

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELIZABETH C. HOWARD, an
Individual,

Case No.: 72685

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Elizabeth A. Brown
Clerk of Supreme Court

Appellant,

v.

SHAUGHNAN L. HUGHES

Respondent.

An Appeal from the Tenth Judicial District
Court, Judge Thomas L. Stockard,
Case Number 15-10DC-0876

APPELLANT'S REPLY 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 C. Howard is Charles R. Kozak, Esq., Kozak & Associates, LLC.

Appellant Elizabeth C. 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 9th day of March 2018.

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

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ARGUMENT

HUGHES asks this Court to harmonize *Sack* and *Langevin* and hold that both read that a presumption of donative intent should apply to co-tenants.

Opposing Brief p. 29. *Sack* and *Langevin* cannot be so simply harmonized. Their holdings are inapposite. Sack held that fractional shares held by tenants in common are presumed equal unless circumstances indicate otherwise. Sack v. Tomlin, 110 Nev. 204, 213, 871 P.2d 298, 304 (1994). Langevin turns this proposition on its head. Under *Langevin*, the law presumes, “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 v. York, 111 Nev. 1481, 1485, 907 P.2d 981, 984 (1995). While co-inhabitation is increasingly common in Nevada and traditional marriage wanes, this case is an opportune moment for this Court to clarify whether co-tenants are presumed equal owners or presumed to hold shares proportional to purchase price contributions.

The core of confusion is that Langevin misstates the hold in Sacks. Langevin outwardly states, “Under Sack there is a presumption that 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). This is not the hold. In fact, Sack held, “The fractional shares held by tenants in common

are usually equal and are presumed to be equal unless circumstances indicate otherwise.” Sack, 110 Nev. at 213, 871 P.2d at 304. Unequal contributions to acquisition of property by tenants in common can rebut presumption that fractional shares are held equally. *Id.* The difference is whether the initial presumption is that fractional shares are held equally or held proportional to acquisition contributions. The initial presumption is critical in a case such as this, wherein the trial court concluded that there was insufficient evidence to determine the parties’ respective interests. Order After February 6, 2017 Hearing p.10:19.

1. Trial Court’s Two Errors

a. Trial Court Applied the Wrong Standard

Turning to the case at hand, the trial court stated misstated the law. The trial court wrote, “fractional shares are presumed to be equal.” Order After February 6, 2017 Hearing at 5:15 (citing Sack, 110 Nev. 204, 213). Similarly, the trial court reasoned that unequal contributions toward the purchase can rebut the presumptively equal shares when the parties are not married, and the facts do not reflect donative intent. Order After February 6, 2017 Hearing at 5:16-17 (citing Sack, 110 Nev. 204, 213). This is an inaccurate statement of the law. Langevin, the more recent precedent, is inapposite. Langevin holds, “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. Even if Sack remains good law, Langevin interpreted Sack and concluded, “Under Sack there is a presumption that 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.” Id. Thus, the trial court in this case misstated the law’s initial presumption.

The trial court’s misstatement of the law resulted in grave consequences for Appellant HOWARD. She had paid the entire purchase price. If the trial court properly stated the law, then the real property would presumptively be HOWARD’S alone.

b. Insufficient Evidence

Respondent HUGHES can rebut the law’s presumption with evidence of his contributions. What is the evidence in this case? At length, Respondent cites his own trial testimony. Respondent’s self-serving and uncorroborated testimony did not convince the trial court. 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.” Order After February 6, 2017 Hearing p.10. Likewise, “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.” Order, p. 3:10-17.

Plaintiff HUGHES bore the burden to prove his case, and the trial court concluded there simply was not enough evidence. Without sufficient evidence, Plaintiff HUGHES failed to move the needle from the law’s initial presumption – that cotenants intended to share in proportion to the amount contributed to the purchase price. The presumption remains unrebutted, and HOWARD owns the property entirely because she paid the entire purchase price.

CONCLUSION

In summary, HOWARD’s appeal asks this court to review Sack and Langevin. Langevin, the more recent precedent, offers lip service to Sack but materially changes the law’s initial presumption when co-tenants purchase real property together. Appellant HOWARD asks this Court to expressly apply the precedent in Langevin and hold that the law presumes cotenants intended to share real property in proportion to the amount contributed to the purchase price. Langevin, 111 Nev. at 1485, 907 P.2d at 984. Applying Langevin to this case at hand, HOWARD asks this Court to conclude that HOWARD presumptively owns the real property because she paid the entire purchase price, and HUGHES provided insufficient evidence to rebut that presumption.

CERTIFICATE OF COMPLIANCE

I certify that I have read this Appellants' Reply 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 Appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the 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, 14-point font and contains 880 words.

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

Dated this 9th day of March 2018.

Respectfully Submitted by:

/s/ Charles R. Kozak

Charles R. Kozak, Esq.
Attorney for Appellant
Elizabeth C. Howard

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify I am an employee of Kozak & Associates, LLC., and that on March 9, 2018, I electronically filed the **APPELLANT'S REPLY** 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.

DATED: March 9, 2018.

/s/ Dedra L. Sonne

Dedra L. Sonne

Employee of Kozak & Associates, LLC.