

No. 356787 AND No. 356795

CONSOLIDATED UNDER No. 356787

COURT OF APPEALS, DIVISION III,  
OF THE STATE OF WASHINGTON

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In Re the Matters of:

HELEN KRINKE V. PAUL PICOLET, *ET AL.*

HELEN KRINKE V. KAREN PICOLET, *ET AL.*

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**BRIEF OF APPELLANTS**

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JUNE 11, 2018

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## I. INTRODUCTION

In July 2017 Paul and Karen Picolet purchased 30 acres of land directly from the owners, Cecil and Adele O'Neal, who told them that Helen Krinke (who was 104, and is now 105 years old), had a life estate to live in the house on the property. The O'Neals would only sell the land to the Picolets if they formally granted her a life estate to the house on one of the three parcels of land making up the 30 acres.

The Picolets hired an attorney who searched unsuccessfully for any record of a life estate agreement. When the Picolets' title insurance company also confirmed that no record of a life estate existed, the Picolets and the O'Neals jointly hired the attorney to prepare a binding life estate agreement formally granting Mrs. Krinke the right to continue living in her home.

Paul and Karen befriended Helen and reassured her that she could continue living in her house. They did not intend to harm Mrs. Krinke nor to kick a 104-year old woman out of her only home since at least 1969.

The Picolets intended to build elsewhere on their land. Early last August they placed a trailer near Mrs. Krinke's house to connect it to power so they could live there temporarily while their building site was prepared. A storage container was placed nearby and they had a new well drilled.

In late August Helen Krinke's neighbor Kent Woodruff was with her when for the first time Helen dramatically recalled and then pulled out a

written life estate agreement from her cedar chest. Until that moment, however, no one knew about the written life estate agreement, or knew that Mrs. Krinke could claim a life estate to the entire parcel where the house is.

A few days later when Paul Picolet was away at a fire, Karen was served with the Vulnerable Adult protective order petition. Until then, neither Paul nor Karen knew about the written life estate agreement.

The non-notarized life estate agreement was denounced as a fraud by Adele O'Neal, the woman who purportedly signed it. Mrs. O'Neal explained that she and Tom Devins, her ex-husband, only allowed Mrs. Krinke to live there until they sold the property. She denied signing the written agreement, and her allegations of fraud are uncontroverted. Moreover, they are supported by the fact the Krinke-to-Devins warranty deed, which does not mention a life estate, was notarized and recorded on June 3, 1969, but the life estate agreement of June 4, 1969, was recorded, non-notarized, in May 1979.

Nonetheless, the trial court held that because the Picolets knew about a life estate for Helen Krinke they knew about the recorded life estate agreement all along, and therefore it was valid as to them despite not being notarized. And because they intentionally moved their things onto their land near Mrs. Krinke's house in knowing violation of her written life estate agreement, they intentionally abused her when they did so.

The trial court issued protective orders. This appeal followed.

## II. ASSIGNMENTS OF ERROR

1. In the absence of any evidence that Paul and Karen Picolet actually intended to injure or hurt Helen Krinke, the trial court erred by finding an intent to abuse under the Abuse of Vulnerable Adults statute, RCW chapter 74.34, in the Picolets' intentional violation of Mrs. Krinke's written life estate agreement by moving their things onto their land near her house. The trial court erred because there is no evidence supporting its finding that the Picolets actually knew about the written life estate agreement when they bought the land or when they moved their things onto it in early August 2017. In fact, there is no evidence that anyone involved—the property sellers, the real estate agents, the Picolets' attorney and their title insurance company, Helen Krinke or her nieces and neighbors—knew about the written life estate agreement until the moment in late August 2017 when Mrs. Krinke's neighbor Kent Woodruff saw her pull it out of a cedar chest.

2. The trial court erred by treating the non-notarized life estate agreement as valid as to the Picolets because a court may only treat non-acknowledged deeds or other documents conveying property interests as valid in the absence of fraud, and here the allegations of Adele O'Neal, the woman who purportedly signed the life estate agreement, that she and her ex-husband never signed it and that the written life estate agreement is a fraud are credible, corroborated, and uncontroverted.

### III. STATEMENT OF THE CASE

In July 2017, Paul and Karen Picolet purchased three contiguous parcels of land comprising 30 acres directly from the owners, Cecil and Adele O’Neal, after their real-estate listing agreement had expired. Tr. 77, 80.

**A. BETWEEN SPRING AND LATE AUGUST 2017  
NO ONE INVOLVED KNEW ABOUT MRS. KRINKE’S  
WRITTEN LIFE ESTATE AGREEMENT**

Earlier, in the Spring of 2017 when Paul Picolet became interested in the property, he and wife, Karen, visited it and met Helen Krinke, who lives in a modest house on the property. Tr. 72, 76. Before they bought the property the Picolets knew that Mrs. Krinke had the right to live there, but they did not know anything more about it than that. *Id.* 77. Cecil O’Neal, one of the sellers of the property, told Paul that Helen Krinke had the right to live in the house on one of the parcels as long as she lived. *Id.* 78, 80.

Paul Picolet hired an attorney, Robert Flock, to investigate and research the life estate issue because the Picolets “wanted to make sure going into it exactly what we were up against.” *Id.* 78. Mr. Flock searched for, but failed to find, any life estate agreement in the real property records, and the Picolets relied on his finding that there was no life estate. *Id.* 79.

After the Picolets’ title insurance company confirmed Mr. Flock’s results by finding—and by financially guaranteeing—that no life estate agreement encumbered the property (a copy of the title policy is Clerk’s

Paper's (CP) 74-84<sup>1</sup>), the Picolets and Cecil O'Neal jointly hired Mr. Flock to write up a life estate agreement "to allow her to live in the house." Tr. 80.

Paul Picolet repeatedly assured Helen Krinke that they were not going to kick her out of her house and that they would be there to help her live there instead, *id.* 73-75. He tried to "make her feel assured that I wasn't going to try to kick her out of the house at all, that she could stay there and, you know, to comfort her in that and said that I'd be helpful in shoveling snow and splitting wood for her and everything else. It could be a good thing if I was there helping her out." *Id.* 74. He split her wood and mowed the property around her house for fire hazards. *Id.* 81. At the request of Mrs. Krinke's niece, Nita Mahaffey, Paul Picolet removed and repaired some live electrical wires that had fallen to the ground near Mrs. Krinke's house. *Id.*; see also *id.* at 111-12. He declined her offer of \$100 for splitting her wood, *id.* 97, but nonetheless paid \$100 towards her power bill because he and Karen intended to run a power cord from her house to their trailer. *Id.* 97-98. Throughout, Helen was "very accepting about it." *Id.* 75.

Helen Krinke never told the Picolets that she had a life estate to an entire parcel or that she had a written life estate agreement. *Id.* 76 ("Q. Did

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<sup>1</sup> The Declaration of Cecil O'Neal and Adele O'Neal, and the Declaration of Anthony Castelda, to which the title policy is attached, are CP 65-70 and CP 71-105 in appeal no. 356795 (superior court cause no. 17-2-00405-9).

she mention to you how she had the right to live there at any point in time?

A. No, she didn't.”).

**B. THE PICOLETS MOVED A TRAVEL TRAILER NEAR MRS. KRINKE'S HOUSE IN EARLY AUGUST 2017 TO CONNECT IT TO POWER WHILE LIVING THERE TEMPORARILY WHILE THEIR BUILDING SITE WAS PREPARED.**

After the sale closed, in early August 2017 the Picolets temporarily moved a travel trailer and a storage container near Helen Krinke's house. The Picolets had intended to build a home in the southernmost of the three parcels, but they were running out of time that season. *Id.* 100. Because they had to move all of their belongings out of their house at the beginning of August, they moved their things onto their property near Mrs. Krinke's house where the trailer could be connected to a power line so they could in it, *id.* 97, until everything could be moved to their building site, *id.* 99-100.

Paul Picolet did not know that Mrs. Krinke's view had been blocked by their trailer: “I didn't think it did. It was close, but it doesn't really block the view.” *Id.* 93-94. Instead he thought that the mobile home was advantageously situated by the house where it “would block the dust and everything from coming up to the house” from the road below. *Id.* 94.

Mrs. Krinke did not object when the Picolets moved their trailer and storage unit near her house on August 3 and 5, 2017, and she did not

complain when the road was cleared, some bulldozing was done, and a new well was drilled between August 21 and 23, *id.* 111.

**C. KENT WOODRUFF WITNESSED HELEN KRINKE'S RECOLLECTION AND DISCOVERY OF THE WRITTEN LIFE ESTATE AGREEMENT.**

A few days after the bulldozing was done, *id.* 122, and thus about the time the new well was drilled, Mrs. Krinke's neighbor Kent Woodruff got involved. He initiated the discovery of the written life estate agreement:

A few days later - - I - - I - - I had talked to Nita, her niece who's - - with whom I've communicated for years. And - - and she - - she indicated that she was gonna come up right away and try to find out what was going on, which she did.

And then I met both Helen and Nita at the property and - - asked them "what" - - "what do you know of the life estate agreement?" And neither of them was completely aware of the life estate agreement.

I - - I asked Ellen what she knew and she said she asked Helen "where is your document?" And she - - and - - and Helen said she thought it was in her safe. So Ellen took some time to look in the safe to see if the document was there. It was not and so asked "where else could it be?" And it was then that Helen said "I think I have it in my cedar chest." So Ellen asked her to see - - see if she could get it.

At that point she found the life estate agreement and got it out.

*Id.* 123-24.

The Picolets first became aware of the written life estate agreement when Karen was served with the Vulnerable Adult petitions, *id.* 114-15, on August 28, 2017, *id.* 23. Neither of them had been aware of it before then. *Id.* 73, 76, 77-78, 87-88, 91 (Paul, away at a fire, "heard about my wife getting

served papers”); 96 (Paul understood his only legal duties to Mrs. Krinke were “being a good neighbor and wanting to help her”).

The life estate agreement, CP 103-05, purportedly was signed on June 4, 1969, by Thomas and Adele Devins, the day after Helen Krinke sold them her house and 30 acres by means of a notarized warranty deed that does not mention a life estate and which was recorded the same day, CP 94-95. By contrast, the written life estate agreement is not notarized and was not recorded until May 16, 1979, almost a decade after it was supposedly signed.

**D. THE TRIAL COURT OVERLOOKED ADELE O’NEAL’S DENIAL THAT SHE SIGNED THE LIFE ESTATE AGREEMENT AND HER UNCONTROVERTED ALLEGATIONS OF FRAUD.**

A hearing on the Vulnerable Adults petitions on September 7, 2017, was continued to September 13, 2017. An affidavit of Cecil and Adele O’Neal, the owners of the property who sold it to the Picolets, CP 65-70, explains that Adele O’Neal, then Adele Devins, and her ex-husband purchased the property from Mrs. Krinke in 1969 and allowed her to live there until the property was sold. CP 68. The affidavit rambles on about irrelevancies but is unmistakably clear that the O’Neals condemn Adele’s purported signature on the written life estate agreement as “forged,” CP 68, and denounce Mrs. Krinke’s use of the document against the Picolets as “perjury to a lie.” *Id.* Its last three paragraphs were specifically ratified and

adopted by Adele O’Neal by “blinks and hand squeezes,” for reasons not divulged, which include the following:

This paper I first heard about and have now seen, but have never seen before is not a paper I signed. As read to me, it is not something I or Tom Devins, my ex-husband, would have ever signed because it is not true. We never saw this paper when we bought the property and out of good grace, only allowed Helen Krinke to use the house until we decided to sell. It was understood for letting her stay there she would protect the property and keep the house and fences up.

\* \* \*

I have never seen it before now. Therefore it was not signed by me. ...

I, Adele M. O’Neal am stating here, I have never seen this paper before that Helen Krinke has presented with what she had said to be signatures of my ex-husband Tom Devins and me, [that] was said to have been signed when we bought her property.

CP 68, 69.

**E. THE TRIAL COURT FOUND THAT THE PICOLETS INTENDED TO ABUSE MRS. KRINKE BY INTENTIONALLY VIOLATING HER WRITTEN LIFE ESTATE AGREEMENT.**

At the conclusion of the hearing the trial court held that protective orders under RCW 74.34.130 were justified because “the actions of the Picolets have resulted in abusive nature towards Ms. Krinke in this matter,”

Tr. 163-64, 165-66:

There was much discussion about the agreement and lack of notarization. I did just a little brief research regarding the requirements of a deed. There’s an old case, a 1929 case, the Devers (phonetic) Estate [*In re Deaver’s Estate*, 151 Wash. 454, 276 P. 296 (Wash. 1929)] that talks about a deed lacking a notarial seal is valid between the parties and against all

persons under (inaudible) except perhaps a good faith purchaser without notice.

The agreement does not have a notary seal on it as such. ... The question might arise as to whether the Picolets had notice of it or not. The - - Ms. Krinke's counsel has submitted declarations from Susana (as stated) Gardner and Ms. Monetta. One was the seller's agent. The other was - - dealt with the Picolets as a prospective client as such. And both of them clearly pointed out - - and it's even included in the listing agreement - - that the property is subject to a life estate of Helen Krinke as such and that the [Picolets] were also aware of the life estate issues with respect to Ms. Krinke's interests as such.

\* \* \*

From the Court's perspective, considering the issue of what might be or might constitute abuse as such, it's not just physical actions. ...

From the Court's perspective, the Court is seeing nonverbal actions here that have caused what's been described as both anguish, feeling violated, shedding tears, concern about living alone. And everybody talks about a woman who up until August lived alone. Significant agitation and worry. Concern as to what might happen; therefore, needs somebody to be at the residence. Fearful for her health as such.

From the Court's perspective, when we establish a preponderance of the evidence or more likely than not, the Court is finding that the actions of the Picolets have resulted in abusive nature towards Ms. Krinke in this matter.

To place - - when you consider - - as I see the map that was submitted - - and I'm gonna assume that it's - - that in the upper portion - - there's 14 acres in the upper portion and there's 12 - - almost 12 and a half in the lower portion. And where did they pick to place everything? Right blocking her view, right next to her residence as such.

On November 2, 2017, the trial judge re-confirmed his finding that the Picolets intended to abuse Helen Krinke because they knew that they were violating her written life estate agreement when they moved their things onto their land near her house, given the acreage available, Tr. 181-82, 184:

And the Court here, having heard the testimony, really determined that the actions here were not accidental; that, in fact, they were done willfully by the Picolets, that they placed their items within the life estate property, which is described physically. It's not just the house that she gets to occupy. The documents submitted to the Court included acreage surrounding that. That description is described in the document, what she has access to as such.

And I believe, off the top of my head, it did not encompass all of the parcels. There was, my recollection, parcels that -- 12 acres in one area and about 14 in another. And this is situated acreage in the middle as such. And that's where they placed their trailer as such. And it was a willful placement from the Court's point of view, which had a direct intent from the Court's perspective to interfere with her peaceful enjoyment of her residence as such. It deliberately obstructed her view. And so from the Court's perspective when they acted deliberately they acted with knowledge and they acted with the intent. They were aware.

And the Court had declarations from a Realtor in the matter -- I think it was Susie Gardner -- that indicated in complete disregard for the life estate he pulled an old mobile home and shipping container, bulldozed dirt, and destroyed the ability of Helen to enjoy the peace and quiet of her home. Again, that's after Delene Monetta also had indicated that they were fully aware of the life estate and they took deliberate actions thereafter.

\* \* \*

The Court basically finds that they were done with the intent to upset her, to basically drive her away, having full knowledge that there was a life estate, full knowledge that -- that they previously inquired of Realtors as to some way to

get her out of that life estate. I believe there was testimony to that effect at the time of the hearing as such.

The Realtor's testimony about "some way to get her out of that life estate" that the trial court referred to is Susannah Gardner's declaration, CP 49-65, in which she testified that Paul Picolet had asked about temporarily removing the life estate from the property just long enough to secure financing, when it would be put it back in place: "He told me [he] wanted to contact the Seller to see if they would remove the life estate just for the period of getting the loan through, then he would put the life estate back in place." CP 61; see also CP 51 ("Paul then came into my real estate office and told me that he needed to get a hold of the seller to see about removing the life estate just until Paul secured financing from the bank.").

#### IV. ARGUMENT

Mrs. Krinke did not meet her burden of proof under the Abuse of Vulnerable Adults statute, RCW Chapter 74.34, because she failed to prove an essential element of her case—namely, that the Picolets intended to abuse her by means of moving their mobile home and storage container near her home. The trial court tied the Picolets' intent to abuse to their intentional violation of the written life estate agreement, but there is no evidence that they or anyone else knew about the written life estate agreement at the time.

All of the evidence shows that the Picolets not only intended to continue honoring Helen Krinke's life estate that she enjoyed for the past 49 years, the evidence also shows that they did so.

It is error to infer or construe intent to abuse under RCW chapter 74.34 from intentional acts that are not improper, *Brown v. Dep't of Soc. and Health Services*, 145 Wn.App. 177, 183, 185 P.3d 1210 (Wash.App. Div. 3 2008) (citation omitted) (“[I]f the harm results from improper action, we label the action abuse. . . . Here, no improper action is shown”). The Picolets' intentional acts of moving things onto their land were proper given everyone's understanding of Mrs. Krinke's life estate at the time.

Finally, the trial court erred by treating the recorded life estate agreement as valid both as to the Picolets and as to Cecil and Adele O'Neal because Adele O'Neal's testimony that she never signed it is uncontroverted. Her allegations of fraud are substantiated by objective evidence, namely, the otherwise inexplicable failure of the Krinke-to-Devins warranty deed of June 3, 1969, to create or mention the life estate, and the fact that the written agreement was never notarized and was not recorded for almost a decade.

#### **A. STANDARD OF REVIEW.**

This Court reviews a superior court's decision to grant an RCW chapter 74.34 protective order under an “abuse of discretion” standard, *In re Knight*, 178 Wn.App. 929, 936, 317 P.3d 1068 (Wn. App. Div. 2 2014). “A

trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons.” *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (Wash. 1997).

The trial court’s findings are reviewed for substantial evidence, *Knight*, 178 Wn.App. at 936-37, which in turn means evidence that “is sufficient to persuade a rational, fair-minded person that the finding is true.” *Cantu v. Dep’t of Labor & Indus.*, 168 Wn.App. 14, 21, 277 P.3d 685 (Wash. App. Div. 3 2012).

Here, the Picolets’ “challenge to the sufficiency of the evidence admits the truth of [Mrs. Krinke’s] evidence and any inference drawn therefrom and requires that the evidence be viewed in a light most favorable to [her]. The standard requires a conclusion ... that there is no evidence or inference derived therefrom by which this verdict can be sustained.” *Bott v. Rockwell Int’l*, 80 Wn.App. 326, 332, 908 P.2d 909 (1996).

**B. THERE IS NO EVIDENCE THAT THE PICOLETS INTENTIONALLY ABUSED HELEN KRINKE BY MOVING THEIR THINGS ONTO THEIR LAND WHEN AT THE TIME NO ONE KNEW ABOUT THE WRITTEN LIFE ESTATE AGREEMENT.**

The trial court found that the Picolets’ intent to abuse Helen Krinke sprang from their knowledge that they were intentionally violating her written life estate agreement by moving their things near her house, Tr. 181:

[T]he actions here were not accidental; that, in fact, they were done willfully by the Picolets, that they placed their items within the life estate property, which is described physically. It's not just the house that she gets to occupy. The documents submitted to the Court included acreage surrounding that. That description is described in the document, what she has access to as such.

But there is utterly no evidence in the record that the Picolets or anyone else knew about the written life estate agreement until weeks after they had moved their trailer and storage unit onto their land, when Kent Woodruff watched Helen Krinke pull it out of her cedar chest.

At the time, Paul and Karen understood in good faith that they had the right to place those objects where they did. They placed the trailer near Mrs. Krinke's house so that it could be connected to power while they lived there temporarily during the preparation of their building site, Tr. 97 ("I ran a cord from there - - from the trailer over to the house"), not because they were trying to make it intolerable for her to stay there, Tr. 99-100:

It was only temporary because we were getting stretched out towards winter and we were trying to move out of our place and get into there and get our stuff stored so we'd be able to store it. And then later on I was planning on building up above. But it was only temporary. I got delayed during the whole real estate process, kind of late in the year, so at that point, you know, I had no option but to kind of just move stuff close thereby.

Moreover, Paul and Karen took the extraordinary step of hiring an attorney, Mr. Robert Flock, to search for any record of a life estate agreement for Mrs. Krinke before they bought the property. They justifiably

relied on his conclusion that no such life estate agreement existed because his conclusion was confirmed by their title insurance company and its financial guarantee that no such encumbrance existed.<sup>2</sup> The Picolets could not have had constructive notice of the recorded agreement because they had no legal duty to inquire further about the documentary basis for Mrs. Krinke's life estate after the sellers told them they only allowed her to live in the house and their attorney and title insurer found nothing in writing:

It is a well-settled rule that where a purchaser has knowledge or information of facts which are sufficient to put an ordinarily prudent man upon inquiry, and the inquiry, if followed with reasonable diligence, would lead to the discovery of defects in the title or of equitable rights of others affecting the property in question, the purchaser will be held chargeable with knowledge thereof and will not be heard to say that he did not actually know of them. In other words,

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<sup>2</sup> Tr. 78-79:

Q. Did Cecil O'Neal ever express to you that Helen Krinke had a life estate on the property?

A. No.

Q. Did you ask him about that specific issue?

A. Oh, yeah, because I had Bob Flock research it too, the attorney.

Q. Why did you retain Bob Flock?

A. Because I wanted to make sure going into it exactly what we were up against going into it. And so I had Bob research it and find out what it was.

Q. Okay. And did Bob Flock ever report to you that there was a life estate on the property?

A. No. That's why I went through the title company.

Q. ... Did Inland Title's title search in that title report state that Helen Krinke had a life estate on the property?

A. No, they did not.

Q. Okay. Did you rely on that title report?

A. No. No, I did not. I had Bob Flock just to make sure that there was nothing else on there before I even bought the property because I wanted to make sure.

knowledge of facts sufficient to excite inquiry is constructive notice of all that the inquiry would have disclosed.

*Miebach v. Colasurdo*, 102 Wn.2d 170, 175-76, 685 P.2d 1074 (Wash. 1984).

There is no evidence supporting the trial court's finding that that the Picolets intended to abuse Mrs. Krinke into giving up her life estate. To the contrary, the Picolets re-engaged Mr. Flock to prepare a binding life estate agreement for Mrs. Krinke so that she would formally have the right to stay in her house as long as she lived.<sup>3</sup>

An intent to abuse Mrs. Krinke cannot be inferred from Paul Picolet's question to the sellers' real estate agent, Susannah Gardner, about temporarily removing the life estate to obtain financing in order to put back into place once financing was obtained. No intent to permanently remove the written life estate agreement can be inferred because neither Paul nor Susannah Gardner knew about the written agreement when the question was asked. And because neither of them knew about the written agreement or that it was recorded, Paul's question reasonably leads to an inference about the limits of knowledge of a layperson about real estate financing rather than

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<sup>3</sup> Tr. 79-80:

Q. Did you intend to remove Helen Krinke from the property at any point?

A. No, I never did.

Q. Okay. Did you have Bob Flock try to work out an agreement for Helen to remain there?

A. I did. I continued the same kind of agreement that I was informed by Cecil to allow her to live in the house.

being indicative of the Picolets' hidden, insidious intent to kick Mrs. Krinke out of her house and deprive her of her life estate.

**C. THE TRIAL COURT ERRED BY TREATING THE RECORDED, BUT UNACKNOWLEDGED, LIFE ESTATE AGREEMENT AS VALID BECAUSE ADELE O'NEAL'S DENIALS THAT SHE SIGNED IT AND HER ALLEGATIONS OF FRAUD ARE CREDIBLE, CORROBORATED, AND UNCONTROVERTED.**

The trial court erred by treating the non-notarized written life estate agreement as valid because Adele O'Neal denounced it as a fraud and her sworn denials that neither she nor her ex-husband signed the document are credible, are corroborated by objective evidence, and are uncontroverted.

While courts may treat non-acknowledged deeds and other documents conveying real property interests as valid between the parties and successors with notice, they may not do so when fraud is involved, *In re Deaver's Estate*, 151 Wash. 454, 456, 276 P. 296 (Wash. 1929) ("no fraud or other ulterior motive appearing"); *Bloomingtondale v. Weil*, 29 Wash. 611, 635, 70 P. 94 (Wash. 1902) ("We have been unable to find from the evidence that the assignment was fraudulent"); *OneWest Bank, FSB v. Erickson*, 185 Wn.2d 43, 71, 73 n. 13, 367 P.3d 1063 (Wash. 2016) ("The few cases addressing the validity of a defectively acknowledged deed ... find the deed is still valid against the grantor's successors and those with notice of the deed" applied as applicable case law because "Erickson does not allege any facts involving fraud").

While a recorded deed that fails to comply with RCW 64.04.020 (deeds must be acknowledged) may give the same notice as a notarized deed,<sup>4</sup> constructive notice of a fraudulent deed or life estate agreement does not give rise to the same legal obligations that would have arisen from notice of an otherwise valid but non-notarized life estate agreement.

Adele O’Neal’s allegations are credible because she alone has first-hand knowledge whether or not she and her ex-husband signed the written life estate agreement. And there is no obvious reason why Mrs. O’Neal—having sold her entire interest in the property—would have any reason to be less than truthful.

Moreover, her allegations of fraud and her denial that she and her ex-husband executed the document are substantiated by the objective evidence of the circumstances surrounding its supposed execution: On June 3, 1969, Helen Krinke signed the statutory warranty deed to Adele and Thomas Devins that was notarized and recorded the same day it was signed on June 3, 1969. CP 94-95. The written life estate agreement was supposedly signed

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<sup>4</sup> RCW 65.08.030 (“An instrument in writing purporting to convey or encumber real estate or any interest therein, which has been recorded in the auditor’s office of the county in which the real estate is situated, although the instrument may not have been executed and acknowledged in accordance with the law in force at the time of its execution, shall impart the same notice to third persons, from the date of recording, as if the instrument had been executed, acknowledged, and recorded, in accordance with the laws regulating the execution, acknowledgment, and recording of the instrument then in force.”)

on June 4, 1969, but was never notarized and was withheld for undisclosed reasons until it was recorded on May 16, 1979, CP 103-05.

This objective evidence supports Mrs. O’Neal’s assertion that she and her ex-husband only intended Helen Krinke to live on their land until they sold it—that is, Adele O’Neal and her ex-husband did not give Mrs. Krinke a formal, written life estate to the house or to the land, and the life estate agreement proffered by Mrs. Krinke is a fraud.

From a purely objective standpoint, the warranty deed and the written life estate agreement do not appear to be two parts of a single transaction in which Helen Krinke sold her interests in 30 acres to Thomas and Adele Devins. Mrs. Krinke did not reserve a life estate for herself when she conveyed her property to the Devins. Had she done so, consideration would have clearly passed from Mrs. Krinke to the Devins, creating a binding contract. Instead, because it does not mention the life estate or the parties’ expectancy of a life estate, the June 3, 1969 Krinke-to-Devins warranty deed is Helen Krinke’s warranty to the Devinses and to all successive title holders that no life estate or other such encumbrance exists. RCW 64.04.030(2) (seller warrants that “the same were then free from all encumbrances”).

Inexplicably, the trial court utterly overlooked Mrs. O’Neal’s affidavit. It erroneously treated the written life estate agreement as valid despite credible, corroborated, and uncontroverted allegations of fraud.

**V. CONCLUSION**

The protective orders issued by the trial court against Paul and Karen Picolet should be dissolved and vacated, and Helen Krinke's Petitions for protective orders dismissed.

Respectfully submitted June 11, 2018



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