Brian Butler, Respondent V. Saori Kitani, Appellant

2024 | Cited 0 times | Court of Appeals of Washington | July 9, 2024

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Marriage of: No. 57861-1-II

BRIAN BUTLER,

Respondent,

and

SAORI KATANI, UNPUBLISHED OPINION

Appellant.

VELJACIC, J. motion findings of fact and conclusions of law pertaining thereto. Kitani argues that the superior court

lacked jurisdiction over the marriage. Specifically, she asserts that because the parties filed a joint petition for divorce in Japan, recorded it with the respective ward, and received a receipt of acknowledgement of the petition, they were no longer married such that the superior court no longer had jurisdiction to address the division of property in Washington for an already-dissolved marriage. She argues that the trial court erred when declining to exercise comity toward the Japanese acknowledgment of petition for divorce such that no further proceedings would be necessary in Washington. Kitani also argues that the terms of the settlement agreement regarding the division of property were not fair and equitable. Finally, Kitani moves to strike the declaration

ns under RAP 10.3(6). Filed Washington State Court of Appeals Division Two

July 9, 2024 We conclude the superior court had jurisdiction to address division of property. We also conclude that the superior court did not abuse its discretion when declining to exercise comity toward the Japanese acknowledgment of petition for divorce. However, we reverse and remand for a fair and equitable distribution of real and personal property.

her request for sanctions. Finally, we reverse th to Butler and deny his request for attorney fees on appeal as he fails to meet the requirements of

RAP 18.1.

FACTS

I. BACKGROUND

In 2015, Butler and Kitani met while Butler was living and working in Japan. Two years later, Butler and Kitani moved to the United States and were married in Washington. In 2019, Kitani returned to Japan. Butler later requested she return to Washington; she did so for five months.

In January of 2020, Kitani learned she was

news, the couple proceeded to purchase a home in Bonney Lake in March of that year. However, shortly after purchasing the home, Kitani returned to Japan. Butler remained in Washington. In September, Kitani gave birth in Japan.

II. DISSOLUTION PROCEEDINGS

In May 2021, Butler and Kitani began participating in alternative dispute resolution (ADR) in Japan for the dissolution of their marriage. 1

1 This process, called yogi Rikon, Agreement administrative divorce in Japan. CP) at 191. Meanwhile, in June, Butler commenced dissolution proceedings in Pierce County,

Washington. The first ADR session in Japan occurred in July. Butler and Kitani each retained

Japanese counsel. Kitani was served process regarding the Washington dissolution proceeding on

September 15. Both Butler and Kitani had Washington attorneys in addition to their counsel in

ton proceedings, which the superior court signed.

Papers (CP) at 14.

On July 1, 2022, Butler and Kitani reached an agreement via ADR and executed the

Settlement A ,

conveyance of the Bonney Lake property to Butler, spousal maintenance, and finalization of the

dissolution in both Japan and Washington. The agreement read, in relevant part:

1 (1) [Butler] and [Kitani] agree to divorce today. (2) [Butler] and [Kitani] shall file divorce papers in Washington State of the United States, and divorce notification in Japan immediately after the agreement is reached. . . . [Butler] and [Kitani] shall cooperate in good faith in the procedures and delivery of documents necessary for the divorce in both countries. . . . . (4) [Butler] shall sell the Property after the divorce is finalized in the United States and Japan. (5) If [Butler] or [Kitani] respectively fails to promptly complete the divorce proceedings in the United States, the failing party shall pay all costs,

2 (1) [Agreement that son would live with Kitani in Japan, and she shall have custody] . . . . 5 (1) [Kitani] shall transfer [her] share of ownership interest in the property to [Butler]. [Kitani] shall agree and shall not object to [Butler] submitting on behalf of [Kitani] the documents necessary for the transfer proceedings of ownership to the Pierce County District Justice Bureau prepared by [Kitani] as part of the divorce proceedings in Washington State of the United States under 1(2) above. [2] . . . . (7) [Butler] and [Kitani] mutually confirm that, except as provided in 1(5) above, neither party shall make any claim against the other party for all costs

CP 65-69 (emphasis added).

with the respe d.

III. MOTIONS FILED IN WASHINGTON AFTER SIGNING OF THE SETTLEMENT AGREEMENT

On August 31, 2022, the superior court stay expired.

Washington attorney moved for a default judgment against Kitani

because Kitani had not filed a response to the dissolution proceedings in Washington.

Two weeks later, and three days before the motion for default was to be heard, Kitani filed

over the marriage and requesting it exercise comity toward the receipt of petition for divorce

provided by the Japanese ward.

Butler responded that the settlement agreement provided that he and Kitani were still

required to finalize the dissolution in Washington regardless of the acknowledgment of petition

for divorce from the Japanese ward.

2 While the agreement was written in Japanese, we use the English version as translated by the parties via a Washington State Court certified translator and provided in our record. On September 19

for default before the hearing.

On September 29, Butler filed a motion to enforce the settlement agreement. He argued

that the agreement was not enforceable without a divorce order from the superior court. Butler

supported his motion with a declaration. In it, he stated that the agreement clearly requires that he

and Kitani must finalize the divorce in both Japan and Washington, and that he was unable to

record the quitclaim deed to the Bonney Lake property and corresponding real estate excise tax

ng ownership. CP at 325.

Kitani reasserted that the superior court lacked jurisdiction as she and Butler were already

validly divorced in Japan, and she requested dismissal of the proceedings.

enforce the settlement

agreement. A week later, a written order was entered to that effect. In its order, the court

acknowledged the settlement agreement required the parties to finalize the divorce in Washington.

Consequently, the superior court decli

at 339. It then ordered the parties to

submit final divorce orders by December 2, and granted Butler attorney fees and costs pursuant to

sections 1(2) and (5), and section 5(7) of the settlement agreement.

Ishihara. In the declaration, Ishihara stated that pursuant to Japanese civil code, married couples

can divorce upon mutual consent. Ishihara stated that the procedure is administrative in nature,

with no court involvement. Consequently, divorce by agreement allows parties to register the divorce with the ward, which in turn changes the status of the parties from married to divorced in

the family registries. Ishihara explained that the updated status in the family registry certifies the

he divorce notification by the ward; this terminates the marriage. CP at 357.

. CP

at 357.

Additionally, Ishihara opined that the settlement agreement was duly entered as it was

executed following Japanese arbitration. Consequently, Ishihara stated the agreement is valid

under the general principles of contract law unless void due to several factors, none of which apply

here.

Ishihara concluded that the terms of the settlement agreement provide that the parties would

submit the notification in Japan, which Kitani did, effectively making the divorce legal under

Japanese law. It is unclear whether the superior court considered this declaration given that it was filed after the superior court issued its order.

the credibility of the declaration. However, Butler conceded that in terms of the process that occurred in Japan, Ishihara is correct, and there is no dispute regarding how Kitani processed the divorce in Japan. Yet, Butler maintained that Ishihara did not address how the Washington dissolution proceeding is to be concluded.

On January 3, 2023, the superior court entered findings of fact and conclusions of law as well as a divorce decree. Kitani appeals. ANALYSIS

I. IN REM JURISDICTION

e. -24. Several of the arguments

relate to the central theme that the superior court could not have jurisdiction because she and Butler were already divorced when she filed the joint petition and received the acknowledgement from the ward in Japan. The conclusion Kitani seeks is that the Japanese proceeding divested the Washington court of jurisdiction. However, Kitani admits that Washington has in rem jurisdiction gton court has in rem

jurisdiction and hold that the trial court did not err in so ruling.

We begin our analysis with a cursory overview of types of jurisdiction in light of the in briefing.

[j] ZDI Gaming,

Inc. v. Wash. State Gambling Comm'n, 173 Wn.2d 608, 617, 268 P.3d 929 (2012) (internal quotation marks omitted) (quoting Dougherty v. Dep't of Labor & Indus., 150 Wn.2d 310, 315, 76

P.3d 1183 (2003)).

Subject matter jurisdiction relates to the authority of the court to hear and decide the type of controversy at issue. Banowsky v. Guy Backstrom, DC, 193 Wn.2d 724, 731, 445 P.3d 543 (2019) (emphasis added). Therefore, if a court lacks subject matter jurisdiction, the court does not have authority to decide the claim at all or issue orders of any type granting relief. Id.

However, in rem jurisdiction deals with to exercise jurisdiction over property, making it far more analogous to personal jurisdiction than to subject matter jurisdiction. Pastor v. Real Prop. Commonly Described as 713 SW 353rd Place, Fed. Way, King County, 21 Wn. App. 2d 415, 425, 506 P.3d 658 (2022) (emphasis added) (internal quotation marks omitted) (quoting City of Walla Walla v. $401,333.44, 164 Wn. App. 236, 249, 262 P.3d 1239

In re Marriage of Kowalewski, 163 Wn.2d 542, 548, 182 P.3d 959 (2008). If the court has jurisdiction over the property of the marital estate, as when the property is located within Washington, the court may distribute that property. Ghebremichale v. of Lab. & Indus., 92 Wn. App. 567, 574, 962 P.2d 829 (1998).

state has no legally operative effect in changing legal title, except as provided by the law of the enforce a decree affecting real property located outside the state of Washington. Kowalewski, 163 Wn.2d at 548.

With regard to personal jurisdiction, challenges to it are waivable. See Sheats v City of East Wenatchee, 6 Wn. App. 2d 523, 537, 431 P.3d 489 (2018); CR 12(h).

We review questions of jurisdiction de novo. See In re Marriage of McDermott, 175 Wn.

App. 467, 479, 307 P.3d 717 (2013) (reviewing subject matter jurisdiction de novo); see also Failla v. FixtureOne Corp., 181 Wn.2d 642, 649, 336 P.3d 1112 (2014) (reviewing claim regarding personal jurisdiction de novo).

To be clear, [a] proceeding dissolving marital bonds is a proceeding in rem. Where one party is domiciled in the state, the court has jurisdiction over the marriage and may dissolve it, even though the court is unable to obtain in personam jurisdiction over the nonreside In re Marriage of Tsarbopoulos, 125 Wn. App. 273, 284, 104 P.3d 692 (2004); RCW 26.09.030.

Here, as admitted by Kitani, the trial court had in rem jurisdiction because Butler resided in Washington and the marital property (the Bonney Lake house) and other personal property is in Washington; the trial court therefore had in rem jurisdiction to distribute the marital property. And, significantly, both Butler and Kitani agreed to finalize the dissolution in Washington. Indeed,

hall file divorce papers in Washington

State of the United States, and divorce notification in Japan immediately after the agreement is

at 65 (emphasis added). Both parties conceded in rem jurisdiction and agreed to

rgument to the

contrary necessarily fails. And Kitani fails to establish that a challenge to in rem jurisdiction cannot be waived.

Next, Kitani argues that because she and Butler were already divorced at the time the superior court entered dissolution orders, there could be no evidence supporting the superior

We disagree because we conclude that the parties agreed to Washington proceedings to resolve their dispute. To the extent Kitani agreed in the settlement agreement to dissolve the marriage in over marital property in Washington.

Kitani next argues that although Japan and Washington had simultaneous in rem

-ordinate in rem

Br. at 29, the trial court was divested of its in rem jurisdiction when Kitani became domiciled in Japan, and when Japan exercised its in rem jurisdiction by dissolving the marriage and issuing the administrative acknowledgement. 3

3 Kitani also argues that application of the prior pending action doctrine supports the entry of the order staying the proceedings in Washington, which in turn supports the conclusion that the superior court lacked in rem subject matter jurisdiction. However, Kitani does not cite any authority that the prior pending action doctrine relates to foreign judgments or to the exercise of Kitani relies on Tsarbopoulos, 125 Wn. App. 273, for the proposition that Japan could

validly dissolve the marriage despite Butler not residing in Japan, and that it did here. But Tsarbopoulos does not have the effect Kitani desires because, though the parties dissolved their marriage in Japan, the Japanese dissolution did not divest Washington of jurisdiction. Significantly, as referenced above, Kitani conceded in rem jurisdiction exists in Washington. Moreover, both she and Butler agreed to submit to the jurisdiction of the court in Washington in their settlement agreement. And because courts may find a lack of jurisdiction only under compelling circumstances, under the specific facts of this case, the superior court did not abuse its discretion in ruling it had jurisdiction. In re Marriage of Weiser, 14 Wn. App. 2d 884, 905, 475 P.3d 237 (2020).

Kitani also relies on Willapa Trading Co., Inc. v. Muscanto, for the proposition that when there is no longer a res upon which the superior court can act, the court is deprived of in rem jurisdiction. 45 Wn. App. 779, 727 P.2d 687 (1986). But any reliance on this case is misplaced because Willapa Trading addressed admiralty in rem jurisdiction and concurrent in personam

jurisdiction. 45 Wn. App. at 784. Willipa Trading is inapposite.

The specific facts of this case demonstrate that the superior court had in rem jurisdiction.

In an apparent effort to resolve both the Japanese and Washington proceedings, the parties agreed to submit to the jurisdiction of a Washington court as part of the resolution of their dissolution, as expressed in sections 1(4) and (5) of their settlement agreement. Thus, the registration of the Japanese divorce and corresponding acknowledgment by the ward did not divest the superior court of in rem jurisdiction. II. COMITY

A. We Review A Decision Whether or Not to Exercise Comity For Abuse Of Discretion.

discretion. Pruczinski v. Ashby, 185 Wn.2d 492, 506, 374 P.3d 102 (2016). A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds. Id.

Kitani argues that the trial court abused its discretion when it did not exercise comity as to Washington were necessary. Butler counters that the superior court has discretion on whether or not to exercise comity. We agree with Butler that a superior court has discretion on whether to exercise comity as to a foreign judgment and that on these facts the superior court did not abuse its discretion.

B. When Comity May Be Exercised

Comity is not a rule of law. In re Estate of Toland, 180 Wn.2d 836, 856, 329 P.3d 878 (2014) (Wiggins, J., concurring in part). Rather, we exercise comity out of deference and respect and for the purposes of practice, convenience, and expediency. Haberman v. Wash. Pub. Power Supply Sys., 109 Wn.2d 107, 160-61, 744 P.2d 1032, 750 P.2d 254 (1988). It is not an imperative or obligation upon our courts but lies within their discretion. Id.; New W. Fisheries, Inc. v. of

Revenue, 106 Wn. App. 370, 379, 22 P.3d 1274 (2001); MacKenzie v. Barthol, 142 Wn. App. 235, 240, 173 P.3d 980 (2007); State v. Medlock, 86 Wn. App. 89, 96, 935 P.2d 693 (1997). The underlying purpose of the comity doctrine is to respect a foreig and ensure there is an end to litigation. As we have concluded above, the parties expressly agreed to submit to both Washington and Japanese jurisdiction in finalizing their dissolution. Accordingly, under the facts in this case, administrative acknowledgment of petition for divorce such that further proceedings in Washington were unnecessary. The trial court did not err when it declined to exercise comity in a way that would deprive Washington courts of the ability to resolve how Washington property should be divided.

III. ENFORCEMENT OF THE SETTLEMENT AGREEMENT

the settlement agreement and entering the final dissolution orders in Washington. However, at oral argument before us, Kitani clearly argued that she wants the settlement agreement enforced. Wash. Ct. of Appeals oral argument, Butler v. Kitani, No. 57861-1-II (Feb. 2, 2024), at 8 min., 14 sec. to 9 min., 4 sec.; 9 min., 39 sec., to 9 min., 49 sec., https://tvw.org/video/division-2-court-of-appeals-

agreement itself required the parties to request the superior court recognize the validity of the concession made at oral argument

and hold that the trial court did not err in recognizing it had the authority to dissolve the marriage and determine matters attendant to a dissolution.

Fairway

Collections, LLC v. Turner, 29 Wn. App. 2d 204, 227, 540 P.3d 805 (2023); see also Condon v.

Condon, 177 Wn.2d 150, 161 n.4, 298 P.3d 86 (2013) (explaining that de novo review is appropriate despite abuse of discretion having been the standard in the past). We interpret settlement agreements in the same way we interpret other contracts. McGuire v. Bates, 169 Wn.2d 185, 188-89, 234 P.3d 205 (2010). In doing so, the goal is to determine the intent of the parties by focusing on their objective manifestations as expressed in the agreement. See Inc. v. Seattle Times Co., 154 Wn.2d 493, 503, 115 P.3d 262 (2005).

When interpreting contracts, the subjective intent of the parties is generally irrelevant if the court can impute an intention corresponding to the reasonable meaning of the actual words used. Id. at 503-04. Words in a contract are generally given their ordinary, usual, and popular meaning unless the entirety of the agreement clearly demonstrates a contrary intent. Universal/Land Constr. Co. v. City of Spokane, 49 Wn. App. 634, 637, 745 P.2d 53 (1987). We do not interpret what was intended to be written but what was written. J.W. Seavey Hop Corp. of Portland v. Pollock, 20 Wn.2d 337, 348-49, 147 P.2d 310 (1944).

Contracts are also considered as a whole, giving them a fair, reasonable, and sensible construction. Kut Suen Lui v. Essex Ins. Co., 185 Wn.2d 703, 710, 375 P.3d 596 (2016) (internal quotation marks omitted) (quoting Key Tronic Corp. v. Aetna (CIGNA) Fire Underwriters Ins. Co., 124 Wn.2d 618, 627, 881 P.2d 201 (1994)) Id.

Here, the record shows that Kitani and Butler executed the settlement agreement on July 1, after extensive negotiation while represented by counsel. Additionally, sections 1(2) and 1(4) of the agreement finalize the divorce and sale of the property:

1 (2) [Butler] and [Kitani] shall file divorce papers in Washington State of the United States, and divorce notification in Japan immediately after the agreement is reached. . . . [Butler] and [Kitani] shall cooperate in good faith in the procedures and delivery of documents necessary for the divorce

in both countries. . . . . (4) [Butler] shall sell the Property after the divorce is finalized in the United States and Japan.

CP at 65 (emphasis added). Further, section 5(1) of the agreement states:

5 (1) [Kitani] shall transfer [her] share of ownership interest in the property to [Butler]. [Kitani] shall agree and shall not object to [Butler] submitting on behalf of [Kitani] the documents necessary for the transfer proceedings of ownership to the Pierce County District Justice Bureau prepared by [Kitani] as part of the divorce proceedings in Washington State of the United States under 1(2) above.

CP at 69 (emphasis added).

dissolution CP at 65, 69.

Read together, these provisions reasonably mean that the parties were to submit final documents

to the superior court in Washington to finalize the dissolution. The superior court did not err in

recognizing that, pursuant to the settlement agreement, it had the authority to dissolve the marriage

and determine matters attendant to a dissolution.

IV. SUPERIOR COURT S PROPERTY DISTRIBUTION

equitable is unsupported by sufficient evidence because there was no evidence before the superior

court of the distribution of the property would be made. As a result, property in Washington remains

undistributed. 4

4 Kitani also argues that the other personal property not listed in the agreement, which she concedes is enforceable, is therefore owned by her and Butler as tenants in common. Consequently, she continues, the appropriate distribution of interests in this property would occur by partition. Wash. Ct. of Appeals oral argument, Butler v. Kitani, No. 57861-1-II (Feb. 2, 2024) at 9 min., 39 sec., to 9 min., 49 sec., https://tvw.org/video/division-2-court-of-appeals- 2024021037/?eventID=2024021037. Because we reverse the property distribution and remand for Under In re Grant, cited by Kitani, the court stated that where the parties enter into a

the court unless it finds, after considering the economic circumstances of the parties and any other

relevant evidence produced by the parties on their own motion or on request of the court, that the

-30, 397 P.3d

property

between the parties regardless of any agreement earlier reached. The statutes direct the dissolution

Id. at 130.

When making a just and equitable determination regarding the allocation of property, the

superior court considers the agreement and other evidence. See In re Marriage of Bernard, 165

Wn.2d 895, 906, 204 P.3d 907 (2009) (considering not only the agreement but witness testimony,

greement). Parties to a marriage

dissolution may have a claim to a share of community assets. See RCW 26.09.080(1).

Parties are presumed competent to enter a contract. Grannum v. Berard, 70 Wn.2d 304,

307, 422 P.2d 812 (1967). This presumption can only be overcome by clear cogent and convincing

evidence to the contrary. See Id.

Looking first at the agreement, the relevant sections relating to distribution of property are

as follows:

5 (1) [Kitani] shall transfer [her] share of ownership interest in the property to [Butler]. [Kitani] shall agree and shall not object to [Butler] submitting on behalf of [Kitani] the documents necessary for the transfer proceedings of ownership to the Pierce County District Justice Bureau prepared by [Kitani] as part

the superior court to hold a hearing to consider community and separate property held by the parties, we do not reach this issue. of the divorce proceedings in Washington State of the United States under 1(2) above. (2) [Butler] shall assume all obligations concerning the property. If [Kitani] is taxed in Japan or the United States concerning the property, [Butler] shall pay to [Kitani] an amount equal to such taxed amount as additional marital expenses. (3) [Butler] shall store the items left behind by [Kitani] and the eldest son in the property with prudent care until delivery, and immediately after the conclusion of this agreement, send them to [Kitani] with careful attention to the packaging method to prevent damage and defacement per the instructions of [Kitani]. The cost of sending the items

shall be paid by [Butler]. . . . . (5) [Butler] shall pay to [Kitani], promptly after receipt of the documents mentioned in 1(3) above, 1,000,000 yen of expenses for childbirth of the eldest son and unsettled marriage expenses by way of a wire transfer to the bank account of [Kitani] listed in 3 above. [Butler] shall pay the transfer fee.

CP at 69 (emphasis added).

While Butler assumed the entirety of the debt and equity in the newly purchased home, as

Kitani notes, the record contains no information on the amount of equity in the home, the value of the retirement account, or other community or separate assets, let alone any indication of what the superior court considered in coming to its determination that the distribution was fair and equitable. and equitable is unsupported by substantial evidence. We reverse the superior court s entry of the decree and findings regarding the fair and equitable division of property and remand to the trial court to hold a hearing and enter findings and conclusions on that issue.

VI. MOTION TO STRIKE

In her reply brief, Kitani moves to strike the declaration of Masami Kittaka attached to

because the declaration is not supplementing the record and instead seeks to provide additional evidence that was not before the trial court. may

direct that additional evidence on the merits of the case be taken before the decision of a case on are present. (Emphasis added.) Here, the declaration is not

part of the superior court record, Butler did not file a motion to supplement the record, nor did we direct Butler to submit additional evidence on the merits of the case. Accordingly, the motion to strike is granted.

VII. SANCTIONS

Kitani also requests sanctions against Butler, alleging neglect of appellate rules.

Specifically, she argues that Butler failed to make arguments supported by proper citation as required by RAP 10.3(6) and misstated the record.

presented for review, together with citations to legal authority and references to relevant parts of appropriate for counsel who neglect to meet

the requirements of RAP 10.3. Litho Color, Inc. v. Pac. Emps. Ins. Co., 98 Wn. App. 286, 305, 991 P.2d 638 (1999). The purpose of these rules is to enable the court and opposing counsel to efficiently and expeditiously review the accuracy of the factual statements made in the briefs and to efficiently and expeditiously review the relevant legal authority. Id. at 305-06.

Here, we do not find significant failures by Butler in complying with the Rules of Appellate VIII. ATTORNEY FEES

A. Attorney Fees Awarded by the Superior Court

Kitani argues that the superior court erred when awarding attorney fees and costs to Butler pursuant to the settlement agreement. In particular, she argues that the court made no findings that ng proceedings and without such a

Butler counters that the settlement agreement requires that either party pay attorney fees and costs incurred in delaying the Washington proceedings. He further argues that under RCW 26.09.140, a court has discretion to order one party to pay reasonable attorney fees and costs.

Whether a party is entitled to attorney fees is a question of law that we review de novo.

ndo. Owners v. Supreme Nw., Inc., 168 Wn. App. 86, 104-05,

Durland

v. San Juan County, 182 Wn.2d 55, 76, 340 P.3d 191 (2014). If attorney fees are authorized, we will uphold an attorney fee award unless the court abused its discretion. Workman v. Klinkenberg, l court abuses its discretion if its decision

In re Marriage

of Littlefield, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). We may affirm on any basis supported by the record. Bavand v. OneWest Bank, 196 Wn. App. 813, 825, 385 P.3d 233 (2016).

Here, because we reverse the superior court and remand for further proceedings, we also B. Attorney Fees on Appeal

Butler Stiles v. Kearney, 168 Wn. App.

250, 267, 277 P.3d 9 (2012); RAP 18.1(b). This requirement is mandator Stiles, 168 Wn. App. at 267. Because Butler fails to request attorney fees on appeal under a separate paragraph and with authority, and instead only devotes a single sentence; this fails the requirements of RAP 18.1. Accordingly, we do not award attorney fees on appeal.

CONCLUSION

We conclude that the superior court had in rem subject matter jurisdiction over the marriage and that the superior court did not abuse its discretion when declining to exercise comity toward the property distribution is fair and equitable is unsupported by substantial evidence. Therefore, we reverse the superio division of property and remand to the superior court to conduct a hearing on the fair and equitable distribution of property.

because we reverse and remand regarding the property distribution, we also reverse the superior

ney fees and costs. Also, we deny Butler request for attorney fees on

appeal. A majority of the panel having determined that this opinion will not be printed in the

Washington Appellate Reports, but will be filed for public record in accordance with RCW

2.06.040, it is so ordered.

Veljacic, J.

We concur:

Glasgow, J.

Cruser, C.J.