

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I hereby certify under the penalty of perjury that on this date I mailed through the US Postal Service, pre-paid, the Reply Brief of Appellant, to the parties listed below.

Dated this 2<sup>nd</sup> day of March, 2011

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