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STATE OF WASHINGTON  
BY DEPUTY

COURT OF APPEALS  
DIVISION II

No. 45130-1-II

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

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ERICKSON LOGGING, INC., a Washington corporation,

Respondent,

v.

PACIFIC GUARDIANSHIP SERVICES, guardian of the estate of  
NATACHA SESKO, a single person, and PACIFIC GUARDIANSHIP  
SERVICES, successor trustee of The SESKO FAMILY TRUST,

Appellant.

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RESPONDENT'S BRIEF

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**I. STATEMENT OF THE CASE:**

On March 7, 2008, Natacha Sesko (“Sesko”) transferred 14 parcels of real property, four of which are the subject of this appeal, to the Sesko Family Trust (the “Trust”). CP at 47, 82–83, 7. Hsiao–Ming Ho was trustee of the Trust. *Id.* at 44, 7.

On July 31, 2012, Erickson and Sesko entered into a contract permitting Erickson “to cut, log and remove all merchantable timber” from the above–described four parcels. *Id.* at 45, 51–54. In part, the contract stated:

4. Landowner(s) [Sesko] warrants that he or she is the owner of the above–described real estate and has full right and authority to sell and/or harvest the timber on the above–described real estate....
6. Landowner(s) warrants that he or she has legal access to the subject property.

*Id.* at 53.

Prior to entering into this contract, Sesko did not disclose to Erickson that (1) she had transferred the four parcels to the Trust; (2) access rights to some or all of the parcels were subject to ongoing litigation; and (3) an injunction hearing in the litigation had been set to limit access to some or all of the parcels. *Id.* at 45.

Between August 9, 2012 and November 24, 2012, Erickson and Sesko modified the logging contract several times, during which Sesko received “stumpage advances” totaling \$164,500. *Id.* at 46–81, 8.

Around November 24, 2012, Erickson learned from Sesko’s attorney that she did not have the authority to enter into the contracts with Erickson. *Id.* at 46, 8, 186.

Erickson, on March 18, 2013, filed suit against Sesko and the trustee of her Trust. *Id.* at 42–98. Erickson also sought a writ of attachment and a hearing was set for April 5, 2013. *Id.* at 99–155.

Sesko, on April 4, 2013, filed a Notice of Appearance and a declaration titled “Response in Opposition to Motion for Writ of Attachment.” *Id.* at 1–2. In her declaration, Sesko used words such as “legal action”, “does not meet requirements of RCW 6.25.030”, “opposition”, “writ of attachment”, “consent and signature”, “original contract”, and “Timber Deed”. *Id.*

At the April 5, 2013 writ of attachment hearing, Erickson and Sesko argued their respective positions. RP at 3–13 (4/5/2013). After argument, the court granted Erickson’s motion and the parties went off the record to review the proposed order. *Id.* at 13–14. When the court went back on the record, Sesko requested an interpreter. *Id.* at 14–16. The court declined her request, noting that:

...it didn't appear to me from your declaration that there were any issues with understanding English. It was very well-written, appeared that you understood that, and you were able to sign it. So I haven't had anything to indicate to me that you have any comprehension troubles up until right now.

*Id.* at 16.

On May 3, 2013, Erickson filed a motion for summary judgment and a hearing was held on June 7, 2013. CP at 156–68, RP at 2 (6/7/2013).

At the beginning of the June 7, 2013 summary judgment hearing, Sesko requested an interpreter and the court provided one. RP at 2–4 (6/7/2013). An initial issue at the hearing was whether Sesko required a RCW 4.08.060 litigation guardian ad litem. *Id.* at 10–16. Sesko argued that the trial court should “eliminate any mentioning of the guardian issue because these issues have not – – nothing to do with my case.” *Id.* at 11–12. Further, she stated: “I feel that the other party’s attorney to even mention this issue is liable to my reputation. It’s harming my reputation.” *Id.* at 16. The trial court determined Sesko did not need a litigation guardian ad litem and then heard argument on the merits of Erickson’s summary judgment motion. *Id.* at 15–16. At the conclusion of the argument, the trial court granted Erickson’s motion for summary judgment

and entered a judgment against Sesko for \$164,500, pre-judgment interest, and for statutory legal fees and costs. CP at 186–87.

On June 17, 2013, Sesko filed a Motion for Reconsideration concerning the writ of attachment<sup>1</sup>, and the court denied the motion. *Id.* at 22, 39, 40.

On July 19, 2013, Sesko filed a Notice of Appeal. Notice of App.

On January 13, 2014, Sesko filed her Appellant’s Brief. *See generally* Br. of Appellant. In her brief, Sesko assigns eight errors to the proceeding below, none of which affect the determination that she owes Erickson \$164,500 plus interest. *Id.*

On May 20, 2014, Court Commissioner Bearnse granted Pacific Guardianship Services’ motion to substitute as the real party in interest in this proceeding as Sesko’s guardian and as successor trustee of the Trust. Pacific Guardianship Services’ motion requesting a stay was also granted to give it sixty days “to become familiar with the appeal.”

On August 25, 2014, Court Commissioner Bearnse directed Erickson to file its brief within thirty days.

## II. ARGUMENT:

- A. The trial court did not err when it issued the writ of attachment.

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<sup>1</sup> The motion also involved Sesko’s request for the judge to recuse herself. CP at 39.

A party seeking a writ of attachment must show that it is entitled to a writ. RCW 6.25.030, in part, states:

The writ of attachment may be issued by the court in which the action is pending on one or more of the following grounds:

...

(6) That the defendant has assigned, secreted, or disposed of, or is about to assign, secrete, or dispose of, any of his or her property, with intent to delay or defraud his or her creditors; or

...

(8) That the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought; or

(9) That the damages for which the action is brought are for injuries arising from the commission of some felony, gross misdemeanor, or misdemeanor; or

(10) That the object for which the action is brought is to recover on a contract, express or implied.

The party seeking the writ must also establish the validity of its claim. *See Van Blaricom v. Kronenberg*, 112 Wn. App. 501, 506, 50 P.3d 266 (2002) (citing RCW 6.25.070(3), *Rogoski v. Hammond*, 9 Wn. App. 500, 507, 513 P.2d 285 (1973)). To determine probable validity, the trial court will evaluate the likelihood of whether the moving party will prevail at trial. *Id.*

On appeal, a writ of attachment will not be disturbed if “[t]he

evidence [at trial] does not preponderate against this finding.” *Hazeltine v. Lyle*, 175 Wn. 395, 397, 27 P.2d 716 (1933) (citing *Bingham v. Keylor*, 25 Wn. 156, 191–92, 64 P. 942 (1901)). Also, “. . . if any one of the grounds upon which a plaintiff predicates his right to attachment is true, the attachment is not wrongfully sued out”. *Brown v. Peoples Nat. Bank of Wash.*, 39 Wn.2d 779, 780, 238 P.2d 1191 (1951).

With regard to the appropriate standard of review to apply to a trial court’s order granting a writ of attachment, Washington case law is not entirely clear, but other states have applied a substantial evidence standard. Compare *Hazeltine*, 175 Wn. at 397, 27 P.2d 716, and *Bingham*, 25 Wn. at 191, 64 P. 942 (“[w]hen the court below is called upon to determine facts on a motion to discharge the writ of attachment, every presumption must be in favor of the conclusion reached by that court, unless the contrary clearly appears”), with *Nakasone v. Randall*, 129 Cal. App. 3d 757, 762, 181 Cal. Rptr. 324 (1982).

In Washington, a reviewing court will uphold a trial court’s factual findings if supported by substantial evidence. *In re Marriage of Stewart*, 133 Wn. App. 545, 550, 137 P.3d 25 (2006) (citing *In re Marriage of Dodd*, 120 Wn. App. 638, 645, 86 P.3d 801 (2004)). “Substantial evidence” is a quantity of evidence sufficient to persuade a fair-minded, rational person of the truth of the finding. *In re Contested Election of*

*Schoessler*, 140 Wn.2d 368, 385, 998 P.2d 818 (2000) (citing *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994)).

Erickson asserted four RCW 6.25.030 grounds for the writ: (1) Sesko assigned parcels to delay her creditors; (2) Sesko had been guilty of a fraud in contracting; (3) the damages for which the action was brought were for injuries arising from the commission of multiple felonies; and (4) the action was brought to recover on an express contract. *See* CP at 147–50. Although Erickson was only required to submit evidence to satisfy *one* statutory ground, it supported each ground with evidence that would persuade a fair-minded, rational person of the truth. *Id.*, *see also* RP at 4–8 (4/5/2013). First, Sesko admits she transferred the parcels to the Trust and her conduct shows she is using the Trust as a device to avoid repaying Erickson. CP at 123, 131. Second, Sesko signed the contract stating she was the legal owner of the parcels to be logged; which she knew were owned by the Trust.<sup>2</sup> *Id.* Third, Sesko used her representation of ownership to receive stumpage advances. *Id.* at 45–46, 52–61. Finally, Sesko never refuted the fact that Erickson’s lawsuit was brought to

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<sup>2</sup> When Sesko signed the contract with Erickson, an injunction action was pending against the Trust alleging the Trust was the owner of the real property. CP at 122–139. Based the pleadings in that litigation in which Sesko was also a named party, and where she and her trustee admitted the Trust was the owner of the real property, a fair-minded, rational person could conclude that Sesko knew she was not the owner of the property when she signed the contract (and all amendments thereto) with Erickson. *See id.*

recover for breach of an express contract, nor has she offered any meritorious argument suggesting Erickson would not prevail at trial. *See id.* at 45, 7; *see also generally* RP at 8–13 (4/5/2013).

If this Court applies a *de novo* standard of review (as Sesko appears to suggest in her brief at page 5) to determine whether a genuine issue of material fact exists to preclude issuance of the writ, the trial court did not err under this standard. Again, Erickson only had to demonstrate *one* ground to obtain the writ. *See* RCW 6.25.030; *Brown*, 39 Wn.2d at 780, 238 P.2d 1191. Sesko does not dispute that the action was commenced to recover on an express contract and Sesko has offered no argument to suggest Erickson would not prevail at trial. CP at 156–160, 186–87, 44–98, 7–8, 1–2; *see also generally* Br. of Appellant. Sesko’s conclusory and self-serving testimony about her intent in her April 4, 2014 declaration<sup>3</sup> is insufficient to create a material issue of fact. CP at 1–2; *Brown v. Child*, 3 Wn. App. 342, 343, 474 P.2d 908 (1970).

B. This Court should not review Sesko’s assignments of error related to (1) the RCW 6.32.250 exemption; (2) appointing her RCW 11.88 guardian ad litem; (3) parcel access; (4) unclean hands; (5) timber/land valuations; or (6) discipline of counsel.

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<sup>3</sup> Sesko also makes new conclusory and self-serving statements in her appellate brief. *See, e.g.*, Br. of Appellant at 4, 6.

Sesko's assignments of error numbered two (the RCW 6.32.250 exemption<sup>4</sup>); three (the RCW 11.88 guardianship ad litem appointment<sup>5</sup>); five (parcel access); six (unclean hands); seven (timber/land valuations); and eight (discipline of counsel) are being raised for the first time on appeal and should not be considered. Br. of Appellant at 1–2; RP at 8–18 (4/5/2013); RP at 8–24 (6/7/2013).

The appellate court will not entertain issues not raised in the trial court. RAP 2.5(a). The Washington State Supreme Court has stated:

RAP 2.5(a) states the general rule for appellate disposition of issues not raised in the trial court: appellate courts will not entertain them. The rule reflects a policy of encouraging the efficient use of judicial resources. The appellate courts will not sanction a party's failure to point out at trial an error which the trial court, if given the opportunity, might have been able to correct to avoid an appeal and a consequent new trial.

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<sup>4</sup> Erickson is prejudiced by Sesko's attempt to raise this issue. Erickson has been denied the opportunity to argue that William Sesko's interest in the real property immediately vested in his surviving spouse upon his death. RCW 11.04.250. Because his interest in the property immediately vested in Sesko, she became the owner of the property and does not qualify for the exemption she now seeks. *Compare* RCW 6.32.250, with *Seattle First Nat. Bank v. Crosby*, 42 Wn.2d 234, 254 P.2d 732 (1953).

<sup>5</sup> Sesko opposed appointment (and any mention) of her guardianship proceeding on June 7, 2013, but now asks this Court to find error in non-appointment of her RCW 11.88 guardian ad litem. RP at 11, 16 (6/7/2013). This is an invited error and should not be considered. *State v. Studd*, 137 Wn.2d 533, 973 P.2d 1049 (1999).

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*State v. Scott*, 110 Wn.2d 682, 685, 757 P.2d 492 (1988) (citations omitted).

Sesko has also failed to cite any precedential legal authority that would suggest the trial court was required to rule as she suggests. *See generally* Br. of Appellant. A reviewing court should not consider conclusory assertions unsupported by argument or legal authority. *See, e.g., In re the Irrevocable Trust of Michael A. McKean*, 144 Wn. App. 333, 344, 183 P.3d 317 (2008) (citing *Bercier v. Kiga*, 127 Wn. App. 809, 824, 103 P.3d 232 (2004)).

C. The trial court did not err when it did not provide an interpreter to Sesko at the conclusion of the April 5, 2013 hearing.

Sesko essentially argues that a person who speaks English as a second language has an absolute right to an interpreter. *See* Br. of Appellant at 14.

Washington statutes provide for interpreters for non-English speaking persons, who are “unable to readily understand or communicate in the English language . . . .” RCW 2.43.010. The appointment of an interpreter is within the discretion of the trial court, and such discretion will be disturbed “only upon a showing of abuse.” *State v. Gonzales-Morales*, 138 Wn.2d 374, 381, 979 P.2d 826 (1999) (citing *State v. Trevino*, 10 Wn. App. 89, 94–95, 516 P.2d 779 (1974), *review denied*, 83

Wn.2d 1009 (1974)).<sup>6</sup> An abuse of discretion occurs when no reasonable person would adopt the view taken by the trial court and when the decision is based on untenable grounds or untenable reasons. *See, e.g., In re Guardianship of Johnson*, 112 Wn. App. 384, 48 P.3d 1029 (2002) (citing *Hope v. Larry's Markets*, 108 Wn. App. 185, 187, 29 P.3d 1268 (2001), *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971)).

Here, the trial court did not abuse its discretion on April 5, 2013. Sesko had already submitted a Notice of Appearance and a declaration containing legal terms and phrases. CP at 1-2. Sesko did not request an interpreter at the beginning of the hearing; rather her request was made after the trial court ruled against her. RP at 3–15 (4/5/2013). Based on the totality of the circumstances<sup>7</sup>, a reasonable person would be justified in not appointing an interpreter for Sesko on April 5, 2013.

Furthermore, under the circumstances of this contract case, Sesko has failed to show any prejudice to her by not being provided with an interpreter at the conclusion of the April 5, 2013 hearing.

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<sup>6</sup> Sesko cites to the unpublished case *Harper v. Coldwell Banker Barbara Sue Seal Props.*, 142 Wn. App. 1009, unreported in P.3d (2007). Br. of Appellant at 14. To the extent that Sesko relies on *Harper*, her argument should not be considered because citation to this case violates GR 14.1(a).

<sup>7</sup> The trial record also includes numerous documents, contracts, and quitclaim deeds, all in English, and all signed by Sesko. *See generally* CP at 44–98.

D. Pursuant to RAP 18.9(a), Erickson is entitled to compensatory damages because Sesko's appeal is frivolous.

This Court may order a party who uses the appellate process for the purpose of delay or frivolity to pay terms and compensatory damages to the harmed party. RAP 18.9(a). The primary inquiry to determine frivolousness is whether the appeal presents no debatable issues and is “so devoid of merit that there is no reasonable possibility of reversal.” *Streater v. White*, 26 Wn. App. 430, 434, 613 P.2d 187 (1980). Appropriate compensatory damages may include an award of attorneys’ fees and costs. *Kinney v. Cook*, 150 Wn. App. 187, 195, 208 P.3d 1 (2009) (citing *Yurtis v. Phipps*, 143 Wn. App. 680, 696, 181 P.3d 849 (2008)).

Sesko has used the appellate process for the purpose of delay. Her appeal is frivolous. She raises no issue on appeal that addresses the parties’ actual dispute and the ultimate decision of the court below that she owes Erickson \$164,500, prejudgment interest, and statutory fees and costs. Rather, her appeal contains self-serving and conclusory arguments, legal argument unsupported by case law, an impermissible citation to an unpublished case, citation to cases that are out of context, application of the wrong standard of review, attempts to introduce new facts, and takes a position on appeal inconsistent with her argument to the trial court.

Sesko's arguments are devoid of merit and create no reasonable possibility of reversal.

If the Court is not inclined to order Sesko to pay all of Erickson's fees and costs for this appeal under RAP 18.9, Erickson requests that it be awarded statutory fees and costs under RAP 18.1.

**III. CONCLUSION:**

The trial court's issuance of the writ of attachment should be affirmed.

The trial court's decision to not appoint an interpreter for Sesko at the conclusion of the April 5, 2013 hearing should be affirmed.

Sesko's other assignments of error should not be considered.

Sesko's appeal is frivolous and sanctions should be imposed.

Dated this 9<sup>th</sup> day of September, 2014.

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CERTIFICATE OF SERVICE

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