COURT OF APPEALS

DIVISION II

43504-7-II

NO: ~~42361-8-II~~

JOY E. FIX,
Appellant,

v.

MICHAEL FIX, et al.,
Respondents.

RESPONDENTS' BRIEF

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I. INTRODUCTION

Respondents Michael Fix and Marcia Fix, husband and wife, and their martial community (hereinafter "Michael Fix" or "Respondents"), reside at the real property known as 36105 40th Avenue South, Roy, Washington (the "subject property"). Petitioner Joy Fix (hereinafter "Joy Fix" or "Petitioner") is the mother of Michael Fix. In 1985, Louis and Joy Fix[1] conveyed by statutory warranty deed seven and one-half (7.5) acres of undeveloped land to their eldest son and his then spouse, Clifford and Laurel Fix. On March 27, 1985, Clifford and Laurel signed a note and deed of trust to his parents, Louis and Joy, for $35,000.00. Both documents were recorded on April 8, 1985.

Clifford and Laurel Fix left the subject property in 1985, and in that same year, Michael Fix moved onto the property. Michael Fix is the son of Louis and Joy Fix and brother to Clifford. Louis and Joy were aware that Michael moved onto the property at that point in time. There was some discussion that Michael wanted to purchase the property, but no specific terms were ever agreed upon. There was never an oral or written agreement completed for the sale of the property.

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[1] Joy Fix is the sole Petitioner in this appeal. Louis Fix passed away in September 2008.

The statutes of limitations for Louis and Joy Fix to sue Clifford on the promissory note, or non-judicially or judicially foreclose on the deed of trust, expired in 1991, six years after the note was signed or six years after Clifford had left the property. Not in the six-year interim or until the present time did Joy sue Clifford on the note nor attempt to recover the property through a judicial or non-judicial foreclosure on the deed of trust. Instead, from 1985 until 2008, Michael Fix held sole possession of the subject property and paid the property taxes although recorded title remained in the names of Clifford and Laurel Fix. Since 1985, Clifford and Laurel have divorced and relocated to Wales, United Kingdom, and New Jersey, respectively.

On May 12, 2009, Laurel Fix quitclaimed her interest in the subject property to Michael Fix. On May 20, 2009, Clifford Fix quitclaimed his interest in the subject property to Michael Fix. Both quitclaim deeds were recorded with the Pierce County Auditor's Office on July 13, 2009. Michael Fix knows of no time since Clifford and Laurel left the property in 1985 that either paid anything on the subject property, including monthly payments or property taxes.

From April 8, 1985, until July 13, 2009, there were no other conveyances of the subject property of any kind to any person. Michael

Fix still remains in ownership and possession. No oral or written contract has ever existed between Michael Fix and Petitioner Joy Fix, or between Michael Fix and Clifford Fix causing Michael to convey the subject property to any person, including Petitioner.

The trial court expressly found Petitioner lacked standing to quiet title in the subject property in her own name. This appeal is an attempt to re-try the case after summary judgment—which was entered after Petitioner was permitted to file her Amended Complaint nearly a year after filing her lawsuit. The trial court maintained that Petitioner still failed to demonstrate requisite standing for her cause of action despite receiving a second bite at the apple.

II. RESPONSE TO ASSIGNMENTS OF ERROR

1. The plaintiff in any cause of action must have legal standing to bring the claims alleged in her complaint, and the trial court expressly found that Petitioner lacked the requisite standing to maintain her cause of action because she did not have a personal stake in the litigation.

2. An award of attorneys' fees under RCW 4.84.185 for defending frivolous lawsuits does not require the trial court to make a finding of bad faith on part of the sanctioned party, is reviewed for abuse

of discretion, and the trial court awarded fees because Petitioner's Amended Complaint was substantially unchanged from the original complaint after being given "the opportunity to state a valid cause of action, on two different occasions" which justified an award of fees to Respondent at the Court's discretion.

III. ISSUES PERTAINTING TO ASSIGNMENTS OF ERROR

1. Was the trial court correct in granting summary judgment when the non-moving party failed to establish that Petitioner had a personal stake in the outcome of the litigation, and thus did not have the requisite standing to sue? (Assignment of Error 1)

2. Was the trial court's order awarding Respondents their reasonable attorney's fees and costs under RCW 4.84.185 an abuse of discretion? (Assignment of Error 2)

IV. STATEMENT OF THE CASE

Respondents Michael Fix and Marcia Fix are husband and wife. (cp 22). Since 1985 to the present, Michael and Marcia Fix have continuously resided at the subject property commonly known as 36105 40th Avenue South, Roy, Washington. (cp 22-23). Petitioner Joy Fix is the mother of Michael Fix. (cp 153). In 1985, Louis and Joy Fix conveyed by statutory warranty deed seven and one-half (7.5) acres of undeveloped

land to their eldest son and his then spouse, Clifford and Laurel Fix. (cp 15-16). On March 27, 1985, the Clifford and Laurel signed a note and deed of trust to his parents, Louis and Joy, for $35,000.00. (cp 17-19). Both documents were recorded on April 8, 1985. (cp 15-19).

Clifford and Laurel Fix left the subject property in 1985, and in that same year, Michael Fix moved onto the property. (cp 23). Clifford and Laurel divorced shortly after moving away from the property. *Id.* Clifford initially moved to California, and subsequently relocated to Wales, Great Britain, where he now resides. *Id.* The family lost track of Laurel's whereabouts after the divorce, but later discovered that she remarried and now resides in New Jersey. (cp 23-24). At no time since Clifford and Laurel left the property in 1985 have either paid anything on the subject property, whether monthly payments or property taxes. (cp 23).

Michael Fix is the son of Louis and Joy Fix and brother to Clifford. (cp 22-23). Louis and Joy were aware that Michael had moved onto the property in 1985 after Clifford and Laurel had moved away. (cp 22-24). There was some discussion that Michael wanted to purchase the property, but no specific terms were ever agreed upon. (cp 24). There was never an oral or written agreement completed for the sale of the property to Michael. *Id.*

In 1987, Clifford and Laurel drafted and signed a document purporting to "voluntarily relinquish all interest and claims" to the subject property (hereinafter "Relinquishment"). (cp 38). However, the Relinquishment does not contain a legal description of the property, it is not notarized, and does not bear the formalities of a deed. *Id.* The trial court ruled the Relinquishment was not a deed or conveyance of land. (cp 137-38).

The statute of limitations for Louis and Joy Fix to sue Clifford upon the promissory note expired in 1991, six years after the note was signed or six years after Clifford had left the property. (cp 143, 151-53). Never in the six-year interim or until the present time did Joy sue Clifford on the note or recover the property through a judicial or non-judicial foreclosure on the deed of trust. *Id.* Instead, from 1985 until 2008, Michael Fix held sole possession of the subject property though recorded title remained in the names of Clifford and Laurel Fix. (cp 4, 144). Michael has paid the property taxes for the parcel since moving onto the property in 1985. (cp 23).

From April 8, 1985, until July 13, 2009, there were no other conveyances of the subject property of any kind to any person. (cp 144). No oral or written contract has ever existed between Michael Fix and

Petitioner Joy Fix, or between Michael Fix and Clifford and Laurel Fix causing Michael to convey the subject property to any person, including Petitioner. *Id.*

On May 12, 2009, Laurel Fix quitclaimed her interest in the subject property to Michael Fix. (cp 24, 32). On May 20, 2009, Clifford Fix quitclaimed his interest in the subject property to Michael Fix. (cp 24, 33). Both quitclaim deeds were recorded with the Pierce County Auditor's Office on July 13, 2009. (cp 32-33).

After learning Michael recorded the two quitclaim deeds, Petitioner brought her lawsuit against Respondents. Petitioner's original Complaint was filed on March 21, 2011, (cp 1-2), which alleged two causes of action: (1) "defendants through trickery obtained quitclaims deeds wrongfully obtaining title ... [to the subject property]"; and (2) "defendants have committed waste on the property...." *Id.* Petitioner's prayer requested that the court "quiet title to said property in the plaintiff." (cp 2). Respondents filed their Answer on May 3, 2011. (cp 182-84).

On January 20, 2012, Respondents filed a Motion for Summary Judgment to dismiss Petitioner's lawsuit for failure to establish standing and failure to plead a cause of action for fraud. (cp 3-21). Petitioner filed her own Motion for Summary Judgment on January 23, 2012. (cp 34-55).

The trial court denied both motions in its Order dated February 17, 2012. (cp 113-15).

On February 23, 2012, Respondents timely filed a Motion for Reconsideration and Motion in Limine requesting the court grant their motion for summary judgment on standing, and to exclude the (1) Relinquishment, (2) Louis Fix's diary entries, and (3) the testimony of attorney Craig Powers. (cp 116-19). On February 27, 2012, Respondents also filed a Motion for Reconsideration requesting the court dismiss Petitioner's claim for failure to adequately and specifically allege her claim of "trickery" in her Complaint pursuant to CR 9(b). (cp 120-23).

On March 13, 2012, the trial court entered an Order on both of Respondents' motions for reconsideration and in limine. (cp 137-38). Due to the vague wording of the cause of action in Petitioner's Complaint, the trial court granted Petitioner 60 days to amend her complaint. *Id.* Petitioner filed her Amended Complaint two days later on March 15, 2012, (cp 139-41), which was "substantially unchanged" from the original filing despite being given a second chance by the trial court. *Id.*; (cp 235).

Respondents then filed a New Motion for Summary Judgment to dismiss Petitioner's claims for lack of standing and failure to plead fraud with particularity as required by CR 9(b). (cp 142-52). The trial court

granted Respondents' motion, and entered judgment in favor of Respondents. (cp 177-79). Respondents also requested the right to present a motion at a later date for their attorneys' fees, which was granted. *Id.*

On May 7, 2012, Respondents filed a Motion for Attorneys' Fees and Costs. (cp 185-193). Respondents' counsel, Thomas L. Dickson, also filed a supporting declaration regarding the fees therewith. (cp 194-221).

The trial court granted Respondents' Motion for Attorneys' Fees and Costs, and awarded a portion of the fees requested pursuant to RCW 4.84.185. (cp 231-237). The trial court entered detailed Findings of Fact and Conclusions of Law to support its decision. *Id.* The amount of the award was $10,000.00 in attorneys' fees and $700.00 in costs. (cp 235).

Petitioner simply does not like the express findings of the trial court, which found Petitioner lacked standing to quiet title of the subject property in her name. At summary judgment—entered after Petitioner was permitted to file her Amended Complaint nearly a year after filing her lawsuit—the trial court maintained Petitioner still failed to demonstrate requisite standing for her cause of action despite receiving a second chance.

V. ARGUMENT AND AUTHORITY

A. Petitioner does not assign error to any specific finding of the trial court but rather refers only to the general "holding" of the case.

An assignment of error will be held to be without merit, where it is based upon conclusions supported by findings which are not challenged by appellant and has become established fact in the case. *Wygal v. Kilwein*, 41 Wn.2d 281, 248 P.2d 893 (1952). Assignments of error which "merely refer to the trial court's 'holding' and fail to set out verbatim any portion of the findings of fact claimed as error" preclude consideration by the appellate court. *Jones v. Nat'l Bank of Commerce*, 66 Wn.2d 341, 344, 402 P.2d 673 (1965).

The burden of drafting proper assignment of error rests on the appellant, and the appellate court cannot redraft assignments in a form that appellant may have intended, but did not provide. *Id.* at 346. Moreover, a "passing treatment of an issue in a brief or lack of reasoned argument is insufficient to merit judicial consideration." *Edwards v. Le Duc*, 157 Wn. App. 455, 459 n.5, 238 P.3d 1187 (2010) (*quoting Holland v. City of Tacoma*, 90 Wn. App. 533, 538, 954 P.2d 290 (1998)).

Petitioner does not attribute error to any findings of the trial court except to assert the court did not "understand" Petitioner's cause of action.

In truth, the court and Respondents understood Petitioner lacked legal standing as a real party in interest, and failed to remedy her deficiency despite being provided another opportunity to do so. Rather, Petitioner blithely asks if "there is another requirement" to establish a constructive trust besides unjust enrichment. The answer, and the answer of the trial court, is yes. Petitioner, like any other litigant, must demonstrate legal standing as the real party in interest. Petitioner failed to do so, and her case was properly dismissed.

Petitioner also (1) fails to assign any error to the trial court's ruling on the issue of statute of limitations defense; and (2) fails to apply any of the elements of equitable estoppel to her case which are merely recited in her brief in passing. Consequently, Petitioner's arguments concerning the issue of the statute of limitations and application of equitable estoppel to bar such a defense should be precluded from the appellate Court's review.

B. The Trial Court's Order Granting Summary Judgment Correctly Determined Petitioner Lacked Standing.

1. *Standard of Review*

Petitioner has wholly failed to identify the appropriate standard of review for any of her assignments of error on appeal. RAP 10.3(6). Different standards of review apply to different portions of the appeal,

depending on what is specifically challenged. The standard of review applied to the review of a trial court's order granting summary judgment is *de novo*. *CLEAN v. City of Spokane*, 133 Wn.2d 455, 462, 947 P.2d 1169 (1997); *see also Nickum v. City of Bainbridge Island*, 153 Wn. App. 366, 373-74, 223 P.3d 1172 (2009) ("Where the facts are not at issue, we review de novo rulings to dismiss for lack of jurisdiction under CR 12(b)(1) and for failure to state a claim under CR 12(b)(6).") (internal citations omitted). Therefore, the appropriate standard of review is *de novo* for review of Petitioner's assignment of error regarding standing.

2. *Petitioner lacks standing*

a. The six-year statute of limitations bars Petitioner's claim to the property

Petitioner argues that the statute of limitations defense should be barred on the basis of equitable estoppel. *Pet'r's Brief,* p. 10. Disregarding the fact Petitioner fails to assign any error to the trial court's ruling on this issue, she fails to apply any of the elements of equitable estoppel to her case which are merely recited. She addresses this argument only in passing (all of which are addressed *supra*, § 5.A, and thus preclude Petitioner's arguments), leaving Respondents' statute of limitations defense directly applicable to Petitioner's claims.

For a breach of contract, an individual lacks legal standing to sue upon a claim for damages after the six-year statute of limitations period has expired. RCW 4.16.040; *Imperato v. Wenatchee Valley College*, 160 Wn. App. 353, 360, 247 P.3d 816 (2011), *rev. denied*, 171 Wn.2d 1033, 257 P.3d 664 (2011). The six-year statute of limitations on enforcement of written contract begins to run at the time of breach. *City of Algona v. City of Pacific*, 35 Wn. App. 517, 521, 667 P.2d 1124 (1983). The statute of limitations to conduct a nonjudicial or judicial foreclosure on a deed of trust is also subject to six years. *Walcker v. Benson and McLaughlin, P.S.*, 79 Wn. App. 739, 746, 904 P.2d 1176 (1995).

"The purpose of the statute of limitations is to shield defendants and the judicial system from stale claims. When plaintiffs sleep on their rights, evidence may be lost and memories may fade." *Burns v. McClinton*, 135 Wn. App. 285, 293, 143 P.3d 630 (2006) (citing *Crisman v. Crisman*, 85 Wn. App. 15, 19, 931 P.2d 163 (1997)). Unfortunately, the expiration of the statute of limitations may operate to "deprive [the] plaintiff of the opportunity to invoke the power of the courts in support of an otherwise valid claim." *Stenberg v. Pacific Power & Light Co.*, 104 Wn.2d 710, 714, 709 P.2d 793 (1985).

Petitioner alleges that she had a legal right to the property, presumably due to the promissory note and deed of trust in favor of Clifford Fix in 1985. *Petitioner's Brief,* p. 7; (cp 26-31). It is undisputed that since 1985, Clifford Fix failed to make any payments on the promissory note. *Id.*; (cp 38). However, Petitioner never pursued any legal action to enforce the terms of that promissory note or foreclose on the deed of trust against Clifford and Laurel Fix, and thereby recover damages or fee title to the property. (cp 143, 23). Instead, Petitioner sat on her rights as a creditor, and the statute of limitations for breach of contract and foreclosure expired in 1991. *See City of Algona*, 35 Wn. App. at 521. The property was thus granted to Clifford Fix in fee simple.

It necessarily follows that once the statute of limitations expired, Clifford Fix could legally dispose of the property in any manner he saw fit without recourse for Petitioner. Clifford could have kept the property (even if Petitioner demanded it), sold it to a third party or borrowed money using it as security for a loan. Regardless, the result is the same: Petitioner no longer holds any legal right to the property at this time and has not since 1991. Further, the doctrine of laches is applicable in this case due to Petitioner's unreasonable failure to pursue her claim on the

note for over 15 years. *See Davidson v. State*, 116 Wn.2d 13, 25, 802 P.2d 1374 (1991).

b. Petitioner lacks standing under RCW 7.28.010 in action to quiet title

An individual must have legal standing to bring a cause of action. The Washington courts held in *Gustafson v. Gustafson,* 47 Wn. App. 272, 276, 734 P.2d 949 (1987), "[t]he doctrine of standing requires that *a plaintiff must have a personal stake in the outcome of the case* in order to bring suit." (Emphasis added). RCW 7.28.010 provides grounds for standing in quiet title:

> *Any person having a valid subsisting interest in real property, and a right to the possession thereof,* may recover the same by action in the superior court of the proper county, to be brought against the tenant in possession; if there is no such tenant, then against the person claiming the title or some interest therein, and may have judgment in such action quieting or removing a cloud from plaintiffs title . . . .

(Emphasis added).

Petitioner sold the property in 1985 to Clifford in exchange for a note and deed of trust leaving her a valid security interest in the property and arguably, a "right to possession thereof but only upon foreclosure." (cp 17-18). Petitioner's right and interest to the property expired at the end of the six-year statute of limitations. *See Stenberg*, 104 Wn.2d at 714;

City of Algona, 35 Wn. App. at 521. At that point, the property was fully vested in Clifford Fix in fee, and he legally transferred the property to Michael Fix. Petitioner cannot be entitled to maintain an action at law or equity where she lacks the requisite standing to bring the claim.

C. Petitioner had the Opportunity to Amend her Complaint to Establish the Real Party in Interest, but Petitioner Failed to do so.

To bring a suit, the plaintiff must have both capacity, under applicable law, as well as a material interest in the outcome, to be a real party in interest as defined by CR 17(a). It is sometimes said the real party in interest is "the person who, if successful, will be entitled to the fruits of the action." *Northwest Independent Forest Mfrs. v. Department of Labor and Industries*, 78 Wn. App. 707, 899 P.2d 6 (1995). The purpose of that rule is to "protect the defendant against a subsequent action by the party actually entitled to recover, and to insure generally that the judgment will have is proper effect as res judicata." *Rinke v. Johns-Manville*, 47 Wn. App. 222, 227, 734 P.2d 533 (1987).

RCW 7.28.010 expressly identifies who may maintain an action in quiet title. *Magart v. Fierce,* 35 Wn. App. 264, 266, 666 P.2d 386 (1983). "If [the plaintiff's] claim of ownership fails, he lacks standing to attack [the defendant's] claim, as the plaintiff in an action to quiet title must

succeed on the strength of his own title and not on the weakness of his adversary." *Id.* (citing *Rohrback v. Sanstrom,* 172 Wash. 405, 406, 20 P.2d 28 (1933). The plaintiff "has the burden of proving ownership of the land in question and standing as a real party in interest." *Id.*

The court's decision in *Magart v. Fierce* is directly applicable to this case and the issue of standing as a real party in interest. In *Magart*, the court found that the plaintiff sold the disputed parcel, and failed to demonstrate he preserved any interest in the land after the conveyance. *Id.* at 267. The court held that "[s]ince the disputed strip would be within the property sold to [a third party], [the plaintiff] has no standing to bring this action as he is not the owner and real party in interest." *Id.* The court in *Magart* thus dismissed the action to quiet title for failure to join an indispensible party. *Id.*

Joy Fix is not the real party in interest because she holds no interest in the property, and any claim she may have had *against Clifford Fix* expired with the running of the six-year statute of limitations. Petitioner sold the property to Clifford and Laurel Fix in 1985, by executing a promissory note and deed of trust. Clifford and Laurel failed to make any payments on the promissory note since 1986, and Petitioner never brought any legal action to enforce the note or foreclose on the deed

of trust. Clifford and Laurel never deeded the property back to Petitioner or to her late husband. Any interest in the property held by Petitioner thus expired in 1991. She cannot now maintain an action to quiet title where she is not the legal owner or otherwise holds any interest in the subject property. *Magert*, 35 Wn. App. at 267.

Moreover, Petitioner was permitted leniency by the trial court to amend her original Complaint to name the real party in interest. (cp 137-38). Petitioner's claim for title would have been against Clifford Fix prior to the deed executed to Respondents. However, the expiration of the statute of limitations operates to "deprive [the] plaintiff of the opportunity to invoke the power of the courts in support of an otherwise valid claim." *Stenberg*, 104 Wn.2d at 714.

The cases cited by Petitioner in support of a constructive trust are inapplicable for the same reason. Each of the equitable trust cases cited in Petitioner's brief are the result of a duty owed to the real party in interest. *See, e.g., Brooke v. Robinson*, 125 Wn. App. 253, 257-58, 104 P.3d 674 (2004) (defendant owed duty to repay funds appropriated after secured judgment in favor of plaintiff was erroneously released by court). The same principle applies in *Baker v. Leonard*, 120 Wn.2d 538, 843 P.2d 1050 (1993).

In this instance, Petitioner does not have standing to assert the creation of an equitable trust in her favor because she is not the real party in interest. Petitioner holds no interest in the subject property. There was never any duty imposed upon Respondents to do anything on her behalf. To hold otherwise would turn the basic tenets of property law for real estate, recording, and perhaps most importantly the doctrine of the Statute of Frauds, on its ear.

Petitioner sat on her rights and the statute of limitations for breach of contract expired in 1991. *City of Algona*, 35 Wn. App. at 521. The property was thus granted to Clifford Fix in fee simple and Petitioner's claim is time-barred by the statute of limitations.

D. Petitioner's Passing Mention of Equitable Estoppel is Inapplicable to this Case.

Firstly, a "passing treatment of an issue in a brief or lack of reasoned argument is insufficient to merit judicial consideration." *Edwards v. Le Duc*, 157 Wn. App. 455, 459 n.5, 238 P.3d 1187 (2010) (*quoting Holland v. City of Tacoma*, 90 Wn. App. 533, 538, 954 P.2d 290 (1998)). Petitioner fails to present any explanation or application of the doctrine of equitable estoppel in her brief. Therefore, it should be excluded from review for that reason alone. *See supra*, §§ 5.A & 5.B.2.a.

Secondly, for the sake of argument, Plaintiff cannot establish it in any event because she must demonstrate: (1) an admission, statement, or act, inconsistent with the claim afterwards asserted; (2) action by the other party on the faith of such admission, statement or act; and (3) injury to the party who relied if the first party is permitted to contradict or repudiate the prior act, statement, or admission. *Peterson v. Groves*, 111 Wn. App. 306, 310, 44 P.3d 894 (2002).

In all the following cases, every one cited in *Peterson v. Groves,* the dispute was between two contracting parties. None of the cases show the relationship of our case: *Langdon v. Langdon,* 47 Cal.App.2d 28, 117 P.2d 371 (1941) (defendant promised to pay Plaintiff once he got a good start in his business); *Kreielsheimer v. Berryman,* 85 Wash. 175, 147 P. 871 (1915) (defendant promised to pay debt to plaintiff after termination of suit against person secondarily liable); *Gurenlian v. Gurenlian,* 407 Pa.Super. 102, 595 A.2d 145 (1991) (plaintiff filed suit to recover a loan he made to defendant); *Rex v. Warner,* 183 Kan. 763, 332 P.2d 572 (1958) (plaintiff sued defendant on the latter's stale promise to execute note and second mortgage); *Ford v. Rogovin,* 289 Mass. 549, 194 N.E. 719 (1935) (plaintiff sued defendant to collect on a statement); *Bryant v.*

Bryant, 246 S.W.2d 457 (Ky.1952) (plaintiff sues on defendant's denial of payment).

1. ***Equitable estoppel is not favored***

"Equitable estoppel is not favored, and the party asserting estoppel must prove each of its elements by clear, cogent, and convincing evidence." *Robinson v. City of Seattle,* 119 Wn.2d 34, 82, 830 P.2d 318 (1992). For the statute of limitations, equitable estoppel may be invoked were a defendant has "fraudulently or inequitably invited a plaintiff to delay commencing suit until the applicable status of limitations has expired." *Id.* (quoting *Del Guzzi Constr. Co., Inc. v. Global Northwest Ltd., Inc.,* 105 Wn.2d 878, 885, 719 P.2d 120 (1986)).

Equitable estoppel is not applicable to this case because Respondents were *not a party to any contract with Petitioner for sale of the land.* Further, she cannot show any evidence she was "lulled ... into delaying timely action," because it did not happen, and again, she had no contract with Michael, *Peterson*, 111 Wn. App. at 311, or an "admission, statement or act, inconsistent with a claim afterward asserted" made by Michael Fix inducing Petitioner's failure to enforce the terms of the promissory note and/or deed of trust executed by Clifford Fix.

Michael did not promise to convey any interest in the property to the Petitioner upon his receipt at any time. Conversely, Petitioner had a 15-year opportunity to sue *Clifford Fix* on the note and/or foreclose on the deed of trust. Plaintiff's attempt to invoke the equitable estoppel doctrine to remedy her unreasonable delay would be terribly inequitable to the Respondents, or for that matter, any other individual who might have otherwise acquired the property from Clifford Fix since 1992.

Nor can Petitioner use equitable estoppel as an excuse for sitting on her rights to sue or foreclose on Clifford to re-acquire the subject property. *Peterson v. Groves*, *Id.* at 311. These theories of estoppel simply do not apply.

2. *Petitioner does not have a right to rely upon a "Trusted Son" theory*

Any arguments under an estoppel theory do not apply here because Petitioner has no standing and is not the real party in interest. Assuming, arguendo, they did, the existence of a close family relationship has been held to be a factor for reliance. *Peterson*, 111 Wn. App. at 311 (citations omitted). However, the "mere existence of a family relationship, without more, is insufficient to establish a 'confidential' relationship between the

parties to justify application of equitable estoppel." *Id.* at 312 (citing 45 A.L.R.3d 630, 633).

A confidential relationship exists "when one has gained the confidence of the other and purports to act or advise with the other's interest in mind." *McCutcheon v. Brownfield*, 2 Wn. App. 348, 467 P.2d 868 (1970). Thus more is required than a parent-child relationship, "such as dependence on advice and customarily abiding by the child's decisions in similar matters in the past." *Peterson*, 111 Wn. App. at 313. In addition, there is no case law where the existence of a confidential relationship affects the statute of limitations.

Petitioner asserts that equitable estoppel should be applied to prohibit Respondent's statute of limitations defense. Her argument relies on the "trusted son" theory that a confidential relationship existed between Michael and Joy. Petitioner's only supporting evidence of a confidential relationship is that she is Michael's mother. She must allege more than a mere parent-child relationship to demonstrate it constituted a confidential one. Further, *Peterson* indicates equitable estoppel cannot be used as a shield against the statute of limitations for an indefinite duration of time. *Peterson*, 111 Wn. App. at 314. Petitioner's unreasonable delay precludes application of the doctrine to this case.

E. Award of Attorneys' Fees under RCW 4.84.185

1. *Standard of review*

The standard of review for a trial court's attorney fee award under RCW 4.84.185 is for an abuse of discretion. *State ex rel. Quick-Ruben v. Verharen,* 136 Wn.2d 888, 903 P.2d 64 (1998); *Timson v. Pierce County Fire Dist. No. 15*, 136 Wn. App. 376, 386, 149 P.3d 427 (2006), as amended, (decision of whether to award attorney fees for a frivolous lawsuit is within the trial court's discretion, which will not be disturbed absent a clear showing of abuse) (citing *Rhinehart v. Seattle Times,* 59 Wn. App. 332, 339–40, 798 P.2d 1155 (1990)). "Such abuse occurs when the trial court takes a view no reasonable person would take, or applies the wrong legal standard to an issue." *Wright v. Dave Johnson Ins. Inc.*, 167 Wn. App. 758, 786, 275 P.3d 339 (2012).

Respondent was awarded a total sum of $10,700.00 in reasonable attorney's fees and costs pursuant to RCW 4.84.185. Therefore, Petitioner must demonstrate clear abuse of discretion to reverse the court's order.

2. *Trial court's findings were not an abuse of discretion*

"RCW 4.84.185 authorizes the trial court to award the prevailing party reasonable expenses, including attorney fees, incurred in opposing a frivolous action." *Wright*, 167 Wn. App. at 785. "A lawsuit is frivolous

if, when considering the action in its entirety, it cannot be supported by any rational argument based in fact or law." *Id.* (citing *Curhan v. Chelan County*, 156 Wn. App. 30, 37, 230 P.3d 1083 (2010)).

The trial court entered its written findings of fact and conclusions of law as required by statute and *Mahler v. Szucs*, 135 Wn.2d 398, 435, 957 P.2d 632 (1998), overruled on other grounds, *Matsyuk v. State Farm Fire & Cas. Co.*, 173 Wn.2d 643, 647, 272 P.3d 802 (2012). The court below found that Petitioner's "purpose" in bringing the lawsuit was not "frivolous" or "advanced without reasonable cause" or "brought in bad faith" because "clearing title to property is not viewed as an improper subject of a lawsuit." (cp 234-35). Petitioner argues that without an express finding that the initial "purpose" is frivolous or in bad faith, the trial court abused its discretion to award fees under RCW 4.84.185.

The statute does not limit the court from awarding fees based solely on the underlying "purpose" of the lawsuit. *Eller v. East Sprague Motors & R.V.'s, Inc.*, 159 Wn. App. 180, 192, 244 P.3d 447 (2010) ("As with CR 11, a trial court is not required to find an improper purpose under RCW 4.84.185 before awarding fees."). Rather, RCW 4.84.185 allows for an award of attorneys' fees and costs under circumstances where *the position of a party* cannot be supported by any rational argument on the

law or facts. *Id.* ("It is enough that the action is not supported by any rational argument."); *see also Wright*, 167 Wn. App. at 785.

The trial court below expressly found that Petitioner's failure to clearly state a cause of action "on two different occasions" justified "some award of attorneys' fees ... based on the equitable grounds granted by the Court under the ...[frivolous] statute." (cp 235). The trial court stated that "after allowing Plaintiffs to amend their complaint to plead a more specific cause of action, other than 'trickery' in the transfer of title, but the amended complaint filed thereafter did not clearly state a cause of action or the basis by which the Plaintiffs would have standing to proceed" substantiated an award of fees. (cp 234-35). The fact that the trial court permitted Petitioner to amend her original complaint almost a year after the original filing, and the product of that leniency generated "no substantial change," *resulted in an action that had become* frivolous and advanced without reasonable cause. (cp 235). Consequently, the trial court entered an order partially awarding Respondents' requests for attorneys' fees and costs.

Furthermore, the trial court is in the best position to make such a determination based on all of the evidence. *Skimming v. Boxer*, 119 Wn. App. 748, 754, 82 P.3d 707 (2004) (deference is given to the trial judge's

"personal and sometimes exhaustive contact with the case."). The standard is explained in the language of the statute: "[t]he judge shall consider all evidence presented at the time of the motion to determine whether the position of the nonprevailing party was frivolous and advanced without reasonable cause." RCW 4.84.185. Petitioner's intentional oversight of the fact that she had received two chances and still failed to establish standing, name a real party in interest, or state an adequate claim for fraud was not overlooked by the trial court. Hence, the trial court awarded fees and costs to Respondent in its sound discretion.

F. Respondents are Entitled to Attorneys' Fees and Costs on Appeal

Respondents should recover their attorneys' fees incurred in defending this appeal. RAP 18.9 permits the appellate court "on its own initiative or on motion of a party" to enter an award of attorneys' fees based on a "frivolous appeal." *See also Reid v. Dalton*, 124 Wn. App. 113, 128, 100 P.3d 439 (2004). Respondents were awarded attorneys' fees below pursuant RCW 4.84.185. Petitioner's now seek to re-try their frivolous cause of action at the appellate level. Respondents are therefore entitled to attorneys' fees on appeal, pursuant to RAP 18.1.

VI. CONCLUSION

Petitioner's appeal fails to present any reversible error on appeal.

The Petitioner still lacks standing to maintain her cause of action to quiet title because she is not a real party in interest. Petitioner is likewise barred from her claims to any interest to the property by the statute of limitations and the doctrine of laches. Lastly, Petitioner failed to adequate state a cause of action for fraud despite having multiple opportunities to do so. The trial court's entry of summary judgment in favor of Respondents and dismissal of Petitioner's claims was appropriate.

Petitioner also failed to demonstrate an abuse of discretion by the trial court, as evidenced by its findings of fact and conclusions of law, for its award of fees to the Respondents under RCW 4.84.185. Without such evidence, Petitioner fails to present a reversible error regarding the attorney fee award. Petitioner's should also be awarded there reasonable attorneys' fees and costs on appeal.

DATED this 4th day of December, 2012.

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COURT OF APPEALS

DIVISION II

NO: ~~42361-8-II~~

JOY E. FIX,
Appellant

v.

MICHAEL FIX, ET AL.,
Respondents.

DECLARATION OF MAILING

I, the undersigned, declares under the laws of perjury of the State of Washington as follows:

That on the 4th day of December, 2012, I did deposit in the United States mail, with proper postage affixed thereto, a true and correct copy of Respondents' Brief, addressed to:

Clerk of the Court of Appeals
950 Broadway, Suite 300
Tacoma, WA 98402

DATED this 4 day of December, 2012, in Tacoma, Washington.

HILARY SCARBROUGH