100471-1

Grant County Superior Court No. 13-2-00609-6
Appellant court Case Number 36551-4-III

THE SUPREME COURT OF WASHINGTON STATE

JERRY LEE REDWINE, Appellant/Petitioner

vs.

VIRGIL D. REDWINE and TERA REDWINE,
Husband and Wife,
Appelles/Respondents

PETITION FOR DISCRETIONARY REVIEW

Jerry Lee Redwine,
Appellant/Petitioner
16537 Road 26 SW
Mattawa, Washington 99349
509-643-2856

TABLE OF CONTENTS

TABLE OF CASES
WASHINGTON SUPREME COURT CASES

Jerry Lee Redwine
16537 Road 26 SW
Mattawa, Washington
509-643-2856

CONSTITUTION OF THE STATE OF WASHINGTON

STATUTES

Jerry Lee Redwine
16537 Road 26 SW
Mattawa, Washington
509-643-2856

1. IDENTITY OF THE PARTIES

Jerry Lee Redwine, pro se, and indigent is the Appellant and Petitioner. Vigil and Tera Redwine are the Respondents. Virgil and Jerry are brothers raised by the same parents. Virgil and Jerry also have a brother named David Redwine. Herein these people may be referred to by only their first name.

CITATIONS TO COURT OF APPEALS DECISIONS

I specifically want my APPEALANTS MOTION FOR RECONSIDERATION reviewed which was filed October 20, 2021. This Motion was denied November 16, 2021,by order of the Court of Appeals. This Motion has a list of a minimum of six (6) of Virgil's lies that can not be disputed, showing Virgil has no credibility in his testimony.

The Supreme Court could also review the Appeal Brief filed on November 9, 2020. The unpublished Opinion was filed on September 14, 2021. I guess this Appeal Brief was not very good because the Appellant court said "We decline to review

Jerry Lee Redwine
16537 Road 26 SW
Mattawa, Washington
509-643-2856

most of these assignments." I don't know what this means as I didn't know I gave them assignments. This document is 26 pages long and I think too long, as I was pointing out lies done by Virgil. But I do know others could not know these are lies so that is why in my Motion for Reconsideration I pointed out some of Virgil's lies that can not be disputed.

The Supreme Court could also review the APPEALANTS REPLY BRIEF IN RESPONSE TO THE AMENDED BRIEF OF RESONDENTS which was filed on February 4, 2021, in the Court of Appeals.

I would like the Supreme Court to review or take notice of exhibit P- 51, on page 3 lines 13 thru 16, another of Virgil's lies that can not be disputed, as it contradicts two of his other lies.

I admit I am way over my head in doing this legal work and do not know what I should be writing or researching but I am doing the best I know to do. I am a pro se with no experience doing an appeal with no legal training of any kind.

Jerry Lee Redwine
16537 Road 26 SW
Mattawa, Washington
509-643-2856

ISSUES PRESENTED FOR REVIEW

The issue of Virgil's lying and being caught lying, his testimony being impeached, being conflicting, being condemned by his own testimony and part of his testimony being impossible by his own testimony. The issue that Virgil's testimony is not credible and therefore Appellant seeks a reversal of the decisions of the trial court and the Court of Appeals.

On the Unit 120 property, both the trial Court and the Appeals court say the case was filed beyond the Statue of Limitations. But according to the trial Court the Statue of Limitations only starts when a clear rebuttal has been made. Virgil claims, at trial, he made a rebuttal, but both Jerry's and David's testimony say he did not made any rebuttal. Virgil, before the trial was always just putting me off, until he wrote the $15,000.00 check to me saying right on the check "house payment rental." See P-23. When Tera found out about it, they

Jerry Lee Redwine
16537 Road 26 SW
Mattawa, Washington
509-643-2856

put a stop payment on this check, see exhibit P-24. Further evidence Virgil did not ever make a rebuttal is Exhibit 15, the only letter Virgil ever wrote to Jerry, wherein he says "Despite what you think I cannot sell a house overnight." This is referring to the Unit 120 property, which was our parents house sitting on about 4.43 acres. Furthermore, Virgil was making payments to David from 5/20/09 thru 10/22/12. See exhibit # 40. With all this going on, how could there have been a rebuttal? The truth is, Virgil never made any rebuttal, untill his testimony at the trial.

STATEMENT OF THE CASE

Concerning Unit 120 property, or homestead, there was no rebuttal from Virgil previous to trial. Furthermore, the Trial Court used the wrong Statute. Trial Court used RCW 4.16.080, which does not include Real Estate. See RCW 4.16.040 and page 16 of my Motion for Reconsideration, which explains this.

Jerry Lee Redwine
16537 Road 26 SW
Mattawa, Washington
509-643-2856

Concerning Unit 45 property, I was foreclosed on in about 1987. In the later part of 1988, I was removed and put in Jail for one day and night. In the morning, Jon Hatt and a neighbor Glenn Leland picked me up from Jail. I was never charged with anything, but the bank removed part of my property and opened my safe. They found just over $17,000.00 in my safe.

Jon Hatt was the bank officer I worked with for many years and we were friends. Jon Hatt offered me the opportunity to repurchase Unit 45 for just the amount they claimed to have in it after being in Court for about a year, which was just under $160,000.00. The appraised value of Unit 45 in 1988 was $280,000.00. So I immediately agreed but part of the agreement was I could not purchase Unit 45 in my name, Jon said an agreed upon friendly party could purchase it. So I asked my brother David, he was moving to Tennessee so we both thought that might not work. I asked my brother Virgil and he readily agreed. I told Virgil this would not cost him any

Jerry Lee Redwine
16537 Road 26 SW
Mattawa, Washington
509-643-2856

money. He would deed the place back to me in the future, or when the place was paid off.

The $17,000.00 from my safe was used for the down payment. After that, I paid Virgil for every expense he came up with every year related to owning Unit 45 and I believed he was being honest with me. I thought he would keep his agreement and deed Unit 45 back to me, when he was fully paid. I thought he was an honest man.

Then, in 2004, when I could not fully pay Virgil, I called him, then I went and saw. He did not seem concerned at all. So I told him I would make a lease agreement on the Unit 45 Circle with him receiving all the rent which was far in excess of his cost of ownership. Virgil never said much at all, but signed the leases I made for the next about 5 years. Then, in 2007, Virgil started sending me twice yearly checks, after receiving the rent, see exhibits P-14 thru P-25 for a list of these payments and P-15 for how Virgil determined the amount to send Jerry that

Jerry Lee Redwine
16537 Road 26 SW
Mattawa, Washington
509-643-2856

year. This was in excess of Virgil's Cost of owner ship, this led me to believe everything was okay and I fully believed Virgil would deed Unit 45 back to me. In 2012, Virgil sent me a $15,000.00 check, which was for "House Payment Rent." See exhibit P-23 and P-24. I called David Redwine and asked if he had received any money from Virgil, he said not in a while, this prompted him to call Tera. When she found out Virgil sent me the check, she or Virgil put a stop payment on this Check. See exhibits P-23 and P-24. This robbed me of $15,000.00. At this point the only thing I thought I could do was file a law suit against Virgil and Tera. After filing the law suit, Virgil has been lying trying to make out like the only agreement was he bought Unit 45 and he was renting it to me. But his deposition (P-54) and his Declaration of Virgil Redwine in Support of Motion for Writ of Restitution and in Opposition to Defendants Motion to Impound Rental Payments (P-51) filed in the trial Court February 20, 2014, Virgil makes many conflicting

Jerry Lee Redwine
16537 Road 26 SW
Mattawa, Washington
509-643-2856

testimonies and Declarations. I have pointed out some of Virgil's lies in my Motion for Reconsideration filed on 10/20/2021.

But there are more lies in Virgil's Declaration filed February 20, 2014, which is filled with lies. One lie that no one can dispute is on page 3 of this Declaration, exhibit P-51, lines 13 – 15, where Virgil declares: "I farmed this ground from 2002 through 2007, All the funds necessary to carry out the farming operation and pay the land payments was borrowed solely on my own credit." In this Declaration, he declares he farmed Unit 45 for 5 years, but in his Deposition (P-54) he claims he farmed Unit 45 for 3 years, then, his testimony in Court was he farmed it for one year. The truth is, Virgil has never farmed Unit 45, at all. Exhibit P-13 proves this. It is a list of who paid the water assessments directly from the South Columbia Basin Irrigation District. Whoever farms a Farm Unit in an Irrigation District

Jerry Lee Redwine
16537 Road 26 SW
Mattawa, Washington
509-643-2856

must pay the water assessment in order to get the irrigation water turned on.

ARGUMENT

The Respondent Virgil Redwine violated Rule ER 609 (a) (2), as his testimony involved many dishonest and false statements. Virgil's testimony was also conflicting and he condemned his own testimony. My Motion for Reconsideration proves this as do other exhibits.

> "The admissibility of evidence offered to impeach the credibility of a witness is governed by ER 607, which provides that "[t]he credibility of a witness may be attacked by any party, including the party calling him."" *State v. Lavaris*, 106 Wn. 2d 340, 344 (Wash. 1986)
>
> "Petitioner argues that credibility of a witness may be supported only by evidence of reputation of truthfulness, ER 608(a)," *State v. Ferguson*, 100 Wn. 2d 131, 137 (Wash. 1983)

This Court should accept review of this case because of the severity and importance of this case; I don't believe any person

Jerry Lee Redwine
16537 Road 26 SW
Mattawa, Washington
509-643-2856

or persons could steal more from one person than what Virgil and Tera have stolen from me, Jerry Redwine. When the trial and RP is seriously reviewed, this will be seen and it will be clear. The amount Virgil and Tera have unjustly enriched themselves is far more than one million five hundred thousand dollars ($1,500,000.00). Is it possible another person could steal everything another person has worked for, for the past over 45 years? That is exactly what Virgil and Tera have done. This was only possible because when I made the verbal contract with Virgil I thought for sure I could trust him, because he was my brother. Instead, he used my trust to take advantage of me and deceive me for the past over 30 years, then, apparently, deceived the Trial Court.

What Virgil and Tera have took from me is: most of my entire adult life work, my farm, my lively hood, my occupation, my integrity, my self esteem and soon my house I live in. This will leave me with no place to live, not enough funds to rent a

Jerry Lee Redwine
16537 Road 26 SW
Mattawa, Washington
509-643-2856

place, so they plan to put me on the streets with no place to live. This is right up there with murder, except for the fact I am still alive. They have left me nothing after my life time of work, saving, making improvements and being an honest man. Not even the taxes from wages for them, L&I or even unemployment benefits. This has caused this appellant major trauma, lost of sleep and serious never ending stress. The Respondents are one of the worse kinds of criminals, they used my trust to take advantage and rob me of my adults' life work and more as listed above, this is fraud from the beginning.

The Trial Court failed, totally, to evaluate the testimony of Virgil Redwine.

> "The trial court must evaluate both the relevance of the testimony and its prejudicial impact, excluding unnecessarily cumulative or unfairly prejudicial testimony. *See* ER 402, 403. " *State v. Petrich*, 101 Wn. 2d 566, 575 (Wash. 1984)
>
> "to comply with the oft forgotten goals of proper character impeachment, evidence must be constrained and limited to the admission of

Jerry Lee Redwine
16537 Road 26 SW
Mattawa, Washington
509-643-2856

> evidence which clearly bears upon *credibility*." *State v. Renneberg*, 83 Wn. 2d 735, 746 (Wash. 1974)

> "Witness credibility is more properly tested 'by examination and cross-examination in the forum of the trial court.'" *Jordan,* 17 Wn. App. at 545 (quoting *State v. Johnson,* 12 Wn. App. 40, 45, 527 P.2d 1324 (1974))." *State v. Allen*, No. 86119-6, at *10 (Wash. Jan. 24, 2013)

The trial court failed, completely, to evaluate the truth of the testimony of Virgil Redwine, which can be seen by the conflicts of his testimony and sworn statements or statements under penalty of perjury. See my Appellants Motion for Reconsideration filed on 10/20/2021.

> "Further, we do not lose sight of the principle that a defendant has no right to testify free of impeachment, and that the purpose of ER 609(a)(2) is to permit admission of evidence affecting the credibility of the witness ." *State v. Brown*, 113 Wn. 2d 520, 553 (Wash. 1989)

> "Thus, to comply with the oft forgotten goals of proper character impeachment, evidence must be constrained and limited to the admission of evidence which clearly bears upon *credibility.*" *State v. Renneberg*, 83 Wn. 2d 735, 746 (Wash. 1974)

Jerry Lee Redwine
16537 Road 26 SW
Mattawa, Washington
509-643-2856

In this case, all the evidence was entered in at trial and before Virgil's testimony at trial. Both Exhibits P-2 and P-3 show or prove Virgil committed fraud from the very beginning of the Agreement. Plus the Trial Court did find there was an agreement. Virgil testifies there was no agreement until after he purchased Unit 45. Unit 45 was never for sale or on the real estate market and had an appraised market value of $280,000.00 in 1988. Jon Hatt the Bank officer was actually a friend and made me the offer to sell Unit 45 for $160,000.00 to a friendly party which I accepted immediately.

Deprivation of property is fundamentally unfair. Appellant has lived on the Unit 45 property since 1973, has made all money payments on the property, has made or caused all improvements to the property, has homesteaded the property in 1974, has put three mobile homes on the property and done much more.

Jerry Lee Redwine
16537 Road 26 SW
Mattawa, Washington
509-643-2856

> The "right to appeal in all cases" is expressly guaranteed by our Washington Constitution. Wash. Const. art. I, § 22.*fn1 The only means by which such an individual constitutional right in Washington may be relinquished is by a voluntary, knowing, and intelligent waiver. City of Seattle v. Klein, 166 P.3d 1149, 161 Wash.2d 554 (Wash. 09/13/2007) WA Supreme Court.

I filed this law suit and doing this appeal in the interest of justice, which the people should expect from the Judicial system. The Judicial system should seek justice and not look for codes to dismiss cases and claim they are satisfied that the trial court's findings are supported by substantial evidence and those findings support the court's conclusion. The Trial Courts findings do not support the evidence. Why should Virgil's testimony (which is full of lies) have more validity than the Testimony of Jerry and David, who did not lie?

Furthermore, the Trial Court Judge made the statement he sees no unjust enrichment. As a fact, this is impossible, even if everything Virgil testified to was true (and it is not) Jerry still

Jerry Lee Redwine
16537 Road 26 SW
Mattawa, Washington
509-643-2856

made or caused every improvement to Unit 45 from 1989 thru the present and before 1989. Here is a partial list of improvements Jerry made to Unit 45 after 1989:

New Valley Center Pivot Irrigation system installed in the spring of 1999 at a cost of $30,000.00. See exhibit P-6 which is a letter thanking me for my order of the new Valley Center Pivot irrigation system.

Two Mobile homes with concrete pads, sewer systems, electrical hook ups, water hooked up and much more.

Orchard and under tree irrigation installed on about 18 acres.

Three phase power in the shop. Plus cost of three phase lights, heater and installing them in the shop. Estimate $10,000.00

Concrete pad in front of the shop door 24 ft by 19 ft by 6 inches deep. Plus much more.

All of the above are major improvements I would never have made unless I believed I was going to be the owner

Jerry Lee Redwine
16537 Road 26 SW
Mattawa, Washington
509-643-2856

because I was relying on the agreement I and Virgil made in 1988.

> Article 1 SECTION 4 RIGHT OF PETITION AND ASSEMBLAGE. The right of petition … of the people ….shall never be abridged. CONSTITUTION OF THE STATE OF WASHINGTON

For this Court to deny my Petition is a violation of the Constitution of the State of Washington which secures this right to me. This is a very serious case and justice has been denied to me, everything I have worked for, for most of my adult life has been stolen by the Respondents.

Further more it took over 5 (five) years for the trial Court to bring my case to trial, that is unnecessary delay, which cost me much more money, my original Attorney put in a demand for a jury trial, the attorney that took the case to trial said it would cost more money and time which ended up denying me of a jury trial.

Jerry Lee Redwine
16537 Road 26 SW
Mattawa, Washington
509-643-2856

Article 1 SECTION 10 ADMINISTRATION OF JUSTICE. Justice in all cases shall be administered openly, and without unnecessary delay. Constitution of the State of Washington

CONCLUSION

For the above reasons this Court should review and really look at this case because what Virgil and Tera have done, really is criminal theft.

For the reasons stated herein and reasons in the Motion for Reconsideration that was timely filed in the Appellant Court and for reasons in the below Declaration of Jerry Redwine, In the interest of justice, I Petition and Move this Supreme Court to accept review of this case and cause the Trial Court to reverse it's decision on both pieces of property and to use the Plaintiff's Proposed FINDINGS OF FACT AND CONCLUSION OF LAW concerning Unit 45 and to cause the Unit 120 Homestead with approximately 4.43 acres to be deeded to Jerry Redwine free and clear of all encumbrances.

Respectfully submitted this day 14th of December 2021.

Jerry Lee Redwine

_____

Jerry Lee Redwine, Appellant/Plaintiff Pro Se

Jerry Lee Redwine
16537 Road 26 SW
Mattawa, Washington
509-643-2856

16537 Road 26 SW
Mattawa, Washington 99349
509-643-2856

Declaration of Jerry Redwine

I, Jerry Redwine, declare, as follows:

There has been a great injustice and huge unjust enrichment of Virgil and Tera Redwine at the cost of Jerry Redwine.

The Trial Transcript when reviewed shows this unjust enrichment.

The Trial Transcript conflicts with Findings of Facts and Conclusions of Law issued by the Trial Court.

Farm Unit 45 block 251 is one piece of property in dispute and where Jerry has lived on for the past over 45 years or since 1973.

It is a fact that Virgil Redwine has never made one single improvement to Farm Unit 45 Block 251 even to this date. .

It is a fact that Jerry Redwine has made every improvement or caused all improvements to be made to Unit 45 Block 251 for the past 45 years even to this date.

Virgil has never done any work at all on Unit 45 Block 251.

Jerry Redwine acting in good faith to uphold the verbal contract with Virgil has worked continuously from the winter of 1973 till present and continues to work on doing all that he can to improve Unit 45.

Since the beginning of Virgil and Tera taking over the lease of the Orchard there has been massive damage caused to Unit 45.

Virgil has never used any of his own funds toward paying off the debt to the banks except for possibly one year, the fall of 2004 when I was late with one payment to Virgil due to a court case I was involved in attempting to get shared custody of my son. This was very temporary as Virgil used Unit 45 for collateral to get a loan from his bank to refinance Unit 45. And Jerry took the necessary action to correct the payment being late

Jerry Lee Redwine
16537 Road 26 SW
Mattawa, Washington
509-643-2856

by causing all rent from the Unit 45 circle ground to be paid directly to Virgil Redwine.

Virgil has never farmed any ground in the Mattawa area including Unit 45 Block 251.

Virgil has never made even one decision as to anything at all to do with Unit 45 Block 251 except continuing to rent the ground to the same farmers that I rented the ground too.

Virgil has been stealing funds from the rental payments he has been receiving since about the year 2007.

Virgil falsely claimed in his deposition that he farmed Unit 45 Block 251 for three years and his Declaration for five years and his testimony in court for one year.

In the trial, Virgil in his testimony under oath falsely claimed he farmed Unit 45 for one year.

Virgil changed this story from three years, to five years, to one year when I got the records from the Water district of who paid the water charges. It is a fact that Virgil Redwine has never

Jerry Lee Redwine
16537 Road 26 SW
Mattawa, Washington
509-643-2856

paid any water assessments on Unit 45 Block 251. This is a proven fact in the Court record by exhibit # 13.

The true fact is that Virgil never farmed Unit 45; there fore he committed perjury in his testimony and many other times in his testimony.

At trial the testimony of Virgil Redwine was impeached several times.

In the year 1999 I Jerry Redwine, acting in good faith that the land would be deeded back to me, put a new Valley Center Pivot Irrigation system on this property (Unit 45 Block 251) at a cost of about $30,000. Virgil never paid a dime of this or any other improvements. This was and is a major improvement to Unit 45.

Virgil Redwine has never planted a thing on Unit 45 B 251.

Virgil Redwine has never supplied any equipment or tools to me or for the care of Unit 45 block 251.

But Virgil Redwine has been collecting all the rent on Unit 45 Block 251 since the year 2005 when I caused and allowed all

Jerry Lee Redwine
16537 Road 26 SW
Mattawa, Washington
509-643-2856

the rent to be paid directly to him. It is only because I trusted Virgil Redwine as a brother that he was able to take advantage of me and literally has stolen everything I have worked for, for the past 45 years.

Virgil Redwine with the help of Tera have unjustly enriched them selves more than one million five hundred thousand dollars ($1,500,000.00) by failing to deed Unit 45 back to Jerry Redwine but have also caused me to loose my house, taken my livelihood, which was my source of income, taken all my labor, all of my time, all of the improvements on unit 45 that Jerry has made for the past 45 years and stripped me of my dignity and caused a massive hardship and stress on Jerry.

Have Virgil and Tera Redwine committed the highest most heinous civil crime that any person or persons could commit against another person? This has happened because I trusted Virgil Redwine because he is a brother raised by the same parents.

I did not foresee that Virgil Redwine would fail to keep his fiduciary responsibility to deed Unit 45 back to me.

Jerry Lee Redwine
16537 Road 26 SW
Mattawa, Washington
509-643-2856

No society that has a court system should allow this to happen to any member of the society.

I affirm that this Declaration is true and correct under penalty of perjury of the laws of the State of Washington.

I certify, to the best of my knowledge and ability, this document contains no more than 3,094 words.

Signed near Mattawa, WA on this 14th day of December, 2021.
Jerry Lee Redwine

_____

Jerry Lee Redwine, Appellant/Plaintiff Pro Se
16537 Road 26 SW
Mattawa, Washington 99349
509-643-2856

FILED
SEPTEMBER 14, 2021
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

JERRY LEE REDWINE AND DAVID JAMES REDWINE, Appellants, v. VIRGIL DALE REDWINE AND TERA REDWINE, Respondents.	)	No. 36551-4-III UNPUBLISHED OPINION

STAAB, J. —Jerry Redwine sued his brother and sister-in-law, Virgil and Tara Redwine, claiming they violated two trust agreements to convey real property to Jerry.[1] Following a bench trial, the superior court dismissed Jerry's complaint. Jerry appeals, raising more than 50 assignments of errors and no identifiable legal issues. We decline to review most of these assignments. After reviewing the record and briefs, we are satisfied that the trial court's findings are supported by substantial evidence and those findings support the court's conclusion. Jerry's claim for a constructive trust for property known as Unit 120 was filed beyond the statute of limitations. At trial, he failed to prove either

[1] Since the appellant and respondent share the same last name, we refer to them using their first names. No disrespect is intended.

an express or constructive trust for property known as Unit 45. We affirm the superior court's decision.

FACTS

The following facts are taken primarily from the trial court's memorandum decision and findings of fact.

A. UNIT 45

Jerry Redwine purchased agriculture property known as Water Delivery Unit 45 (Unit 45) in 1973. In 1987, the bank foreclosed on his mortgage. The following year, the bank informed Jerry that it would sell Unit 45 to a friendly buyer if Jerry would waive his right of redemption.

At trial, Jerry testified that he discussed repurchasing Unit 45 with his brother, Virgil, at a family dinner. The parties disagree on what was said or agreed. Jerry testified that Virgil promised to be a strawman buyer and purchase Unit 45 for Jerry with the understanding that once Jerry paid all costs and expenses, Virgil would transfer the property back to Jerry. Virgil disputed making such a promise, but the trial court found an oral promise to transfer Unit 45 back to Jerry upon payment to Virgil of all expenses related to the purchase and maintenance of Unit 45. The court also noted that "[a]s with most oral promises between family members, however, the parties never discussed specific details about what would happen if Jerry failed to reimburse Virgil for all funds

and expenses related to Unit 45 or what would happen if Virgil paid off Unit 45 earlier than expected." Clerk's Papers (CP) at 94.

Virgil purchased Unit 45 from the bank in 1989. From 1989 to 2004, Jerry farmed Unit 45 and invested money into his farming operation on the property. Jerry made improvements to Unit 45, including planting an orchard, installing an irrigation system, and installing a couple of mobile homes. Starting in 1998, he leased out the crop circle to various third parties to farm. According to Jerry, from 1989 to 2003, he made regular payments to Virgil each fall that covered all Virgil's expenses for Unit 45 according to their agreement. Virgil maintains that any payments he received from Jerry were under a lease agreement between the two from 1989 to 2002. Virgil stated that the lease agreement ended in 2002 when Jerry failed to make payments.

In 2004, Virgil stopped allowing Jerry to farm Unit 45 and began leasing the property directly to various third parties. During that time, he would sometimes send Jerry a portion of the rent as a management fee. According to Virgil, starting two years after he purchased Unit 45, Jerry would frequently approach him, requesting that Virgil deed Unit 45 to a friend or Jerry himself. Virgil maintains that he never agreed to such a transfer and that Jerry never reimbursed him for any expenses incurred in the real estate contract. Virgil states that Jerry was served with a notice of eviction sometime around 2013 but failed to leave the property and continued to live there without paying rent. Jerry admits that in 2004 he was unable to make a payment to Virgil and has not made a

payment to him since. Jerry said he arranged for third parties to sublease the crop circle and make payments directly to Virgil in place of his payment. Jerry sent a letter to Virgil proposing the change, but Virgil never responded. Jerry also sent letters to Virgil requesting the property be deeded to his daughter without response. Jerry made multiple attempts to agree with Virgil about the payment for Unit 45, but there was never any conversation between the two about how future payments would be made. Jerry continued to farm the orchard portion of the property until 2008, when he leased that portion to Seth Weeks. Weeks paid Jerry under the lease until 2015, when he started making payments directly to Virgil. From 2007 to 2012, Jerry received payments from Virgil in random and oddly specific amounts. Jerry assumed these payments were his share of the rent paid by the third parties leasing the property from Virgil. Virgil stated that these were management fees paid to Jerry for supervision of and improvements to Unit 45. Virgil paid off the amount due on Unit 45 in 2004. Before paying off the bank loan, Virgil made all the loan payments, tax payments, and insurance on the property. Jerry did not learn that Virgil had paid off the loan on Unit 45 until 2011. After learning that the property had been paid off, Jerry mailed Virgil a letter containing a deed to transfer the property back to Jerry. Virgil did not respond. Jerry brought a claim against Virgil for a constructive trust against Unit 45 in 2013. Since Jerry was claiming there was an agreement to hold the property in trust and return it upon payment of all expenses, the trial court felt that an express trust might be a more appropriate claim and thus

addressed that as well in its decision. Regardless, the trial court rejected Jerry's claim for an express or constructive trust because there was no fraud in the creation of the trust and no unjust enrichment. The trial court found that Jerry discussed Unit 45 with Virgil, and Virgil made an oral promise to purchase Unit 45 and transfer the property back to Jerry, provided that Jerry reimburse him for all payments and expenses. However, there was no agreement about what would happen if Jerry failed to reimburse Virgil for expenses or if Virgil paid off the property early. Virgil made all loan, insurance, and tax payments for Unit 45 and remained solely liable for the expenses of the property. The trial court did not find credible Jerry's argument that there was an agreement that the rental payments from third parties substituted as payments. After 2005, Jerry continued living on the property without making payments to Virgil, received payments from his lease of the orchard, and received money from Virgil from 2007 to 2012. Thus, the court found that Virgil had not been unjustly enriched.

B. UNIT 120

In 1993, brothers Jerry, Virgil, and David Redwine created a trust naming themselves as trustees using a document drafted by Jerry. In this trust, the brothers placed four acres of family land where their mother lived (Unit 120) with the understanding that it would be distributed among the three of them when their mother

died. In 1998, the brothers transferred Unit 120 to Virgil at Virgil's request.[2] Virgil orally agreed to transfer Unit 120 back to the trust once their mother passed away. According to both Jerry and David, the understanding was that the transfer would take place as soon as their mother passed away.

Their mother died in April 2006. About two weeks after their mother's passing, Jerry and David called Virgil requesting he divide up the property. About the same time, Jerry sent a letter to Virgil demanding that he "act in a righteous and honorable way" concerning Unit 120 and claiming an interest in the property. CP at 103. He also asserted that Virgil had wrongfully taken ownership of the property. Jerry stated that Virgil "had no lawful and righteous authority" to move others onto the property and demanded that Virgil "do what is right." CP at 103. He asked Virgil to sell the property and deposit the proceeds into the trust. Virgil refused to speak with his brothers and called them vultures. He later told David that he needed time to make arrangements. In 2007, Virgil also sent Jerry a letter saying, "Despite what you think, I cannot sell a house overnight." Report of Proceedings at 242. Jerry could not recall if he had any conversations with Virgil regarding Unit 120 after receiving the letter. In April 2012, Jerry received a check for $15,000 from Virgil, which Jerry believed was a partial payment for his interest in the property. Payment on the check was later stopped when

[2] Virgil told his brothers that he needed the property in his name to obtain a loan.

Tara, Virgil's wife, found out about it. In 2012, Virgil also made payments to David for the property, although it is not clear whether Jerry was aware of those payments. In 2013, Jerry filed suit against Virgil and Tara, seeking the declaration of a constructive trust against Unit 120.[3] After Jerry presented his case, the defendants moved to dismiss the case as barred by the statute of limitations.

The trial court found the document Jerry drafted in 1993 created a trust holding their mother's property, Unit 120, with Jerry, Virgil, and David as trustees. In January 1998, Jerry and David as trustees signed a deed transferring Unit 120 to Virgil at Virgil's request in exchange for an oral agreement from Virgil that he would hold Unit 120 as if it were still part of the trust and transfer the property back to the trust after their mother died. However, the trial court determined that the constructive trust claim was subject to a three-year statute of limitations that starts running when a beneficiary discovers or should have discovered that the trust has been terminated or repudiated by the trustee. The court found that Jerry discovered or should have discovered that the trust was terminated or repudiated by Virgil in April 2006 when Virgil refused to place Unit 120 back into the trust. Thus, the court concluded that the statute of limitations for the constructive trust claim began to run in April 2006, and the claim was barred.

[3] The initial filing was a petition to foreclose. However, it was later amended to a claim for a constructive trust.

ANALYSIS

A. COMPLIANCE WITH RULES OF APPELLATE PROCEDURE (RAPS)

As a preliminary matter, we address the briefing and arguments raised by the appellant, Jerry Redwine. Jerry is representing himself and is not an attorney. While we respect his efforts, as a pro se appellant, he is held to the same standard as an attorney. *State v. Marintorres*, 93 Wn. App. 442, 452, 969 P.2d 501 (1999).

Under RAP 10.3(a)(4), an appellant shall set forth a concise statement for each error alleged by the trial court. Mr. Redwine identifies at least 50 assignments of error, essentially going through each paragraph of the trial court's memorandum decision, findings of fact and conclusions of law, judgment, and trial exhibits, while briefly discussing whether and to what extent he agrees with them. Throughout his brief, he disputes facts but does not identify any legal issues. In the 42 pages of his brief, Jerry cites one case, and that is only to disagree with the trial court's analysis of that case.

Jerry misunderstands our role on appeal. During a bench trial, the judge sits as the finder of fact. "An essential function of the fact finder is to discount theories which it determines unreasonable because the finder of fact is the sole and exclusive judge of the evidence, the weight to be given thereto, and the credibility of witnesses." *State v. Bencivenga*, 137 Wn.2d 703, 709, 974 P.2d 832 (1999) (citing *State v. Snider*, 70 Wn.2d 326, 327, 422 P.2d 816 (1967)). The Court of Appeals is not a trial court and we do not provide a second opportunity to argue and decide disputed facts. "The power of this

court is appellate only, which does not include a retrial here but is limited to ascertaining whether the findings are supported by substantial evidence or not." *Stringfellow v. Stringfellow*, 56 Wn.2d 957, 959, 350 P.2d 1003 (1960), opinion amended on denial of reh'g, 56 Wn.2d 957, 353 P.2d 671 (1960).

As an appellate court, we do not reweigh the evidence. *Harrison Mem'l Hosp. v. Gagnon*, 110 Wn. App. 475, 485, 40 P.3d 1221 (2002). Instead, following a bench trial, we review the record in a light most favorable to the prevailing party to determine if substantial evidence supports the trial court's findings of fact and, if so, whether the findings support the conclusions of law. *Id*. at 484-85. We consider specific issues raised in the briefs that include citation to legal authority and references to the relevant portions of the record. RAP 10.3(a)(6). We need not consider arguments that are unsupported by meaningful analysis or authority. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

While Jerry assigns error to almost every finding made by the trial court, he fails to identify any legal issues pertaining to those assignments of error or cite to any legal authority. We decline to address the bulk of his assignments of errors.

B. UNIT 120

To the extent that Jerry challenges the trial court's conclusion that the statute of limitations barred his claim for a constructive trust of Unit 120, we find no error. At trial, Jerry alleged that his brother Virgil took their mother's property in constructive trust and

then refused to convey it back to the trust upon her death. The trial court found that even if a constructive trust was proved, it was barred by the statute of limitations.

The statute of limitations for a constructive trust is three years. *Goodman v. Goodman*, 128 Wn.2d 366, 373, 907 P.2d 290 (1995). The statute begins to run when a "beneficiary discovers or should have discovered the wrongful act which gave rise to the constructive trust." *Id*. n.2.

Here, the testimony at trial from both Jerry and David was that their understanding of their agreement with Virgil was that he would convey the property back to the trust upon their mother's death. Their mother died in 2006. Two weeks later, they both called Virgil about Unit 120, and he refused to speak with them. Jerry also wrote a letter to Virgil demanding that he behave "righteously" concerning the property and saying that Virgil had wrongfully taken possession of it, indicating that he was aware Virgil had violated the agreement. Thus, the statute of limitations began to run in 2006. Jerry's lawsuit was filed in 2013, seven years later. Although conversations, payments, and attempts to negotiate a settlement allegedly occurred between Virgil and the brothers for the property in 2007 and 2012, Jerry's 2006 letter clearly indicated that he believed Virgil violated the agreement. The trial court found that Jerry knew or should have known in 2006 that Virgil was terminating or repudiating the trust holding of Unit 120. The trial court did not err in concluding that the statute of limitations barred Jerry's claim for constructive trust holding of Unit 120.

C. UNIT 45.

While not articulated by Jerry in his briefing, we also review the trial court's finding that Jerry failed to meet his burden of proving that Virgil held Unit 45 in a constructive or express trust for the benefit of Jerry.

The trial court concluded that Jerry's claim pertaining to Unit 45 was for an express trust, not a constructive trust. At trial, Jerry testified that he and Virgil had an express agreement that Virgil would buy Unit 45 in trust for Jerry. An express trust is defined as "'a fiduciary relationship with respect to property, subjecting the person by whom the title to property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it.'" *In re Marriage of Lutz*, 74 Wn. App. 356, 365, 873 P.2d 566 (1994) (quoting 1 William F. Fratcher, Scott on Trusts Sec. 2.3, at 41 (4th ed. 1987).

An express trust involving a real estate transfer cannot be established by parol evidence unless actual or constructive fraud is involved in the original transaction. *Dowgialla v. Knevage*, 48 Wn.2d 326, 335-36, 294 P.2d 393 (1956); *Lutz*, 74 Wn. App. at 365; *Arnold v. Hall*, 72 Wash. 50, 53, 129 P. 914 (1913). The subsequent failure of the trustee to return the trust property does not prove bad faith in the original transaction. *Lutz*, 74 Wn. App. at 365-66.

Here, because Jerry claims an express manifestation of intent to form a trust, a claim for express trust suits his case better than a constructive trust. However, Jerry's

express trust claim rests on parol evidence. Although some written communications were presented at trial, the communications were unilateral from Jerry to Virgil and did not establish a mutual agreement between the two parties. And while Jerry claimed Virgil was acting in bad faith for not conveying the property after the loan was paid, he failed to present any evidence of actual or constructive fraud or bad faith on the part of Virgil *at the time of entering into the agreement*. The trial court found that parol evidence was inadmissible to show an express trust to transfer real property because there was no evidence of actual or constructive fraud on the part of Virgil when he entered into the transaction.

In his pleadings, Jerry also claimed that Virgil held Unit 45 in constructive trust. A court typically imposes a constructive trust when there is clear, cogent, and convincing evidence of an equitable duty to convey a piece of property to another. *Baker v. Leonard*, 120 Wn.2d 538, 547, 843 P.2d 1050 (1993). Constructive trusts are generally imposed in cases of fraud or unjust enrichment. "A constructive trust is an equitable remedy that 'compel[s] restoration, where one through actual fraud, abuse of confidence reposed and accepted, or through other questionable means, gains something for himself which, in equity and good conscience, he should not be permitted to hold.'" *Consulting Overseas Mgmt., Ltd. v. Shtikel*, 105 Wn. App. 80, 86-87, 18 P.3d 1144 (2001) (quoting *Scymanski v. Dufault*, 80 Wn.2d 77, 88, 491 P.2d 1050 (1971)).

Constructive trusts may be found when an oral promise to hold real estate in express trust is made in bad faith. *Lutz*, 74 Wn. App. at 367. Parol evidence is admissible to establish the existence of a constructive trust. *Id.* at 366. Similar to an express trust, actual or constructive fraud must be demonstrated before a constructive trust involving real property can be established by parol evidence. *Id*. at 364-65. The fraud must be present at the inception of the transaction. *Id*. A breach of an oral agreement does not itself establish fraud in the original agreement. *Dowgialla v. Knevage*, 48 Wn.2d at 334.

Constructive trusts may also be imposed "where the retention of the property would result in the unjust enrichment of the person retaining it." *Consulting Overseas Mgmt., Ltd.*, 105 Wn. App. at 87 (internal quotation marks omitted) (internal citations omitted). For example, "[a] constructive trust may arise if consideration for the acquisition of property is furnished by one party and title is taken in the name of another so that retention of the property would result in an unjust enrichment. The deciding factor is whether the party who possesses the property has been unjustly enriched." *Yates v. Taylor*, 58 Wn. App. 187, 190-91, 791 P.2d 924 (citations and footnotes omitted).

Where the statute of frauds prevents Jerry from proving an express trust through parol evidence, he may prove a constructive trust if he can show that Virgil's agreement to hold Unit 45 was made in bad faith. Similar to his claim for an express trust, however,

Jerry has not presented any evidence of actual or constructive fraud at the inception of the transaction in 1987.

Nor did Jerry prove unjust enrichment. The trial court found that Jerry failed to prove that he paid Virgil for all of the expenses related to Unit 45. Virgil was solely responsible for the loan payments, taxes, and insurance. While Jerry initially made payments to Virgil, those payments ended in 2004 while Jerry has continued to live on the property. Jerry accepted rental payments from third parties without paying Virgil and even received financial assistance from Virgil for several years. Although Jerry believes that Virgil accepted payments from third parties leasing the crop circle in lieu of payments from Jerry, he presented no evidence that such an agreement was reached.

The evidence or lack of evidence introduced at trial supports the trial court's conclusion that Jerry failed to prove that Virgil held Unit 45 in either a constructive or express trust for Jerry's benefit.

D. ATTORNEY FEES

Jerry requests that he be awarded about $100,000 in attorney fees and that the court fine Virgil and Tera $1,000,000 in punitive damages. As the respondent, Virgil is also requesting attorney fees under RAP 18.9.

RAP 18.1 provides a process whereby eligible parties may request the court grant their attorney fees. "RAP 18.1(b) requires a party to devote a separate section of the appellate brief to the fee issue." *Lakes v. von der Mehden*, 117 Wn. App. 212, 220, 70

P.3d 154 (2003). This section must contain more than simply citations to the RAP and statutory provisions. *Id*.

Attorney fees may also be imposed under RAP 18.9. "The appellate court on its own initiative or on motion of a party may order a party or counsel, or a court reporter or authorized transcriptionist preparing a verbatim report of proceedings, who uses these rules for the purpose of delay, files a frivolous appeal, or fails to comply with these rules to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court." RAP 18.9(a). "Appropriate sanctions may include, as compensatory damages, an award of attorney fees and costs to the opposing party." *Yurtis v. Phipps*, 143 Wn. App. 680, 696, 181 P.3d 849 (2008).

"A frivolous action is one that cannot be supported by any rational argument on the law or facts." *Id*. at 697. An appeal is not frivolous if it presents debatable issues upon which reasonable minds might differ. *Holiday v. City of Moses Lake*, 157 Wn. App. 347, 236 P.3d 981 (2010). Raising one meritorious issue will not result in a finding of frivolousness, even if the outcome of other issues are not debatable. *Green River Cmty. Col. Dist. No. 10 v. Higher Ed. Personnel Bd.*, 107 Wn.2d 427, 730 P.2d 653 (1986). Courts resolve all doubts as to whether an appeal is frivolous in favor of the appellant. *Wood v. Thurston County*, 117 Wn. App. 22, 68 P.3d 1084 (2003).

Here, Jerry fails to provide any support for his request for attorney fees. Therefore, the court will not consider his request. Although there is little merit to Jerry's appeal, it is not utterly devoid of merit. He appeals the court's dismissal of the Unit 120 claim, referring to evidence he presented at trial that he still hoped, up until 2012, that Virgil would pay him his fair share of the property. This argument is not entirely baseless. Moreover, although some of his arguments are baseless, he presented evidence at trial to support some of the findings of fact he contested on appeal in regard to Unit 45. Thus, we likewise deny Virgil's request for attorney fees under RAP 18.9.

Affirm.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Staab, J.

WE CONCUR:

Lawrence-Berrey, J.

Pennell, C.J.

Tristen L. Worthen
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

The Court of Appeals
of the
State of Washington
Division III

500 N Cedar ST
Spokane, WA 99201-1905

Fax (509) 456-4288
http://www.courts.wa.gov/courts

September 14, 2021

Jerry Lee Redwine
16537 Road 26 SW
Mattawa, WA 99349
jerryleeredwine@gmail.com

Michael M Wyman
Wyman Law
2219 W Broadway Ave Ste A
Moses Lake, WA 98837-2891
law1@mmwymanlaw.com

CASE # 365514
Jerry Lee Redwine v. Virgil Dale Redwine and Tera Redwine
GRANT COUNTY SUPERIOR COURT No. 132006096

Dear Counsel:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file the motion electronically through the court's e-filing portal or if in paper format, only the original motion need be filed. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion (may be filed by electronic facsimile transmission). The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

Tristen L. Worthen
Clerk/Administrator

TLW:ko
Attach.
c: **E-mail** Hon. David G. Estudillo

JERRY REDWINE

December 14, 2021 - 12:25 PM

Transmittal Information

Filed with Court:	Court of Appeals Division III
Appellate Court Case Number:	36551-4
Appellate Court Case Title:	Jerry Lee Redwine v. Virgil Dale Redwine and Tera Redwine
Superior Court Case Number:	13-2-00609-6

The following documents have been uploaded:

- 365514_Petition_for_Review_20211214122305D3579119_2211.pdf
  This File Contains:
  Petition for Review
  The Original File Name was AAppeal to Supreme-2.pdf

A copy of the uploaded files will be sent to:

- law1@mmwymanlaw.com
- mwyman26335@gmail.com

Comments:

Sender Name: Jerry Redwine - Email: jerryleeredwine@gmail.com
Address:
16537 Road 26 SW
Mattawa, WA, 99349
Phone: (509) 643-2856

Note: The Filing Id is 20211214122305D3579119