

FILED  
Court of Appeals  
Division II  
State of Washington  
2/22/2022 8:00 AM

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
2/22/2022  
BY ERIN L. LENNON  
CLERK

100670-5

No. 54507-1-II

COURT OF APPEALS  
DIVISION II  
OF THE STATE OF WASHINGTON

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Allen and Nikkala McPherson

Appellant

V

Eric Betten

Michael McPherson

Estate of Julia H. Betten

Respondent

---

PETITION TO REVIEW  
TO THE WASHINGTON SUPREME COURT

---

ALLEN MCPHERSON  
NIKKALA MCPHERSON

PRO SE

PO BOX 1097

WOODLAND 98674

360 901 1362

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A. IDENTITY OF PETITIONER

Allen and Nikkala McPherson asks this court of Appeals decision terminating review designated in Part B of this petition.

B. COURT OF APPEALS DECISION

In an unpublished opinion the court affirms Superior courts decision of a summary judgment in a Quiet Title. This opinion was filed on January 19, 2022. A copy of this is in the Appendix

### C. ISSUES PRESENTED FOR REVIEW

No. 1 The Appellate Court erred in affirming Superior Courts summary judgment in the foreclosure as barred by collateral estoppel. It is a violation of due process for a judgment to be binding on a named litigant who was not party to or privy therefore has never had opportunity to be heard. *Blonder v Tongue* 402 U.S. at 329

First, on page 7 of the appellate courts opinion states Nikkala was party to the foreclosure as an unnamed defendant. This is incorrect. Nikkala was a named defendant and did not receive a summons.

In the quiet title action on January 15, 2020 this was argued by Attorney Craig Kennedy. Allen and Nikkala (married) did not live together therefore service on Nikkala had not been had. Nikkala was not privy to the foreclosure and only found out after the fact. See transcription in appendix. Second, she has a judgment against her with Allen for over 600,000.00 dollars from the foreclosure and a separate sanction to given to only Nikkala for 5,000.00 for attempting to bring evidence to the courts attention defend herself and Allen during the quiet title action. Copies of the judgments are in the appendix.

No.2 Appellate Court erred and gave an opinion and affirmed both Superior Courts summary judgments. Which was improper.

Summery Judgment is if there is no genuine dispute. In both foreclosure and quiet title there was question of dispute. Superior court erred in allowing the case to move forward when originally filed. The court did not verify if the note was valid.

1. Statute of limitations had passed 6 yrs. to collect promissory note.(RCW 4.16)
2. Plaintiff claimed Allen was in default and had never made a payment. Although if one was to read the note it states no payments or installments.
3. Deed of Trust- Appointed trustee for the deed was Cascade Title agent Janie Ray. She was directed by Carl Betten to release deed in October 2008. This made both the promissory note and deed of trust void by transfer. ((RCW 62A.3-203)

No. 3 Superior court failed to ensure Nikkala's right to due process as a named defendant.

1. When foreclosure was filed Plaintiffs knew who Nikkala was. Both Plaintiffs Michael and Eric were at Allen and Nikkala's wedding in 1988. They also are trustee for Margaret (Allen and Nikkala's daughter) a beneficiary of the Julia Betten estate and had regular contact with her. To locate Nikkala would have been very easy by asking Margaret. Plaintiffs misled the court by calling Nikkala Jane Doe McPherson (his Wife).

They chose not to serve Nikkala with a summons or complaint. The court also erred by not assuring all defendants were notified. In quiet title action Attorney Craig Kennedy argued these facts and the court ignored him and still granted summary judgment. (See appendix transcribed information of quiet title hearing).

#### D. STATEMENT OF THE CASE

Between Superior Courts errors and Personal Representatives Eric Betten and Michael McPherson intentional fraudulent actions combined has caused Nikkala to be discriminated against and has impaired her ability to assert her rights and bring forth the truth of the fact that the property in Woodland was given to Allen by Carl and Julia Betten. There has been so many lies told in this case with the help of Eric and Michael's attorney.

Superior Court failed to verify evidence from the beginning when the complaint was filed in August of 2015. If that had been done we would not be here today.

#### E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

This review should be accepted because it would be a miscarriage of justice to not hear the all issues. This review should be accepted to for the reason that laws were broken and over looked by superior court. If Nikkala had been given the opportunity to be heard from the beginning we would not be here asking for a review.

## F. CONCLUSION

The relief sought is if the court granted this review it would remedy the harm. We ask that this is to make us whole as we were before this case was filed against us.



2/21/2022

Respectfully Submitted

  
Nikkala McPherson

Nikkala McPherson  
9307 N.E. 95th St.  
Vancouver, WA. 98662

  
Allen McPherson

Allen McPherson  
P.O. Box 1097  
Woodland, WA. 98674

APPENDIX

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January 19, 2022

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

ERIC C. BETTEN and MICHAEL R.  
McPHERSON, as Co-Personal Representatives  
of the Estate of Julia H. Betten, Deceased,

Respondents,

v.

ALLEN McPHERSON and NIKKALA  
McPHERSON, husband and wife, and the  
marital community comprised thereof; and  
J. DOES 1-10 and all other occupants of  
1148 S. Pekin Rd., Woodland, WA 98674,

Appellants.

No. 54507-1-II

UNPUBLISHED OPINION

PRICE, J. — Allen and Nikkala McPherson<sup>1</sup> appeal the superior court’s decision granting the personal representatives’ summary judgment motion in a quiet title action. Three years before the quiet title action, the personal representatives received possession of the property following a foreclosure action. The McPhersons argue that the initial foreclosure was improper because notice was not properly served. We find that arguments related to the foreclosure are barred by collateral estoppel. The McPhersons also raise additional issues that we decline to consider. Finally, the McPhersons argue that the superior court erred by granting the personal representatives’ request for attorney fees and that we should deny the personal representatives’ request for attorney fees on

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<sup>1</sup> Because the appellants share the same last name, they are referred to using their first names and collectively as the McPhersons.

appeal. We decline to consider the superior court's grant of attorney fees and decline the personal representatives' request for fees on appeal. We affirm the superior court.

## FACTS

### I. BACKGROUND

In 2008, Allen acquired property using a loan from his stepfather. The deed was conveyed to "Allen McPherson, a married man, as his separate estate." Clerk's Papers (CP) at 23 (internal quotation marks omitted). At the time, Allen was legally married although he and his wife Nikkala had been separated since 1994.<sup>2</sup> In exchange for the loan, Allen executed and delivered a promissory note payable to his stepfather in the principal sum of \$229,000. Allen also executed and delivered a deed of trust on the property to his stepfather in which he stated that he was granting the deed as "a married man, as his separate estate." CP at 52.

Allan never made payments on the promissory note. His stepfather died in March 2014, and Allan's mother then took title to the promissory note and deed of trust. She died six months later.

### II. 2015 FORECLOSURE ACTION

The personal representatives of Allen's mother's estate brought a foreclosure action in 2015 against Allen and "Jane Doe McPherson, his wife, and all other persons or parties unknown claiming any right, title, estate, heir or interest in the [property]." CP at 66. In his answer to the complaint, Allen stated that he was "unmarried." CP at 81.

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<sup>2</sup> Nikkala filed for dissolution in 1994, but the dissolution was never completed and later dismissed for failure to prosecute.

The summons was served by publication for unknown defendants. After more than sixty days following the first publication, when no unknown defendants had appeared or answered the complaint, the superior court entered an order of default and a judgment against unknown defendants. The superior court ordered that the defaulted defendants were “forever barred and foreclosed” from further action except for the statutory right of redemption. CP at 77.

Allen opposed the foreclosure action by arguing that the purported loan was a gift. However, the only supporting evidence he provided was his own testimony about Carl’s statements. The evidence was stricken by the superior court under the dead man’s statute. The superior court granted the personal representatives summary judgment against Allen. Allen filed a motion for reconsideration that was denied, and the decision was not appealed.

The personal representatives purchased the property at the execution sale and received the deed to the property.

### III. 2018 QUIET TITLE ACTION

After the sale, Allen refused to leave the property and instead claimed that he and Nikkala had a community interest in the property. Thus, in 2018, the personal representatives brought a claim for quiet title, trespass, and ejectment against the McPhersons. The McPhersons again asserted that the loan was actually a gift. They also argued that the foreclosure action was invalid because Nikkala had not been properly served.

The personal representatives filed a partial motion for summary judgment on the quiet title claim. In response, the McPhersons filed their own motion for summary judgment arguing that the foreclosure action was invalid. In addition to arguing that the loan was a gift and service on Nikkala was improper, the McPhersons argued that the personal representatives had breached their

fiduciary duties. The superior court denied the McPhersons motion for summary judgment and granted summary judgment to the personal representatives on the quiet title claim. When the McPhersons again refused to leave the property, the superior court issued a writ of ejectment.

Following the entry of the judgment and the issuance of the writ, the personal representatives filed a motion for an award of costs and attorney fees arguing that they were entitled to costs and fees. The personal representatives argued that an award of fees was warranted because they were forced to bring a second action to obtain possession and clear title of the property and had to reargue many of the issues adjudicated in the foreclosure action. The personal representatives also argued that the continued refusal of the McPhersons to leave the property, even after the superior court rendered judgment quieting title, forced them to obtain and enforce a writ of ejectment.

The promissory note provided that the prevailing party in an action arising out of the note is entitled to its reasonable attorney fees. The deed of trust also stated that the grantor agreed to pay reasonable attorney fees in a foreclosure action arising out of the deed. Additionally, under Washington law, a superior court may in its discretion grant costs including reasonable attorney fees to any party in proceedings involving trusts and decedent's estates and properties. RCW 11.96A.150. The superior court granted the personal representatives their fees, finding that they were entitled to them by contract and statute.

The McPhersons appeal the superior court's orders and award of fees.

## ANALYSIS

### I. SUMMARY JUDGMENT

#### A. LEGAL PRINCIPLES

Summary judgment is appropriate if there is no dispute as to any material facts and the moving party is entitled to judgment as a matter of law. CR 56(c). We review decisions on summary judgment de novo, engaging the same inquiry as the superior court viewing the facts and all reasonable inferences in a light most favorable to the nonmoving party. *Williamson, Inc. v. Calibre Homes, Inc.*, 147 Wn.2d 394, 398, 54 P.3d 1186 (2002). Whether collateral estoppel bars the relitigation of an issue is also reviewed de novo. *Christensen v. Grant County. Hosp. Dist. No. 1*, 152 Wn.2d 299, 305, 96 P.3d 957 (2004).

“Collateral estoppel, or issue preclusion, bars relitigation of an issue in a subsequent proceeding involving the same parties.” *Id.* at 306. It is distinguished from claim preclusion or res judicata “ ‘in that, instead of preventing a second assertion of the same claim or cause of action, it prevents a second litigation of *issues* between the parties, even though a different claim or cause of action is asserted.’ ” *Id.* at 306 (internal quotation marks omitted) (quoting *Rains v. State*, 100 Wn.2d 660, 665, 674 P.2d 165 (1983)). Collateral estoppel applies only to issues that were actually litigated and were essential and finally determined in a prior proceeding. *Id.* at 307.

The party seeking application of collateral estoppel must demonstrate that four requirements are met for the doctrine to apply:

- (1) the issue decided in the earlier proceeding was identical to the issue presented in the later proceeding,
- (2) the earlier proceeding ended in a judgment on the merits,
- (3) the party against whom collateral estoppel is asserted was a party to, or in privity with a party to, the earlier proceeding, and
- (4) application of collateral estoppel does not work an injustice on the party against whom it is applied.



*Id.*

Pro se litigants are held to the same standard as attorneys and must comply with procedural rules on appeal. *In re Marriage of Olson*, 69 Wn. App. 621, 626, 850 P.2d 527 (1993). An appellant is required to set forth “argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record.” RAP 10.3(a)(6). We need not consider arguments that are not supported by citations to the record or legal authority. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

#### B. APPLICATION

The McPhersons raise several arguments in their appeal of the superior court’s summary judgment order. Most of the McPhersons’ arguments appear to be directed to the validity of the foreclosure action. The McPhersons appear to argue that the superior court should have granted the McPhersons’ motion for summary judgment because Nikkala was not properly served in the foreclosure action. They maintain that the lack of service on Nikkala violated her due process rights and Washington law, arguing that she should have been served individually and that even under service of an unknown defendant, Nikkala was not properly served. The McPhersons also argue that this failure to properly serve Nikkala in the foreclosure action was discrimination and a due process violation.

Arguably related to both the foreclosure and the quiet title, the McPhersons also argue that the personal representatives breached fiduciary duties by not following the mother’s wishes in her will, singling out Allen to “cause harm,” using their position as a weapon, and misrepresenting

facts to the superior court. Appellant's Opening Br. at 3, 4. They argue that the personal representatives brought the foreclosure action in bad faith and without legal basis.

The McPhersons have incessantly attempted to relitigate the foreclosure in this case.<sup>3</sup> We find that these arguments related to the foreclosure are barred by collateral estoppel. First, the issues are identical because, here, the McPhersons are raising issues directly related to the process of the foreclosure case and the validity of the title resulting from the sale. Second, the foreclosure action ended with the superior court granting the personal representatives' motion for summary judgment, which was a final judgment on the merits. Third, Nikkala was not only a party to the earlier proceeding as an unnamed defendant, she was also in privity with her husband Allen who was a party to the earlier proceeding. Fourth and finally, because there was an opportunity to litigate these issues during the foreclosure action and the McPhersons have not provided compelling reasons for why these issues were not raised in the first action, the application of collateral estoppel here does not result in injustice.

Because the requirements have been met, we find that the McPhersons' arguments regarding service of process and breach of fiduciary duty related to the foreclosure are barred by collateral estoppel.

For issues arguably unrelated to the foreclosure, such as additional alleged breaches of fiduciary duties by the personal representatives, the McPhersons fail to support their allegations

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<sup>3</sup> Following the filing of a notice of appeal, the McPhersons requested that documents from the foreclosure action that were not a part of the record below be included on appeal. Our commissioner denied this request. Ruling by Comm'r (Sept. 29, 2020). The McPhersons then filed a motion requesting to modify the notice of appeal to include the foreclosure action. Our commissioner again denied this "back door attempt to bring an untimely appeal in the [foreclosure] case." Ruling by Comm'r (Nov. 20, 2020).

with citations to legal authority. Under RAP 10.3(a)(6), we may decline to consider “bald assertions” that fail to reference any legal authority. *Brummet v. Washington’s Lottery*, 171 Wn. App. 664, 681, 288 P.3d 48 (2012). Therefore, we decline to address these arguments.

Finally, the McPhersons raise certain additional issues only in their reply brief and the supplement to their reply brief. They appear to argue, for example, that the personal representatives did not have standing to bring this claim and the statute of limitations related to the promissory note prevented the foreclosure. These issues generally appear to be yet another attempt to relitigate the foreclosure, but we decline to review them because an appellant may not raise new issues in a reply brief. RAP 10.3(c); *In re Marriage of Sacco*, 114 Wn.2d 1, 5, 784 P.2d 1266 (1990).<sup>4</sup>

## II. ATTORNEY FEES

### A. LEGAL PRINCIPLES

Attorney fees may also be awarded in “any action on a contract” where provided for in such contract to the prevailing party, even where the fees must be paid by an individual who was not originally a party to the contract. RCW 4.84.330; *Yuan v. Chow*, 96 Wn. App. 909, 915-16, 982 P.2d 647 (1999). “[A]n action is on a contract if the action arose out of the contract and if the contract is central to the dispute.” *Seattle First Nat’l Bank v. Washington Ins. Guar. Ass’n*, 116 Wn.2d 398, 413, 804 P.2d 1263 (1991).

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<sup>4</sup> The McPhersons argue for the first time on appeal that the personal representatives should have produced the original promissory note to the superior court instead of a copy. Because this argument was not made to the superior court, we decline to address it. RAP 2.5(a).

Additionally, attorney fees may be granted on appeal if the right to recover is granted by applicable law. RAP 18.1. “Contractual authority as a basis for an award of attorney’s fees at trial also supports such an award on appeal.” *Marine Enterprises, Inc. v. Sec. Pac. Trading Corp.*, 50 Wn. App. 768, 774, 750 P.2d 1290 (1988).

#### B. SUPERIOR COURT FEES

The McPhersons argue that the superior court incorrectly granted the personal representatives’ attorney fees below. They offer no citations to statutes, case law, or the record in support of this contention. *See generally* Br. of Appellant. As explained above, pro se litigants are held to the same standard as attorneys. *In re Marriage of Olson*, 69 Wn. App. at 626. Under RAP 10.3(a)(6), we decline to address this issue.

#### C. FEES ON APPEAL

The personal representatives request that they be awarded their attorney fees and costs on appeal under contract.<sup>5</sup> We deny this request.

This action arose out of neither the promissory note nor the deed of trust, and those documents are not central to this dispute. This is a quiet title action that arose out of the McPhersons’ refusal to relinquish control of property after the foreclosure. Although the McPhersons have attempted to make the promissory note and the deed of trust central to this dispute, their arguments are misplaced. Because this is not an action on a contract, we deny the personal representatives’ request for attorney fees based on contract.

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<sup>5</sup> The personal representatives did not ask for their fees under RCW 11.96A.150. Therefore, we do not address whether they would have been entitled to fees under the statute.

CONCLUSION

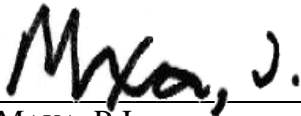
In conclusion, we affirm the superior court and deny the personal representatives their fees on appeal.

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.

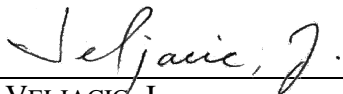


PRICE, J.

We concur:



MAXA, P.J.



VELJACIC, J.

1 UNOFFICIAL TRANSCRIPT

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4 UNOFFICIAL TRANSCRIPT

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7 UNOFFICIAL TRANSCRIPT  
IN THE SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

8 Eric C. Betten and Michael R.  
9 McPherson, as Co-Personal  
10 Representatives of the Estate  
11 of Julia H. Betten, Deceased,

Sup. Ct. #: 18-2-01334-08

COA#: 54507-1-II

12 Plaintiffs,

13 v.

14 Allen McPherson and Nikkala L.  
15 McPherson, husband and wife, and  
16 the marital community comprised  
17 thereof; and J. DOES 1-10 and all  
18 other occupants of 1148 S. Pekin Rd.,  
19 Woodland, Washington 98674,

20 Defendants.

21 VERBATIM REPORT OF PROCEEDINGS FOR:  
22 January 15, 2020, before Judge Stephen M. Warning

23 For the Plaintiffs: BAUMAN & WOLF, PLLC  
24 By: Bradley S. Wolf, Attorney at Law

25 KELLER ROHRBACK, LLP  
By: Edwin G. Woodward, Attorney at Law

For the Defendants: CRAIG E. KENNEDY, Attorney at Law

Transcription Service: THREE RIVERS TRANSCRIPTS  
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Proceedings recorded by electronic sound recording;  
transcript produced by transcription service

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1           JANUARY 15, 2020; 2:33 P.M.; KELSO, WASHINGTON

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3           THE COURT: Benton v. McPherson.

4           UNOFFICIAL TRANSCRIPT  
4           Okay, so, Counsel, I guess starting point is one of the  
5           summary judgment motions filed by the Defense was filed on  
6           the 6th, so we're not up to the point where it can be argued  
7           UNOFFICIAL TRANSCRIPT  
7           unless both sides agree that it should be argued.

8           MR. KENNEDY: No, they -- I'm Craig Kennedy, I'm for  
9           Allen McPherson, the Defendant, Your Honor. No, it -- they  
10          UNOFFICIAL TRANSCRIPT  
10          have actually objected to it, and so we have asked that it  
11          be put off until January 29th to give them the appropriate  
12          time.           UNOFFICIAL TRANSCRIPT

13          So, we'd ask the Court to take the existing summary  
14          judgment motion and the affidavits and some of the argument  
15          and include it in our CR 60 motion for relief.           UNOFFICIAL TRANSCRIPT

16          THE COURT: Is that 29th date agreeable? Because I  
17          think that's still short of a --

18          UNOFFICIAL TRANSCRIPT  
18          MR. KENNEDY: We could put it off for another week,  
19          then. I want to make sure they get their time.

20          THE COURT: It would be --

21          UNOFFICIAL TRANSCRIPT  
21          MR. KENNEDY: Although they've already responded, but --

22          THE COURT: Yeah.

23          MR. KENNEDY: -- unless they're willing to waive, I  
24          UNOFFICIAL TRANSCRIPT  
24          think they would want the time.

25          MR. WOLF: Your Honor, the -- there's such a proximity



1 of the issues here. In other words, on their CR 60 I think  
2 we will waive and have it heard today.

3 THE COURT: All right.

4 MR. KENNEDY: That's acceptable for us, Your Honor.

5 THE COURT: All right. Let's go forward, then. Go  
6 ahead.

7 MR. KENNEDY: And so, the -- on our --

8 MR. WOLF: Your Honor, are we the -- you want us to  
9 proceed on this?

10 THE COURT: Yours was the first.

11 MR. WOLF: All right.

12 MR. KENNEDY: Plaintiffs filed first.

13 THE COURT: Yes. All right -- yeah, that was ahead of  
14 the CR 60. Let's do it this way, though. What I would ask  
15 is just make the arguments you wish to make; make responding  
16 arguments and the arguments on your motions and respond.

17 MR. WOLF: Thank you, Your Honor. In my -- also in  
18 attendance here is Mr. Woodward, representing the probate  
19 and also was the attorney in the previous litigation. He  
20 would be responding to the CR 60 motion which they filed.

21 THE COURT: All right.

22 MR. WOLF: Your Honor, I represent Allen McPherson --  
23 or, excuse me, Michael McPherson, Eric Betten. They are the  
24 personal representatives of the Estate of Julia Betten.

25 In -- in 2008, Carl Betten made a loan to Allen

1 McPherson for the purpose of, you know, of him acquiring a  
2 piece of property, so it was financed by Carl Betten. Allen  
3 McPherson got a Deed indicating that it was being taken as  
4 his sole and separate estate, and he -- and Allen McPherson  
5 signed a Note and Deed of Trust, which was duly recorded.  
6 Carl Betten passed away. His interest descended to his  
7 wife, Julia Betten, who then passed away. And therefore,  
8 this action is being brought as -- as Personal Rep --  
9 Personal Representatives.

10 Due to a default in the payments, an action was started  
11 in 2015 by Mr. Woodward to foreclose -- judicially foreclose  
12 that Deed of Trust. Mr. Allen McPherson and Jane Doe  
13 McPherson were named in that lawsuit. Also named were any  
14 parties or persons unknown, which is authorized by a  
15 specific statute. At that time the action was commenced, a  
16 Lis Pendens was recorded against the property. In  
17 accordance with the statute the -- it was published, the  
18 Summons was published, and an order of default and default  
19 judgment were taken against the unknown parties.

20 As to Mr. Allen McPherson, he came forward in the case  
21 alleging two substantive defenses. One was a claim that  
22 this was a gift; and secondly, that the matter was barred by  
23 the statute of limitations. Those issues came up for a  
24 summary judgment before this court, with Your Honor  
25 presiding in it, and summary judgment was granted.

1 Therefore, judgment -- a final judgment was entered in the  
2 case. That judgment was never appealed. It was never  
3 subject to a motion for reconsideration of the Court's last  
4 entry of judgment. It is therefore a final judgment.

5 Based upon that, my client obtained a order of sale.  
6 Property was auctioned off by the sheriff. Redemption  
7 period was waited out. He got a Deed, a Sheriff's Deed, and  
8 there was an order confirming the sale. So, at this point,  
9 my clients are fully vested and titled.

10 During the action, Allen McPherson had asserted that he  
11 was an unmarried individual. But, when it came time for us  
12 to try to get possession of the property, we were given the  
13 answer that actually there is a -- he does have a wife.  
14 Apparently they have been estranged for a long period of  
15 time, but their divorce was never concluded. And therefore,  
16 he's come forward with the -- now the claim that the  
17 interests of his wife and marital community were not fully  
18 adjudicated in the previous action.

19 In my motion for summary judgment, I took a look at  
20 this from a few different perspectives. The first one is:  
21 what if it was separate property? And the answer there is,  
22 that if -- if this is separate property, the -- the wife  
23 need not be joined. In other words, a party who takes title  
24 as his separate estate, and if it -- if it retained that  
25 separate character, it wouldn't -- there is no community

1 interests to adjudicate. So -- so, that was -- that is not  
2 an issue, if it is separate property.

3 Now, the second claim that comes up, or the second way  
4 we looked at it is: what if it was separate property but it  
5 had been improved, or that community resources had been  
6 used? First thing I want to say on that is that these --  
7 these parties were estranged and living apart, and the law  
8 is very clear that any earnings, any accumulations during  
9 the period of separation are also separate property. In any  
10 case, one thing I would like to note about real -- real  
11 property is, and this is under *The Estate of Borghi*, that  
12 although community contributions to a property they may  
13 result in an equitable -- a right of reimbursement to the  
14 community, potentially protected by an equitable lien, it  
15 does not transmute the title to the property.

16 So, at most, the interests of Mrs. -- of the community  
17 here would be a right of con -- a right of reimbursement.  
18 We wouldn't even get into that unless and until they got  
19 divorced, and potentially protected by an equitable lien.  
20 And this equitable lien that we're talking about would be  
21 truly *de minimis* here because the purchase price was paid by  
22 my client, who financed it; they've acknowledged they made  
23 no payments on the mortgage or insurance payments. There  
24 was a reference in some of her material about purchasing  
25 irrigation equipment. That -- that's personalty, it has

1 nothing to do with this case.

2 THE COURT: Hold on for just a second. Did we get that  
3 phone on? It seems to me we are getting all these weird  
4 bleeps.

5 THE CLERK: CourtCall is on [indiscernible]. Do you  
6 want me to [indiscernible].

7 THE COURT: Let me stop you just a second.

8 (PAUSE IN PROCEEDINGS.)

9 (PROCEEDINGS RESUME.)

10 THE COURT: My apologies, go ahead.

11 MR. WOLF: Sure. Where I left off was -- I started off  
12 by saying if it is separate property, the wife need not have  
13 been named at all. The second --

14 THE COURT: I apologize, I'll just jump right in with  
15 the next interruption.

16 Counsel, do you got an agreed order?

17 (PAUSE IN PROCEEDINGS.)

18 (PROCEEDINGS RESUME.)

19 THE COURT: Okay. Anticipating no further issues, go  
20 ahead.

21 MR. WOLF: Okay. I'm going to -- I kind of -- where I  
22 was is I was dividing this up into three different analysis.  
23 The first one: separate property, where she doesn't have to  
24 be named. The second case being there were some potential  
25 community contributions. That will -- that doesn't

1 transmute title to the property. It merely creates a  
2 potential equitable lien. The -- one thing to note here,  
3 Your Honor, is that my client's Deed of Trust was recorded  
4 at the exact same time as -- as the Deed was. So, to the  
5 extent that there were any subsequent contributions, liens  
6 arising therefrom on the part of the marital community, by  
7 definition their subsequent in time to our Deed of Trust.  
8 And therefore, we submit, they were foreclosed in the prior  
9 action, as any junior creditor would have been.

10 Our -- we have a race notice statute, and by the way,  
11 when it comes to an equitable lien some courts have held  
12 that it doesn't even arise unless and until a court  
13 determines fixes it, and I cited to you the case of *Monegan*  
14 *v. Pacific National Bank*. Others -- other cases have stated  
15 that, quote, "an equitable lien will not be imposed against  
16 a bona fide mortgagee for value" and that was *Spokane v.*  
17 *Schidelman* case. Our client would be a bona fide mortgagee  
18 for value; okay? So, there's nothing -- there are no  
19 substantive defenses there.

20 The third possibility that we examined was what if this  
21 property was community property at -- at the point of  
22 acquisition? Allow me to say this: that we submitted a Deed  
23 indicating that it was his separate estate. No evidence has  
24 been submitted in opposition to show any gift. They've  
25 eluded to it, and we -- we have objected to that, on the

1 basis of the dead man's statute which I will talk about at  
2 the end. But, these same kind of arguments were raised, by  
3 the way, in the 2015 litigation and Your Honor struck that  
4 evidence as being violative of the dead man statute.

5 In any case, the -- a few other things need to be said  
6 here. There is a special statute that appears in the Title  
7 26, which is under domestic relations, that allows a spouse  
8 to record a notice of their potential interest under the  
9 circumstances. And that -- that would be RCW 26.16.100.  
10 That wasn't done --

11 THE COURT: And that's not effective unless and until --  
12 in terms of actually creating a lien it's effective for  
13 notice but it doesn't create a lien unless and until the  
14 court says so.

15 MR. WOLF: Correct, that would be our position. And  
16 here's what it says: "... any actual bona fide purchaser of  
17 such real estate from [a] person whose name and legal title  
18 stands of record ... shall be deemed ... to have received  
19 the full legal and equitable title to such real estate free  
20 and clear of all claims of the other spouse."

21 So, that was the law and that was the common law rule  
22 anyway. But there's a special statute that made it  
23 applicable to any kind of marital claims. None of these  
24 arguments have been refuted or resisted in -- in any of the  
25 opposing material. And I would submit to the court that

1 this is -- this is a true case of issue preclusion, because  
2 we submit that the interests of Allen McPherson were clearly  
3 adjudicated in the previous case. And under princi -- is if  
4 our case -- our title is entire -- is dependent upon the  
5 validity, ultimately, of our foreclosure process. But that  
6 foreclosure process, from the start to the finish, down to  
7 order confirming sale, were all binding upon Allen  
8 McPherson.

9 Now, what -- one of the questions that rises here is  
10 are they binding upon his wife, as well? And here's what I  
11 have to say about that. First of all, the -- as indicated,  
12 we did name a Jane Doe in this case. They filed an answer  
13 indicating he is an unmarried individual; okay? So, in any  
14 case, let's just say that was an error on his part.  
15 Nevertheless, we went through the process of -- of naming  
16 all parties who -- known or unknown who have an interest in  
17 this property, in accordance with the statute, which is RCW  
18 4.28.150. And here is what that statute says: such unknown  
19 heirs or unknown persons or parties who claim any right,  
20 estate, lien or interest in the property in controversy at  
21 the time of the commencement in the action, duly served, as  
22 aforesaid, shall be bound and concluded by the judgment in  
23 such action if -- if the same is in favor of the plaintiff  
24 therein and as effectually, as if the action were brought  
25 against such defendant by his or her name.



1 UNOFFICIAL TRANSCRIPT So, let's examine the situation here. We're not --  
2 we're not dealing with Carl Betten. We're dealing with  
3 people who are two -- twice removed from that. We are  
4 dealing with a probate estate that's done years later, a  
5 family member who they are completely estranged from? Title  
6 that was listed in his separate estate?

7 We have no -- no reason, first of all, to -- to know  
8 that she would've claimed any such interest. If you list --  
9 if you look at her affidavit in this case she says, well,  
10 UNOFFICIAL TRANSCRIPT yeah, we had been separated for years; but, on occasion I  
11 would come back there and we would kind of like clear the  
12 land a little bit. This is not the kind of thing that it  
13 would be obvious to anyone that we would know that there was  
14 an interest there, and that's why statute is there.

15 That's why that statute is there, because there are  
16 occasionally situations where people have a stake in a piece  
17 of property and it's not of record. That's why that statute  
18 UNOFFICIAL TRANSCRIPT is there. We went through the exact process described by  
19 the statute; recorded a Lis Pendens; published it; and  
20 obtained a default against those parties. And so, we submit  
21 UNOFFICIAL TRANSCRIPT to you that the interests of the -- of the wife in this case  
22 have been adjudicated under that statute.

23 Now, as a separate matter, as I indicated about the  
24 UNOFFICIAL TRANSCRIPT only theory that she could even claim anything under,  
25 substantively, would be if she is somehow claiming that this

1 was community property at the very outset. But, if that  
2 were true, we also cited the Court to the case of -- in  
3 which -- excuse me, we also cited the Court to the case of  
4 *Gleason v. Metropolitan Mortgage*, in which it said that the  
5 husband did have authority to defend an action on behalf of  
6 the marital theory, even when they are separated. The court  
7 in that case said that it's true that the husband's actions  
8 -- it is -- this is what the court said. It's not only the  
9 husband's right, but his duty to defend the actions of the  
10 marital community. It's true that the husband's actions may  
11 work to terminate the agency when he has deserted his family  
12 and they are living separate and apart to -- so as to render  
13 it a marriage in name only; but, however grievous the  
14 husband's acts may have been upon the wife and the integrity  
15 of the marriage, they must also involve disloyalty or fraud  
16 upon the community business interests before they serve to  
17 terminate the husband's agency. So, if even -- even under  
18 these scenarios where you say it was community property,  
19 then our service on Allen McPherson would be effective as to  
20 his wife, as well.

21 So, there has been no substantive defenses to any of  
22 these issues raised, except to say we want to re-visit the  
23 old case under CR 60, which I'll leave Mr. Woodward to  
24 address.

25 I will close my own remarks here by just talking a

1 little about this motion to strike that we made. We filed a  
2 motion based upon the dead man's statute, which states that  
3 when a party in interest or to the record shall not be  
4 admitted to testify in his or her own behalf as to any  
5 transaction had by him or her, or any statement made to him  
6 or her in his presence by any such deceased. And so, once  
7 again as they did in the previous case, they're trying to  
8 come forward again and assert a gift. The dead man statute  
9 was designed specifically to prevent claims of gift. And I  
10 cited the Court to the case of *Cunningham's Estate* where  
11 they said it applies to claims that a transaction was a  
12 gift.

13 Their only argument to this is a waiver argument. That  
14 by somehow bringing at issue a contract -- we -- we've  
15 introduced evidence of the transaction, and I cited to the  
16 Court language from the *Wildman* case, just -- the very case  
17 that they cited in opposition to this actually says the  
18 exact opposite of what it is being offered for, and in that  
19 case the court said that one of the major purposes of this  
20 legislative enactment is to give protection to the writings  
21 and documents of a decedent or persons claiming thereunder  
22 so that the decedent's purposes in making a conveyance in  
23 writing will not be defeated by parole, description of his  
24 acts or purposes after death.

25 That's exactly what we have here. And, Your Honor,

1 it's an even stronger case than in the *Wildman* because in  
2 this case the instruments that we submitted in evidence  
3 comprised a Promissory Note and a Deed of Trust that my  
4 client -- that Carl Betten never even signed. Those are  
5 instruments that Allen McPherson signed. So, the -- the --  
6 this claim to a gift is barred under the dead man's statute.

7 It's also clearly barred under the statute of frauds.

8 We cited to the Court -- this is a Note and a Deed of Trust.

9 There's a special statute, apart from the regular Deed of  
10 Trust, that deals with credit agreements. You have to put  
11 some special language in there, we did that. And it bars  
12 any testimony that contradicts or varies the terms of the  
13 Note and Deed of Trust.

14 And lastly, they try to introduce some hearsay. I  
15 think -- what they knew they couldn't put in their own mouth  
16 they tried to say that some escrow agent told them, and it's  
17 a straight up hearsay, not admissible into evidence and  
18 should be stricken. They cited an exception that related to  
19 statements of personal or family history, that's not what we  
20 are dealing with here.

21 So, we -- we ask the Court grant summary judgment here.  
22 And one last remark, by the way, I just have to make is that  
23 even if you accepted that the wife had some kind of nescient  
24 lien out there against the property, nothing in that defeats  
25 our title or right of possession. It's not uncommon that

1 creditors who conduct a foreclosure sometimes forget or omit  
2 a junior creditor. That does not invalidate the sale. All  
3 that does is, it means that the new purchaser would take it  
4 subject to that interest; okay?

5 So, there's nothing here that they are even, in theory,  
6 alleging that should prohibit us from being confirmed  
7 entitlement possession of the property.

8 So, with those remarks, I would turn it over to Mr.  
9 Woodward for the CR 60 motion.

10 THE COURT: Go ahead. Well -- well, I'll hear you in  
11 response to the motion.

12 MR. KENNEDY: Thank you, Your Honor.

13 In response to their summary judgment, we filed a  
14 declaration from Nikkala McPherson and in that she, in  
15 contradiction to what opposing counsel said, she actually  
16 spent long periods of time on the property and spent  
17 thousands of dollars in improvements, and that's in the  
18 declaration before the Court. So, if that is going to be  
19 the basis that the Court is going to grant summary judgment,  
20 we would obviously disagree.

21 Why it -- why it has an equitable lien issue, as  
22 Opposing Counsel has pointed out and filed with the Court  
23 through Odyssey, they had a dissolution action in Clark  
24 County that was ultimately dismissed for want of  
25 prosecution. A dissolution may very well take place, they

1 could reopen it at any time. They are prejudicing Nikkala  
2 McPherson's ability to make an equitable claim. They are  
3 also, essentially, making it difficult for my client, Ms.  
4 McPherson, to be able to gain access to the property and  
5 inspect it and go forward during the dissolution claim  
6 itself. So, yes, we object to their claim against Nikkala  
7 McPherson.

8 More importantly though, we're talking about lack of  
9 personal service. They failed to do their due diligence.  
10 They were on notice that he was married. First of all, they  
11 know through the Superior Court records that a dissolution  
12 action took place, and they know that it was dismissed for  
13 want of prosecution. One of the heirs to the Estate,  
14 Margaret McPherson, the couple's daughter, was the golden  
15 daughter and is in the Will and is one of the heirs. They  
16 had constant communication with Margaret at all time. They  
17 were on notice, or should have known. The other thing as we  
18 filed by (sic) the Court, we filed a copy of her driver's  
19 license, showing that she wasn't hiding from court process.  
20 She wasn't trying to dodge it in any way. As a matter of  
21 fact, her driver's license is a public record.

22 They chose to go a different route, and interestingly  
23 enough, we also pointed out to the Court that you're  
24 required to serve on the Clerk an affidavit saying that you  
25 don't know this person's address or you don't know where

1 they are. They never did that. Their declaration to the  
2 Court basically says, well, we don't know. And so what we  
3 have said is, well, if you're confused because of the  
4 contrary statement, which was in artful, that Mr. McPherson  
5 --

6 THE COURT: Well, it was a lot more than inartful.

7 MR. KENNEDY: Well, I agree with you. It says "denied"  
8 and then they were stating it and, frankly, it doesn't even  
9 respond to the question at all in the Complaint, and I don't  
10 even know why it was answered that way. But if it confused  
11 them, I understand. But that's exactly the reason why No.  
12 11 -- CR 60(b)(11) is used, is saying that if they -- and he  
13 says so in his motion, he says based on personal information  
14 and belief this is how they came to that conclusion. Well,  
15 you know, that's exactly the case law that I've cited to the  
16 Court that says that's why you grant relief is that they  
17 made a mistake; okay?

18 And so, we're asking that --

19 THE COURT: Let me ask you this.

20 MR. KENNEDY: Go ahead.

21 THE COURT: Whatever their obligation was prior to the  
22 entry of an answer, doesn't an answer by one party to the  
23 marriage that says I ain't married have a significant impact  
24 on just what the extent of their obligation is?

25 MR. KENNEY: It can, except the problem in this

1 particular case is by the time they actually ask for service  
2 by publication they've taken summary judgment against Allen  
3 McPherson. What they should have done is at the very  
4 beginning of the litigation inquired -- asked the court for  
5 a publication and gone forth. They didn't do that. They  
6 should do that right away; okay? They're not doing their  
7 due diligence from the very beginning. They basically  
8 brushed it aside.

9 CR 60(11) is supposed to be something the Court uses  
10 only in extraordinary situations, something external from  
11 the court process happens, and it did happen. They failed  
12 to do their due diligence. They failed to look for the  
13 wife. They had access to the information. They should have  
14 known. One of the heirs that they are handing money to is  
15 -- is the only -- the only child of the marital couple. So,  
16 no, we are asking for the Court to relieve Nikkala McPherson  
17 from this case. I mean, she didn't hide herself. She  
18 didn't do anything to deserve a default process. They took  
19 no action quickly during the beginning of this case.

20 If the Court will refer to the Clerk's Notes, you will  
21 notice that that's the particular time the Court gives them  
22 permission to do service by publication. That's too late.  
23 We're asking the Court for relief.

24 THE COURT: All right. Do you want to address your  
25 summary judgment, as well? Or, pardon me, the -- well, it's



1 all part of the same, so I guess --

2 MR. KENNEDY: It is, Your Honor.

3 THE COURT: -- you've got to -- yeah, these are so  
4 intertwined it's hard to --

5 MR. KENNEDY: They are, Your Honor.

6 THE COURT: -- parse them out separately.

7 MR. KENNEDY: So, what we have done is we've brought a  
8 motion under (b)(4) and (b)(11). It basically turns on  
9 (b)(4) because if you look at the underlying Complaint in  
10 the underlying case which you were the judge involved in, if  
11 you look at Page 2 of the Complaint, at Line 24, it  
12 specifically states that they are "relying on the  
13 declaration of Michael McPherson, Paragraphs 7 and 8."  
14 That's a quote.

15 Now, 7 and 8, if you actually go to the declaration, as  
16 we pointed out in our motion for summary judgment, they  
17 haven't even calculated the property taxes correctly.

18 (b)(4) says the court has discretion to reverse an  
19 underlying order, and you can do it after a year even though  
20 the statute says it must be done within a year the court  
21 rule doesn't limit it to a year, you have the authority to  
22 reverse an underlying order if there is fraud, if there is  
23 misrepresentation, or if there is misconduct by the opposing  
24 party.

25 Misconduct is such a vague proposition I actually

1 looked it up. I mean, misconduct can be actually  
2 dereliction of duty, just negligent behavior, there doesn't  
3 have to be an intent. And interestingly enough, the case  
4 law says that you don't even have to prove that you have a  
5 meritorious claim to defend the action if you go back and  
6 start litigating again, which is remarkable to me because I  
7 was always taught that CR 60 you had to have a meritorious  
8 claim. But, under the misconduct portion you don't have to  
9 have one.

10 Now, the interesting thing about this is that their  
11 derelict -- the personal -- so, let me -- let me step back  
12 for a second. Allen McPherson and Michael McPherson are  
13 biological brothers. Their mother was Julia Betten. The  
14 minute Ms. Betten died on (sic) September of 2014, her  
15 estate came into existence and Michael was appointment the  
16 personal representative. Now, the minute he became a  
17 fiduciary, that relationship between the two changed. He  
18 had a duty of good faith, fair dealing and complete honesty  
19 with the trust -- with the beneficiary, which was Allen  
20 McPherson.

21 And instead, in Paragraphs 7 and 8: (1) said it  
22 completely wrong. We provided the court the actual payments  
23 of property taxes during the year so the court can see the  
24 math is wrong, and I've cited in my motion for summary  
25 judgment; and (2) he made the most preposterous statement in

1 Section (sic) 8 by saying that the estate went back in time  
2 and bought the insurance from January 1, 2009, through  
3 November 24th, 2014, and then gave the number of \$8,067.75.  
4 Well, first of all, Julia Betten was still alive; and second  
5 of all, as we have provided the court with an exhibit,  
6 insurance existed at that time. It gets even worse because  
7 Michael McPherson, now the fiduciary, says in the statement  
8 (sic) letter -- in a certified letter, which I believe is  
9 Exhibit H, that Julia Betten has been paying for the  
10 insurance all along starting back in May 2008.

11 So, why is all this important? Well, it's important  
12 (1) because he breached his fiduciary duty with Allen  
13 McPherson because he (a) wasn't honest with the court, he  
14 wasn't honest with Allen McPherson, and he breached his duty  
15 to fairly deal, tell the truth. He didn't do that. This is  
16 clearly a lie. But worse than that, it's confirmed by the  
17 letter he sends the insurance company. He says, yeah, Julia  
18 -- Julia Betten paid for this thing from the moment they  
19 acquired the property.

20 This is important because the defense level (sic) --  
21 levied at the lower level was counting the secure statute of  
22 limitations. That limitation should have started in May  
23 2008. It would've run out before Julia Betten died -- if it  
24 weren't for the very statements that they relied on in their  
25 motion for summary judgment, which were not so.

1 Michael McPherson -- this is -- this is not normal,  
2 civil litigation where people just deal with it at arm's  
3 length. If that were so then, you know, it's *res judicata*,  
4 the thing has been decided, it should be done. Michael  
5 McPherson was a fiduciary to Allen McPherson. He had an  
6 obligation to completely tell the truth, fair deal, and not  
7 mislead the court by misrepresentations or misconduct.

8 We are asking the Court to right a miscarriage of  
9 justice and return the property to Allen McPherson. Thank  
10 you, Your Honor.

11 THE COURT: Counsel.

12 MR. WOODWARD: Your Honor, I'm Ted Woodward --

13 THE COURT: Go ahead.

14 MR. WOODWARD: -- and I represent the Estate in the --  
15 in the foreclosure proceeding, the two hundred and -- or the  
16 2015 case. I'd like to respond to the CR 60 motion brought  
17 by Allen McPherson.

18 Initially, I'd like to respond to Counsel's comments  
19 about the alleged fraud that occurred. Nothing in the  
20 statements in the affidavit of Michael McPherson were wrong.  
21 They were -- if I can go back and explain the background of  
22 this. Michael McPherson stated in that affidavit that Carl  
23 Betten, and subsequent to his death Julia Betten, and  
24 subsequent to her death the Estate, had paid certain  
25 charges. The fact that in that declaration he did not claim

1 payment all the way back to 2008 and 2009 is simply a  
2 reflection of the fact that the Estate had determined on its  
3 own that those charges may be barred by the statute of  
4 limitations and there was no purpose in creating an  
5 additional issue at that time.

6 There's no falsity here, because Allen McPherson has  
7 consistently taken the position that he knew that he hadn't  
8 paid those obligations. So, as I pointed out in the  
9 response to this motion, that the elements of fraud require  
10 that the person claiming the fraud not know the actual truth  
11 of the matter. And in this case, Mr. Allen McPherson has  
12 made a very strong point of the fact that he did not make  
13 those payments from the outset, and he obviously knew that  
14 he hadn't made them. So, there can be no fraud.

15 Even if there was falsity, as the nine elements of  
16 fraud provide, they must show ignorance of the falsity on  
17 the part of the person when then the statement was made.  
18 And also they just show reliance on the statements as having  
19 been made the truth -- as having been true. Nothing in  
20 their declarations show any reliance whatsoever.

21 The essence of this claim really boils down to their  
22 legal theory. And I submit that if their legal theory is  
23 wrong, there is simply no basis to overturn the judgment.  
24 And their legal theory is wrong. They are asserting that on  
25 a Deed of Trust if you breach one of those subsidiary

1 obligations, the statute of limitations starts to run on the  
2 Deed of Trust as a whole. And we cited a number of  
3 authorities to the effect that this is not true. The  
4 statute of limitation does run on the installment  
5 obligations that are not made, but it does not serve to  
6 trigger the statute of limitations on the -- on the Deed of  
7 Trust as a whole.

8 In the case of *Coleman v. Peters* cited in our response,  
9 it pins that down and makes it clear that the only way the  
10 overarching debt, the debt on the Deed of Trust itself, can  
11 be accelerated is by the holder of that obligation, and not  
12 certainly by the person who owes the money. In this case,  
13 there's been no allegation that any acceleration by the  
14 holder, by the Estate or anybody else in the chain of  
15 ownership, was ever made; and, therefore, a statute of  
16 limitations analysis presented at the original summary  
17 judgment hearing was correct and the judgment was correctly  
18 entered.

19 I'd also like to point out that with respect to this  
20 motion, it is extremely untimely. The judgment -- summary  
21 -- the summary judgment itself was entered in the Summer of  
22 2016, roughly 29 months ago. A few months after the  
23 judgment there was a sheriff's sale of the property that  
24 Allen McPherson was notified on, so he understood that that  
25 was occurring. Subsequently, there were partial

1 distributions from the Estate that Allen McPherson was  
2 notified about. And these distributions were offset, or I  
3 should say the judgment was offset against those  
4 distributions, so that Mr. McPherson did not receive any  
5 money. If this judgment is reopened, those calculations are  
6 going to have to be revised, and clearly the Estate has been  
7 prejudiced by his failure to bring this motion on for  
8 hearing any sooner.

9 Finally, I just -- as in -- as in my pleadings, I'd  
10 like to indicate that we adopt Mr. Wolf's arguments  
11 regarding striking the -- the various statements in  
12 Defendants' pleadings that violate the dead man's statute  
13 and the hearsay rule. In particular, I've mentioned in my  
14 -- I've cited the Court in my response to statements by  
15 Counsel that this was a gift, on Page 9, Line 11 of their  
16 motion, and we object to that on the same basis as Mr. Wolf.  
17 Thank you.

18 MR. WOLF: If I may just briefly respond?

19 THE COURT: Yes, sir.

20 MR. WOLF: The -- Your Honor, Opposing Counsel has used  
21 such terms as whether or not we used due diligence to find  
22 Nikkala. And, Your Honor, that -- the concept of due  
23 diligence, what we are talking about there is where I'm  
24 suing Greg Jones and I can't find Greg Jones so I end up  
25 trying to serve by publication under the civil rules.

1 That's not what we are dealing with here.

2           What we are dealing with is an un -- the fact that we  
3 didn't know Nikkala had a claim against this property. They  
4 had been separated from --- for years; they had been -- she  
5 had been represented as not married; title was taken to --  
6 in the name of Allen, as his separate estate; and no  
7 recording of her interest had been made under RCW 26.16.100.  
8 So, the question isn't -- the question isn't whether we  
9 could've found Nikkala. We didn't know and had know reason  
10 to know that she had an interest in the property.

11           And that is why that this case is really governed by  
12 the unknown claimant statute, and we followed all the  
13 procedures there. Record it, recordation; naming it -- them  
14 in their publication. It does not invoke any kind of due  
15 process issue here, Your Honor. Ninety-nine percent of the  
16 foreclosures in this state are done through a non-judicial  
17 process that involves the exact same kind of a publication.

18           So -- and, the issue has been raised that it wasn't  
19 published in the county where she lived. That's because the  
20 statute requires that it be published in the county where  
21 the property is. So, she is an unknown claimant and you  
22 haven't heard any argument against that statute.

23           Now, the -- just also to address this cost motion for  
24 summary judgment. Yeah, Mr. Woodward is correct. When you  
25 -- it is a very common, and there's many cases in Washington



1 in history where you have an installment note in which there  
2 have been missed payments, let's say for eight years; okay?  
3 And in the absence of an acceleration, you can still -- you  
4 can sue on the missed installments that happened in years  
5 one through six, and that is what was done in this case. In  
6 fact, I cited to the Court the provision of the Uniform  
7 Commercial Code which deals with promissory notes and  
8 statutes of limitations under promissory notes. And it  
9 refers to the limitation being based on, quote, "the due  
10 date or dates in the Note, or the due" -- "or, if the due  
11 date is accelerated within six years after the accelerated  
12 due date."

13 So, what you have here is an allegation that, oh, I  
14 missed the first tax payment; or, oh, I missed the first --  
15 I didn't insure it. And the point is, is that -- that kind  
16 of a breach that, you know, frankly, a creditor may not  
17 notice or even know about, that does not trigger the six-  
18 year running of the statute of limitations. It's when they  
19 miss those payments, they have to bring action on those  
20 payments within six years. And we also cited the Court the  
21 case of *Edmundson v. Bank of America* a six-year installment  
22 accrues on each monthly installment from when it becomes  
23 due.

24 So there -- there is no substantive defense to this  
25 action. And, you know, by the way, Your Honor, one other

1 thing I have to mention here is if you put aside the issues  
2 of service in the original case, we -- there's no question  
3 that she was served in this case, and we brought a motion  
4 for summary judgment and you really haven't heard any  
5 substantive defense to our motion. So, for that reason,  
6 summary judgment should be granted. Thank you.

7 MR. KENNEDY: If I may, Your Honor?

8 THE COURT: Yes, sir.

9 MR. KENNEDY: Thank you, Your Honor.

10 So, first of all, a contract of insurance is not an  
11 installment. The Promissory Note was a balloon. It -- what  
12 they cited is inapplicable.

13 Second of all, the Court in the underlying decision  
14 relied on *City of Algona v. City of Pacific*, which recites  
15 the restatement of the con -- restatement of contracts,  
16 which re -- which tells us -- that's a Division I case, but  
17 no other division has talked about it and neither has the  
18 Supreme Court, so it's good law at this point, and it says  
19 that the six-year statute of limitation runs when they  
20 breach their first requirement of immediate performance on  
21 the Deed of Trust. That's the insurance obligation, which  
22 is May 2008, and that's when the clock starts running.

23 Look, those issues were argued below and they are res  
24 *judicata*. What we're doing is we are bringing a motion  
25 under CR 60 arguing that the personal representative, the

1 fiduciary, had an obligation of full faith, honest  
2 obligation, tell the Court exactly how Allen McPherson  
3 failed his obligations, and that way the Court can precisely  
4 count the six-year statute. Under the interpretation given  
5 by *City of Algona*, it began to run May 2008, six years it  
6 ran while Julia Betten was alive. It did not run beyond the  
7 time that Julia Betten died, and the Estate was not entitled  
8 to the extra year under the statute.

9 If *City of Algona* controls this case, and that's the  
10 question here, and if you sees, because this is  
11 discretionary and you have to make a discretionary judgment,  
12 if the Court sees because Plaintiffs rely on Section (sic) 7  
13 and 8, they say it on Page 2 of their underlying motion for  
14 summary judgment. Look, read this. He didn't start  
15 breaching his obligations that require immediate performance  
16 until July 2009. Well, if that happens, obviously Ms.  
17 Betten dies, it goes into, what, 2015 and then they get  
18 another year? And of course the Court made the right  
19 decision. Absolutely, the Court should have made that  
20 decision, that's correct. And they did not appeal, and  
21 that's grist for Division II or for a motion for  
22 reconsideration, but it's not what I'm arguing here today.

23 I'm arguing here, this is not just a mistake, this was  
24 deliberately misleading. More than that, he had an  
25 obligation. This is not arm's length litigation. He was a

1 fiduciary to Mr. McFadden (sic) -- McPherson. He had an  
2 obligation to be completely honest with the Court and him  
3 about his failure in his immediate performance. They  
4 deceived the Court into counting to six, and we are asking  
5 the Court to stop it right now, because that's an incredible  
6 miscarriage of justice.

7 THE COURT: All right, thank you, Counsel.

8 As was said at the beginning, the motions here are all,  
9 I think, inexorably intertwined, so I apologize if I kind of  
10 meander back and forth between them.

11 First, as to all the motions in front of me, there is  
12 no issue of material fact. I'm going to deny the motion to  
13 strike. I think the comments made by Mr. McPherson about  
14 what the Decedent told him about this transaction do run  
15 smack into the dead man's statute. That isn't waived by  
16 filing of written documents by the other side regarding that  
17 transaction. The dead man statute requires and was enacted  
18 to bring that specific result. Testimony about a  
19 transaction with a decedent is left out in preference to the  
20 Court considering the writing. So, I think that's exactly  
21 why it is in place and that is the result here.

22 MR. WOLF: So, the Court is saying you are going to  
23 grant the motion to strike?

24 THE COURT: Or, I'm sorry, I'm granting the motion to  
25 strike.

1 MR. WOLF: All right, thank you, Your Honor.

2 THE COURT: The -- with regard to the CR 60 motion and  
3 all of this, we've got pretty significant issues with the  
4 issue of preclusion here. The claim of misrepresentation in  
5 the original affidavit by the personal representative of the  
6 Estate I don't see as a material misrepresentation, first of  
7 all. Because those monthly obligations are each a separate  
8 default, so there was ongoing defaults each month.

9 If we say that the failure to provide the insurance was  
10 a one-time complete default, that doesn't change the fact  
11 that the failure to make those other payments continued.  
12 The case law seems pretty clear that there is no  
13 acceleration on those unless the acceleration is  
14 unambiguously expressed by the holder of the Note or the  
15 Deed. And what's important in a lot of this analysis is  
16 that there is no question that's what being raised now was  
17 known and available to the -- to Mr. McPherson in the prior  
18 action. He knew from day one he didn't pay a dime on the  
19 insurance. He knew from day one, and expressed it, he  
20 didn't make any payments on any other obligation. There's  
21 no reason that that could not, should not, have been raised  
22 in that prior action. And so, those issues are *res*  
23 *judicata*.

24 I mean, the same analysis applies to the minor addition  
25 errors, if you will. Assuming they exist, (a) I don't see

1 them material; and (b) there's nothing about them that was  
2 not available to Mr. McPherson in the prior litigation. So,  
3 (1) I think Mr. McPherson is precluded from raising those  
4 issues by *res judicata*; and (2) even if I were to consider  
5 them, I don't see them as being of any consequence.

6 Second, CR 60, in addition to having time limits that  
7 have been exceeded requires a party to act promptly. The  
8 order confirming sale was October of '16, this motion some  
9 months -- ten months later, so I don't see that as fitting  
10 with the requirements of CR 60.

11 And so, then that takes me to Ms. McPherson's claims.  
12 I am inclined to agree with the Plaintiff, that under any  
13 analysis she has, what is at best, an inchoate interest that  
14 might, at some future date in a dissolution action that is  
15 not filed apparently at this point, be able to establish a  
16 right of reimbursement from her then-soon-to-be-ex-spouse.  
17 There is a specific procedure and statute to give notice of  
18 that equitable claim of lien, although that statute does not  
19 create such a lien.

20 So, whether -- under whatever scenario we address, and  
21 the Plaintiff addressed all the ones I can think of,  
22 whatever she's got doesn't arise to the level of a claim  
23 against the property at this point in time. And should such  
24 an interest exist, it's still subordinate to the Deed of  
25 Trust and it's precluded by the statute cited, and I didn't

1 write down the number, on the effect of the sale. I don't  
2 think the *Gleason* case really applies here, because I think  
3 Mr. McPherson's denial of the existence of the marriage all  
4 by itself probably would fit under the heading of fraud, so  
5 I don't think we can rely on his authority to conduct this  
6 transaction on behalf of the marriage.

7 MR. WOODWARD: Excuse me. May I stand? Your -- my  
8 hearing aids just kicked out and I'm having difficulty --

9 THE COURT: Not a problem. My wife says I need them, so  
10 -- and then on the issue of service of process, Ms.  
11 McPherson fits under the heading of an unknown claimant. I  
12 don't know of anything that would require the Plaintiff to  
13 be aware of and take notice of a dismissed dissolution  
14 action in another county where the existing documents  
15 specifically say that this person, if she exists, has no  
16 interest in the property.

17 And there also isn't any requirement that the  
18 Plaintiffs have her served before they get an answer from  
19 the other Defendant. So, I think at the point that Mr.  
20 McPherson says there is no marriage, then the Plaintiff is  
21 under even less obligation to seek her out.

22 The best-case scenario that Ms. McPherson has at this  
23 point is that somewhere down the road, if there is a divorce  
24 filed, she might establish a claim against her current  
25 husband that a court may or may not guarantee by way of an

1 equitable lien. And if it did, that lien would come into  
2 existence only at that point in time. And if it did come  
3 into existence at that point in time, it would not impact  
4 the validity of the sale and it would be subordinate to the  
5 Plaintiffs' action.

6 So, I'll grant the Plaintiffs' motion for summary  
7 judgment; deny the Defendants' summary judgment motion and  
8 the CR 60 one.

9 All right, Counsel, do you want to set a date for  
10 presentation, or should I just leave it to you folks to sort  
11 out?

12 MR. WOLF: I have proposed orders. They are pretty  
13 straight forward, because on summary judgment there are no  
14 findings.

15 THE COURT: All right. So, take a look at --

16 MR. KENNEDY: I will, Your Honor.

17 THE COURT: -- them, if not I'll just leave it to  
18 Counsel to note on.

19 MR. KENNEDY: Thank you, Your Honor.

20 THE COURT: All right, thank you.

21  
22 (PROCEEDINGS CONCLUDE.)

23 UNOFFICIAL TRANSCRIPT

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**SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY**

**Eric C. Betten and Michael R. McPherson, as  
Co-Personal Representatives of the Estate of  
Julia H. Betten, Deceased,**

**Plaintiff,**

**v.**

**Allen McPherson and Nikkala L. McPherson,  
husband and wife, et al ,**

**Defendants.**

**No. 18 2 01334 08**

**COURT'S RULING ON MOTION  
FOR ADDITIONAL FEES**

The Plaintiffs are entitled, both by contract and statute, to a full award of attorney's fees as against Allen McPherson, and it is so ordered.

Nikkala L. McPherson was not a signator to the contract at issue. Further, her claim here was a narrow one. I found it to be meritless, but it did not encompass all the various acts and tactics involving her co-defendant. In recognition of this I award \$5,000 in attorney's fees to the Plaintiffs against the defendant Nikkala L. McPherson.

Dated August 10, 2020

  
Stephen M. Warning  
Superior Court Judge

**Amount Due under Previous Judgment  
Betten v. McPherson**

Principal	\$	229,000.00	
Pre-Judgment Interest	\$	207,951.80	
Attorney's Fees	\$	5,000.00	
Costs	\$	325.00	
Other Recovery	\$	15,795.54	
<b>Total</b>	<b>\$</b>	<b>458,072.34</b>	

Sum on which interest accrues	\$	458,072.34	
Rate of interest per annum		12%	
Interest per annum	\$	54,968.68	
Days per year		365	
Interest per diem	\$	150.60	
Date of Judgment		8/8/2016	
Today's Date		5/19/2020	
Days elapsed		1380	
Interest per diem	\$	150.60	
Post judgment Interest	\$	207,826.79	\$ 207,826.79
<b>Total amount due:</b>	<b>\$</b>		<b>665,899.13</b>

Honorable Stephen Warning  
Civil Motions Docket, Dept. 2  
Wednesday, June 3, 2020 at 2:00 p.m.  
Without Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF COWLITZ

Eric C. Betten and Michael R. McPherson, as  
Co-Personal Representatives of the Estate of  
Julia H. Betten, Deceased,

Plaintiffs,

vs.

Allen McPherson and Nikkala L. McPherson,  
husband and wife, and the marital community  
comprised thereof; and J. DOES 1-10 and all  
other occupants of 1148 S. Pekin Rd.,  
Woodland Washington 98674,

Defendants.

NO: 18-2-01334-08

SUPPLEMENTAL JUDGMENT

***(Clerk's Action Required)***

**JUDGMENT SUMMARY**

1. Judgment Creditors: Eric C. Betten, and  
Michael R. McPherson,  
Both as Personal Representatives of the  
Estate of Julia H. Betten
2. Judgment Debtors: Allen McPherson; and  
Nikkala L. McPherson; and  
Their Marital Community; and  
  
Other John Doe Occupants of  
1148 S. Pekin Rd., Woodland, WA 98674

- 3. Principal Judgment Amount \$0.00
- 4. Interest to Date of Judgment \$0.00
- 5. Attorney Fees \$34,450.00
- 6. Costs \$656.00
- 7. Other Recovery n/a
- 8. Principal Judgment Amount Shall Bear Interest at 12 % Per Annum.
- 9. Attorney Fees, Costs and Other Recovery Amounts Shall Bear Interest at 12% Per Annum.
- 10. Attorney for Judgment Creditor: Bradley S. Wolf

**JUDGMENT**

THIS MATTER having come on for hearing this day upon the Plaintiffs' Motion for entry of Judgment, and the court having previously granted partial summary judgment in this matter, and having thereafter entered an award of attorney's fees against the Defendants, in the amount of \$34,450.00, and costs in the amount of \$656.00, now therefore it is hereby:

ORDERED, ADJUDGED and DECREED that Plaintiffs are awarded judgment against Defendants, Allen McPherson and Nikkala L. McPherson, husband and wife, and the marital community comprised thereof; for attorney's fees of \$34,450.00 and costs of \$656.00, and **entry of judgment shall be entered without delay:**

This judgment supplements the judgment previously entered by the court on January 15, 2020.

DATED: \_\_\_\_\_

\_\_\_\_\_  
 HONORABLE STEVEN WARNING  
 SUPERIOR COURT JUDGE

BAUMAN & WOLF, PLLC  
 811 First Avenue, Suite 350  
 Seattle, Washington 98104  
 Phone: (206) 264-4577

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**Presented By:**  
**BAUMAN & WOLF, PLLC**

By: s/ Bradley S. Wolf  
Bradley S. Wolf, WSBA #21252  
Attorney for Plaintiffs



**CASCADE**  
**TITLE COMPANY**

1425 Maple Street  
Longview, Washington 98632

1280 U.S. POSTAGE P83374  
0455\*01.170 OCT 16 2  
9817 MAILED FROM ZIP CODE 98

**ALLEN MCPHERSON**  
**PO BOX 1097**  
**WOODLAND WA 98674**

When recorded return to:  
ALLEN MCPHERSON  
PO BOX 1097  
WOODLAND, WA 98674

3363599  
04/03/2008 04:04:03 PM  
Deed CASCADE 43.00  
Cowlitz County Washington  
Pages: 2



Escrow No.:00065512-JER

Received \$ 2849.28 excise tax levied  
pursuant to Chap. 11, Laws Ex. 1951  
AFF. NO. **080951** JUBY AINSLIE  
Date APR 03 2008 J. Ainslie Deputy  
COWLITZ COUNTY TREAS.

### Statutory Warranty Deed

THE GRANTOR, JCR SOLUTIONS LLC, A WASHINGTON LIMITED LIABILITY COMPANY, for and in consideration of Ten Dollars and other valuable consideration in hand paid, conveys and warrants to ALLEN MCPHERSON, a married man, as his separate estate, the following described real estate, situated in the County of COWLITZ, State of Washington:

See Exhibit A attached hereto and made a part hereof.

SUBJECT TO covenants, conditions, restrictions, reservations, easements and agreements of record, if any.

Tax Parcel Number(s): 6016101  
Abbreviated Legal: O BOZARTH DLC, T-4B

Dated this 27th day of March, 2008.

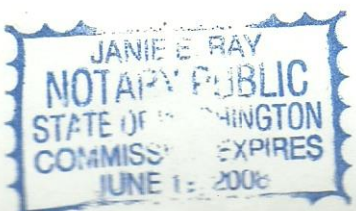
JCR SOLUTIONS LLC  
[Signature]  
By: CHRISTINE L. RANDALL, Manager/Member

[Signature]  
By: JON N. RANDALL, Manager/Member

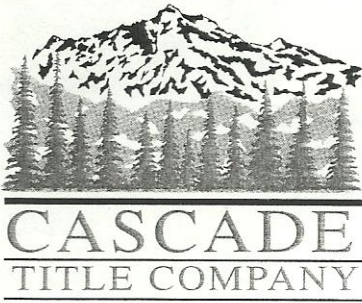
STATE OF WASHINGTON }  
COUNTY OF COWLITZ } ss

I certify that I know or have satisfactory evidence that CHRISTINE L. RANDALL & JON N. RANDALL are the persons who appeared before me, and said persons acknowledged that they signed this instrument and on oath stated they are authorized to sign as the Manager/Members of JCR SOLUTIONS LLC and acknowledged it to be the free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: March 27, 2008



[Signature]  
Janie E. Ray  
Notary Public in and for the State of Washington  
Residing at Castle Rock  
My appointment expires: June 19, 2008



Title (360) 425-2950  
Escrow (360) 577-8000  
Toll Free (877) 425-2950  
Fax (360) 425-8010

1425 Maple Street  
Longview, Washington 98632

THIS IS YOUR FINAL TITLE INSURANCE POLICY

This is for informational purposes only.  
The premium has been paid in full during the closing of your Escrow.  
Please keep this document in a safe place.

If you have any questions please give us a call.

Thank you for choosing Cascade Title of Cowlitz County for your title and escrow closing.

Sincerely,  
Cascade Title Company of Cowlitz County

Serving your from these locations as well:

Main Office

805 Broadway St  
Ste 747  
Vancouver, WA 98660  
Phone: (360) 695-1301  
Escrow Fax: (360) 695-2358

Fishers Landing

1498 SE Tech Center Pl.  
Ste 200  
Vancouver, WA 98683  
Phone: (360) 891-1881  
Fax: (360) 891-1884



**STATE OF WASHINGTON  
VEHICLE CERTIFICATE OF OWNERSHIP (TITLE)**

CERTIFICATE NUMBER

**0814126306**

LICENSE NUMBER <b>+114977</b>	VEHICLE IDENTIFICATION NUMBER (VIN) <b>1927</b>	YEAR <b>1972</b>	MAKE <b>KINGS</b>	MODEL	STYLE	SERIES BODY <b>24/40</b>
DATE ISSUED <b>05/20/2008</b>	ODOMETER MILES <b>000000</b>	ODOMETER STATUS <b>EXEMPT</b>	FLEET NUMBER	EQUIP NUMBER	FUEL TYPE <b>UNPOWERED</b>	
USE CLASS <b>MOB</b>	SCALE WEIGHT <b>00000</b>	GROSS WEIGHT <b>000000</b>	VEHICLE COLOR	PRIOR TITLE STATE <b>WA</b>	PRIOR TITLE NUMBER <b>0803915011</b>	

COMMENTS  
**2100-2008**

BRANDS

SALE PRICE \$ \_\_\_\_\_

DATE OF SALE \_\_\_\_\_

**LEGAL OWNER:** When lien is satisfied, release interest by signing below and transmit this document to County Auditor or Agent with proper fee. Failure to properly release and transmit the document within 10 days after lien is satisfied may result in monetary penalty to the debtor, pursuant to RCW 46.12.170. **TRANSFeree/BUYER MUST APPLY FOR TRANSFER OF OWNERSHIP WITHIN 15 DAYS FROM DATE OF DELIVERY TO AVOID PENALTY.**

LEGAL OWNER

**MCPHERSON, ALLEN  
PO BOX 1097  
WOODLAND WA 98674-1100**

REGISTERED OWNER

**SAME AS LEGAL OWNER**

SIGNATURE OF LEGAL OWNER HEREBY RELEASES ALL INTEREST IN VEHICLE AS DESCRIBED ABOVE \_\_\_\_\_ DATE \_\_\_\_\_

SIGNATURE OF REGISTERED OWNER HEREBY RELEASES ALL INTEREST IN VEHICLE DESCRIBED ABOVE \_\_\_\_\_ DATE \_\_\_\_\_

SIGNATURE OF LEGAL OWNER HEREBY RELEASES ALL INTEREST IN VEHICLE AS DESCRIBED ABOVE \_\_\_\_\_ DATE \_\_\_\_\_

SIGNATURE OF REGISTERED OWNER HEREBY RELEASES ALL INTEREST IN VEHICLE DESCRIBED ABOVE \_\_\_\_\_ DATE \_\_\_\_\_

I CERTIFY THAT THE RECORDS OF THE DEPARTMENT OF LICENSING SHOW PERSONS NAMED HEREON AS REGISTERED OWNERS AND LEGAL OWNERS OF THE VEHICLE DESCRIBED.

*Elizabeth A. Luce*

DIRECTOR DEPARTMENT OF LICENSING 05/06

0024972 01 AT  
0024972 01 AT

I certify, to the best of my knowledge, that the ODOMETER READING, as shown below: (CHECK ONE)



**NO TENTHS**

- 1. is the ACTUAL MILEAGE of the vehicle
- 2. is in EXCESS OF ITS MECHANICAL LIMITS
- 3. is NOT THE ACTUAL MILEAGE

ODOMETER READING (in miles)

TRANSFEE / BUYER: unless licensed dealer, must transfer title within 15 days of sale. I / we warrant this Title and certify that the vehicle described herein has been sold to the following:

Date of Transfer

SIGNATURE OF TRANSFEE / BUYER \_\_\_\_\_

SIGNATURE OF TRANSFEROR / SELLER \_\_\_\_\_

HANDPRINTED NAME OF TRANSFEE / BUYER \_\_\_\_\_

HANDPRINTED NAME OF TRANSFEROR / SELLER \_\_\_\_\_

ADDRESS OF TRANSFEE / BUYER \_\_\_\_\_

ADDRESS OF TRANSFEROR / SELLER \_\_\_\_\_

ASSIGNMENT BY REGISTERED OWNER



FEDERAL REGULATION AND STATE LAW REQUIRE THAT YOU STATE THE MILEAGE IN CONNECTION WITH THE TRANSFER OF OWNERSHIP. FAILURE TO COMPLETE ODOMETER STATEMENT OR PROVIDING A FALSE STATEMENT MAY RESULT IN FINES AND/OR IMPRISONMENT.

**KEEP IN A SAFE PLACE**

**ANY ALTERATION OR ERASURE VOIDS THIS TITLE**

TD-420-002

**If you are the buyer:** You must apply for a new Certificate of Ownership (Title) within 15 calendar days of acquiring the vehicle. Take the signed title to your local vehicle licensing office and pay the appropriate fees and taxes. You must also complete an application for Certificate of Ownership. It is available on our website at [www.dol.wa.gov](http://www.dol.wa.gov), or from your local vehicle licensing office. If you do not transfer ownership within 15 calendar days, there is a penalty fee.

**STATE OF WASHINGTON  
VEHICLE CERTIFICATE OF OWNERSHIP (TITLE)**

CERTIFICATE NUMBER

**0822430504**

LICENSE NUMBER <b>@76904</b>	VEHICLE IDENTIFICATION NUMBER (VIN) <b>02910388J</b>	YEAR <b>1976</b>	MAKE <b>HILLC</b>	MODEL	STYLE	SERIES BODY <b>60/24</b>
DATE ISSUED <b>08/11/2008</b>	ODOMETER MILES <b>000000</b>	ODOMETER STATUS <b>EXEMPT</b>	FLEET NUMBER	EQUIP NUMBER	FUEL TYPE <b>UNPOWERED</b>	
USE CLASS <b>MOB</b>	SCALE WEIGHT <b>00000</b>	GROSS WEIGHT <b>000000</b>	VEHICLE COLOR	PRIOR TITLE STATE <b>WA</b>	PRIOR TITLE NUMBER <b>0803915010</b>	

COMMENTS  
**7400-2008**

BRANDS

SALE PRICE \$ \_\_\_\_\_

DATE OF SALE \_\_\_\_\_

**LEGAL OWNER:** When lien is satisfied, release interest by signing below and transmit this document to County Auditor or Agent with proper fee. Failure to properly release and transmit the document within 10 days after lien is satisfied may result in monetary penalty to the debtor, pursuant to RCW 46.12.170. **TRANSFeree/BUYER MUST APPLY FOR TRANSFER OF OWNERSHIP WITHIN 15 DAYS FROM DATE OF DELIVERY TO AVOID PENALTY.**

LEGAL OWNER

**MCPHERSON, ALLEN  
PO BOX 1097  
WOODLAND WA 98674-1100**

REGISTERED OWNER

**SAME AS LEGAL OWNER**

SIGNATURE OF LEGAL OWNER HEREBY RELEASES ALL INTEREST IN VEHICLE AS DESCRIBED ABOVE \_\_\_\_\_ DATE \_\_\_\_\_

SIGNATURE OF REGISTERED OWNER HEREBY RELEASES ALL INTEREST IN VEHICLE DESCRIBED ABOVE \_\_\_\_\_ DATE \_\_\_\_\_

SIGNATURE OF LEGAL OWNER HEREBY RELEASES ALL INTEREST IN VEHICLE AS DESCRIBED ABOVE \_\_\_\_\_ DATE \_\_\_\_\_

SIGNATURE OF REGISTERED OWNER HEREBY RELEASES ALL INTEREST IN VEHICLE DESCRIBED ABOVE \_\_\_\_\_ DATE \_\_\_\_\_

I CERTIFY THAT THE RECORDS OF THE DEPARTMENT OF LICENSING SHOW PERSONS NAMED HEREON AS REGISTERED OWNERS AND LEGAL OWNERS OF THE VEHICLE DESCRIBED.

*Elizabeth A. Vucce*  
DIRECTOR DEPARTMENT OF LICENSING

05/06

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0044834 01 AT

I certify, to the best of my knowledge, that the ODOMETER READING, as shown below: (CHECK ONE)



**NO TENTHS**

- 1. is the ACTUAL MILEAGE of the vehicle
- 2. is in EXCESS OF ITS MECHANICAL LIMITS
- 3. is NOT THE ACTUAL MILEAGE

ODOMETER READING (in miles)

**TRANSFEEE / BUYER: unless licensed dealer, must transfer title within 15 days of sale.**

I / we warrant this Title and certify that the vehicle described herein has been sold to the following:

Date of Transfer

SIGNATURE OF TRANSFEEE / BUYER \_\_\_\_\_

SIGNATURE OF TRANSFEROR / SELLER \_\_\_\_\_

HANDPRINTED NAME OF TRANSFEEE / BUYER \_\_\_\_\_

HANDPRINTED NAME OF TRANSFEROR / SELLER \_\_\_\_\_

ADDRESS OF TRANSFEEE / BUYER \_\_\_\_\_

ADDRESS OF TRANSFEROR / SELLER \_\_\_\_\_



**FEDERAL REGULATION AND STATE LAW REQUIRE THAT YOU STATE THE MILEAGE IN CONNECTION WITH THE TRANSFER OF OWNERSHIP. FAILURE TO COMPLETE ODOMETER STATEMENT OR PROVIDING A FALSE STATEMENT MAY RESULT IN FINES AND/OR IMPRISONMENT.**

**KEEP IN A SAFE PLACE**

**ANY ALTERATION OR ERASURE VOIDS THIS TITLE**

TD-420-002

**If you are the buyer:** You must apply for a new Certificate of Ownership (Title) within 15 calendar days of acquiring the vehicle. Take the signed title to your local vehicle licensing office and pay the appropriate fees and taxes. You must also complete an application for Certificate of Ownership. It is available on our website at [www.dol.wa.gov](http://www.dol.wa.gov), or from your local vehicle licensing office. If you do not transfer ownership within 15 calendar days, there is a penalty fee.

**NIKKALA MCPHERSON - FILING PRO SE**

**February 21, 2022 - 8:42 AM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 54507-1  
**Appellate Court Case Title:** Eric Betten et al., Respondents v. Allen McPherson et al., Appellants  
**Superior Court Case Number:** 18-2-01334-9

**The following documents have been uploaded:**

- 545071\_Petition\_for\_Review\_20220221084143D2607861\_6826.pdf  
This File Contains:  
Petition for Review  
*The Original File Name was petition for review.pdf*

**A copy of the uploaded files will be sent to:**

- bwolf@wolflaw.us

**Comments:**

---

Sender Name: Nikkala McPherson - Email: nikkala66@gmail.com  
Address:  
9307 N.E. 95th St.  
Vancouver, WA, 98662  
Phone: (360) 901-1362

**Note: The Filing Id is 20220221084143D2607861**