Docket Number 72685

In the

SUPREME COURT

For the

STATE OF NEVADA

ELIZABETH HOWARD

Appellant,

v.

SHAUGHNAN L. HUGHES

Respondent.

Appeal from a Decision of the Tenth Judicial District of the State of Nevada,

Shaughnan L. Hughes v. Elizabeth Howard, Court Case No. 15DC-10-0876

APPELLANT'S OPENING BRIEF

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NRAP 26.1 CORPORATE DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal.

Attorney of record for Appellant Elizabeth Howard is Charles R. Kozak, Esq. of Kozak & Associates, LLC.

Ms. Howard was represented in the underlying District Court case by Charles R. Kozak, Esq.

There exists no publicly held company nor corporation affiliated with Kozak & Associates, LLC.

Dated this 6th day of January 2018.

/s/ Charles R. Kozak
Charles R. Kozak, Esq.
Attorney for Appellant

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APPELLANT'S OPENING BRIEF

Appellant, Elizabeth Howard, (hereinafter, "Appellant"), hereby files her opening brief.

I. STATEMENT OF JURISDICTION

Elizabeth Howard submits the following NRAP 28(A)(4) statement of jurisdiction. The Tenth Judicial District of the State of Nevada Court, Washoe County, (the "Trial Court") had personal jurisdiction over this action against Plaintiff JACC pursuant to NRS 17.76. Elizabeth Howard, an individual who, at all material times, including at the time of the incidents set forth in their Complaint, resided in Fallon, Nevada. Appellee Shaughnan Hughes is and was, at all material times, an adult resident of Fallon, Nevada.

The Trial Court entered final judgment on February 27, 2017 its Order After February 6, 2017 Hearing. (See AA0299-AA0312 @ Appellants' Appendix Volume 3). The Trial Court's judgment constitutes a final judgment as to all issues and parties. NRAP 3A(b)(1). This appeal is timely because the Howard filed her Notice of Appeal within 30 days of service of notice of entry of the judgment/order. (See AA0313-AA0329 @ Appellants' Appendix Volume 3). NRAP 4(a)(1).

ROUTING STATEMENT

This case should be retained by the Nevada Supreme Court pursuant to NRAP 17(14) as this case raises "as a principal issue a question of statewide public importance, or an issue upon which there is an inconsistency in the published decisions of the Court of Appeals or the Supreme Court or a conflict between the decisions of the two courts.

II. STATEMENT OF THE ISSUES

This Court's precedent in Langevin v. York, 111 Nev. 1481, 1485, 907 P.2d 981, 984 (1995) controls the issue at hand. Langevin relies chiefly on Sack v. Tomlin, 110 Nev. 204, 210, 871 P.2d 298, 303 (1994)), but Langevin develops the Sack doctrine and modified an initial presumption propounded therein. This appeal asks whether, in this case, the Trial Court properly stated the doctrine as modified in Langevin and properly applied the precedent. Further this appeal asks this Court to clarify and harmonize Langevin and Sack. The facts in the present case are similar to the precedent, and this case is an optimal vehicle to clarify the law.

Second, this appeal asks whether plaintiff Shaughnan Hughes proved sufficient evidence. As plaintiff, Hughes bears the burden of proving his complaint's allegations. In Langevin, a partition action, the Court awarded real property to the unmarried joint tenant who paid entire purchase.[1] In this case, also a partition action, appellant paid 100% of the purchase price, and the Trial Court found no clear record of the parties' respective contributions.[2] Nonetheless, the Trial Court awarded Hughes a one-half interest. Howard appeals the resulting windfall.

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[1] Langevin v. York, 111 Nev. 1481, 907 P.2d 981 (1995)

[2] Shaughnan Hughes v. Elizabeth Howard, Order After February 6, 2017 Hearing, Case No. 15-10DC-0876 (10th Judicial District Court, Feb. 27, 2017) (hereinafter "Order"), at AA 0301:4-5 and AA0308:10-17 @ Appellant's Appendix Volume 3.

III. REVIEWABILITY AND STANDARD OF REVIEW

This Court reviews the district court's interpretation of caselaw and statutory language de novo.[3] An error of law is not granted a differential standard. This Court should review *de novo* whether the lower court properly interpreted Langevin, 111 Nev. 1481, 907 P.2d 981 and Sack, 110 Nev. 204, 871 P.2d 298.

This appeal also asks this Court to review the Trial Court's findings for abuse of discretion. A clearly erroneous assessment of the evidence constitutes abuse of discretion.[4] Herein, the Trial Court found that Elizabeth Howard, in addition to paying 100% of the purchase price of the property, also "contributed in excess of One Hundred Thousand Dollars ($100,000)." (See AA0301:4-5 @ Appellants Appendix Volume 3). Further the Trial Court found that Shaughnan L. Hughes approximately Twenty Thousand Dollars ($20,000) with an additional Five Thousand dollars being gifted to Shaughnan L. Hughes for improvements to

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[3] LVMPD v. Blackjack Bonding, 131 Nev. Adv. Op. 10, 343 P.3d 608, 612 (2015), reh'g denied (May 29, 2015), reconsideration en banc denied (July 6, 2015), Liu v. Christopher Homes, LLC, 130 Nev. Adv. Op. 17, 321 P.3d 875, 877 (2014) (reviewing de novo the meaning and application of caselaw); Reno Newspapers, Inc. v. Haley, 126 Nev. 211, 214, 234 P.3d 922, 924 (2010) (reviewing de novo issues of statutory construction).

[4] Aktiengesellschaft v. Roth, 127 Nev. 122, 133, 252 P.3d 649, 657 (2011) (citing Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 405, 110 S.Ct. 2447, 110 L.Ed.2d 359 (1990)).

the property's garage (AA0301:6-9 and AA0301:22-24 @ Appellants Appendix Volume 3). The Trial Court found that neither party presented detailed records to confirm that either party presented "evidence regarding payment of other regular expenses for the property."[5] Notwithstanding this lack of evidence, the Trial Court awarded plaintiff Hughes a 50% share of the real property in question.

IV. STATEMENT OF THE CASE AND FACTS

Appellant Elizabeth Howard purchased real property at 11633 Fulkerson Road in Fallon, Nevada. Appellee Shaughnan Hughes cohabitated at the property. Immediately after Howard's purchase, Mr. Hughes demanded that Ms. Howard quitclaim the property to them together as joint tenants. She complied and quit a one-half interest in the property to Hughes just five (5) days after purchasing the property. Hughes did not contribute to the purchase of the property at the time of purchase nor in the interim 5-day period. His half share came free. While residents at the property, the parties shared expenses but did not maintain comprehensive receipts.

On July 27, 2015, Hughes filed the Complaint pursuant to Nevada Revised Statues 39.010 for partition of his alleged interest in the real property. At trial,

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[5] Shaughnan Hughes v. Elizabeth Howard, Order After February 6, 2017 Hearing, Case No. 15-10DC-0876 (10th Judicial District Court, Feb. 27, 2017) (hereinafter "Order"), at AA0301:13-14 @ Appellants Appendix Volume 3.

Hughes failed to present substantive evidence of his contributions. The Trial Court concluded "neither party presented clear testimony or other evidence regarding their respective interests" and "neither party maintained sufficiently detailed records to confirm their exact contributions."[6] Likewise, "[n]either party presented evidence regarding the payment of other regular expenses for the property. Notably, the parties have provided several receipts for their purchases, but they have limited documentation regarding the flow of money between themselves and between them and their parents."[7] Hughes' documented expenses totaled no more than $2,367.16 -- roughly 6% of the of $225,000.00 appraised value of the home. The Trial Court also found "Ms. Howard contributed in excess of One Hundred Thousand Dollars ($100,000) to the improvements" of the real property in question ("Fulkerson Property").[8] Mr. Hughes' contributions appear to be chiefly labor in the construction of an accessory dwelling, but the Trial Court was unable to determine whether the accessory building added to the property's value.[9]

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[6] Shaughnan Hughes v. Elizabeth Howard, Order After February 6, 2017 Hearing, Case No. 15-10DC-0876 (10th Judicial District Court, Feb. 27, 2017) (hereinafter "Order"), at p. AA0308:15-19 @ Appellants Appendix Volume 3.
[7] *Id.* at AA0301:10-17@ Appellants Appendix Volume 3.
[8] *Id.* at AA0301:4-5 @ Appellants Appendix Volume 3.
[9] *Id.* at AA309:1-7@ Appellants Appendix Volume 3. Further, "Hughes does not dispute that he did not contribute financially to the dwelling." *Id.* at fn. 30 (AA0309:18:20 @ Appellants Appendix Volume 3.

Despite Mr. Hughes' *de minimis* contribution, the Trial Court awarded him a one-half (50%) interest in property.

V. SUMMARY OF THE ARGUMENT

The Trial Court improperly stated the law and incorrectly applied precedent in Langevin, 111 Nev. 1481, 907 P.2d 981. Under Langevin, courts presume that unmarried cohabitants intend to share ownership of real property in proportion to the amount each contributed to the purchase price.[10] Instead of this, the Trial Court applied earlier caselaw from Sack, 110 Nev. 204, 871 P.2d 298.

Hughes contributed nothing to the purchase price of the property. He did not keep comprehensive receipts, and the Trial Court did not find substantive evidence of his contributions to the improvements to the real property. Thus, Plaintiff Hughes failed to prove facts sufficient to change the initial presumption. Nonetheless, despite this lack of evidence, the Trial Court awarded Hughes a one-half interest in the property. (See AA0311:1-3 @ Appellants Appendix 3).

Howard paid 100% of the purchase price, and the Trial Court found insufficient evidence of Plaintiff Hughes' contributions. Thus, the property should remain 100% Howard's.

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[10] Langevin, 111 Nev. 1481, 907 P.2d 981 (1995).

VI. ARGUMENT

a. District Court Improperly Stated and Applied the Langevin Presumption and Standard

In Sack, 110 Nev. 204, 871 P.2d 298 (1994) and Langevin, 111 Nev. 1481, 907 P.2d 981 (1995), this Court considered the partition of real property between unmarried, cohabitating joint tenants and tenants in common. Sack held that fractional shares held by tenants in common are presumed equal unless circumstances indicate otherwise. The presumption can be rebutted where tenants in common are not related, show no donative intent, and contribute unequally to the purchase price.[11] In that situation, proceeds upon sale are to be divided in proportion to amount contributed to the purchase price. Then, any claims that one party may have against the other (for unequal contributions during ownership) are accredited.

In Langevin, the cohabitants were tenants in common rather than joint tenants, but the Court found the distinction inconsequential and considered Sack controlling. Indeed, Sack considered the joint tenants in Sack to be "more analogous to those instances where cotenants unequally contribute to the purchase price of real property" because the unmarried parties lived together without pretense of marriage, and held no community property.[12] Langevin concluded that

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[11] Sack v. Tomlin, 110 Nev. 204, 213, 871 P.2d 298, 304 (1994)
[12] Id, 110 Nev. at 210, 871 P.2d at 303.

unmarried cohabitants intend to share ownership of real property in proportion to the amount each contributed to the purchase price.[13] Importantly, the Court made no mention of donative intent. Sack considered donative intent, but Langevin removed this consideration from the equation. Langevin awarded real property to plaintiff outright because he purchased the two properties without any contribution from defendant.

i. Distinction between Sack and Langevin

Langevin subtly developed the Sack doctrine. Langevin held that initial presumption is: "where cotenants unequally share in the purchase price of property, the cotenants intended to share in proportion to the amount contributed to the purchase price."[14] Previously, Sack held that fractional shares held by tenants in common are presumed equal,[15] and that initial presumption can be rebutted.[16] Langevin takes the facts which Sack found sufficient to rebut the initial presumption, and Langevin changes the initial presumption to now assume that the cohabitants' intent is to hold unequal shares proportionate to their contributions

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[13] Langevin, 111 Nev. 1481, 907 P.2d 981 (1995).

[14] Langevin, 111 Nev. at 1485, 907 P.2d at 984 (citing Sack, 110 Nev. at 210, 871 P.2d at 303) (internal quotation omitted)

[15] Sack,110 Nev. at 213, 871 P.2d at 304

[16] Id., ("unequal contributions toward acquisition of property by cotenants who are not related and show no donative intent can rebut the presumption of equal shares"). Notably, Langevin cites Sack here, but the progeny develops its precedent and alters the initial presumption.

toward the purchase price. Following Langevin, courts must assume unmarried cohabitants intend to share real property in proportion with their contributions to the purchase price.

b. The Trial Court Improperly Stated the Law

In this case, the Trial Court utilized the initial presumption set forth in Sack rather than the initial presumption developed by its progeny, Langevin. The Trial Court stated, "fractional shares are presumed to be equal."[17] The Trial Court also highlighted that unmarried parties' unequal contributions toward the purchase can rebut the initial presumption when the facts do not reflect donative intent.[18] This is the formulation set forth in Sack. Following this Court's more recent precedent, courts now presume that unmarried cohabitants hold real property in proportion to their contribution to the acquisition of the property.[19] Thus, the lower court flatly misstated the law.

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[17] Order at 5:15 (citing Sack, 110 Nev. 204, 213).

[18] Order at AA0303:16-17@ Appellants Appendix Volume 3. (citing Sack, 110 Nev. 204, 213).

[19] Langevin, 111 Nev. 1481, 907 P.2d 981 ("where cotenants unequally share in the purchase price of property, the cotenants intended to share in proportion to the amount contributed to the purchase price").

c. At Trial, Plaintiff Shaughnan L. Hughes Failed to Evidence His Contributions and Failed to Evidence Donative Intent

Importantly, under Langevin, the law presumes cohabitants intend to own real property in shares proportionate to their contributions to the purchase price.[20] Cohabitants' unequal contributions to the maintenance and improvements to the property are offset with deductions and accreditations from the proceeds of sale.[21] Applying this presumption to the present case, Ms. Howard owns the whole property because she paid the whole purchase price. Even if, *argeundo*, Sack controls, the same conclusion follows with the Sack formulation.[22] In either formulation, this case begins with the presumption that Ms. Howard owns the whole property.

At trial, plaintiff Shaughnan L. Hughes bore the burden of proving his contributions. The Trial Court concluded that Hughes failed to do so, stating

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[20] The analysis starts with this presumption: "where cotenants unequally share in the purchase price of property, 'the cotenants intended to share in proportion to the amount contributed to the purchase price.'" Langevin, 111 Nev. at 1485, 907 P.2d at 984 (citing Sack, 110 Nev. at 210, 871 P.2d at 303).

[21] Langevin, 111 Nev. at 1485, 907 P.2d at 983 (citing Sack, 110 Nev. at 211, 871 P.2d at 303)

[22] Under Sack, the initial presumption of equality can be rebutted when circumstances indicate otherwise. Sack, 110 Nev. at 213, 871 P.2d at 304 ("unequal contributions toward acquisition of property by cotenants who are not related and show no donative intent can rebut the presumption of equal shares"). The Trial Court found that Ms. Howard's unequal contribution to the purchase price rebutted the Sack presumption.

"neither party presented clear testimony or other evidence regarding their respective interests" and "neither party maintained sufficiently detailed records to confirm their exact contributions."[23] Likewise, the Trial Court continued,

> Neither party presented evidence regarding the payment of other regular expenses for the property. Notably, the parties have provided several receipts for their purchases, but they have limited documentation regarding the flow of money between themselves and between them and their parents.[24]

Thus, Plaintiff Hughes failed to prove facts which could move the trial court's findings from the initial presumption. The facts and the Trial Court's conclusions must remain with the initial presumption – that the property is owned by the cohabitants in proportion to each cohabitant's contribution to the purchase price. Again, it bears worth repeating, Ms. Howard paid the entire purchase price, and therefore presumptively owns the whole property.

Notwithstanding the uncertain contributions and outright purchase by Ms. Howard, the Trial Court also found that Ms. Howard purchased the real property with a donative intent. Importantly, "donative intent" is removed from the analysis under the Court's most recent precedent, Langevin. Moreover, plaintiff Hughes failed to prove donative intent. The Trial Court stated,

> Mr. Hughes testified that, at the time the deed was executed, he paid the transfer tax of Two Hundred and Thirty-Seven Dollars ($237) after Ms. Howard told him that she had 'already paid her half' and that the

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[23] Order at AA0308:15-19 @ Appellants Appendix Volume 3

[24] Order at p. AA0301:10-17.

> transfer tax constituted his half. Mr. Hughes also testified that Ms. Howard joked with him, saying 'when was the last time you paid Two Hundred and Thirty-Seven Dollars for Thirty-Seven Thousand Dollar Coin.[25]

Mr. Hughes' self-serving testimony regarding Ms. Howard's joke is wholly insufficient to find donative intent. First, a joke, by definition, is not to be taken seriously. Yet, the lower court seems to have taken the joke as dispositive. They say a lot of truth is said in jest. The truth is this joke evidences that Ms. Howard expected Mr. Hughes to contribute financially. His financial contribution thus far was the transfer tax, and Ms. Howard's joke highlighted the insufficiency of his contribution. She did not intend to gift half the property away. Instead, she expected Mr. Hughes to further contribute to his half financially.

Perhaps most importantly, donative intent does not add to the Langevin analysis. The facts are markedly similar in Sack, Langevin, and in the present case, but there is no mention of donative intent in Langevin. Donative intent does not contribute to the analysis of the facts at hand. If the Trial Court rested its decision on a finding of donative intent, then the Trial Court made a mistake of law.

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[25] Order at p. AA0305:9-16 (the joke references the parties' background as coin collectors)

VII. CONCLUSION AND SUMMARY OF REQUESTED RELIEF

Elizabeth Howard respectfully request that this Court reverse the Trial Court's Order and enter Judgment in favor of Elizabeth Howard on all claims of Respondent Shaughnan Hughes.

VIII. CERTIFICATE OF COMPLIANCE

I certify that I have read this opening brief, and that to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, including NRAP 28(e), which requires every assertion regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

I certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), the type style requirements of NRAP 32(a)(6) and the type-volume limitation set forth in NRAP 32(a)(7). This brief uses a proportional typeface and 14-point font, contains 2,708 words and does not exceed 30 pages.

Pursuant to NRS 239B.030 the undersigned certifies no Social Security numbers are contained in this document.

DATED: January 8, 2018.

Respectfully Submitted

By: */s/ Charles R. Kozak*
Charles R. Kozak, Esq.
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Kozak & Associates, LLC., and that on the 8th day of January 2018, I electronically filed the **APPELLANT'S OPENING BRIEF** with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following:

Allison & MacKenzie, LTD./Justin M. Townsend, Esq.

/s/ Dedra L. Sonne
DEDRA L. SONNE