

SUPREME COURT OF WASHINGTON

Olver v. Fowler

168 P.3d 348 (Wash. 2007) · No. No. 78321-7 · Decided September 20, 2007

SUMMARY

The Washington Supreme Court held that a trial court did not abuse its discretion by allowing a guardian ad litem to intervene in probate proceedings involving the estates of two deceased partners. It further held that Washington’s law governing committed intimate relationships may be applied to divide jointly acquired property between the estates of both deceased partners before distribution under wills or intestacy laws. The court declined to decide whether joint tort liability extends to committed intimate partners, leaving that issue for a separate action.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Washington                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| WRITING FOR THE COURT | Bridge, J.; Tom Chambers, J.; Charles W. Johnson, J.; Susan Owens, J.; Barbara A. Madsen, J.; Mary E. Fairhurst, J.; Sanders, J.; Gerry L. Alexander, C.J.; James M. Johnson, J.                                                                                                                                                                                                                                                                                                                                                                |
| JURISDICTION          | Washington                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| DECIDED               | September 20, 2007                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| DOCKET                | No. 78321-7                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| PROCEDURAL POSTURE    | Vu Nguyen, on behalf of minor Dianna Nguyen, intervened in a probate proceeding challenging the inventory and equitable division of property between the estates of two deceased unmarried partners. The trial court granted intervention and ordered that one-half of the property inventoried in Cung Ho's estate be transferred to Thuy Nguyen Ho's estate. The Washington Court of Appeals affirmed, and the Washington Supreme Court granted review of the intervention, committed-intimate-relationship, and joint-tort-liability issues. |
| STANDARD OF REVIEW    | The timeliness of intervention is reviewed for abuse of discretion. The court applies an abuse-of-discretion standard where the trial court's decision is manifestly unreasonable, based on untenable grounds, or based on untenable reasons.                                                                                                                                                                                                                                                                                                   |
| PRECEDENTIAL VALUE    | Published en banc Washington Supreme Court opinion; precedential.                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

## PARTIES

Julie K. Fowler, special administrator of the estate of Cung Van Ho, Vu Nguyen, guardian ad litem for Dianna Nguyen v. Michael L. Olver, special administrator of the estate of Thuy Thi Thanh Nguyen Ho

## TOPICS

probate procedure

estate administration

estate litigation

intervention

family law

## PRACTICE AREAS

probate

estate administration

family law

civil procedure

torts

## QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by allowing Vu Nguyen to intervene after the equitable division judgment was entered or proposed.
2. Whether Washington's law of committed intimate relationships applies to equitably divide jointly acquired property between the estates of two partners who both died.
3. Whether joint tort liability principles apply to committed intimate partners or permit creditors of one partner to reach the other partner's estate.

## HOLDINGS

1. The trial court did not abuse its discretion in allowing Vu Nguyen to intervene in the probate proceeding.
2. When a committed intimate relationship is terminated by the death of both partners, jointly acquired property that would have been community property had the partners been married may be equitably divided between their estates.
3. The court declined to decide whether joint tort liability principles apply to committed intimate partners.

## KEY QUOTATIONS

*“First, the decedent's property must be inventoried; a personal representative must determine what property belongs in the decedent's estate.”* (at 356)

*“Only after the contents of the estate are established can the personal representative distribute the contents of the estate according to a valid will or the rules of intestacy.”* (at 356)

*“We conclude that the law of committed intimate relationships applies where both partners are deceased, allowing equitable division between the deceased partners' estates.”* (at 357)

*“The trial court did not abuse its discretion when it allowed Vu to intervene in this challenge to the inventory of Cung's estate.”* (at 357)

## FACTUAL BACKGROUND

Cung Ho and Thuy Nguyen Ho lived together for at least 14 years, held themselves out as husband and wife, had two children, and jointly operated a family business. Although most property was titled in Cung's name, the

couple pooled their money and acquired substantial assets during the relationship; titling property in the male partner's name was customary in their Vietnamese culture. Both partners and one of their children died in a 2003 automobile accident, leaving their estates to dispute ownership and distribution of the jointly acquired property.

## PROCEDURAL HISTORY

Olver, as special administrator of Thuy's estate, challenged the inventory of Cung's estate and sought an equitable interest in property acquired during the couple's committed intimate relationship. The trial court found that the relationship existed, and a binding mediation resulted in an equal division of jointly acquired property between the estates. Vu intervened before entry of the judgment and appealed, while Olver cross-appealed the intervention ruling. The Court of Appeals affirmed intervention and the equitable division, declined to reach joint tort liability, and the Supreme Court affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Olver v. Fowler, 131 Wash. App. 135, 126 P.3d 69 (2006)
- Westerman v. Cary, 125 Wash. 2d 277, 303, 892 P.2d 1067 (1994)
- Kreidler v. Eikenberry, 111 Wash. 2d 828, 832-33, 766 P.2d 438 (1989)
- T.S. v. Boy Scouts of Am., 157 Wash. 2d 416, 423-24, 138 P.3d 1053 (2006)
- State ex rel. Carroll v. Junker, 79 Wash. 2d 12, 26, 482 P.2d 775 (1971)
- State v. Rohrich, 149 Wash. 2d 647, 654, 71 P.3d 638 (2003)
- State v. Lewis, 115 Wash. 2d 294, 298-99, 797 P.2d 1141 (1990)
- Columbia Gorge Audubon Soc'y v. Klickitat County, 98 Wash. App. 618, 623, 989 P.2d 1260 (1999)
- Loveless v. Yantis, 82 Wash. 2d 754, 759, 513 P.2d 1023 (1973)
- In re Brenchley's Estate, 96 Wash. 223, 164 P. 913 (1917)
- Creasman v. Boyle, 31 Wash. 2d 345, 196 P.2d 835 (1948)
- Latham v. Hennessey, 87 Wash. 2d 550, 554 P.2d 1057 (1976)
- In re Estate of Thornton, 81 Wash. 2d 72, 499 P.2d 864 (1972)
- In re Marriage of Lindsey, 101 Wash. 2d 299, 678 P.2d 328 (1984)
- Peffley-Warner v. Bowen, 113 Wash. 2d 243, 778 P.2d 1022 (1989)
- Connell v. Francisco, 127 Wash. 2d 339, 898 P.2d 831 (1995)
- Vasquez v. Hawthorne, 145 Wash. 2d 103, 33 P.3d 735 (2001)
- Lyon v. Lyon, 100 Wash. 2d 409, 413, 670 P.2d 272 (1983)
- Washington Educ. Ass'n v. Washington State Pub. Disclosure Comm'n, 150 Wash. 2d 612, 622-23, 80 P.3d 608 (2003)