

72601-3

72601-3

CASE #: 72601-3

WASHINGTON COURT OF APPEALS
DIVISION ONE

RUSSELL JAMES JENSEN, JR. A/K/A JAMIE JENSEN,

Appellant

v.

THERESE BROWN JENSEN

Respondent

APPEAL

from Washington Superior Court
for Snohomish County
No. 13-3-02117-1

APPELLANTS' BRIEF

Jamie Jensen
Mukilteo Law Office
PO Box 105
Mukilteo, Washington 98275-0105
(425) 212-2100

APPELLANTS' BRIEF
FILED
NOV 13 2013
COURT OF APPEALS
DIVISION ONE
SEATTLE, WA

TABLE OF CONTENTS

TABLE OF CONTENTS.....2

TABLE OF AUTHORITIES.....3

 Cases.....3

 Statutes.....4

 Other Authorities.....4

INTRODUCTION.....4

ASSIGNMENTS OF ERROR.....5

 1. The court erred when it removed the husband from his own home and allowed the non-resident wife to sell it without his consent or approval, in violation of RCW 26.16.030(3) , RCW 6.13.060, and RCW 26.09.080.....5

 2. The court erred when it sanctioned the husband \$500 per day, and attorney's fees, for refusing to sign sales documents to a third party when he never agreed, or was ordered, to enter into a contract with the unknown third party.....5

 3. The court erred when it refused to order the wife to effectuate the divorce decree by signing over property to the husband that was awarded to him in the CR 2A agreement and the decree, plus awarding attorney's fees against husband for even asking for relief.....6

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.....6

STATEMENT OF THE CASE.....7

 Facts.....7

 ARGUMENT.....23

 Initial Summary.....23

The Law of the Case.....	25
The Equity of the Case.....	30
Public Policy.....	33
The Relative Outcome of a Decision.....	36
CONCLUSION.....	38

APPENDIX

TABLE OF AUTHORITIES

Cases

<i>Brotton v. Langert</i> , 1 Wash. 73, 23 P. 688 (1890).....	25
<i>In re Marriage of Larson and Calhoun</i> , 313 P.3d 1228, 178 Wn.App. 133 (Wash.App. Div. 1 2013).....	29
<i>In re Marriage of Littlefield</i> , 133 Wash.2d 39, 46-47, 940 P.2d 1362 (1997).....	29
<i>In Re Marriage of Muhammad</i> , 108 P.3d 779, 153 Wn.2d 795 at 803 (Wash. 2005).....	29
<i>In re Marriage of Morris</i> , 309 P.3d 767, 176 Wn.App. 893 (Wash.App. Div. 1 2013).....	30
<i>In re Marriage of Soriano</i> , 44 Wn.App. 420, 422, 722 P.2d 132 (1986), review denied, 107 Wn.2d 1022 (1987).....	21
<i>In re Marriage of Underwood</i> , 326 P.3d 793, 181 Wn.App. 608 (Wash.App. Div. 2 2014).....	29
<i>Keene v. Edie</i> , 907 P.2d 1217, 80 Wn.App. 312 (Wash.App. Div. 1 1995)	25
<i>Kilcup v. McManus</i> , 64 Wash.2d 771, 779, 394 P.2d 375 (1964).....	25

<i>McGlaufflin v. Merriam</i> , 34 P. 561, 7 Wash. 111 (Wash. 1893).....	26
<i>Pippins v. Jankelson</i> , 110 Wash.2d 475, 478, 754 P.2d 105 (1988).....	30
<i>Sadler v. Neisz</i> , 5 Wash. 182, 194, 31 P. 630 (1892).....	25
<i>Taylor Distributing Co., Inc. v. Haines</i> , 641 P.2d 1204, 31 Wn.App. 360 (Wash.App. Div. 3 1982).....	25
<i>Whiting v. Johnson</i> , 390 P.2d 985, 64 Wn.2d 135 (Wash. 1964).....	26

Statutes

RCW 26.09.080.....	5, 28
RCW 26.16.030.....	26
RCW 26.16.030(3).....	5, 25, 27
RCW 6.13.060.....	5, 27

Other Authorities

H. Cross, <i>The Community Property Law in Washington</i> , 49 Wash.L.Rev. 729, 783 (1974).....	25
--	----

INTRODUCTION

The parties were married for 33 years. The wife contracted multiple sclerosis in 1999. By 2013 the husband, sole care giver to the wife, now profoundly handicapped, could no longer handle all of her needs. She moved into a care facility in Omaha, Nebraska where she was born. A divorce was commenced so that she would qualify for Medicaid.

The first act of the wife's attorney, prior to any settlement or discovery, was to obtain an order allowing the wife to sell the family home

without the consent or approval of the husband. The husband, a Washington attorney, wanted to stay in the home. The order was granted over the significant objections of the husband. The husband was then ordered out of his home of seven years on 10 days notice and the home was sold. The sale generated no proceeds for either party.

The divorce was eventually finalized. In the end, the wife took less than \$100,000 in assets from the marital estate, took \$257,612.60 in debts, lost \$205,000 on the forced sale of the homestead, and paid in excess of \$100,000 in attorney's fees. She still is not on Medicaid. Her family is paying her monthly expenses of over \$12,000.

The husband cannot help his ex-wife now but he seeks to overturn the series of Orders that allowed the sale of his home, to invalidate the deed and to regain possession of his home. Further, he seeks to overturn other Orders that assessed him penalties and attorney's fees, Orders that never should have been entered.

ASSIGNMENTS OF ERROR

1. The court erred when it removed the husband from his own home and allowed the non-resident wife to sell it without his consent or approval, in violation of RCW 26.16.030(3), RCW 6.13.060, and RCW 26.09.080.
2. The court erred when it sanctioned the husband \$500 per day, and

attorney's fees, for refusing to sign sales documents to a third party when he never agreed, or was ordered, to enter into a contract with the unknown third party.

3. The court erred when it refused to order the wife to effectuate the divorce decree by signing over property to the husband that was awarded to him in the CR 2A agreement and the decree, plus awarding attorney's fees against husband for even asking for relief.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Can the Superior Court disregard three statutes in a divorce proceeding and, without any equitable basis, authorize the wife, a non-resident of any community property, to sell the family home, for no proceeds to either party, without the consent or approval of the husband?
2. Can the Superior Court, in a divorce proceeding, order the husband to join in a contract which he has not seen or negotiated, for the sale of his home, which sale he opposes, and assess him a \$500 per day penalty, plus attorney's fees, for failing to enter into this undesired contract?
3. Can the Superior Court refuse to enforce a divorce decree in favor of the husband and award \$5,000 against the husband for asking that the exact language of the decree be enforced?

STATEMENT OF THE CASE

Facts

The parties were married on March 28, 1981, in St. Paul, Minnesota. They raised four children, all college graduates who are living on their own.

In 1999 the wife, Therese Brown Jensen (Therese) was diagnosed with primary or secondary multiple sclerosis (CP 640). She started to lose muscle function right away. The husband, Russell James Jensen, Jr. (Jamie) was her only care giver.

The parties moved to Washington in July, 2007, because Therese felt that the extreme cold and hot temperatures of Minnesota were detrimental to her condition. They found a home in Mukilteo, Washington and paid \$830,000 for the home at the top of the housing bubble. This particular house was purchased because it had a wide view of Puget Sound and Therese wanted a great view since she would be home bound most of the time. A mortgage was taken out to purchase the house but, since Therese did not work and was handicapped, the lender did not require that she join in the note. She did join in the deed of trust but was not obligated on the debt.

At the time of the move Jamie, a former real estate attorney, had

been a full-time real estate developer for 11 years. The move, plus three children in college, as well as the decline in the real estate market, was a strain on the parties' finances and Jamie decided to rejoin the practice of law. He took the Washington bar exam and started practice in November, 2008, later founding the Mukilteo Law Office to be closer to home.

In June, 2013, Jamie felt that he had reached the end of his ability to care for Therese by himself. She could no longer hold a fork to feed herself. By that time he was getting Therese out of bed, dressing her, bathrooming her, making breakfast and feeding her, then going to work. He would repeat this action at noon, at dinner, and at bedtime. Therese used a scooter for mobility, but was losing the ability to operate the scooter. (CP 640) A trip in the car consisted of lifting Therese into the passenger seat, then lifting the scooter into the back of the station wagon. The process was reversed at the destination. The return home was the same process.

On June 30, 2013, Jamie wrote a letter to Therese's siblings in Omaha, Nebraska and asked for help. Her siblings said they had expected the call for help. They had talked about it and had decided that, rather than providing help, Therese should go into assisted care. They found her a place near them in Omaha and arrangements were made for her to move to Omaha. The place in Omaha was selected, in part, because it accepted

Medicaid payments. (P 641)

Therese then filed for divorce so that she would distance herself from Jamie's income and allow her to apply for Medicaid to cover her anticipated \$12,000 monthly expenses. (CP 636-657) The filing and service was made on August 15, 2013. Therese left for the care facility in Omaha on September 21, 2014, and she remains in Omaha. Jamie cared for her until she left for the care facility. Jamie remained in Mukilteo.

When she left the home in Mukilteo Therese took all of the assets that she wanted, without limitation. She took all of the jewelry, furniture, household goods, art work, and clothing that she wanted. She also took assets that she could not possibly use, like cooking utensils and excess furniture that would not fit in her new small care facility. She was not limited in any way on anything that she wanted to take with her to Omaha.

Jamie did not agree with the divorce (CP 593) but, knowing the law, he determined not to oppose it. He did not initially file an answer or any pleadings, endeavoring to work toward a fair solution with Therese. At the end the parties' relationship was amicable.

Then, in December, 2013, Jamie took a trip to Florida with one of his high school buddies. (CP 655-657) He stayed in the family time-share unit. Therese's brother, James R. Brown (Mr. Brown), was also invited. He also had units in the time-share building. Upon returning Jamie was

served with a motion by Therese whereby she, through her attorney, Sabrina Layman, wanted to take control of all of the parties' assets, consisting almost entirely of real estate development assets in Minnesota, and to gain alimony of \$3,500 per month. (CP 636-657) Therese had no ability or capital to manage the assets. (CP 542 (4)) Further, Jamie had insufficient income to pay anywhere near the \$3,500 in alimony demanded. Nonetheless, the motion appeared to be based on anger over the vacation. Jamie, still resolved not to contest the divorce in court, declined to plead the matter. The divorce was, apparently, no longer amicable.

On December 24, 2013, Therese sought, and obtained, her Order, allowing her to list the property of the community for sale. (CP 631-635) She was not given the power to sell the property.

Thereafter, Therese hired only one real estate agent. The only purpose for hiring the agent was to sell the home in Mukilteo, Washington, the home that Jamie continued to use as his homestead. The realtor listed the home at a very low price and began showing the home.

Therese then brought a motion to have Jamie excluded from the house for interfering with the sales efforts. The motion was brought on January 24, 2014. (CP 616-630) Jamie did not interrupt the sales efforts, as that might have been a violation of the court Order. He kept the house

clean, in the normal fashion, and allowed any realtor to see the house. “It is true, that the respondent allowed access to the home for viewing, and presumably the home was offered in a presentable condition. . . .” (CP 541) However, Jamie informed all parties that he was not willing to sell the house under the listing terms because it would cause a loss to them of over \$200,000; that the title to the house would not be cleared for a sale if he did not join in the sale and that the listing efforts were in vain. In Therese’s pleadings she said “[Jamie] has made every effort to obstruct the sale of the property” (CP 541) Jamie provided this information to every party who entered the home while he was there and to every party who called for access to the house. He also posted a note on the door so that any potential purchasers would know that he did not consent to the sale. “[Jamie] has also posted a notice on the door which was discovered by the realtor [which stated “Buyer Beware. Title is unlikely to be cleared for sale. Call 651-633-5010 {Jamie’s Cell}”] (CP 541, 567)

Numerous potential buyers came through the house in the first week. Jamie was not told, but learned later, that two full-price offers were received in four days, and one was accepted by Therese. He never saw the sales documents until they were signed. Therese’s pleadings stated “The respondent is correct when he states that I am attempting to exclude him from the sale.” (CP 541)

For the first time, Jamie felt that he had to respond to the pleadings. He had tried to amicably settle the divorce but he got no responses. He opposed the motion.

At the same time that Therese was asking to have the Mukilteo home granted to her alone, Jamie was asking Therese to abandon the parties' former home in Minnesota to him. It had no equity and needed work. Therese responded that such a request could not be made in this court at this time. She states:

Respondent asks that our former home (Dawn Circle) be abandoned to him or awarded to him without payment to me. Putting aside that fact that this appears to be a request which is not appropriate for temporary orders, . . .

Therese states that the action is inappropriate for a temporary order. It is the same action that she is taking; to get the Mukilteo property awarded to her by temporary order.

On February 10, 2014, the court, Commissioner Susan Gaer presiding, issued an Order finding that Jamie had obstructed the sale by indicating his disagreement with the sale and that he had to discontinue his efforts. He was not removed from the home but was assessed \$3,500 in attorney's fees.

Jamie brought a motion for revision of Commissioner Gaer's Order. The motion was denied on February 20, 2014, by Judge Joseph

Wilson.

On the same day, February 20, 2014, Therese brought a motion to approve her sale of the home, to force Jamie to sign the sales documents, and to force Jamie from his property. (CP 477-500). Jamie opposed this motion and cited significant law in his favor. (CP 454-460)

On March 7, 2014, the court, Commissioner Gaer presiding, granted the motion to sell the home against Jamie's opposition, and ordered him out of his house in 10 days. (CP 424-426)

Jamie immediately brought a motion for revision. The motion for revision was denied by Judge Wilson on March 18, 2014. (CP 377-378 and 379-380) Jamie was given 24 hours to move out of his home. Jamie indicated that he would seek an emergency appeal and asked for a supersedeas bond amount. The court declined to give an amount.

Jamie filed his "Emergency Motion to Stay Order of Superior Court, Snohomish County," Appellate Court file no. 71619-1-1. (Apx 1) Thereafter, Judge Wilson heard the motion on the supersedeas bond and determined the amount to be \$45,000. (CP 376) It is unclear where Judge Wilson came up with that figure. Therese had requested \$60,000 in supersedeas bond. Judge Wilson also ordered Jamie to be out of the house by 5 PM that evening.

The appellate court, Commissioner Masako Kanazawa presiding,

heard the emergency motion brought by Jamie to stay the order of Judge Wilson regarding sale and the removal from the home. A request was also made to reduce the supersedeas bond to \$10,000.

In the afternoon of the filing of the emergency motion the parties were called to a telephone conference with Commissioner Kanazawa. The purpose of the call was to ask Ms. Layman how one spouse could sell community property without the consent of the other spouse. A discussion ensued but no determination was made.

As part of the telephone conference the commissioner stated that she did not feel that she had sufficient information to stay the order for removal so Jamie had to vacate the home by 5 PM on March 19. On March 21 the commissioner issued a letter ruling that reduced the supersedeas bond to \$10,000. If the bond was paid by 3 PM that afternoon then the sale would be stayed and Jamie would be returned possession of the property. (Apdx 2) The bond was paid in a timely manner and Jamie did re-acquire possession of the property.

The commissioner determined that the emergency motion should be treated as a Petition for Discretionary Review. Jamie made the appropriate motion. Therese responded.

After oral argument the commissioner determined that the matter was not significant enough to merit interlocutory discretionary review and

it was denied. Commissioner Kanazawa awarded Therese \$2,000 in fees for having to defend against Jamie's efforts to save his house. (Apdx 3) The stay on the Order removing Jamie from his home was lifted and he had to vacate, which he did. He never regained possession of his home.

After Jamie lost possession of the home there was no one to take possession. The house fell into disrepair and the grass grew knee deep. Two or three times an old man came and hacked at the grass. It was never cut. The utilities were not being paid by Therese, nor was the mortgage.

At this point Jamie had exhausted all of his judicial remedies to save his house from a sale by just his wife. He could only wait for the divorce to be over so that he could bring this appeal.

Thereafter Therese attempted to go forward with the sale and closing of the house. Apparently, a closing on the sale was scheduled but Jamie refused to sign the sales documents. He could not save the house but he was not going to join in its loss. However, because he would not join in the sale the title company refused to insure the sale, regardless of the court orders, and the closing failed. The buyers withdrew from the purchase.

On April 18, 2014, Therese brought a motion for entry of judgment against Jamie for non-payment of alimony of \$3,500 per month, plus \$3,500 from the Order of February 10, and \$1,000 for the current motion.

The motion was going to be heard on May 7, 2014. Another nearly identical motion was brought and would be heard on May 13, 2014. The motions were consolidated but delayed until May 20, 2014.

These motions did not seem to make any sense. Therese needed to obtain Medicaid to pay her expenses in excess of \$12,000 per month. To obtain Medicaid Therese can only have income of \$973 per month. Any income in excess of that amount and Therese does not qualify to get the \$12,000 per month. Also, she can only have assets of \$4,000. A judgment for \$21,000 would doubly bar her from getting the Medicaid she needed. Still, her attorney sought these amounts.

On May 7, 2014, the first motion was brought before the court and continued to the later date. However, by oral motion, Therese, by Ms. Layman, asked the court to deny Jamie access to three of his bank accounts. Although no pleadings were filed or advance notice given, the court granted the oral motion. The three accounts were Jamie's personal account, his business account, and his IOLTA trust account. No reason was given for the request and no reason was given by the court. (CP 354-355)

The parties held a mediation from which a CR 2A Agreement was reached. (CP 338-348) The agreement was made to settle all disputes between the parties and to end the litigation. As part of the agreement,

Jamie felt forced to grant that the Mukilteo home would go to Therese. At this point he had no choice, having exhausted all of his judicial options, pending this appeal. Any other act could have led to a contempt of court claim.

However, four days later Therese violated the CR 2A agreement by continuing litigation and seeking, and obtaining, a judgment against Jamie for alimony. (CP 351-352) The alimony issue had been determined in the CR 2A agreement and Jamie had wanted to avoid judgments so that he would have a clear credit record for working on real estate transactions.

As part of the negotiating process Therese asked for a deed from Jamie to the Mukilteo home. Ms. Layman drafted a deed, but used the wrong name for Jamie and put in a clause that said that the deed was given in satisfaction of the divorce decree. No decree had yet been drafted or executed. Jamie agreed to execute the faulty deed, but he would not release it until he was compensated for the lost of the home and he also received all of the other documents he was entitled to receive under the CR 2A agreement.

Jamie placed the deed with his attorney, Gail Nunn, with instructions that it would not be released until all of the other parts of the divorce were complete. After Therese violated the CR 2A agreement Jamie instructed his attorney, by email on June 2, 2014, to shred the deed

and that he would not supply any documents unless the documents that he needed were provided. (Apdx 4. Bold in original) Gail Nunn refused to shred the deed but assured Jamie, by email dated June 3, 2014, that “I won’t return it to Sabrina (Layman) on your request.” (Apdx 5) By email of June 4, 2014, Gail Nunn indicated that no deed could be filed without a REETA (real estate excise tax affidavit). She stated “She can’t file it (the deed) without the REETA I won’t send that to her.” (Apdx 6)

However, opposite her words, Gail Nunn did send the deed to Ms. Layman and did send the REETA to her, apparently on the date of her email, June 4, 2014. It was not learned until after September 18, 2014, that Gail Nunn had not only sent the deed and the REETA forms to Ms. Layman, but that she had also appointed herself as Jamie’s agent and signed the REETA in his place. She was never made Jamie’s agent. The discovery was made when the Department of Revenue issued a REET audit and supplied Jamie with the REETA form. (Apdx 7) Neither Ms. Nunn nor Ms. Layman revealed it to Jamie.

Jamie never supplied the deed or the REETA to Therese or to her attorney. The closing on the home did not take place with Jamie’s approval or permission. The deed was also faulty and could not transfer the title out of Jamie’s name.

Just prior to the closing, on June 30, 2014, Therese brought a

motion to compel Jamie to sign the sales contract, citing the faulty deed, or suffer a penalty of \$500 per day, plus the loss of a development property in Minnesota. The motion acknowledges that Jamie "did sign a Quit Claim Deed and REETA to transfer title to the Mukilteo home to my client." (CP 334) (Jamie did not yet know that these had been given to Therese by his attorney, Gail Nunn.)

The CR 2A agreement did not require Jamie to sign any sales contracts and he had no intention of joining in a contract with people he did not know for a sale he opposed. The CR 2A agreement stated, in its entirety on this issue, as follows:

Awarded to W
(a) Highway 96 Mukilteo Crow Wing
H to sure typing the correct

The agreement awarded the property to "W," meaning "wife." It did not obligate Jamie to enter into any contract with a third party.

The motion by Therese also said that the title company wanted

Jamie to “sign off on the closing documents so there is no confusion or future litigation.” (CP 335) Jamie would not sign off on the closing documents because he would not have been able to bring this appeal. Therese, unknown to Jamie, already had the only deed Jamie would be obligated to give her. Of course, the deed was faulty, and therefore worthless, being in the wrong name, and containing a clause referring to a document that did not exist. (CP 335) Nonetheless, the motion was granted to Therese. (CP 332) Without any other action by, or notice to, Jamie the closing was somehow held on July 3, 2014 and Therese deeded the property to new buyers, who then took possession of the home. Therese alleges that she got no proceeds from the sale, as stated in the Decree. (CP 182)

Therese then brought another motion on July 9, 2014. At that time she indicated that Jamie did not sign the closing documents so he was assessed \$4,500 for the nine days from the earlier motion, even though the closing had occurred six days earlier. (CP 328-330) Jamie was also dispossessed of one of the corporate properties that had been awarded to him in the CR 2A agreement, property in which only Mr. Brown, Therese’s brother, and not Therese, had an interest with Jamie. The trial court had no power over the interests of Mr. Brown, a resident of Omaha Nebraska, and not subject to this court’s jurisdiction, respecting property

held by a corporation in Minnesota. [A dissolution court] "has no power over the property as to the rights of third parties claiming an interest in the property." See *In re Marriage of Soriano*, 44 Wn.App. 420, 422, 722 P.2d 132 (1986), review denied, 107 Wn.2d 1022 (1987). That act brought no benefit to Therese and damaged Mr. Brown's and Jamie's investment by interfering with a development of the property.

Jamie was also assessed \$3,500 in attorney's fees. Jamie was being penalized for not doing something he was not required to do, sign sales documents to an unknown buyer.

Thereafter, nothing happened in the divorce. By August Jamie determined that Therese had abandoned the CR 2A agreement so he filed for a court date for trial. (CP 324-327) Therese responded with a Motion to Enforce CR 2A Agreement and Approve Proposed Final Pleadings. (CP 265-323) The motion was to be heard on September 23, 2014.

Jamie opposed the motion to enforce the CR 2A agreement due to violations of that agreement by Therese. (CP 140-148 and 149-169)

A day-long telephone motion was heard by Judge Anita Farris on September 23, 2014. At that time the court determined to issue a Decree of Dissolution, (CP 170-190) Findings of Fact and Conclusions of Law, (CP 191-197) and an Order (CP 198-201) setting out the terms of the divorce. The parties respectfully agreed to disagree on a number of points

and the documents were signed and initialed by all parties.

At this point the CR 2A, the Decree, and the Findings of Fact and Conclusions of Law granted Jamie property in Minnesota. Several of the properties had notices of lis pendens on them from Therese. Jamie asked that the properties be signed over to him and the lis pendens discharged. Therese refused.

On October 2, 2014, Jamie brought a motion to compel Therese to give him the properties he was awarded. (CP 100-137 and 138-139) Therese objected to the motion. (CP 71-99) It was heard on October 17, 2014. The court, Judge Wynn presiding, refused to grant Jamie any relief requested in his motion and awarded Therese \$5,000 for having to defend the motion.

Jamie then filed this appeal. (CP 1-167)

On November 12, 2014, Therese took the same action that Jamie had just taken, and which had been denied. She asked that the Decree be enforced against Jamie. The Decree had not awarded any judgments against Jamie and all judgment language in the Decree, as it was drafted by Therese's attorney, Ms. Layman, was stricken from the Decree, and initialed, by Judge Farris. Dissatisfied with Judge Farris' removal of the judgment language, Therese asked the court, Commissioner Lee B. Tinney presiding, to grant the judgments anyway. Commissioner Tinney granted

all of the judgments that had just been denied by Judge Farris in the Decree.

At this time Therese has five attorneys representing her on this divorce. She has Sabrina Layman and Karen D. Moore of the Brew Layman firm in Everett, Stanford Hill and Daniel Olson of the Bassford Remele firm in Minneapolis, Minnesota, and an unknown trust attorney in Omaha, Nebraska. (CP 335)

ARGUMENT

The appellant, Jamie, argues that there is no law to support the results in the trial court, no equity to support the results, and that the results offend public policy. The argument in this case is broken up into three parts. The first part is the argument regarding the law in the case. The second part is the argument regarding the equity in the case. The third part is an argument regarding public policy as it relates to divorce. The court will see that the law favors Jamie, the equities of the case favor Jamie, and public policy would also favor an outcome for Jamie.

Initial Summary

Before the argument is begun, Jamie would have the court consider the entirety of the case. The parties' children are all adults so there were no custody, visitation, or child support issues. The pleadings show virtually no dispute regarding the division of the assets of the parties,

except for the family home. There is virtually no dispute regarding the division of debt of the parties. Therese took the debt that was owed to her family. Jamie took all the other debt. Alimony was not seriously contested because any amount over \$973 bars Therese from Medicaid. She sought and got \$2,500 in alimony. She will have to agree to a reduction in the alimony in order to get Medicaid.

Therefore, the only issue that has kept this divorce going for 17 months, so far, forced Jamie from the home he owned, created 200 docket entries in the trial court, generated 797 pages of Clerk's Papers for this court to review, and has cost at least a hundred thousand dollars in attorney's fees to Therese, was the proceed-free forced sale of the family home in violation of three statutes. This court will be asked to overturn the orders that allowed for that sale, including the attorney's fees, invalidate the deed, and return the home to Jamie.

All of the orders that resulted in the sale of the family home and which awarded attorney's fees against Jamie are grouped together into one concept for purposes of this appeal. If this court determines that one spouse can sell community property over the objections of the other spouse, and that a court commissioner can grant that power, then this court should ratify all of the orders. If this court determines that the statutes of this state prohibit the sale of community real property by one spouse then

it should overturn all of the orders allowing the sale and void the deed given by Therese in the sale of the home.

The Law of the Case

The law of the case is the easiest of the three arguments in this appeal. The law regarding the sale of community property by one member of the community has been part of our jurisprudence for over 120 years.

The statutory language protecting community real property has remained essentially unchanged since the *Brotton* decision in 1890.[3] *Brotton v. Langert*, 1 Wash. 73, 23 P. 688 (1890) (overruled on grounds not relevant here in *Kilcup v. McManus*, 64 Wash.2d 771, 779, 394 P.2d 375 (1964)).

Keene v. Edie, 907 P.2d 1217, 80 Wn. App. 312 (Wash.App. Div. 1 1995)

This case involves three major statutes. The first statute in this case is RCW 26.16.030(3), which states that:

(3) Neither person shall sell, convey, or encumber the community real property without the other spouse or other domestic partner joining in the execution of the deed or other instrument by which the real estate is sold, conveyed, or encumbered, and such deed or other instrument must be acknowledged by both spouses or both domestic partners.

The law, RCW 26.16.030(3);

Is designed to protect the nonsigning spouse against improvident transfers or encumbrances involving major assets belonging to the community. See *Sadler v. Neisz*, 5 Wash. 182, 194, 31 P. 630 (1892) at 192, 31 P. 630; H. Cross, *The Community Property Law in Washington*, 49 Wash.L.Rev. 729, 783 (1974).

Taylor Distributing Co., Inc. v. Haines, 641 P.2d 1204, 31 Wn.App. 360 (Wash.App. Div. 3 1982)

The wife, in this case, obtained an Order allowing her to list the community property for sale. In its Order of December 24, 2013, the court gave Therese the right to “list for sale” the community property of the parties. In actuality, Therese already had that power under RCW 26.16.030, which allows either party to manage and control community property. However, she then attempted to sell and convey community real estate without the other spouse joining in the execution of the deed and such deed was not acknowledged by both spouses.

Courts have held this guarantee of the statutes to be the rule of law.

Earlier courts have held:

The husband (wife in this case) not possessing the power to sell the community property, and there being no ratification by the [husband] of the brokerage contract, or authority given by the [husband] for the [wife] to enter into such a contract, it seems to us to follow that no benefit accrued to the community from the act of the [wife] in employing the broker to find a purchaser, and such act lacked community purpose and constituted a mere idle gesture, in so far as the community is concerned, unless ratified by the [husband]. (Paren. added)

We are of the opinion that the rule announced in the *McGlaufflin* case (*McGlaufflin v. Merriam*, 34 P. 561, 7 Wash. 111 (Wash. 1893)), that 'the [wife], having no authority to sell community real estate, cannot bind the same for any indebtedness incurred by [her] in employing a broker to find a purchaser therefor,' is still the law of this state, and is a proper rule to apply to facts such as were shown to exist in the *McGlaufflin* case. (Paren. added)

Whiting v. Johnson, 390 P.2d 985, 64 Wn.2d 135 (Wash. 1964)

The result of these actions is, as declared in *McGlaufflin*, “a mere idle gesture” on the part of the wife to list and show the home for sale.

The actions cannot bind the community or the respondent. The wife can list all the property she wants to list. She just cannot sell it.

Based on this law and the clear facts of the case the deed given by the wife is invalid. The order of the Superior Court allowing the wife to sell the property must be reversed.

The second statute in this case is RCW 6.13.060, which states that:

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 spouses or both domestic partners, except that either spouse or both or either domestic partner or both jointly may make and execute powers of attorney for the conveyance or encumbrance of the homestead.

This language is nearly identical to RCW 26.16.030 (3) with the exception that this statute includes the word “homestead.”

The property at issue in this appeal was owned by the parties and was used by the parties as their sole homestead until the wife moved to assisted living and, thereafter, by the husband alone. There is no suggestion that either party executed a power of attorney to the other.

Based on the undisputed facts of this case and the clear language of the statute, the deed issued by the wife alone is invalid and the authorization to execute the deed that was granted by the Superior Court was improper and must be overturned.

The third argument of law is created by RCW 26.09.080, which states that:

In a proceeding for dissolution of the marriage . . . the court shall, without regard to misconduct, make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including, but not limited to:

- (1) The nature and extent of the community property;
- (2) The nature and extent of the separate property;
- (3) The duration of the marriage or domestic partnership; and
- (4) The economic circumstances of each spouse or domestic partner at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse or domestic partner with whom the children reside the majority of the time.

In this case the court did not look at the nature and extent of the community property, the separate property, the duration of the marriage, or the economic circumstances of each spouse prior to authorizing the sale of the family home. There is no suggestion that the wife or the court looked at the nature and extent of the interests in the case. The wife simply asked for authority to list the family home before any other action was taken in the divorce and the request was granted by the court commissioner. Thereafter, the wife treated the right to list the property as if it amounted to a right to sell the property. That was not the case. She was empowered to enter into a contract with a realtor. It did not empower her to enter into a sales agreement with a buyer to transfer the property.

The trial court is not at liberty to individualize assets and to determine the ownership of that asset without a full review of the whole of the marital estate. Yet, here, the court gave the house to the wife and allowed her to sell it, keeping any proceeds for her own use, before the rest of the divorce was even determined.

Because the trial court is in the best position to decide issues of fairness, we review a trial court's property division made during a dissolution of marriage for manifest abuse of discretion.; *In re Marriage of Larson and Calhoun*, 313 P.3d 1228, 178 Wn.App. 133 (Wash.App. Div. 1 2013) at 138. " 'A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons.'" *In Re Marriage of Muhammad*, 108 P.3d 779, 153 Wn.2d 795 at 803 (Wash. 2005) (quoting *In re Marriage of Littlefield*, 133 Wash.2d 39, 46-47, 940 P.2d 1362 (1997)). "

In re Marriage of Underwood, 326 P.3d 793, 181 Wn.App. 608 (Wash.App. Div. 2 2014).

The trial court abused its discretion because it based its decision on no grounds at all. There are no findings of fact or conclusions of law to review prior to the sale of the home. Since this matter was all done in motions rather than in a trial setting, the court did not review all matters transpiring between the parties. Therefore, its decision was an abuse of discretion, unreviewable in any reasonable manner by this court.

Again, the application of the law to the undisputed facts shows that the actions of the wife and the Superior Court violated Washington law. The decisions of the Superior Court should be overturned and the deed by

the wife should be invalidated.

The Equity of the Case

Our court system allows the Superior Court to act as a court of law but also to act as a court of equity. “Moreover, the court has broad equitable powers in family law matters. See, e.g., *Pippins v. Jankelson*, 110 Wash.2d 475, 478, 754 P.2d 105 (1988).

In re Marriage of Morris, 309 P.3d 767, 176 Wn.App. 893 (Wash.App. Div. 1 2013)

Since it appears that the Superior Court erred in its application of the law in this case there may be a question as to the equities in the case. Since Washington law does not require a Superior Court to indicate why it made a decision in motions the parties are left to speculate on the basis of the decision and to respond accordingly. This review of equity is that speculation.

At the commencement of a review of the equities in this case the court should be aware, and should review the fact, that no part of this case, from the first pleading to the final Decree, to the post decree motions, and, finally to this court, includes any discussion, determination, or argument of any kind that the sale of the family home was a good idea for, or advantageous to, Therese in any way. Since the major dispute in this case

is the sale of the family home it should be made clear that the sale netted no proceeds.

The search, then, for motivation on Therese's, and her attorney's, part does not include the receipt of money. The only remaining purpose or motivation would be to harass Jamie. If that was their motivation then they were successful.

This argument regarding equities will be divided into three sections, the benefit to the wife, the relief to the wife, and the equities regarding the husband.

While the statutes regarding the sale of the family home by one spouse over the objections of the other spouse may be clear, as shown above, the court may have found that the wife was benefited so significantly by the sale of the house that the statutes should be ignored. That was not the case here. The parties had purchased the home for \$830,000. The home was sold by the wife for \$625,000. The wife gained no proceeds from the sale of the home, and neither did the husband. The home was sold for the mortgage balance and the costs of sale. Based on those figures, the wife was not benefited by the sale of the home.

The second area of equity might be a finding that the wife was relieved of some burden by the sale of the home. That would not be the case in this divorce. While the parties purchased and owned the home

together, only the husband signed the mortgage note. Due to her lack of income and her infirmity, the mortgage lender did not require the wife to participate in the mortgage debt obligation. She could simply walk away from the property without any personal ramifications.

This second area of equity, the relief of a burden to the wife, could not be the basis for the Superior Court's authorization of the sale. And, as with the first argument regarding equity, this area of equity was not argued to the court by the wife on paper or in the courtroom.

The third area of equity might be a review of the conduct of the husband with the idea that perhaps the husband did something to justify the sale of his home without his consent.

There is nothing in the record from the court or from the wife or even from the husband that suggests that the husband did anything to merit the loss of his home, or a waiver of the protections of the statutes noted here.

A strong area for review that might merit equitable relief might include a review of the husband's conduct towards the handicapped wife or towards the home. If he mistreated the wife or caused waste to the home perhaps he would have merited the loss of the home. However, there is nothing in the record, or anywhere else, to suggest that the husband did anything but take the best care of his wife that was possible, based on her

condition and his abilities. Neither is there any indication that he was negligent towards the home, and there is nothing in the record that would suggest he neglected the home.

Conversely, if either of these areas of equity regarding the husband had occurred then they most certainly would have been made part of the record and used against him in this case.

There is no equitable basis for violating the three statutes shown above, either as a benefit to the wife, a basis for relief to the wife, or in the conduct of the husband. The order of the court allowing the wife to sell the property without the husband's consent should be overturned and the deed invalidated.

Public Policy

The statutes listed above were created to direct the relationship between a husband and wife with regard to community real estate, but they were also created for two other reasons; from the societal standpoint;

- a. To prohibit the malicious use of community property as a significant bargaining chip in a divorce, particularly when there are children involved, and, secondly,
- b. To aid those persons who may buy the property or deal with the property, as lenders or title insurers, in knowing who can and cannot sell community property.

their peril, between the statutes that have existed for over 120 years and new orders of the court, as were issued in this case, that violate the statutes.

By overruling the Superior Court and invalidating the deed from just one spouse this court would affirm and clarify the rule of law. Spouses would not be able to use the homestead as a bargaining chip in divorces so the relative negotiating power of each party would remain as it was before this case was created. Second, it would lend clarity to the area of law for third parties. This court should lend that clarity and security to this area of dispute, particularly in the already litigious area of family law.

The Relative Outcome of a Decision

This court has two options, either to overrule the actions of the Superior Court and invalidate the deed or to affirm. Each one has its own ramifications.

If the court overrules the Superior Court then it will ratify over 120 years of statute and case law and lend clarity to the area of law to third parties. But it will also mean that someone has to lose. The loser in this case would be the buyer of the home. He could be dispossessed of the home.

The other option is to affirm the Superior Court. That would mean putting a case on the books, even if unpublished, that completely violates

three statutes and allows a divorcing wife to kick her husband out of their home and sell the home for so little money that no proceeds are generated from the sale.

The second option seems the hardest to support. The court would have to mince words and find excuses and exceptions for allowing a trial court to completely ignore over a century of law. It is hoped that the court will not take this second option.

The first option is the easiest to support, but also the most disruptive. The court can support current statutes and case law with ease. The laws are clear and there is no case that supports the actions of this Superior Court. However, that might mean that the buyers would have to move and allow the husband to reclaim his home.

But the first option, the easy one, is also the one that is most protected by the marketplace. The buyer of the home purchased title insurance against just this event. The title company, with full knowledge of the facts, and for a fee, chose to take the risk of this court's decision. The title company would make the buyer whole, a business risk it was willing to take.

This court is asked to take the first option. The court is also asked to be indignant that the wife's attorney billed her handicapped client tens of thousands of dollars to achieve a result that did nothing for her client.

CONCLUSION

This appellate court is faced with a case where the Superior Court appears to have allowed a clear violation of existing statutes, one that shows no benefit to the wife and significant burden to the husband. The case appears to be nothing more than harassment. The court is asked to overturn the Superior Court as a violation of the statutes, without equitable support, and to confirm the public policy behind the rules that have existed for over a century.

Specifically, the court is asked:

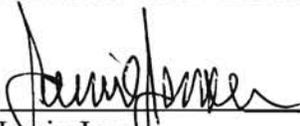
1. To overturn the Order of December 24, 2013, in as much as it granted the wife \$3,500 in alimony without any review of the parties' financial situation;
2. To overturn the Orders of the court that permitted the wife to remove the husband from his home and to sell the home without his consent;
3. To invalidate the deed given by the wife so that the home may be restored to the husband;
4. To invalidate all grants of attorney's fees and penalties that accrued as a part of this erroneous course of action;

5. To award attorney's fees to the appellant for having to bring this appeal in light of such clear and historic law, RAP 18.1 et. seq; and
6. For such other and further relief as the court determines appropriate.

DATED this 9th day of JANUARY, 2015.

MUKILTEO LAW OFFICE, PLLC

By


Jamie Jensen

WSBA No. 40475

APPENDIX

IN THE COURT OF APPEALS OF
THE STATE OF WASHINGTON

Therese Brown Jensen,
Petitioner,
and
Russell James Jensen, Jr.
Respondent

Appellate Ct. No.

Trial Ct. No. 13-3-02117-1

**Emergency Motion to Stay Order of
Superior Court, Snohomish County**

Facts

The petitioner commenced this divorce action and then started offering the family home for sale, against the express and vocal objection of the respondent. The home is not in danger of loss due to foreclosure or for any other purpose.

The petitioner found a buyer for the home and asked the court to permit the sale. The trial court, Commissioner Gaer presiding, allowed the sale, set to close March 24, 2014. The net proceeds to the community would be \$16,892.24. Respondent brought a motion to revise the commissioner's Order but the revision was denied. He then brought a motion for a supersedeas bond. The court ordered a supersedeas bond of \$45,000, way beyond the ability of the respondent.

Petitioner also brought a motion to have the respondent excluded from the home. There is no suggestion that the respondent has done anything but take full care of the home. Nonetheless, the Superior Court has ordered the respondent out of the house by 5:00 p.m today.

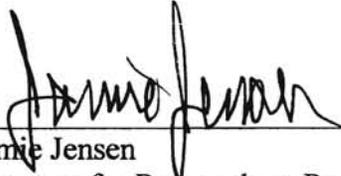
Motion

This emergency motion is brought to stay the order of the Superior Court from allowing a sale of community property by one spouse without the consent of the other spouse.

This emergency motion is also brought to stay the order of the Superior Court regarding the exclusion from the house of respondent by 5:00 p.m. today.

The court is also asked to set a reasonable supersedeas bond amount to allow respondent to proceed with his appeal.

DATED this 19st day of March, 2014.



Jamie Jensen
Attorney for Respondent, Pro se

IN THE COURT OF APPEALS OF
THE STATE OF WASHINGTON

Therese Brown Jensen,
Petitioner,
and
Russell James Jensen, Jr.
Respondent

Appellate Ct. No.

Trial Ct. No. 13-3-02117-1

**Supplement to
Emergency Motion to Stay Order of
Superior Court, Snohomish County**

Nature of Motion

1. To stay the order for sale to allow the appeal of the order to sell the community home without the consent of respondent;
2. To stay the order removing respondent from the home; and
3. Setting a reasonable supersedeas bond during the pendency of the appeal.

Facts

The petitioner moved out of the family house in Mukilteo on September 21, 2013, and moved to assisted care in Omaha, Nebraska. She has profound multiple sclerosis. Respondent is the sole occupant of the Mukilteo house, where he currently resides. There has been no showing as to why respondent should be forced out of the house.

Motion

The respondent believes that he is protected from the sale of his home by RCW 26.16.030 (3) which states:

Neither person shall sell, convey, or encumber the community real property without the other spouse or other domestic partner joining in the execution of the deed or other instrument by which the real estate is sold, conveyed, or encumbered, and such deed or other instrument must be acknowledged by both spouses or both domestic partners.

This emergency motion is brought with the idea that the sale of the home may not proceed without the consent of the respondent. The sale by petitioner nets the parties very little. Respondent has offered, and continues to offer, to pay off petitioner for her equity.

There is case law that suggests that a sale of community property can be ordered by the court, but only after the full divorce trial, not in this piecemeal fashion.

Unless the Order for sale is stayed, the house will be sold and will no longer be available for the determination of the appeal.

The Order requiring respondent to vacate the home has no basis. Respondent is caring for the home and is the only occupant. Removing him will leave the home vacant and open to vandals or other damage.

The supersedeas amount determined by the superior court was not clearly determined to be a reflection of the rule on bonds, Rule 8.1 (c) (2) RAP. The rule calls for the bond amount to be the use value of the property. The superior court ordered a flat \$45,000 bond. Respondent offered to pay \$10,000 now and keep the mortgage current, a \$4,974. monthly payment of which \$2,500 is principal reduction, which, when added to the equity in the home, amounts to \$48,500 by year end.

DATED this 19st day of March, 2014.



Jamie Jensen
Attorney for Respondent, Pro se

*The Court of Appeals
of the
State of Washington*

RICHARD D. JOHNSON,
Court Administrator/Clerk

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
(206) 464-7750
TDD: (206) 587-5505

March 21, 2014

Russell James Jensen, JR
Mukilteo Law Office
4605 116th St SW Ste 101
Mukilteo, WA. 98275-5301
mukilteolawoffice@gmail.com

Sabrina Ann Layman
Attorney at Law
PO Box 488
Everett, WA. 98206-0488

CASE #: 71619-1-I

Therese Brown Jensen, Res. and Russell James Jensen, Jr., App.
Snohomish County No. 13-3-02117-1

Counsel:

The following notation ruling by Commissioner Masako Kanazawa of the Court was entered on March 21, 2014, regarding appellant's emergency motion to stay the trial court's order of the sale of the Mukilteo House and supersedeas bond:

NOTATION RULING
In re Marriage of Jensen, No. 71619-1-I
March 21, 2014

This is a dissolution case. At issue is petitioner Russell Jensen's emergency motion to stay the trial court's order that approved the sale of the family home ("Mukilteo residence") of Russell and respondent Therese Jensen (Therese). The order required Russell to execute all necessary documents to effectuate the closing of the sale by 5 p.m. on Monday, March 24, 2014. The trial court issued the order before the dissolution trial or decree. The trial is set for June 2014. In light of Russell's intent to seek interlocutory appeal, the trial court required a supersedeas bond of \$45,000 to stay the sale of the Mukilteo residence. The trial court ordered Russell to file the supersedeas bond by 1 p.m. today (March 21, 2014). Russell challenges the supersedeas amount as excessive. By ruling of March 19, 2014, after hearing the parties' argument, I denied Russell's emergency motion with respect to his request to stay the trial court's order requiring his removal from the Mukilteo residence by 5 p.m. on March 19, 2014, because Russell presented little information and no basis to grant the relief. In the March 19 ruling, I directed Therese to file an answer to Russell's motion and allowed Russell to file supplemental information by March 20, 2014. Therese filed an answer, and Russell filed a supplemental brief. As explained below, the supersedeas bond amount is temporarily modified to \$10,000 to be filed by 3 p.m. today (March 21, 2014) until further order of this Court.

Except when prohibited by statute, a party may obtain a stay of enforcement of a decision affecting rights to possession, ownership, or use of real property by filing in the trial court a supersedeas bond or cash. RAP 8.1(b)(2). The supersedeas amount shall be the amount of the judgment, plus interest likely to accrue during the appeal and attorney fees, costs, and expenses likely to be awarded on appeal. RAP 8.1(c)(1). The purpose of a supersedeas bond is to delay execution of the judgment while ensuring that the judgment debtor's ability to satisfy the judgment will not be impaired pending appeal. Lampson Universal Rigging, Inc. v. Wash. Pub. Power Supply Sys., 105 Wn.2d 376, 378, 715 P.2d 1131 (1986).

It appears the net proceeds to the community from the proposed sale of the Mukilteo residence would be \$16,892.24. The trial court's March 7, 2014 order states each party is entitled to 50% of the proceeds, provided Russell must first satisfy the attorney fee award of \$3,500. Thus, according to the order, Therese is entitled to \$8,446.12 (50% of \$16,892.24) plus \$3,500 (attorney fees) in the total amount of \$11,946.12, and Russell is entitled to \$4,946.12. Therese requested a supersedeas bond of \$60,000 at the trial court. She argued she spent \$15,000 in attorney fees and costs related to the sale of the Mukilteo residence and anticipates \$20,000 attorney fees and costs on appeal. She also argued the buyer of the residence may sue for specific performance on the sale, and the community may incur potential loss of \$10,000 or more in fees and costs. Russell is willing to pay \$10,000 and promises to keep current his mortgage on the Mukilteo residence, which appears to be about \$5,000. It is unclear how the trial court determined the \$45,000 supersedeas amount.

This Court has yet to grant review in this case. Thus, a supersedeas bond based on the costs and fees on appeal is premature. Thus, pursuant to RAP 8.1(h), the supersedeas bond of \$45,000 is temporarily modified to \$10,000 to be filed by 3 p.m. today (March 21, 2014) until further order of this Court. For a temporary stay of the trial court's order approving the sale of the Mukilteo residence and his removal from the residence, Russell must file a supersedeas bond of \$10,000 in the superior court registry by 3 p.m. today (March 21, 2014). If Russell files the supersedeas bond, the order approving the sale and requiring his removal from the residence will be temporarily stayed until further order of this Court. Russell shall keep the mortgage current and must inform this Court if he misses any payment. Russell shall file a motion for discretionary review by March 28, 2014 in compliance with RAP 17.3 and 17.4. Therese shall file an answer to the motion for discretionary review by April 4, 2014 in compliance with RAP 17.3 and 17.4. Russell may file a reply by April 9, 2014. In their respective pleadings, the parties shall also address the supersedeas amount in case this Court grants review. A hearing on the motion for discretionary review is set for April 11, 2014, at 9:30 a.m. If either party has conflict, the party shall promptly inform this Court and provide available dates in April 2014.

Page 3 of 3

71619-1-I, Therese Brown Jensen v. Russell James Jensen, Jr.

March 21, 2014

Therefore, it is

ORDERED that the supersedeas bond of \$45,000 is temporarily modified to \$10,000 to be filed by 3 p.m. today (March 21, 2014) until further order of this Court. If Russell files a supersedeas bond of \$10,000 in the superior court registry by 3 p.m. on March 21, 2014, the trial court's order approving the sale and requiring his removal from the Mukilteo residence will be temporarily stayed until further order of this Court. It is further

ORDERED that Russell shall file a motion for discretionary review by March 28, 2014, and Therese shall file an answer to the motion by April 4, 2014. Russell may file a reply by April 9, 2014. It is further

ORDERED that a hearing is set for **April 11, 2014, at 9:30 a.m.** on Russell's motion for discretionary review. If either party has conflict, the party shall promptly inform this Court and provide available dates in April 2014.

Masako Kanazawa
Commissioner

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

khn

c: The Hon. Joseph P. Wilson

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

IN RE MARRIAGE OF)	
)	No. 71619-1-1
THERESE BROWN JENSEN,)	
)	
Respondent,)	
)	COMMISSIONER'S RULING
v.)	DENYING DISCRETIONARY
)	REVIEW
RUSSELL JAMES JENSEN, JR.,)	
)	
Petitioner.)	
<hr/>		

This is a dissolution case. Russell James Jensen (Jamie) seeks discretionary review of the trial court's pre-trial order that approved the sale of the family home of Jamie and his wife Therese Brown Jensen (Therese). The order required Jamie to effectuate the sale and vacate the home. Jamie argues the trial court committed obvious or probable error and departed from the accepted and usual course of judicial proceedings in ordering the sale of the family home without his consent in an interlocutory order. However, Jamie consented to the sale. Jamie presents no basis for discretionary review under RAP 2.3(b). Therese is awarded attorney fees in the amount of \$2,000 under RAP 18.9.¹

FACTS

Therese and Jamie were married in 1981 in Minnesota. They raised four children. In 1999, Therese was diagnosed with multiple sclerosis. She is

¹ This ruling refers to the parties by their first names to avoid confusion. Petitioner Russell James Jensen is referred to as Jamie, consistent with his pleadings.

No. 71619-1-I/2

severely disabled and needs assistance in dressing, toileting, and preparing food. They moved to Washington in 2007. At the time of the move, Jamie was a real estate developer. He currently practices the law in Washington. The parties own real estate properties in Washington and Minnesota, including their residence in Mukilteo, Washington.

In August 2013, Therese filed for divorce. She then moved to Omaha, Nebraska to live in a senior living community.

In December 2013, Therese filed a motion for a temporary order, seeking, among other things, an order granting her "control and authority to list for sale any and all parcels of real property owned by the parties including the property located in Mukilteo Washington."² She also sought an award of monthly maintenance of \$3,500, beginning in December 2013. Jamie did not contest the motion. On December 13, 2013, he advised Therese's counsel that he was moving out, and she could sell the home.

On December 24, 2013, the trial court granted Therese's motion. Jamie did not appear at the hearing. The order granted Therese monthly maintenance of \$3,500 and "control and authority to list for sale any and all parcels of real property owned by the parties including but not limited to . . . [the Mukilteo property]."³ The order stated that the proceeds received from the sale "shall be deposited and held in the trust account" of Therese's counsel's law firm.

Jamie continued to live in the Mukilteo residence. Therese listed the

² Appendix (App.) C to Answer for Discretionary Review ("Motion/Declaration for Temporary Order") at 4.

³ App. D at 4 (Temporary Order).

No. 71619-1-1/3

home for sale. When her real estate agent contacted Jamie to arrange the placing of signage in the yard and asked Jamie to remove the "For Sale" sign he had placed there, Jamie refused.⁴ Jamie advised Therese that he had stopped making the house payment and the house would go into foreclosure. Jamie forwarded to her counsel what appeared to be a foreclosure notice received at the residence, indicating imminent foreclosure.

In his letter to Therese's counsel dated January 20, 2014, Jamie wrote Therese could sell the house and he would not "get in the way":

For the Mukilteo house, if it sells under the current terms then she will have to bring thousands of dollars to the closing. Not me. I will not take on any more debt. And any proceeds will have to go to income taxes or other debts. There is no chance of getting a dollar out of this house without me.

...

So, at this point, she can go ahead and sell the properties. I may not assist but I will not get in the way. Eventually one of you will do the math and see what I am talking about. Maybe not.⁵

On January 24, 2014, Therese filed a motion to remove Jamie from the Mukilteo residence and sought terms against him for obstructing the sale process. On February 10, 2014, Commissioner Susan Gaer of the trial court issued an order, finding Jamie had been obstructing the listing and sale of the Mukilteo residence. Because Jamie agreed to "fully cooperate with the sale of the Mukilteo residence up to point of signing closing document," the

⁴ App. E at 3.

⁵ App. E (Ex. 2 to Therese Jensen declaration) (emphasis added).

No. 71619-1-I/4

commissioner declined to require him to vacate the house until the closing.⁶ However, the commissioner ordered that if Jamie refused to sign closing documents, Therese could file a motion to effectuate the sale. The commissioner awarded attorney fees to Therese in the amount of \$3,500. Jamie filed a motion to revise the commissioner's order, which motion was denied.

Therese received a full price offer for the Mukilteo residence. The closing was scheduled for March 31, 2014 but has been extended to April 30, 2014.

Therese filed a motion to approve the sale of the Mukilteo residence and to require Jamie to sign the closing documents and vacate the property by 5:00 p.m. on March 24, 2014. Jamie filed a response, arguing Therese could not sell the family home without his consent under RCW 26.16.030(3).⁷

On March 7, 2014, Commissioner Gaer granted Therese's motion and approved the sale of the Mukilteo residence. The commissioner required Jamie to execute all necessary documents to effectuate the sale by 5:00 p.m. on March 24, 2014 and vacate the home by 5:00 p.m. on March 17, 2014. On March 18, 2014, Judge Joseph Wilson denied Jamie's motion to revise the commissioner's order and required him to vacate the home by 5:00 p.m. on March 19, 2014.

On March 19, 2014, Jamie filed a notice for discretionary review of the trial court's order approving the sale. The trial court set the supersedeas amount of \$45,000 for a stay of the sale. Jamie filed an emergency motion in this Court to stay the trial court's decision pending review. This Court temporarily reduced the

⁶ App. F at 2.

⁷ App. O.

No. 71619-1-I/5

supersedeas amount to \$10,000 for a temporary stay of the trial court's decision until this Court rules on Jamie's motion for discretionary review.

DECISION

Discretionary review is available only on the narrow grounds set forth in RAP 2.3(b). Jamie seeks review under RAP 2.3(b)(1), (2), and (3), which state:

- (1) The superior court has committed an obvious error which would render further proceedings useless;
- (2) The superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act;
- (3) The superior court has so far departed from the accepted and usual course of judicial proceedings . . . as to call for review by the appellate court[.]

Jamie fails to satisfy the review criteria, because he fails to demonstrate that the trial court committed obvious or probable error or departed from the accepted and usual course of judicial proceedings in requiring the sale of the Mukilteo residence. Jamie argues the trial court lacked authority to order, before trial, the sale of the family home without his consent. He cites RCW 26.16.030(3), which states:

Neither person shall sell, convey, or encumber the community real property without the other spouse or other domestic partner joining in the execution of the deed or other instrument by which the real estate is sole, conveyed, or encumbered, and such deed or other instrument must be acknowledged by both spouses or both domestic partners.

The trial court in a dissolution case has authority to order the sale of the

No. 71619-1-I/6

family home without both parties' consent.⁸ In a dissolution case, the trial court must dispose of all the property and liabilities, both community and separate, in a just and equitable manner.⁹ The trial court has wide discretion in the division and distribution of the parties' property.¹⁰ "In order to achieve an equitable property distribution between the parties, the trial court has the jurisdiction to order the sale of the family home."¹¹

There is a question as to whether the trial court may order the sale of the family home *in an interlocutory order before the dissolution trial*. But Jamie presents no authority or analysis to show such an interlocutory order is improper.

Further, Jamie has consented to the listing and the sale of the Mukilteo residence. Jamie did not contest Therese's motion to grant her the "control and authority to list for sale any and all parcels of real property owned by the parties including the property located in Mukilteo[,] Washington."¹² He indicated to Therese and her counsel that he was moving out, she could sell the home, and he would not "get in the way."¹³ It also appears Jamie represented to the trial court he would "fully cooperate with the sale of the Mukilteo residence" and

⁸ In re Marriage of Foley, 84 Wn. App. 839, 844, 930 P.2d 929 (1997); In re Marriage of Sedlock, 69 Wn. App. 484, 503, 849 P.2d 1243 (1993).

⁹ RCW 26.09.080.

¹⁰ Foley, 84 Wn. App. at 843.

¹¹ Id. at 844 (citing Sedlock, 69 Wn. App. at 503).

¹² App. C at 4.

¹³ App. E at 3 ¶ 2, Ex. 2.

No. 71619-1-I/7

would sign closing documents.¹⁴ Under these circumstances, Jamie fails to demonstrate that the trial court committed an obvious or probable error or departed from the accepted and usual course of judicial proceedings in approving the sale of the Mukilteo residence and requiring his removal from it. Discretionary review is not warranted under RAP 2.3(b).

Therese requests attorney fees as sanctions for filing a frivolous appeal under RAP 18.9. She argues Jamie's obstruction of the sale of the Mukilteo residence has caused her to incur unnecessary attorney fees. She requests \$6,500 in attorney fees. Sanctions of \$2,000 are warranted under RAP 18.9.

CONCLUSION

Jamie presents no basis for discretionary review under RAP 2.3(b). Therese is awarded attorney fees in the amount of \$2,000 under RAP 18.9. Therefore, it is

ORDERED that discretionary review is denied. It is further

ORDERED that the temporary stay of the trial court's order is lifted.

It is further

ORDERED that respondent Therese Brown Jensen is awarded attorney fees in the amount of \$2,000. Petitioner Russell James Jensen shall pay the fees.

Done this 17th day of April, 2014.

Masako Hanagawa
Court Commissioner

FILED
COURT OF APPEALS DIV. I
STATE OF WASHINGTON
2014 APR 17 PM 4:20

¹⁴ App. F at 2.



Jamie Jensen <mrjamiej14@gmail.com>

FW: taped to the front door ...

Jamie Jensen <mrjamiej14@gmail.com>
To: Gail Nunn <Gail.Nunn@onglaw.com>

Mon, Jun 2, 2014 at 7:13 PM

Gail:

Please shred the deed that I gave you and the excise tax documents. I am having others drawn up and will have them to you soon. The others were drawn in haste. They were also drawn so that I could get possession. They cheated me there. They say there is a short closing. I do not trust or believe them.

Once I sign on the house I will have absolutely no leverage to get anything done. Therefore, I will sign all of the documents but I will not allow the release of any of them unless I have all of the documents that I need and am divorced. This is a pinch point in the negotiations and I am going to use it. The realtor and the title company will press her like I never could. This is our chance to get this to end. I am very happy.

This is also a point where I can renegotiate the agreement. I know that that probably sends chills down your spine. It has to be done some time or she cannot get the Medicaid she needs.

Jamie Jensen
651-633-5010
[Quoted text hidden]

Apdx 4 1/2



Jamie Jensen <mrjamiej14@gmail.com>

FW: taped to the front door ...

Gail Nunn <Gail.Nunn@onglaw.com>
To: Jamie Jensen <mrjamiej14@gmail.com>

Tue, Jun 3, 2014 at 10:27 AM

I don't think this is a good idea. Your wife was awarded the Mukilteo house. You are not going to renegotiate with Sabrina. I think you are being unwise if you want this over with soon. I am not going to shred the deed but I won't return it to Sabrina on your request.

Gail

GAIL B. NUNN

O'LOANE NUNN LAW GROUP, P.L.L.C.

2707 Colby Avenue, Suite 1204

P.O. Box 5519

Everett, WA 98206

(425) 258-6860

(425) 259-6224 fax

www.onglaw.com

NOTICE: This communication originates from O'Loane Nunn Law Group, P.L.L.C. This electronic communication and any attachments may contain privileged or other confidential attorney-client communications. If you as the reader are not the intended recipient, you are hereby notified that you have received this communication in error and that any retention, review, use, dissemination, distribution or copying of this communication or the information contained herein is strictly prohibited. Attempts to intercept this message are in violation of 18 USC 2511(1) of the Electronic Communications Privacy Act, which subjects the interceptor to fines, imprisonment and/or civil damages. If you have received this communication in error, please notify the sender immediately and delete the original message from your system. Thank you.

From: Jamie Jensen [mailto:mrjamiej14@gmail.com]

Sent: Monday, June 02, 2014 5:14 PM

To: Gail Nunn

Subject: Re: FW: taped to the front door ...

[Quoted text hidden]

Appx 5 1/2



Jamie Jensen <mrjamiej14@gmail.com>

deed

Gail Nunn <Gail.Nunn@onglaw.com>
To: "Mrjamiej14@gmail.com" <Mrjamiej14@gmail.com>

Wed, Jun 4, 2014 at 12:11 PM

She can't file it without the REETA I won't send that to her.

Gail**GAIL B. NUNN****O'LOANE NUNN LAW GROUP, P.L.L.C.**

2707 Colby Avenue, Suite 1204

P.O. Box 5519

Everett, WA 98206

(425) 258-6860

(425) 259-6224 fax

www.onglaw.com

NOTICE: This communication originates from O'Loane Nunn Law Group, P.L.L.C. This electronic communication and any attachments may contain privileged or other confidential attorney-client communications. If you as the reader are not the intended recipient, you are hereby notified that you have received this communication in error and that any retention, review, use, dissemination, distribution or copying of this communication or the information contained herein is strictly prohibited. Attempts to intercept this message are in violation of 18 USC 2511(1) of the Electronic Communications Privacy Act, which subjects the interceptor to fines, imprisonment and/or civil damages. If you have received this communication in error, please notify the sender immediately and delete the original message from your system. Thank you.

Apob 6¹¹ 4₁



STATE OF WASHINGTON
DEPARTMENT OF REVENUE

September 18, 2014

Russell J Jensen Jr
9314 62nd Pl W
Mukilteo WA 98275-3540

Tax Registration Account (TRA): **950 048 104**

Real Estate Excise Tax (REET) Audit – Community Property Exemption

Dear Russell J Jensen Jr:

We are auditing the exemption you claimed on your REET affidavit (copy enclosed). The exemption you claimed is valid when there is a transfer of property from one spouse or registered domestic partner to the other that establishes or separates community property. (WAC 458-61A-203)

To prove your exemption you must provide a copy of one of the following court recorded documents:

- Divorce, dissolution, or legal separation decree.
- Community property agreement.
- Marriage certificate.
- Domestic partnership registration.

Mail or fax the documents to the address or fax number listed below by **10/02/2014**. If you need more time to respond, please call me at the number below to request an extension. Reference the **TRA** number on all correspondence. We will review your documentation and notify you of the results.

If we do not receive your documents by the due date we will issue an estimated tax assessment based on the information currently available.

Copies of all authoritative references cited in this report may be downloaded from the Department's website at dor.wa.gov.

Sincerely,

Keith Valdez, Excise Tax Examiner
(360) 534-1453

Enclosures
ar

Apdx 7 2/3

REAL ESTATE EXCISE TAX AFFIDAVIT
CHAPTER 82.45 RCW - CHAPTER 458-61A WAC

This form is your receipt when stamped by cashier.

PLEASE TYPE OR PRINT

THIS AFFIDAVIT WILL NOT BE ACCEPTED UNLESS ALL AREAS ON ALL PAGES ARE FULLY COMPLETED
(See back of last page for instructions)

Check box if partial sale of property

If multiple owners, list percentage of ownership next to name.

SELLER GRANTOR	Name: <u>Russell James Jensen, Jr.</u>	BUYER GRANTEE	Name: <u>Theresa B. Jensen</u>
	Mailing Address: <u>PO Box 105</u>		Mailing Address: <u>9604 Nicholas Street, #123</u>
	City/State/Zip: <u>Mukilteo, WA 98275</u>		City/State/Zip: <u>Omaha NE 68114</u>
	Phone No. (including area code): <u>(651) 633-5010</u>		Phone No. (including area code): <u>(402) 885-7980</u>
Send all property tax correspondence to: <input type="checkbox"/> Same as Buyer/Grantee		List all real and personal property tax parcel account numbers - check box if personal property	
Name: <u>Theresa B. Jensen</u>		00536900005900 <input type="checkbox"/>	
Mailing Address: <u>9604 Nicholas Street, #123</u>		<input type="checkbox"/>	
City/State/Zip: <u>Omaha, NE 68114</u>		<input type="checkbox"/>	
Phone No. (including area code): <u>(402) 885-7980</u>		<input type="checkbox"/>	
		List assessed value(s) \$503,000	

Street address of property: 9314 62nd Place W., Mukilteo, WA 98275

This property is located in Mukilteo

Check box if any of the listed parcels are being segregated from another parcel, are part of a boundary line adjustment or parcels being merged.

Legal description of property (if more space is needed, you may attach a separate sheet to each page of the affidavit)

Lot 59, the Assessor's Plat of Olympus Terrace, According to the plat thereof, recorded in Volume 23 of Plats, Page 77, Records of Snohomish County, Washington, Situate in the County of Snohomish, State of Washington.

Select Land Use Code(s):
11 - Household, single family units
enter any additional codes:
(See back of last page for instructions)

Was the seller receiving a property tax exemption or deferral under chapters 84.36, 84.37, or 84.38 RCW (nonprofit organization, senior citizen, or disabled person, homeowner with limited income)?	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
Is this property designated as forest land per chapter 84.33 RCW?	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
Is this property classified as current use (open space, farm and agricultural, or timber) land per chapter 84.34?	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
Is this property receiving special valuation as historical property per chapter 84.26 RCW?	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>

If any answers are yes, complete as instructed below.

(1) NOTICE OF CONTINUANCE (FOREST LAND OR CURRENT USE)
NEW OWNER(S): To continue the current designation as forest land or classification as current use (open space, farm and agriculture, or timber) land, you must sign on (3) below. The county assessor must then determine if the land transferred continues to qualify and will indicate by signing below. If the land no longer qualifies or you do not wish to continue the designation or classification, it will be removed and the compensating or additional taxes will be due and payable by the seller or transferor at the time of sale. (RCW 84.33.140 or RCW 84.34.108). Prior to signing (3) below, you may contact your local county assessor for more information.

This land does does not qualify for continuance.

DEPUTY ASSESSOR _____ DATE _____

(2) NOTICE OF COMPLIANCE (HISTORIC PROPERTY)
NEW OWNER(S): To continue special valuation as historic property, sign (3) below. If the new owner(s) does not wish to continue, all additional tax calculated pursuant to chapter 84.26 RCW, shall be due and payable by the seller or transferor at the time of sale.

(3) OWNER(S) SIGNATURE _____

PRINT NAME _____

List all personal property (tangible and intangible) included in selling price.

If claiming an exemption, list WAC number and reason for exemption:
WAC No. (Section/Subsection) 458-61A-203(2)
Reason for exemption
Furthurance of a Decree of Dissolution of Marriage under Snohomish County Cause No. 13-3-02117-1

Type of Document Quit Claim Deed
Date of Document 5-23-14

Gross Selling Price \$	0.00
*Personal Property (deduct) \$	0.00
Exemption Claimed (deduct) \$	
Taxable Selling Price \$	0.00
Excise Tax : State \$	0.00
<u>0.0050</u> Local \$	0.00
*Delinquent Interest: State \$	
Local \$	
*Delinquent Penalty \$	
Subtotal \$	0.00
*State Technology Fee \$	5.00
*Affidavit Processing Fee \$	5.00
Total Due \$	10.00

A MINIMUM OF \$10.00 IS DUE IN FEE(S) AND/OR TAX
*SEE INSTRUCTIONS

I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Signature of Grantor or Grantor's Agent [Signature]
Name (print) Russell James Jensen, Jr.
Date & city of signing: 6-9-14 Everett

Signature of Grantee or Grantee's Agent [Signature]
Name (print) Theresa B. Jensen
Date & city of signing: 6/5/14 EA

Perjury: Perjury is a class C felony which is punishable by imprisonment in the state correctional institution a fine in an amount fixed by the court of not more than five thousand dollars (\$5,000.00), or by both.

No. 7808745 6/5/2014 11:31 AM
Thank you for your payment.
BRITTANY

10.00

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

NO. 13-3-02117-1
APPLT CT. 72601-3-1

IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION 1

In Re the Marriage of

Therese Brown Jensen

Petitioner,

and

Russell James Jensen, Jr.,

Respondent

NO. 13-3-02117-1
APPLT CT. 72601-3-1

DECLARATION OF SERVICE

I, Jamie Jensen, declare and say as follows:

1. I am a citizen of the United States and resident of the State of Minnesota;
2. I am over the age of 18 years, a party to the above-entitled action;
3. I declare under penalty of perjury that on the 19th day of January, 2015, I mailed to counsel for the petitioner, Sabrina Layman and Karen D Moore, Brewe Layman, 3525 Colby Avenue, Everett, Washington 98201 the following documents:

1. **Appellant's Brief**

Jamie Jensen
PO Box 105
Mukilteo, Washington 98275-0105
(425) 212-2100

2. **This Declaration of Service.**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26



Jamie Jensen

This 19th day of January, 2015

Jamie Jensen
PO Box 105
Mukilteo, Washington 98275-0105
(425) 212-2100