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CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

NO. 92199-7

THE SUPREME COURT
OF THE STATE OF WASHINGTON

SANDRA J. ARCHDALE,

Petitioner

vs.

SHARYL L. O'DANNE,

Respondent

Court of Appeals Cause No. 71905-0-I
Appeal from the Superior Court of Snohomish County
The Honorable Millie M. Judge

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Petitioner Sandra J. Archdale (hereafter "Ms. Archdale") asks this court to accept review of the Division I Court of Appeals' decision terminating review, designated in part B below.

B. COURT OF APPEALS' DECISION

Ms. Archdale asks the Supreme Court to review the decision of Division I of the Court of Appeals, entered on July 6, 2015 (Appendix at pages A-001 - 014) and its denial of Ms. Archdale's Motion for Reconsideration on July 31, 2015 (A-015).

C. ISSUES PRESENTED FOR REVIEW

1. Does the decision of the Division I Court of Appeals below conflict with the Supreme Court's decisions in City of Lakewood v. Pierce Cnty., 144 Wn.2d 118, 126, 30 P.3d 446, 450 (2001), Baker v. Leonard, 120 Wn.2d 538, 843 P.2d 1050 (1993), Kausky v. Kosten, 27 Wn.2d 721, 179 P.2d 950 (1947), Biggs v. Vail, 119 Wn.2d 129, 830 P.2d 350 (1992), and State ex rel. Quick-Ruben v. Verharen, 136 Wn.2d 888, 969 P.2d 64 (1998)?

2. Does granting a Plaintiff part of the relief she requested in her Complaint preclude the court from finding her action frivolous as a whole, making an award of "frivolous action" attorney's fees inappropriate?

3. Is refusing to quiet title to a condominium in the name of its constructive owner inequitable when the constructive owner pays all costs associated with the purchase of the condominium?

D. STATEMENT OF THE CASE

1. Factual Background

In 2004, O'Danne agreed to take title to the Condo in her name as an accommodation to Archdale, since Archdale was separated from her husband and did not want his name on the title. CP 4-5. Archdale used her separate funds to purchase the Condo and has paid all mortgage payments, taxes, insurance, and dues associated with the Condo.¹ CP 5. O'Danne never transferred title to Archdale, prompting Archdale to initiate a quiet title action.

The trial court refused to quiet title to the Condo in Archdale, ordered her to "purchase" it, and, absent such "purchase," ordered its forced sale within 6 months of trial on a finding that Archdale acted in bad faith in not paying off the underlying note and deed of trust upon receipt of the proceeds from her mother's estate. CP 6. The trial court found the action frivolous based on findings that Archdale "induced" O'Danne to purchase the Condo through a bad-faith misrepresentation that she would

¹ At the time they were due, Archdale did not pay the mortgage payments for February and March 2012. O'Danne initially made these payments, and Archdale has since reimbursed her.

use her inheritance to pay off the mortgage, that Archdale “had no need to resort to litigation or call upon the equitable powers of the Court,” and that Archdale “did not have a factual or legal basis for asserting her claim that she was entitled to a constructive or other trust.” CP 13.

Archdale asserts she acted in good faith. Archdale further claims it was O’Danne’s refusal to honor her promise to quit-claim the Condo’s title to Archdale, and O’Danne’s refusal to transfer title until the estate of the parties’ mother was settled, that compelled Archdale to initiate a quiet title action. Archdale also asserts her action for a constructive or resulting trust was brought in good faith and was not frivolous.

2. Procedural Background

Archdale filed this quiet title action on June 4, 2010, alleging O’Danne refused to honor her promise to quit claim the Condo’s title to Archdale so Archdale could refinance the Condo’s mortgage in her own name. CP 296, CP 300:6-8. Further, Archdale filed this action because O’Danne operated under the false assumption that a March 2007 court order prohibited her from transferring the Condo’s title to Archdale. CP 5, CP 29, CP 32, November 13, 2013 VR at 126:6-17.

Bench trial of this matter occurred in Snohomish County Superior Court before the Honorable Millie M. Judge on October 10, 2014 and November 13 and 14, 2014. October 10, 2014 VR 1-44, November 13

and 14, 2014 VR 1-230. After trial, the court issued a Decision and Order on November 14, 2014, finding equitable grounds for granting Archdale a constructive trust in the Condo (CP at 152, ¶¶2, 7-8) but refusing to quiet title in Archdale. CP at 152, ¶2. Further, the trial court ordered Archdale to “purchase” the Condo no later than 5:00 p.m. on Monday, May 14, 2014 via a Purchase and Sale Agreement whereby O’Danne would transfer title via quit-claim deed to Archdale upon Archdale satisfying the underlying debt. CP 153 ¶8.a. The trial court ordered the forced sale of the Condo if Archdale was unable to “purchase” it by May 14, 2014. CP 153 ¶8.b. Finally, the trial court ordered payment to O’Danne of 25% of the excess proceeds of the Condo’s sale as “compensation for the use of her credit” by Archdale. CP 153 ¶8.c.ii.

In its November 14, 2013 Decision and Order, the trial court also found the litigation was not frivolous or brought in violation of CR 11. CP at 154, ¶12. However, on January 27, 2014, the court granted reconsideration, amending paragraph 12 of its November 14, 2013 Decision and Order and allowing O’Danne to bring a motion for attorney’s fees and costs pursuant to RCW 4.84.185, the frivolous lawsuit statute.

On April 4, 2014, the trial court entered findings and an order granting O’Danne’s motion for attorney’s fees and costs, totaling

\$55,388.91. CP 15-18. On April 18, 2014, the trial court entered “corrected” findings, *nunc pro tunc* to April 4, 2014. CP 11-14. On May 5, 2014, the trial court entered a judgment confirming its April 4, 2014 decision and order, as amended, *nunc pro tunc* to April 4, 2014. CP 1-3.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The Court of Appeals decision conflicts with the Supreme Court's decisions in City of Lakewood v. Pierce Cnty., 144 Wn.2d 118, 126, 30 P.3d 446, 450 (2001), Baker v. Leonard, 120 Wn.2d 538, 843 P.2d 1050 (1993), Kausky v. Kosten, 27 Wn.2d 721, 179 P.2d 950 (1947), Biggs v. Vail, 119 Wn.2d 129, 830 P.2d 350 (1992), and State ex rel. Quick-Ruben v. Verharen, 136 Wn.2d 888, 969 P.2d 64 (1998). RAP 13.4(b)(1) and (2).

The Court of Appeals erred in concluding substantial evidence supported the trial court's finding that "The Defendant [Ms. O'Danne] agreed to transfer title to the Plaintiff once the mortgage was paid off." (A-007).

The Court of Appeals also erred in finding no abuse of discretion by the trial court with respect to the terms of the constructive trust (A-007 - A-009).

Finally, the Court of Appeals abused its discretion in awarding attorney's fees and costs to O'Danne pursuant to RCW 4.84.185, the "frivolous lawsuit" statute (A-009 - A012)

1. **This Case is Squarely Controlled by City of Lakewood v. Pierce Cnty., 144 Wn.2d 118, 30 P.3d 446, 450 (2001).**

The trial court refused to quiet title in the Condo to Archdale, despite imposing a constructive trust in her favor, and despite the parties' agreement that Archdale is the Condo's constructive owner. CP 151 ¶2, Ex. 26. The trial court did so based on the erroneous finding that Archdale promised to pay off the underlying mortgage "as soon as she received her inheritance[.]" CP 152 ¶6. In fact, O'Danne testified on direct examination the parties had no agreement as to when Archdale would pay off the mortgage, November 13, 2013 VR 17:9-19; and she agreed Archdale was the Condo's constructive owner. *See* Ex 26. Regardless, the equities favor quieting title in Archdale when she pays off the Condo's mortgage.

Fee simple title is not necessary to plead and prove a quiet title action. Some possessory interest is sufficient, as is equitable title. W. Stoebeck, J. Weaver, Ejectment and Quiet Title Actions, 18 Wash.Prac., Real Estate § 11.3 (2d ed.):

A constructive trust is an equitable remedy which arises when the person holding title to property has an equitable duty to convey it to another on the grounds that they would be unjustly enriched if permitted to retain it. Constructive trusts are imposed when there is clear, cogent and convincing evidence of the basis for impressing the trust.

City of Lakewood v. Pierce Cnty., 144 Wn.2d 118, 126, 30 P.3d 446, 450 (2001)

Constructive trusts can be imposed in broad circumstances not arising to fraud or undue influence. Baker v. Leonard, 120 Wn.2d 538, 547, 843 P.2d 1050 (1993). Indeed, when legal title to property has been obtained through any means or circumstances rendering it unconscientious for the holder of the legal title to retain and enjoy the beneficial interest, equity impresses a constructive trust. Kausky v. Kosten, 27 Wash.2d 721, 727–28, 179 P.2d 950 (1947) (quoting 4 S. Symons, Equity Jurisprudence § 1053, at 119 (5th ed. 1941)). The trial court rightly impressed such a trust in Archdale in the present case. CP 151 ¶2.

O'Danne had an equitable duty to convey title back to Archdale, subject to encumbrances. This could have been accomplished by O'Danne simply signing a quit-claim deed to Archdale and placing it in escrow, or by O'Danne simply holding title until Archdale paid off the Condo's mortgage, then transferring it to Archdale via quit-claim deed. Any other result would be unconscientious and inequitable. The trial court's refusal to quiet title in Archdale, subject to encumbrances, ignores

O'Danne's equitable duty to convey title to Archdale. As such, the trial court abused its discretion in not quieting title.

2. The Trial Court Abused its Discretion with Respect to the Terms of the Constructive Trust.

For the same reason the court abused its discretion in refusing to quiet title in Archdale, it abused its discretion in ordering Archdale to “purchase” the Condo by May 14, 2014, or, in the alternative, ordering the forced sale of the Condo if Archdale were unable to “purchase” it by May 14, 2014. The court in the present case found clear, cogent and convincing evidence for granting Archdale a constructive trust in the Condo. CP 151 ¶2. Indeed, the parties agreed Archdale is the Condo's constructive owner. Ex. 26. It necessarily follows that O'Danne has a duty to convey title to the Condo to Archdale, subject to encumbrances of record. *See City of Lakewood, supra*, 144 Wn.2d at 126, *and see Brooke v. Robinson*, 125 Wn. App. 253, 257, 104 P.3d 674 (2004). By ordering Archdale to purchase the Condo by May 14, 2014, or, in the alternative, ordering the forced sale of the Condo by that date, the trial court ignored O'Danne's equitable duty to convey title to Archdale. As such, the trial court abused its discretion.

In addition, the trial court erroneously granted O'Danne 25% of the net proceeds from any sale of the Condo. CP 153, ¶8.c.ii. Because the

constructive trust imposes an equitable duty on O'Danne to convey the Condo's title to Archdale once Archdale pays off the underlying mortgage, it necessarily follows that O'Danne would be unjustly enriched if she were allowed to receive any proceeds from the sale of the Condo. See City of Lakewood, *supra*, 144 Wn.2d at 126, and see Brooke, *supra*, 125 Wn. App. at 257.

“[A] person who is unjustly enriched at the expense of another is liable in restitution to the other.” Quasi contracts, or contracts implied by law, are founded on the equitable principle of unjust enrichment that one should not be “unjustly enriched at the expense of another.” A person has been unjustly enriched when he has profited or enriched himself at the expense of another contrary to equity. Enrichment alone will not trigger the doctrine; the enrichment must be unjust under the circumstances and as between the two parties to the transaction. Three elements must be established for unjust enrichment: (1) there must be a benefit conferred on one party by another; (2) the party receiving the benefit must have an appreciation or knowledge of the benefit; and (3) the receiving party must accept or retain the benefit under circumstances that make it inequitable for the receiving party to retain the benefit without paying its value.

Dragt v. Dragt/DeTray, LLC, 139 Wn.App. 560, 576, 161 P.3d 473, 482 (2007) (internal citations omitted).

O'Danne received the benefit of “ownership” of the Condo without the burden. Archdale has paid all costs associated with the Condo. O'Danne suffered no adverse consequences from Archdale missing two mortgage payments in February and March 2012, as O'Danne neither

applied for nor was denied any credit as a result. CP 186:14-16. Further, Archdale has since reimbursed O'Danne for those payments.

By contrast, O'Danne failed to act in an equitable manner. She kept the proceeds from escrow refund checks related to the Condo's mortgage even though she knew they belonged to Archdale. CP 20:9-19, 23:5-18. She never asked the Condo's mortgage lender, Chase Bank, whether it would consent to transferring title to Archdale, despite the Bank's authority to do so, and despite Archdale's repeated demands that she do so since 2005. CP 179:8-20; 185:2-186:6; 193:15-18; Ex. 39, p.18. Likewise, O'Danne never asked Chase Bank to hold a quit-claim deed in escrow pending Archdale obtaining funds to pay off the underlying debt on the mortgage, despite Archdale asking her to do so for years. CP 193:4 - 194:11. O'Danne cited "security" as her rationale for refusing to put the Condo's title in escrow. 194:25 - 195:4. Despite her multiple representations to the contrary, when Archdale presented O'Danne with an offer to pay off the underlying obligation on the Condo in its entirety, O'Danne refused unless Archdale simultaneously paid off a separate judgment against Archdale in the Franzen Estate action. CP 53:5-11.

It would be inequitable for O'Danne to receive any proceeds from the sale of the Condo, as she has not acted in equity, and she would be unjustly enriched thereby. There is no reason to force the sale of the

Condo as long as Archdale continues to make all payments associated with it. However, if the Condo is sold, all excess proceeds should go to Archdale. The trial court abused its discretion in ordering otherwise.

3. The Trial Court Erred in Awarding “Frivolous Action” Attorney’s Fees and Costs.

A lawsuit or defense, *in its entirety*, must be determined to be frivolous and to have been advanced without reasonable cause before an award of prevailing party attorneys’ fees can be made pursuant to RCW 4.84.185. Biggs, *supra*, 119 Wn.2d 129, 133, 830 P.2d 350, 352 (1992). “A case is not necessarily frivolous because a party ultimately loses on a factual or legal ground.” W.R.P. Lake Union Ltd. P’ship v. Exterior Servs., Inc., 85 Wn.App. 744, 752, 934 P.2d 722, 727 (1997). Indeed, a claim can even be found meritless but not frivolous. See, e.g., Lockhart v. Greive, 66 Wn.App. 735, 744, 834 P.2d 64, 69 (1992).

An action is only frivolous if it “cannot be supported by any rational argument based in fact or law.” Granville Condo. Homeowners Ass’n v. Kuehner, 177 Wn.App. 543, 312 P.3d 702, 710 (2013), quoting Wright v. Dave Johnson Ins. Inc., 167 Wn.App. 758, 785, 275 P.3d 339, *review denied*, 175 Wash.2d 1008, 285 P.3d 885 (2012). Under RCW 4.84.185, the trial court is not empowered to sort through the lawsuit, search for abandoned frivolous claims and then award fees based solely on

such isolated claims. Biggs, *supra*, 119 Wn.2d at 136. Indeed, when an action is not *entirely* frivolous, an award of *any* sanctions under RCW 4.84.185 is unwarranted, even for allegedly frivolous causes of action. Id. at 133-37.

The court in Wright, *supra*, found the trial court abused its discretion in awarding fees under RCW 4.84.185 when it found the plaintiff's testimony not credible. At the hearing on the Wright Defendants' post-judgment motion for fees under RCW 4.84.185, the trial court opined, "What is a frivolous lawsuit [or] defense other than you know it when you see it[.]" and referring to the Plaintiff's "deceitfulness," "dishonesty," and "basically false testimony." The Wright court held the trial court applied the wrong standard, reasoning that,

[e]ven if we disregard Wright's testimony, as we must, based on the trial court's credibility determination, the evidence viewed in the light most favorable to Wright nevertheless shows a dispute was ongoing between Wright and Johnson over Wright's compensation. [...] Even though Wright's counterclaim ultimately failed, it cannot be said that it was entirely frivolous.

Wright, *supra.*, 167 Wn.App. at 785-87.

Like the trial court in Wright, *supra*, the trial court in the present case used the wrong standard in awarding attorney's fees and costs to O'Danne:

My problem is I am hung up on the law and the requirement that I find the matter as a whole was frivolous. I do find -- I do find that the relief that Ms. Archdale sought was largely not granted to her and that she could have obtained relief without coming to court. [...] So I guess I am finding based on that that Ms. Archdale's claims were frivolous and I will grant attorney's fees in favor of Ms. O'Danne under 4.84.185. I am hopeful that this is not subject to reversible error when the Court of Appeals looks at it, but you know, when I look at the equities here, there is just no question that Ms. O'Danne was in the right and her sister Ms. Archdale was in the wrong. And the fact that the relief that was granted was largely in favor of Ms. O'Danne and not in favor of Ms. Archdale weighs heavily on me, so that is my decision for now and we'll see where you parties take it from here. [Emphasis added]

March 10, 2014 VR 19:6-23.

Contrary to the trial court's finding (CP 16 - 17, March 10, 2014 VR 19), Archdale's action was well-grounded in law and in fact. This action to quiet title was filed pursuant to RCW 7.28.120, as Archdale has superior title to O'Danne's legal title. CP 305:1-3. Archdale's claim for a constructive trust was supported by evidence other than her own testimony, proceeded to trial, and the court found clear, cogent and convincing evidence to support it. CP 152, ¶8. Indeed, O'Danne's intransigence necessitated the action. On March 23, 2007, the Snohomish County Superior Court entered an Order in the Estate of Beverly Franzen matter, Docket No. 03-4-01343, providing in part as follows: "No party shall encumber, sell, or transfer the condominium without approval of

both parties' counsel." CP 29. As a practical matter, this language protected Archdale from O'Danne's actions, as Archdale was not on title to the condominium and therefore had no ability to encumber, sell or transfer it. Nonetheless, O'Danne took the position that this language somehow prohibited transfer of the Condo's title to Archdale until the estate matter was resolved:

This simply means that according to the court papers [...], "no party will be allowed to transfer or sell the condominium at this time." This still stands and will continue to stand until the estate has been settled.

CP 32.

O'Danne's intransigence on this issue forced Archdale to seek the assistance of the court in compelling O'Danne to transfer title to the Condo. Indeed, O'Danne's prior counsel suggested to Archdale at the end of the Estate trial that she file a quiet title action. CP 5, November 13, 2013 VR at 126:6-17.

In response to the Complaint in this action, O'Danne also baselessly alleged Archdale "removed funds from the estate coffers to pay for the earnest money and the appraisal" on the Condo. CP 33. In her deposition on July 25, 2013, O'Danne conceded this was not true:

2 Q. And Page 3 of this document, Paragraph 5, Line 5, the
3 sentence towards the end of that line says, Contrary
4 to Sandra Archdale's assertions, I have never
5 attempted to deny the fact that Sandra Archdale is the

6 equitable owner of this property and is entitled to
7 possession of the property and the tax deductions for
8 the payment of interest each year on the note and deed
9 of trust against this property.
10 Did I read that correctly?
11 A. That's what it says.
12 Q. And do you agree with that statement?
13 A. Yes.
14 Q. So you have never tried to claim the property-tax
15 deductions for the condominium?
16 A. Never.
17 Q. And you've never claimed the mortgage interest, on
18 your taxes, for the condominium?
19 A. Never.
20 Q. And you agree Ms. Archdale paid all of the down
21 payment and other costs required to complete the
22 initial purchase; correct?
23 A. Yes.
24 Q. Okay. And do you know what the source of those funds
25 was?
1 A. I would assume from the inheritance. I didn't write
2 the check, so I really couldn't answer that.
3 Q. When you say the inheritance, you're referring to your
4 sister's share of the inheritance from your mother's
5 estate?
6 A. Her share, yes.

CP 36-37.

Contrary to the trial court's finding (CP 13:7-10), O'Danne was unwilling to convey the condominium to Archdale upon a simultaneous payoff of the mortgage balance, necessitating trial. When Archdale presented O'Danne with such an offer, O'Danne refused to transfer title to the Condo to Archdale without a simultaneous payoff of a separate

judgment against Archdale in the Franzen Estate action. CP 53:5-11. Archdale was thus compelled to proceed to trial.

Contrary to the court's finding (CP 13, ¶2.b.), Archdale needed to bring this action. Indeed, the action afforded Archdale the opportunity to acquire title to the Condo without O'Danne's demand that the purchase be contingent on payment of the judgment in the estate action. Archdale's constructive trust and resulting trust claims were necessary and brought in good faith. The constructive trust claim advanced to trial, and the court, exercising its equity powers, granted Archdale the relief she requested. CP 152, ¶7. Therefore, the court abused its discretion in finding Archdale's action frivolous. See Biggs, *supra*, 119 Wn.2d at 137; and see Verharen, *supra*, 136 Wn.2d at 903-04.

4. The Trial Court Erred in Awarding O'Danne \$53,396.00 in Attorney's Fees and \$1,992.91 Costs as the "Prevailing Party".

Even if Archdale's action were entirely frivolous (which it is not), an attorney fee award under RCW 4.84.185 is predicated on the party requesting fees being the prevailing party. See Rawe v. Bosnar, 167 Wn. App. 509, 513, 273 P.3d 488, 489-90 (2012), *review denied*, 175 Wn.2d 1003, 285 P.3d 884 (2012). Although a successful defendant can recover as a prevailing party [see Marine Enters., Inc. v. Sec. Pac. Trading Corp., 50 Wn.App. 768, 772, 750 P.2d 1290 (1988)],

In general, a prevailing party is one who receives an affirmative judgment in his or her favor. If neither wholly prevails, then the determination of who is a prevailing party depends upon who is the substantially prevailing party, and this question depends upon the extent of the relief afforded the parties.

Riss v. Angel, 131 Wn.2d 612, 633-34, 934 P.2d 669, 681 (1997).

O'Danne did not receive a judgment in her favor. Archdale received, in part, the relief she was requesting, namely, a constructive trust in the Condo. O'Danne is not the prevailing party, and Archdale prevailed, in part, on her claim for the imposition of a constructive trust. Therefore, assuming *arguendo* that Archdale's action was entirely frivolous, the court may not award attorney's fees to O'Danne under RCW 4.84.185.

Contrary to the trial court's finding (CP 16:15-16), Archdale's abandonment of her resulting trust theory at trial does not make O'Danne the "prevailing party" for purposes of awarding attorney's fees under RCW 4.84.185. Archdale brought this action to quiet title under alternate constructive or resulting trust theories. She abandoned the resulting trust theory, not because it was without merit, but because it became unnecessary:

A resulting trust arises where a person makes or causes to be made a disposition of property under circumstances which raise an inference that he does not intend that the person taking or holding the property should have the

beneficial interest in the property. An essential element of a resulting trust is that there be an *intent* that the beneficial interest in property not go with the legal title. By definition, this intent is not express but may be inferred from the terms of the disposition or from the accompanying facts and circumstances. When the person asserting the trust has paid the consideration for the property, a presumption arises that a trust exists in that person's favor, absent evidence of a contrary intent.

Engle v. Breske, 37 Wn.App. 526, 528, 681 P.2d 263, 264 (1984) (internal citations omitted, emphasis in original).

O'Danne admittedly took title in the Condo for Archdale with the intent that the beneficial interest not go with the title, but instead to Archdale. Additionally, the law presumes Archdale has a resulting trust in the condo since she paid all the consideration for the property. *Id.* Archdale did not abandon this theory at trial because it was meritless, as O'Danne asserts; rather, she abandoned it because it became unnecessary to pursue, as she believed going into trial that the parties agreed she had a constructive trust in the Condo. October 10, 2013 CP 4:12-20. Regardless, voluntary dismissal of a claim does not amount to a final judgment for purposes of determining a statutory prevailing party attorney fee award. Wachovia SBA Lending, Inc. v. Kraft, 165 Wn.2d 481, 491, 200 P.3d 683, 687-88 (2009). Indeed, statutory attorney fee provisions require final judgment to be operative. *Id.*

F. CONCLUSION:

The trial court erred in refusing to quiet title to the Condo, despite finding Archdale to be its equitable and constructive owner. O'Danne has an equitable duty to convey title back to Archdale once she pays off the mortgage. It necessarily follows the trial court erred in limiting Archdale's constructive trust to six months and ordering Archdale to "purchase" the Condo by May 14, 2014, or, in the alternative, ordering the forced sale of the Condo if Archdale was unable to "purchase" it by May 14, 2014.

The trial court also erred in granting O'Danne of 25% of the net proceeds of the sale of the Condo. To do so would be to grant equity to one who has not done equity. Further, O'Danne would be unjustly enriched if she were to receive any proceeds from any sale of the Condo.

The trial court erred in finding Archdale's action frivolous. Archdale's action was well-grounded in law and in fact. Archdale's claim for a constructive trust was supported by evidence other than her own testimony, proceeded to trial, and the court found clear, cogent and convincing evidence to support it.

The trial court erred in awarding attorney's fees and costs to O'Danne as the "prevailing party." Archdale's action was not frivolous. Even if it were, O'Danne did not receive a judgment in her favor.

Therefore, O'Danne is not the "prevailing party" and not entitled to fees and costs pursuant to RCW 4.84.185.

For the foregoing reasons, the Court should accept review of this matter.

RESPECTFULLY SUBMITTED this 28th day of August, 2015.


SANDRA J. ARCHDALE, Petitioner Pro Se

DECLARATION OF SERVICE

I, SANDRA J. ARCHDALE, DECLARE THAT THE FOLLOWING IS MY VOLUNTARY SWORN STATEMENT:

On August 31, 2015, I delivered a true and correct copy of the foregoing Petition For Review to Respondent's attorney as follows:

Lorna S. Corrigan
Newton Kight
1820-32nd Street
Everett, WA 98206

I declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Executed at Everett, Washington this 31 day of August, 2015.


SANDRA J. ARCHDALE

COURT OF APPEALS
STATE OF WASHINGTON
2015 JUL -5 AM 10:31

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

SANDRA J. ARCHDALE,)	
)	No. 71905-0-1
Appellant,)	
)	DIVISION ONE
v.)	
)	
SHARYL L. O'DANNE,)	UNPUBLISHED OPINION
)	
Respondent.)	FILED: <u>July 6, 2015</u>

SPEARMAN, C.J. — This action arises from a dispute over the ownership of a condominium. Appellant Sandra Archdale appeals the trial court's decision denying her request for quiet title and imposing a constructive trust for the benefit of both appellant and respondent, Sharyl O'Danne. Archdale also appeals the trial court's award of attorney fees and costs to O'Danne. Finding no error, we affirm.

FACTS

Sandra Archdale and Sharyl O'Danne are sisters. In 2004, Archdale told O'Danne that her marriage was failing and she desired to move out of her marital home. But, according to Archdale, no lender would finance her purchase of a new home in her individual capacity without a quitclaim deed signed by her husband. Because she did not want to involve her husband in the purchase of a property, Archdale asked O'Danne to obtain financing for a condo where she

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could live during the separation from her husband and for which she could eventually take title in her own name. Archdale agreed that she would be solely responsible for all costs associated with the purchase of the condo, including the down payment, closing costs, mortgage and other related payments. O'Danne agreed to the request and in August 2004, closed sale on a condo of her sister's choosing. Archdale moved into the condo in October 2004 and continued to live there for the next six years, even though she and her husband eventually reconciled.

Beginning in 2005, Archdale made several requests that O'Danne convey legal title to the condo, which O'Danne refused without a simultaneous pay off or assumption of the underlying mortgage. On June 4, 2010, Archdale initiated this action seeking quiet title to the condo or, in the alternative, a constructive trust requiring O'Danne to immediately convey legal title to her via quitclaim deed, without any further conditions. Archdale also sought money damages, attorney fees and costs. The case proceeded to trial on October 10, 2013.

At trial, it was undisputed that O'Danne was obliged to transfer title to the condo to Archdale. At issue, was whether, under the agreement, O'Danne was obligated to immediately transfer title to the condo to Archdale regardless of the status of the underlying mortgage, as Archdale contended, or whether transfer of the title was contingent on Archdale assuming or paying off the mortgage, as O'Danne asserted.

In her testimony, Archdale conceded that she had assured O'Danne that she would pay off the condo with funds from their mother's estate, which was in

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probate at the time of the sisters' agreement in 2004. She admitted sending an email regarding the condo to O'Danne on March 26, 2004, in which she promised to "pay it off with the inheritance." Verbatim Report of Proceedings (11/13/13) (VRP) at 144; Exhibit (Ex.) 29. Archdale also acknowledged that her former lawyer had advised her in a letter dated December 3, 2008,¹ that no court would order O'Danne to transfer title until Archdale assumed or paid off the existing mortgage. In the letter, a copy of which was admitted into evidence, Archdale's attorney also noted that O'Danne was holding title for Archdale's benefit, pending payment or satisfaction of the underlying mortgage.

O'Danne testified that there was no specific agreement as to how long she would hold title. She further testified, however, that based on Archdale's March 26, 2004 promise to "pay it off with her inheritance," she understood that she would hold title until the their mother's estate was probated, at which point Archdale would pay off the mortgage on the condo and O'Danne would convey title. O'Danne's deposition testimony, which was consistent with her testimony at trial, was published at trial at Archdale's request.

The trial court found that Archdale "promised to pay off the underlying mortgage with inheritance funds from their mother's pending estate" but "[i]nexplicably, when Archdale received [the inheritance funds, she refused to pay off the mortgage. . . ." CP at 5. The court also found that O'Danne "agreed to

¹ At trial, defense counsel apparently misspoke and stated the letter was dated November 3, 2008. Review of the record reveals that this letter from Archdale's attorney was dated December 3, 2008.

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transfer the title to [Archdale] once the mortgage was paid off" and, "[f]or her part[,]...O'Danne has repeatedly stated that she does not intend to retain the subject property and will readily quitclaim it to [O'Danne] as soon as she is no longer liable for the underlying mortgage." Id. The court also found:

Archdale has paid the mortgage and property taxes on the unit for the past nine years, except for two months during 2012, where she withheld payment causing the bank to begin foreclosure proceedings against her sister. . . . [O'Danne] was forced to pay a total of \$1,493.84 to stop the foreclosure proceedings. The payment covered the cost of the two months of mortgage payments and late fees. Archdale admits she has not repaid O'Danne for making those payments.

CP at 5. Based on these findings, the trial court concluded that there was no basis to quiet title in Archdale, but the action was not frivolous and there were equitable grounds for imposing a constructive trust that benefitted both parties.

The trust terms set forth by the court required Archdale and O'Danne to execute a Purchase and Sale Agreement, whereby O'Danne would transfer the condo to Archdale via quitclaim deed, subject to all senior liens and encumbrances, if she received full payment and/or notice of satisfaction of the total outstanding mortgage on or before 5:00 p.m. on May 14, 2014. In the event that Archdale failed to meet this deadline, the trial court granted O'Danne an immediate right of reentry in the condo for purposes of placing it on the open market for sale and ordered her to list the property for sale within thirty days. Finally, the trust provided for the distribution of the proceeds of a sale to a third party. The court ordered that proceeds would be applied first to the outstanding mortgage balance and any remaining taxes, fees, assessments, costs and commissions. Surplus proceeds would then be used to reimburse O'Danne for

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\$1,493.84 in mortgage payments and late fees she had paid on Archdale's behalf. Any remaining funds would be allocated at 75 percent to Archdale and 25 percent to O'Danne, with O'Danne's share intended as compensation for the use of her credit by Archdale.

On November 20, 2013, the court amended its decision and order, striking its initial conclusion that the lawsuit was not frivolous or brought in violation of CR 11 and reserving ruling on the issue until after consideration of a timely motion for such determination by O'Danne. Subsequently, O'Danne brought a motion for attorney fees and costs pursuant to RCW 4.84.185, which permits such an award to a party who prevails in an action that has been frivolously brought.

On April 4, 2014, the trial court entered findings that O'Danne was the prevailing party in the lawsuit and that "Archdale had no need to resort to litigation or to call upon the equitable powers of the Court because O'Danne was willing without such a lawsuit to convey the condominium to Archdale upon a simultaneous payoff by Archdale of the existing mortgage balance, but Archdale needlessly declined to do so." CP at 16. The court concluded that the lawsuit was frivolous within the meaning of RCW 4.84.185 and that O'Danne was entitled to attorney fees and costs totaling \$55,388.91.

On April 18, 2014, the trial court entered corrected findings, *nunc pro tunc* to April 4, 2014, which added a judgment summary to the court's initial findings.

On May 5, 2014, the trial court entered a judgment confirming its April 4, 2014 decision and order, as amended, *nunc pro tunc* to April 4, 2014.

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Archdale appeals the decision and order, as well as the award of attorney fees and costs to O'Danne.

DISCUSSION

I.

Claims for quiet title and imposition of a constructive trust are equitable in nature. Durrah v. Wright, 115 Wn. App. 634, 649, 63 P.3d 184 (2003); In re Marriage of Lutz, 74 Wn. App. 356, 366, 873 P.2d 566 (1994). Whether to grant equitable relief is a question of law we review de novo. Niemann v. Vaughn Comm'ty Church, 154 Wn.2d 365, 374, 113 P.3d 463 (2005). We review the fashioning of an equitable remedy by the trial court for abuse of discretion. Sorenson v. Pyeatt, 158 Wn.2d 523, 531, 146 P.3d 1172 (2006). Here because it is undisputed that the trial court's grant of equitable relief was proper and Archdale challenges only the nature of the relief granted by the trial court, we review for abuse of discretion. A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or reasons. State v. Powell, 126 Wn.2d 244, 258, 893 P.2d 615 (1995). To the extent discretion is exercised in reliance upon factual findings, the findings must be supported by substantial evidence. In re Lutz, 74 Wn. App. at 370. "Substantial evidence is 'evidence of a sufficient quantity to persuade a fair-minded rational person of the truth of the declared premise. . . . Even though there may be conflicting evidence on the record, [a reviewing court] will not disturb findings based on substantial evidence.'" Id. (quoting Henery v. Robinson, 67 Wn. App. 277, 289, 834 P.2d 1091 (1992)).

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Archdale contends the trial court abused this discretion when it refused to quiet title in her and, instead, established a constructive trust. We disagree.

The trial court found, on undisputed evidence, that while O'Danne was the "legal owner," of the condo, Archdale had an "equitable interest" therein. The court also found, in paragraph 3 of its decision and order, that:

The Plaintiff promised to pay off the underlying mortgage with inheritance funds from their mother's pending estate. The Defendant agreed to transfer title to the Plaintiff once the mortgage was paid off. Inexplicably, when Archdale received the inheritance funds, she refused to pay off the mortgage on the subject property...

CP at 5. Although Archdale disputes this finding, it is supported by substantial evidence, including testimony from both parties and written communications between the parties and their attorneys regarding the condo dispute.

The trial court's conclusion that "it was reasonable for the Defendant to refuse to transfer title to the subject property to Archdale, given Archdale's lack of performance in paying off the underlying mortgage as soon as she received her inheritance, as promised," flows logically from its findings in paragraph 3. Likewise, the trial court's conclusion that "title should not be quieted in the Plaintiff" flows from these findings because they establish that Archdale did not have superior title to her sister. CP at 4; see also Finch v. Matthews, 74 Wn.2d 161, 166, 443 P.2d 833 (1968) (explaining that a plaintiff seeking quiet title bears the burden of establishing superior title to his or her opponents). The trial court's refusal to quiet title in Archdale was not an abuse of discretion.

We also find no abuse of discretion with respect to the constructive trust terms imposed by the trial court. Sitting in equity, a court may fashion

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broad remedies to do substantial justice to the parties and put an end to litigation. Hough v. Stockbridge, 150 Wn.2d 234, 76 P.3d 216 (2003). In this case, the terms of the constructive trust accomplished both ends.

The trial court imposed three material trust terms:

1. If Archdale tendered full payment and/or notice of satisfaction of the total outstanding mortgage amount within six months of the decision and order, O'Danne was required to transfer legal title to the condo to Archdale via quitclaim deed.
2. In the event that Archdale failed to tender full payment and/or notice of satisfaction of the total outstanding mortgage amount within six months of the decision and order, O'Danne's duty to transfer title would cease, she would gain immediate right of re-entry in the condo for the purpose of placing it on the open market, and she would have 30 days to place the condo up for sale.
3. Upon sale of the condo to a third party, the proceeds would be applied first to the outstanding mortgage balance and related costs. If the sale yielded any surplus proceeds, the first \$1,493.84 would go to O'Danne "in repayment of late mortgage payments and late fees owed by [Archdale]." CP at 6. After that, 25 percent of the remaining balance would go to O'Danne "as compensation for the use of her credit by [Archdale]" for nine years. Id. The remaining proceeds would go to Archdale.

These terms protected Archdale's equitable interest in the condo by formalizing O'Danne's duty to convey title to Archdale via quitclaim deed. And, although Archdale expressly objected to terms setting a time limit for Archdale's requirement to satisfy the underlying mortgage, authorizing O'Danne to sell the condo while Archdale continued making timely mortgage payments, or apportioning any proceeds of a third party sale to O'Danne, such terms were necessary to protect O'Danne's pecuniary interest as the holder of legal title to the condo. Moreover, by clarifying the parties' respective duties and establishing

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enforceable time limits for the parties' fulfillment of these duties, the trust terms ensured the parties would go their separate ways without endless litigation.

We conclude that the equitable remedy fashioned by the trial court was a reasonable exercise of its discretion.

II.

Next, Archdale challenges the trial court's award of attorney fees and costs to O'Danne pursuant to RCW 4.84.185. We review an award of attorney fees under RCW 4.84.185 for abuse of discretion. Alexander v. Sanford, 181 Wn. App. 135, 184, 325 P.3d 341, review denied, ___ Wn.2d ___, 339 P.3d 634 (2014). Because the trial court has weighed the evidence on this issue, our review is, once again, limited to determining whether the trial court's findings of fact are supported by substantial evidence and, if so, whether the findings support the conclusions of law and the judgment. Sac Downtown Ltd. Partnership v. Kahn, 123 Wn.2d 197, 202, 867 P.2d 605 (1994).

RCW 4.84.185 provides in relevant part:

In any civil action, the court having jurisdiction may, upon written findings by the judge that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in opposing such action, counterclaim, cross-claim, third party claim, or defense. This determination shall be made upon motion by the prevailing party after a voluntary or involuntary order of dismissal, order on summary judgment, final judgment after trial, or other final order terminating the action as to the prevailing party. The 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. In no event may such motion be filed more than thirty days after entry of the order.

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The statute was adopted “to discourage frivolous lawsuits and to compensate the targets of frivolous lawsuits for their fees and costs incurred in defending meritless cases.” Timson v. Pierce County Fire Dist. No. 15, 136 Wn. App. 376, 386, 149 P.3d 427 (2006) (citing Kearney v. Kearney, 95 Wn. App. 405, 416, 974 P.2d 872 (1999)). In order for the court to award attorney fees under the statute, three elements must be present: (1) each of the claims or defenses asserted by the opponent of fees must be frivolous, i.e., without basis in fact or law; (2) the claims or defenses must have been advanced without reasonable cause; and (3) the proponent of fees must have prevailed at trial. Alexander, 181 Wn. App. at 184. Each is present in this case.

The Lawsuit Was Frivolous in its Entirety

In support of the fee award, the trial court found, based on the substantial evidence discussed previously, that Archdale failed to pay off the mortgage on the condo with her inheritance, as promised, and that O’Danne was willing, without a court order, to transfer title upon Archdale’s assumption or satisfaction of the underlying mortgage. CP at 13. These findings establish that Archdale had no factual or legal basis for her claim, as stated in her complaint, of an immediate and unconditional right to legal title to the condo. The court’s conclusion that Archdale’s claims for equitable relief “were frivolous within the meaning of RCW 4.84.185 in that they were advanced without a rational basis in law or fact” flows logically from these findings. Id.

The trial court made no specific findings to justify its conclusion that Archdale’s claim for damages was also frivolous. Nevertheless, review of the

record reveals that the conclusion is supported by substantial evidence, as Archdale offered no evidence in support of the claim for damages at trial.

Archdale's Claims Were Advanced Without Reasonable Cause

Because each of Archdale's claims was frivolous, our inquiry turns to whether they were advanced without reasonable cause. Under Archdale's interpretation of the parties' verbal agreement, she was legally entitled title to the condo, subject to encumbrances of record but without further conditions. Generally, a party may initiate a lawsuit to vindicate reasonably perceived legal rights without fear of adverse consequences under RCW 4.84.185. See, State ex rel. Quick-Ruben v. Verharen, 136 Wn.2d 888, 906-07, 969 P.2d 64 (1998) ("litigants should not fear adverse consequences for reasonably seeking to judicially vindicate their perceived legal entitlements. . . . Just because underlying claims are weak is not to say they are frivolous."). However, in this case, Archdale's repeated concessions throughout the trial court proceedings undermined her claim of an immediately enforceable right² and none of the non-testamentary evidence supported it.³ Furthermore, as noted previously, it was never disputed that O'Danne would transfer legal title to Archdale upon Archdale's satisfaction or assumption of the underlying mortgage. Accordingly,

² In her complaint, Archdale asserted superior title to O'Danne and claimed that, pursuant to RCW 7.28.120, title to the condo should be quieted in her, subject to encumbrances of record but without further conditions. However, at several instances throughout trial and on appeal, Archdale has acknowledged that her right to legal title to the condo was contingent on her assumption or satisfaction of the underlying mortgage.

³ This evidence included, among other items, an email from Archdale in which she stated she would "pay off with the inheritance" (Exhibit (Ex.) 29) and an email from Archdale's former attorney to Archdale, dated December 3, 2008, which acknowledged that O'Danne was holding title for Archdale's benefit, pending payment or satisfaction of the underlying mortgage. Ex. 32.

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we conclude that Archdale did not reasonably seek to vindicate a perceived legal entitlement.

O'Danne Was the Prevailing Party at Trial

Archdale also asserts that O'Danne did not qualify as a "prevailing party" under RCW 4.84.185. This argument lacks merit. Our Supreme Court has explained that:

In general, a prevailing party is one who receives an affirmative judgment in his or her favor. If neither wholly prevails, then the determination of who is a prevailing party depends upon who is the substantially prevailing party, and this question depends upon the extent of the relief afforded the parties.

Riss v. Angel, 131 Wn.2d 612, 633-34, 934 P.2d 669 (1997) (citations omitted).

Applying this standard to the facts of the case, it is clear that O'Danne is the prevailing party.

The trial court's decision and order was a judgment granting O'Danne the right to sell the condo to a third party should Archdale fail to timely satisfy the underlying mortgage, the right to reimbursement of \$1,493.84 in late mortgage payments and late fees owed by Archdale upon a third party sale, and the right to 25 percent of any surplus sale proceeds. Thus, contrary to Archdale's claims, O'Danne received affirmative judgment in her favor.

And, although the constructive trust also benefitted Archdale, the relief afforded by the trial court was entirely different from the relief requested in her complaint, i.e., that title to the condo be quieted immediately in her name, regardless of a simultaneous satisfaction of the mortgage. The relief granted was also substantially different from that requested by Archdale at trial, i.e., that title

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to the condo be transferred to Archdale via quitclaim deed upon payment or satisfaction of the underlying mortgage, with no further contingencies. Thus, to the extent Archdale contends that she was the substantially prevailing party, she is mistaken.

Conclusion

Because O'Danne was the prevailing party in this frivolous lawsuit, she was entitled to an award of attorney fees and costs pursuant to RCW 4.84.185. The trial court's entry of such an award was not error.⁴

III.

O'Danne requests an award of attorney fees and costs on appeal, citing RAP 18.1 and RCW 4.84.185 as the basis for such an award. Because she was entitled to an award of attorney fees and costs in the trial court pursuant to RCW 4.84.185, we conclude that, as the prevailing party on appeal, she is entitled to recover reasonable attorney fees and costs, subject to compliance with RAP 18.1(d). See Xieng v. Peoples Nat. Bank of Washington, 63 Wn. App. 572, 587, 821 P.2d 520 (1991) (explaining the general principle in Washington that those entitled to an award of attorney fees below are also entitled to attorney fees on appeal).⁵

⁴ In a cross-appeal, O'Danne assigns error to the trial court's denial of her motion to strike portions of Archdale's affidavit in opposition to O'Danne's motion for attorney fees and costs. Because the trial court granted O'Danne's substantive motion for attorney fees and costs in spite of the offending affidavit and because this award is affirmed on appeal, any error by the trial court was harmless. See Diaz v. State, 175 Wn.2d 457, 472, 285 P.3d 873 (2012) (explaining that an evidentiary ruling is not subject to reversal on appeal unless the error was prejudicial, i.e., it affected the outcome of trial).

⁵ Archdale also contends that she is entitled to an award of attorney fees based on (1) RCW 4.84.330 and the attorney fees and costs provision of the deed of trust; (2) RAP 18.1 and RCW 4.84.185; and (3) the court's equity powers. In light of our disposition of her claims on appeal the request is denied.

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Affirm.

Speelman, C.J.

WE CONCUR:

Trickey, J.

Cox, J.