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COURT OF APPEALS
DIVISION II
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COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

RAYMOND TUCKER,

Appellant,

v.

DARWIN TUCKER,

Respondent.

BRIEF OF RESPONDENT

July 7, 2017

Darwin Tucker
Respondent Pro Se
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COMES NOW the Respondent, Darwin Tucker, and submits for the Court's consideration this Response brief:

I. INTRODUCTION

This is an appeal to try to relitigate a foregone conclusion. The entire case is a bit hard to fathom. The Plaintiff/Appellant, Raymond Tucker (“Raymond”)¹ was an heir to a house. Recognizing Defendant/Respondent Darwin Tucker’s (“Darwin”) care of Raymond’s deceased brother, Raymond deeded the property to Darwin. RP 6, 8. Raymond’s lawyer delivered the executed deed to Darwin. RP 8, 9. Darwin had taken the deed to a title company which had noted a minor and somewhat irrelevant inconsistency in the deed and asked it be corrected and returned the deed to Raymond’s lawyer Al Overland. RP 9. Raymond then changed his mind, refused to make the change and refused to return the original deed. RP 10-11. However, Darwin had a copy.

Many years had passed with Darwin living in the house and treating it as his own – as it had been deeded to him. Raymond filed the instant action for unlawful detainer, failed to appear for a hearing and the case was dismissed, then reopened and Raymond then failed to appear for trial. Darwin had responded providing the court copies of the deed. The trial court treated the response with the copies of the deed as a defense of

¹ Due to the same last name, first names are used for clarity. No disrespect is intended.

ownership and a counterclaim asserting the right to possession based on ownership, took testimony and entered findings of facts and conclusions of law.

II. RESPONSE TO ASSIGNMENT OF ERROR

No. 1 – The trial court did not err in awarding title to Darwin as Raymond had had months of notice of such claim, had notice of the hearing, and had actual knowledge of the existence of the deeds, being the grantor thereof.

No. 2 – The trial court did not err in applying the doctrine of res judicata in an offensive fashion as the prior case was not actually litigated, not necessarily decided, did not alter the status quo of Darwin occupying the premises, and when there was not complete identity of the parties.

No. 3. – The trial court did not err in entering findings of facts based upon copies of deeds in evidence and testimony at trial that support such findings which properly lead to the legal conclusion.

III. RESPONSE STATEMENT OF THE CASE

The timeline set forth by appellant is generally correct. It is noted that the prior case was dismissed for personal reasons after Darwin's brother had died. CP 73. It was not decided on the merits. CP 73. Both prior to and after the dismissal, Darwin continued to live in the subject house for eight years. CP 37 (Finding 5). Darwin has paid all real property taxes since the deeding. CP 37 (Finding 6). The "error" in the deed to Darwin was that Darwin was the sole grantee but it discussed an "undivided interest". CP 37 (Finding 8). Darwin had requested such

words be stricken as they were superfluous. As set forth in the Appellant's Opening Brief p. 4, there is no doubt as to the intent of Raymond as "Darwin was given a quit claim deed to the property by Raymond." There is no issue that the "undivided interest" was not meant to be some sort of fractional interest but rather as the record supports it was to be a conveyance of 100% of the property but that Raymond changed his mind. CP 37 (Finding 8), CP 79. The deed is admitted by Raymond. CP 79. Delivery is acknowledged. CP 82. Donative intent is admitted. CP 79. A later change of mind occurred and Raymond had "intervening personal bad feelings about Darwin..." CP 80. Essentially, Raymond's entire argument comes down to a notion that Darwin must have physical possession of the original deed. That is obviously not the law when the deed is admitted, it is undisputedly executed and delivered.

IV. ARGUMENT

a. Appellant has waived claimed errors.

The Appellant on two occasions failed to appear before the trial court. CP 25, 36. The court conducted a bench trial at the scheduled time and took testimony of Darwin Tucker. CP 36. No objection were made at trial to the evidence Mr. Tucker provided (as Appellant was not there). Now, after having twice not appeared in court, Appellant wants to complain. However, such failures to appear and object constitutes a waiver of such issues on appeal. "A party generally waives the right to

appeal an error unless there is an objection in the trial court. *State v. Kalebaugh*, 183 Wash.2d 578, 583, 355 P.3d 253 (2015). “ Matter of Adoption of K.M.T., 195 Wash. App. 548, 567, 381 P.3d 1210, 1220 (2016), review denied sub nom. In re K.M.T., 187 Wash. 2d 1010, 388 P.3d 489 (2017).

The failure to appear at trial creates a situation where virtually everything the Appellant raises would be first raised on appeal. “[W]e do not address errors raised for the first time on appeal. *Eldredge v. Kamp Kachess Youth Servs., Inc.*, 90 Wn.2d 402, 408, 583 P.2d 626 (1978).” McConnell v. Riedel, 150 Wash. App. 1057 (2009). The issues raised by the Appellant are not properly before this court. It has also created a situation where the Appellant has misstated the record based upon ignorance of what actually happened because Appellant was not at trial. As shown in the verbatim report, Respondent testified under direct questioning of the trial court on the trial date. Respondent testified to the facts and circumstances related to the execution and delivery of the deed from Appellant to Respondent. RP 8. Respondent testified to his occupancy. RP 6. Respondent testified to the family dynamics and history underlying this case. RP 6-10. Based upon such testimony and the pleadings and record, the trial court entered findings of facts and conclusions of law. (CP 36, 39). Appellant claims the trial court got

things wrong but in the absence of being at trial, how can Appellant possibly say that the trial court was wrong?

Moreover, the assignments of error are vague and nonspecific. The court will not consider vague assignments of error. Koster v. Wingard, 50 Wash. 2d 855, 856, 314 P.2d 928 (1957) (“Such are not assignments of error but an invitation to this court to search the record to see if there is error, but we consider only errors specifically printed out.”) Not a single factual finding is set forth as being in error. Appellants are required to specify the facts in error. *Id.* Unchallenged findings of fact are verities on appeal. State v. Neeley, 113 Wash. App. 100, 105, 52 P.3d 359 (2002).

The appeal is vague and in such fashion concedes the findings of fact. Thereafter, as discussed infra, the Appellant is incorrect on legal matters.

b. A determination of title was necessary to determine possession and was properly raised and argued.

The appeal seems to miss the point that the ultimate issue in any unlawful detainer action is the issue of possession. Heaverlo v. Keico Indus., Inc., 80 Wash. App. 724, 728, 911 P.2d 406, 409 (1996). Counterclaims and defenses are allowed so long as they relate to possession.

To protect the summary nature of an unlawful detainer proceeding, other claims, including counterclaims, are generally not allowed. *Munden v. Hazelrigg*, 105 Wash.2d 39, 45, 711 P.2d 295 (1985). There are, however, exceptions. If the counterclaim, affirmative defense, or setoff excuses the tenant's failure to pay rent, then it is properly asserted in an unlawful detainer action. *Munden*, 105 Wash.2d at 45, 711 P.2d 295. Put another way, issues unrelated to possession are not properly part of an unlawful detainer action. See *First Union Management, Inc. v. Slack*, 36 Wash.App. 849, 854, 679 P.2d 936 (1984) (claims not properly asserted if not related to possession).

Heaverlo at 728. Darwin, in this case, responded to the complaint for unlawful detainer by filing a Declaration and attaching copies of the Personal Representative's deed to Appellant and then the later deed from Appellant to Respondent. CP 6-10. The obvious import of the document is to set forth "you can't evict me – I own the property." It was in response to a complaint and set forth the nature of defense (ownership) and to the extent the court had to establish and quiet title as to the quality of title, such pleading set forth the nature of Darwin's estate by attaching a copy of the very document providing his interest. The notion that somehow Appellant was unaware of such claim of title is not well taken as the Appellant had testified in the earlier action that he deeded the property to Darwin. CP 79. Moreover, Raymond was the party that signed the deed. The contents of the deed were not a surprise to Raymond. Appellant later changed his mind. CP 80. However, as the Finding of

Fact 4 sets forth, the deed had been executed and delivered to Darwin. CP 37. The Appellant has not cited to the record showing how such finding is clearly erroneous – the proper standard on appeal. State v. Lundy, 176 Wash. App. 96, 105, 308 P.3d 755, 760 (2013).

This is a situation where Appellant not only had knowledge of Darwin's claim, **Appellant was the Grantor of the deed**. Nothing that was presented in this case, other than the correct law that should have been a surprise to Appellant. The notion that the pro se pleadings were somehow not clear is not well taken. Washington is a notice state and pleadings have to apprise a party of the nature of the claim:

A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” CR 8(a). We construe a complaint liberally so as to do substantial justice. CR 8(f); *State v. Adams*, 107 Wash.2d 611, 620, 732 P.2d 149 (1987). “If a complaint states facts entitling the plaintiff to some relief, it is immaterial by what name the action is called.” *Adams*, 107 Wash.2d at 620, 732 P.2d 149. But a complaint should adequately alert the defendant of the claim's general nature. *State v. Ralph Williams' Nw. Chrysler Plymouth, Inc.*, 87 Wash.2d 298, 315, 553 P.2d 423 (1976). While a complaint may contain inexpert pleading, it may not contain insufficient pleading. *Lewis v. Bell*, 45 Wash.App. 192, 197, 724 P.2d 425 (1986). A complaint is insufficient if it does not give the defendant “ fair notice of what the claim is and the ground upon which it rests.” *Williams v. W. Sur. Co.*, 6 Wash.App. 300, 305–06, 492 P.2d 596 (1972). Thus, a complaint must identify the legal theory upon which the plaintiff seeks relief. *Dewey v. Tacoma Sch. Dist. No. 10*, 95 Wash.App. 18, 23, 25–26, 974 P.2d 847 (1999).

Estate of Dormaier ex rel. Dormaier v. Columbia Basin Anesthesia, P.L.L.C., 177 Wash. App. 828, 853–54, 313 P.3d 431, 442–43 (2013).

How much more obvious could a pleading be than Darwin’s Declaration and attached deeds? “You can’t evict me as I am the owner and here is my deed to prove it.” Any attempt to try to quibble over whether something was a defense or a counterclaim is pointless as CR 8(c) provides in pertinent part: “When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.”

The trial court was faced with a Plaintiff who was pursuing an eviction claim against a party the plaintiff had deeded the house to. Unusual, to say the least. The Defendant was defending saying he was the owner and providing a copy of his deed – that Plaintiff admitted executing. Accordingly, to get to the issue of possession, the trial court had to necessarily decide who owned the house and it did by holding trial and by entering Findings of Fact. CP 36-39. In another unlawful detainer case where there was a counterclaim for specific performance under an option, “the action was properly triable in equity.” Hardinger v. Blackmon, 13 Wash. 2d 94, 101, 124 P.2d 220, 223 (1942). The Trial Court noted a trial date and only the Defendant appeared, claiming

ownership and setting forth the strength of his title. The trial court held trial wherein Darwin testified to the facts and circumstances related to the deed, the house, his payment of taxes and possession. The court did the proper thing in establishing a record. The Court entered findings on the counterclaim/defense that vindicated Respondent's position. Faced with proof of execution and delivery of the deed – the trial court made the obvious and correct decision and the scant authority in the Appellate Brief dickers over procedure and ignores the obvious correct answer in this case.

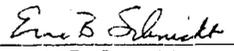
c. Res Judicata does not apply to a case not decided on the merits and does not preclude a defense.

The Appellant keeps raising the prior Court of Appeals' decision as if the matter was actually litigated and decided. The trial court pleadings in such respect were misleading. The Appellate brief seems to try to combine various notions of unrecorded deeds and physical possession of a deed in the same breath as a prior Court of Appeals decision. Darwin Tucker had appealed a denial of summary judgment. CP 72. All the Court of Appeals said was that it was not granting discretionary review. CP 72. The superior court had not ruled one way or another – it just denied Darwin's summary judgment motion and the case was proceeding to trial. CP 72. Here is the appellate holding:

Darwin argues that the trial court erred in denying his motion for summary judgment because once Raymond delivered the deed to him, title to the property had been conveyed to him. *Chelan Cnty. V. Wilson*, 49 Wn. App. 628, 632, 744 P.2d 1106 (1987) (citing *Seattle Renton Lumber Co. v. United States*, 135 F.2d 989, 991 (9th Cir. 1943)). But even if the trial court erred, Darwin does not show that further proceedings have been rendered useless, that the status quo has been substantially altered order that his freedom to act has been substantially limited. His action remains set for trial. He does not show that discretionary review is appropriate under RAP 2.3(b). Accordingly, it is hereby

ORDERED that Darwin's motion for discretionary review is denied.

DATED this 20th day of September, 2013.


Eric B. Schmidt
Court Commissioner

CP. 72. That's it. There is no formal decision. Even the denial of the summary judgment was interlocutory in nature. Maybury v. City of Seattle, 53 Wash. 2d 716, 717, 336 P.2d 878, 880 (1959). So there was no true "holding" from the Court of Appeals.

The prior Superior Court matter was between Darwin and Roderick Tucker as the personal representative of the uncle's estate (as the estate that originally had the house) as well as against Raymond Tucker. CP 79. That case was dismissed with prejudice but it never resolved the issue of possession. The authority Appellant cites establishes the fallacy of his position. The requirements in Loveridge v. Fred Meyer, Inc., 125

Wash. 2d 759, 887 P.2d 898 (1995) say that the matter had to be litigated. We did not have a trial. Darwin Tucker's brother had died and the matter was dropped for personal reasons. RP 10-12. Nothing in that case was decided. To make a judgment res judicata in a subsequent action there must be a concurrence of identity in four respects: (1) of subject-matter; (2) of cause of action; (3) of persons and parties; and (4) in the quality of the persons for or against whom the claim is made. Bordeaux v. Ingersoll Rand Co., 71 Wash. 2d 392, 396, 429 P.2d 207, 210 (1967). "Res judicata requires a final judgment on the merits. *Leija v. Materne Bros., Inc.*, 34 Wash.App. 825, 827, 664 P.2d 527 (1983) (citing *Bordeaux v. Ingersoll Rand Co., supra*); Restatement (Second) of Judgments § 13 (1982)." Schoeman v. N.Y. Life Ins. Co., 106 Wash. 2d 855, 860, 726 P.2d 1, 3 (1986). The case previously dismissed had other parties in it and was not an eviction action. While Raymond was a defendant in the prior action, he also agreed to the dismissal without any final resolution of the title issue. It would seem that if Darwin was barred from claiming quiet title, Raymond would be barred from claiming possession and hence barred from pursuing this eviction. If res judicata was applicable, it would cut both ways. "The failure to assert a compulsory counterclaim bars a later action on that claim. *Krikava v. Webber*, 43 Wash.App. 217, 219, 716 P.2d 916 (1986); *Baker v. Southern Pac. Transp.*, 542 F.2d 1123, 1126 (9th

Cir.1976); Restatement (Second) of Judgments § 22(2) (1982)....”
Schoeman v. N.Y. Life Ins. Co., 106 Wash. 2d 855, 863, 726 P.2d 1, 5
(1986). Nothing would have stopped Raymond from asserting an
ejectment claim in the prior action.

Raymond sued Darwin in the current action claiming possession of
the subject property. Raymond’s complaint claims that Raymond is the
owner. CP 1. Darwin submitted a copy of his deed in response to show
that such assertion was false. CP 6-10. Darwin raised the fact that he was
in fact the owner to defend against an eviction under RCW 59.12.030(6)
which requires both that a party have entered without permission and that
not have color of title. Darwin entered with permission as he had cared
for his uncle and lived with him. Darwin also had (and still does) have
color of title because he was deeded the property. Is Appellant truly
contending a property owner cannot defend an eviction based on
ownership simply because a case several years ago was dismissed prior to
trial? The deed from Raymond to Darwin was never previously held by
any court to be ineffective or invalid. Quite to the contrary, the findings of
facts and conclusions of law in this case establish the Darwin is the true
owner so as to defeat Raymond’s claim of unlawful detainer.

Appellant’s argument does not explain how the application of res
judicata would assist in the resolution of this issue. While there was a

case several years ago -- Darwin's use of the property is ongoing. As the prior case was dismissed without a resolution, to take Appellant's approach would leave both parties with no ability to resolve the issue presently. However, there are new possible causes of action that could accrue since the dismissal of the prior action. Darwin could wait out seven years and file a quiet title action under the seven year color of title statute. In theory he could wait out the ten years and claim adverse possession. But the fact remains that Darwin has a deed that has never been invalidated. Darwin has possession that has never been judicially changed. Darwin can defend his possession by asserting the strength of his title. Res judicata does not preclude defenses -- it precludes subsequent claims. Res judicata is a defense -- a shield. It is not a doctrine to be used offensively -- a sword. The attempt by Raymond to use res judicata offensively is improper for both legal reasons, factual reasons and pragmatic consideration.

The proper thing that should have occurred in this case was that Raymond should have shown up for trial. Had that occurred, he would have been damned by his own prior declaration testimony that he had executed the deed tied to Darwin's testimony that Raymond's lawyer had delivered it, tied to Raymond's testimony that he later changed his mind and did not want to gift the property. CP 79. There are no "take-back's" in

real estate law. Raymond testified he had the requisite donative intent, executed the deed, and his lawyer delivered the deed to Darwin (which has never been disputed) so the transfer was effective well before the change of heart.

d. The trial court appropriately entered findings of fact and conclusions of law following trial.

This portion of the opening brief is not clear. The assignment of errors discusses that the finding of facts and conclusion of law do not have a legal basis but does not address that such findings/conclusions were entered after a scheduled trial date where testimony was provided. CP 36. This is the required procedure under CR 52. Raymond does not cite to the testimony and evidence to demonstrate that the findings are not supported by evidence. Raymond does not set forth where the legal conclusions based upon the findings of facts are in error. There is sort of an implied argument as to procedure – but this is from a litigant that repeatedly did not show up or showed up with documents at the last minute. There is an easy answer to the Appellant’s posturing...show up for trial. There is a Declaration of Allan Overland testifying to how he showed up on the trial date on the correct date but the incorrect time – but there is no testimony that Raymond ever showed up for trial at any time. CP 45-47, PR 24-27.

Darwin gave testimony at trial. The court had copies of the deeds. The findings are consistent with the record that is before the court. The findings are supported by substantial evidence:

“An appellate court reviews a trial court's findings of fact for substantial evidence in support of the findings. *In re Marriage of Schweitzer*, 132 Wash.2d 318, 329, 937 P.2d 1062 (1997). Evidence is substantial if it is sufficient to persuade a fair-minded, rational person of the declared premise. *Bering v. SHARE*, 106 Wash.2d 212, 220, 721 P.2d 918 (1986). A reviewing court may not disturb findings of fact supported by substantial evidence even if there is conflicting evidence. *In re Marriage of Lutz*, 74 Wash.App. 356, 370, 873 P.2d 566 (1994). Unchallenged findings of fact are verities on appeal. *Robel v. Roundup Corp.*, 148 Wash.2d 35, 42, 59 P.3d 611 (2002).”

Merriman v. Cokeley, 168 Wash. 2d 627, 631, 230 P.3d 162, 164 (2010).

The Appellant does not cite a single specific finding that is error – just that the findings were “unlawful”. There is no real legal authority provided for such assignment of error. Such authority must be raised in the opening brief:

“A corollary of this rule is that an appellant must include all theories upon which reversal is sought (accompanied by proper argument and citations to authority) in its opening brief on appeal. *Dickson v. U.S. Fid. & Guar. Co.*, 77 Wash.2d 785, 787, 466 P.2d 515 (1970); *In re Estate of Foster*, 165 Wash.App. 33, 56, 268 P.3d 945 (2011). A legal theory that is raised for the first time in a reply brief is raised too late to warrant consideration. *Cowiche Canyon Conservancy v. Bosley*, 118 Wash.2d 801, 809, 828 P.2d 549 (1992); *Dykstra v. County of Skagit*, 97 Wash.App. 670, 676, 985 P.2d 424 (1999).”

Maziar v. Washington State Dep't of Corr., 180 Wash. App. 209, 227, 327 P.3d 1251, 1260 (2014), rev'd, on other grounds 183 Wash. 2d 84, 349 P.3d 826 (2015).

So what is argued? That the gift quitclaim deed was not effective. It is black letter law that a deed is effective upon execution and delivery.

(citations omitted). Puckett v. Puckett, 29 Wash. 2d 15, 18, 19, 185 P.2d 131, 133 (1947). Recording only protects such deed from later recorded grants. However recording is not required to make a deed effective. See RCW 65.08.070. The facts surrounding the deed are admitted. Raymond executed it. His attorney delivered it. It was effective. We look at the intent at the time of the execution and delivery – not some change of heart down the road. Delivery can be through agents. “It is essential to the delivery of a deed that there be a giving by the grantor and a receiving by the grantee with a mutual intention to pass a present title from the one to the other. It may be made through the hands of an agent, and it may be accepted through the hands of an agent, but there must be a mutual intention presently to pass the title.” Showalter v. Spangle, 93 Wash. 326, 331, 160 P. 1042, 1044 (1916). All this is admitted. Per the Declaration of Raymond:

During that time I decided I would make a gift to Darwin of the home Lawyer had willed to me. I therefore contacted Allan L. Overland, the attorney for the estate and on June 27, 2011 signed a gift deed to Darwin Tucker. Shortly after that I returned to my home in Hearne, Texas.

CP 79. The attorney admitted the delivery to Darwin. CP 37. The transfer was completed at that time. The following is a summary of the law on the topic as set forth in an unpublished opinion that is not cited as precedent, but only because the internally cited (published) cases explain the law quite well:

To pass title effectively, a deed must be delivered to the grantee. *Anderson v. Ruberg*, 20 Wash.2d 103, 107, 145 P.2d 890 (1944). No particular form or ceremony is necessary, but a deed may be delivered by acts and/or words clearly manifesting the mutual intention that the deed immediately pass title. *Puckett v. Puckett*, 29 Wash.2d 15, 18, 185 P.2d 131 (1949) (citation omitted). Sufficient delivery also exists where a deed is held by an agent or attorney. See *Showalter v. Spangle*, 93 Wash. 326, 331, 160 P. 1042 (1916) (agent); *In re Shea's Estate*, 60 Wash.2d 810, 816, 376 P.2d 147 (1962) (attorney). Essential to a finding of delivery where the deed is held by a third person is the grantor's present intent to relinquish control over the property. *Showalter*, 93 Wash. at 331, 160 P. 1042.

Acceptance of a deed by the grantee is presumed if the conveyance benefits the grantee. *Clearwater v. Skyline Constr.*, 67 Wash.App. 305, 319, 835 P.2d 257 (1992) (citations omitted). Acceptance also may be demonstrated by the grantee's conduct after obtaining knowledge of the deed. *Id.* (citing *Johnson v. Wheeler*, 41 Wash.2d 246, 247, 248 P.2d 558 (1952)). Presumptions of both delivery and acceptance can be rebutted only by clear and convincing evidence. *Id.* at 319, 835 P.2d 257.

Frelone v. Frelone, 92 Wash. App. 1048 (1998). An original deed is not even needed. In a lost deed case where the deed was unrecorded and disputed the Washington Supreme Court said:

“The court held orally, at the close of the trial, that, in a case of this kind, plaintiff's proof must be strong and convincing, citing: 1 Jones on Evidence, Civil Cases, 4th Ed., 441, § 227. We have said, in our own decisions: ‘* * * the evidence must be clear and positive and of such a character as to leave no reasonable doubt as to terms and conditions of the instrument.’ *Scurry v. Seattle*, 56 Wash. 1, 104 P. 1129, 1130, 134 Am.St.Rep. 1092. See, also, *Margett v. Wilson*, 85 Wash. 98, 147 P. 628; *Neill v. Griner*, 85 Wash. 329, 147 P. 1137; *Kelliher v. Clark*, 120 Wash. 175, 206 P. 924.”

Smyser v. Smyser, 19 Wash. 2d 42, 49, 140 P.2d 959, 962 (1943). Here, we have the admission of the grantor as evidence that the grantor deeded the property. How much stronger could the evidence get?

The law and the facts establish all requisites to the gift deed existed as of the delivery of the deed. Raymond admits having donative intent. Raymond admits execution. His attorney admits delivery. Darwin acknowledges and accepted receipt. The gift occurred.

The only authority cited by Raymond related to the deed is In re Gallinger's Estate, 31 Wash. 2d 823, 199 P.2d 575 (1948) which was a will contest case that challenged the validity of a gift. It dealt with a lost will and a copy of the will was provided. The Appellant had no standing to challenge the will so the will challenge was dismissed. As to the gift, the evidence that the court ruled to be insufficient to show a gift of a house was: "He reached in his pocket and pulled out a key, and he said to Mr. Vogelsson 'Here is the key to my place. I give you everything, and you take care of me, won't you?' That is as far as I can remember his exact words." Id. at 823. But there were other witnesses as to the alleged giftor being taken to a sanitarium and the court weighed the evidence and said:

Applying such general rule relative to the credibility and weight to be accorded to the testimony of the witnesses, I am of the opinion, after a careful consideration of the conflicting testimony and evidence herein, direct and circumstantial, that Mr. Vogelsson has not established a gift, either inter vivos or causa mortis, to him by clear, convincing, cogent or satisfactory evidence herein. On the contrary, I believe that it is established, by a fair preponderance of the evidence, that what the decedent

intended to do, and actually did do, was to temporarily place the keys to his place of business and living quarters into the hands of Mr. Vogleson to keep the same while the decedent was in the sanitarium. My finding that a gift by the decedent of all or any of his property to Mr. Vogleson was neither intended nor made, is not only supported by the clear and convincing testimony of the distinterested ambulance attendants, but also by the surrounding circumstances, the general habits of the decedent and the acts of Mr. Vogleson subsequent to the time he secured decedent's keys.

Id. at 829–30. In the present case there is absolute proof of what happened from Raymond's own declaration and pleadings. There is no need to "presume" anything. What the entire argument comes down to is if Raymond can "change his mind" and revoke a completed gift. There is no authority that the undersigned could find remotely allowing this. Such a rule would sow uncertainty into titles. Such a rule would rewrite basic understanding of how deeds work and would imply oral conditions into an explicit, written, unconditional deed. If one could revoke a gift of land after the fact because "I changed my mind" – what is next? Revocation of a sale because "I decided a couple of months later that the price was too low?" Revocation of a mortgage because "I later changed my mind about the interest rate?" The implications of what Raymond is urging would essentially rewrite deed law in this state. One would hope there is a better reason than "I changed my mind."

V. REQUEST FOR ATTORNEY FEES

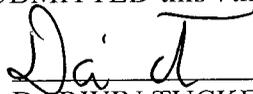
Darwin Tucker has represented himself pro se. However, he has retained the services of an attorney to assist in the research and drafting of

the response. Such amount can be verified by declaration of the attorney under RAP 18.1(d). The Appeal does not appropriately challenge findings of facts and conclusions of law, presents almost no relevant authority and otherwise submits a brief not well based in law or fact. Fees should be awarded under RAP 18.9(a). This was an unlawful detainer and the prevailing party is entitled to fees and costs under RCW 59.18.290. To be clear, the undersigned is not seeking compensation for the substantial time he spent researching, reading, and litigating this case. He only is seeking those fees related to paying an attorney to assist in the background. Such arrangement should not be objected to by Appellant as the fees would be substantially higher had the attorney appeared and done all things necessary in this appeal.

VI. CONCLUSION

The Appeal has almost no law - let alone relevant law. The “facts” are generally more of assertions as Raymond as he neither showed up for trial. Despite having the transcript of the trial, Appellant does not demonstrate in his opening brief where the findings are not supported in the record. It is frivolous. To the extent any law is cited, it has very little, if any, applicability and is overwhelmed with far more relevant and contrary authority. This court should affirm the trial court and award attorney fees and costs incurred.

RESPECTFULLY SUBMITTED this 7th day of July, 2017.



DARWIN TUCKER, Respondent Pro Se

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CERTIFICATE OF SERVICE STATE OF WASHINGTON

I certify that on the 7th day of July, 2017, I caused a true and correct copy of this Brief to be served on the following to: DEPUTY

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DATED this 7th day of July, 2017, at Tacoma, Washington.

By: D. T.
Darwin Tucker