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COURT OF APPEALS

DIVISION III
OF THE STATE OF WASHINGTON

IN THE MATTER OF HELEN KRINKE,
A VULNERABLE ADULT

**BRIEF OF RESPONDENT HELEN KRINKE,
A VULNERABLE ADULT**

Appellate Court Case 356787 (consolidated with case number 356795)
Okanogan County Superior Court Causes 17-2-00408-3 and 17-2-00405-0

NATALIE N. KUEHLER, WSBA No. 50322
Principal
RYAN & KUEHLER PLLC
PO Box 3059
Winthrop, WA 98862
Email: nk@ryankuehler.com
Phone: (509) 996-2832
Attorney for Helen Krinke, a vulnerable adult

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I. INTRODUCTION

This action was brought by Helen Krinke, a 105 year-old single woman, whom the trial court determined had been abused on her own property by appellants Paul and Karen Picolet (together, the “Picolets”) under RCW 74.34. *See* Orders for Protection dated November 11, 2017 (the “Order”), Clerk’s Papers (CP) 5-6; 10-11.

Mrs. Krinke has lived in her house in Twisp since 1948. Declaration of Helen Krinke in Support of Petition (“Krinke Decl.”), Respondent’s Supp. Designation of Clerk’s Papers (“RSD”), Sup. Court Docket No. 7, at 5. Mrs. Krinke originally owned three adjoining tax parcels, and sold all three to Thomas Devins and Marjorie Adele Devins on June 3 1969. The very next day, she by written agreement received a life estate interest in the 3.4 acre tax parcel on which her residence is located (the “Life Estate Property”). *Id.* at 5, 11. The Life Estate Agreement, dated June 4, 1969, though not notarized, was signed by all parties and recorded in the Okanogan County Auditor’s Office on May 16, 1978. *Id.*

Compelling evidence presented established that the Picolets had not only record but actual notice of the Life Estate Agreement. CP 49-52, 55. Indeed, both their own realtor and the sellers’ realtor advised them of the Life Estate Agreement and the fact that it was “on the title” of the Life Estate Property. CP 49-52, 55, 57, 59, 61, 64, 65. The evidence also

demonstrated an intent by the Picolets to evade the Life Estate Agreement and minimize Mrs. Krinke's rights thereunder for their own benefit. *Id.* The trial court therefore properly concluded that the Picolets' abused the 104-year old widow. Krinke Decl. at 1, 3.

The Picolets now appeal the trial court's determination that they abused Mrs. Krinke by selectively citing only favorable facts presented to the court below and by misstating the applicable law. This is their second appeal in this action. Like the Picolets' first appeal, which was ruled frivolous and for which fees were awarded, this appeal, too, is procedurally inappropriate and meritless, and should be denied.

II. ISSUES PRESENTED FOR REVIEW

1. Whether a trial court's judgment that does not dispose of all claims is appealable as of right when the trial court has not certified that there is no just reason for delay and respondent's claim for damages against appellants' remains pending.

2. Whether a trial court's judgment that is not appealable as of right qualifies for discretionary review when the trial court has neither committed a probable error nor departed from the accepted and usual course of judicial proceedings by concluding from ample evidence presented that the life estate agreement was valid under RCW 65.08.030 and longstanding Washington State case law notwithstanding questionable

allegations of fraud and the agreement's lack of notarization.

3. Whether an appellate court may review the trial court's evidentiary and credibility determinations when there is ample evidence in the record supporting the trial court's judgment.

III. FACTS

A. Factual Background

Mrs. Krinke was born on January 6, 1913, and was 104 years old when she brought this lawsuit against the Picolets. Krinke Decl. at 1. At the time, she could no longer drive, was nearly deaf, and had limited eyesight. *Id.* Nonetheless, with the assistance of friends, she had been able to continue to live alone in her house near Twisp, which had been her home since 1948. *Id.* p. 1-2.

Mrs. Krinke, who moved to the Methow Valley in 1916, initially owned thirty acres comprised of three different tax parcels. *Id.* p. 2. After her husband died, however, she sold all three parcels to Thomas Devins and Marjorie Adele Devins. *Id.* A day after the sale, Mrs. Krinke entered into a Life Estate Agreement with Mr. and Mrs. Devins, by which she retained complete control over the 3.45 acre parcel on which her house was located until her death or abandonment of the Life Estate Property. *Id.*; *see also* Declaration of Natalie Kuehler in Support of Petition ("First Kuehler Decl."), Superior Court Docket No. 5, at 3-6. Mrs. Krinke lived

on the Life Estate Property undisturbed for nearly five decades.

Mrs. Krinke's circumstances, however, changed dramatically in 2017 – nearly five decades after she sold the property and the Life Estate Agreement was executed. At the time, Mrs. Devins's second husband, Cecil O'Neal,¹ had listed all 30 acres owned by him and his wife for sale with Delene B. Monetta, a realtor with Windemere Mazama. CP 64. The listing indicated that "The Sale house parcel (3322200068) is subject to A Life Estate of Helen Krinke." *Id.*; *see also* CP 50, 55. And the Life Estate Agreement was recorded in the Okanogan County Auditor's Office on May 16, 1978, and listed on the Auditor's Office's public taxfinder website as attached to the Life Estate Property, tax parcel 33222000068, with a date of May 16, 1979. RSD, Declaration of Natalie Kuehler, Sup. Court Docket No. 11 ("Second Kuehler Decl.") at 2; First Kuehler Decl. at 42.

In April of 2017, Paul Picolet learned of the listing and approached Susannah Gardner, who is also a real estate agent in the Methow Valley, about purchasing the listed property. CP 50. Mrs. Gardner told him that "one of the three parcels was subject to a life estate," although Paul Picolet at the time already seemed to be aware of this. *Id.* Indeed, Paul Picolet mentioned to Mrs. Gardner that Helen Krinke "was 104 years old, how

¹ Mrs. Devins took on her second husband's last name and now goes by Adele O'Neal.

much longer would she live.” *Id.* at 61.

Mrs. Gardner began to negotiate the terms of a sale on Paul Picolet’s behalf with Mrs. Monetta, and on April 25, 2017, submitted a counter offer on the purchase price. *Id.* 51, 59. Mrs. Gardner explained “that the price offered was as high as he was willing to go ‘because of all the issues concerning the property’ including ‘of course the life estate.’” *Id.* This was what Paul Picolet “had asked [her] to relate.” *Id.* at 51

Paul Picolet next approached Mrs. Gardner “about removing the life estate” so that he could secure a loan. *Id.* Mrs. Gardner refused “because it was not ethical and there would be no way to force him to put the life estate back on the property once it was removed.” *Id.* Indeed, Mrs. Gardner recalled a prior situation in which Paul Picolet had sought to purchase property in the Methow and, before the transaction had closed and “without the seller’s permission”, “moved one of the seller’s travel trailers away from the house” and “moved a sizeable saw mill set up on the property.” *Id.* 49-50. This sale then fell through. *Id.*

Mr. O’Neal’s daughter then called Mrs. Gardener “screaming, ranting and raving” and threatened her with a law suit for “stopping a sale from going through.” *Id.* 51. That same day Karen Picolet also called Mrs. Gardner, and accused her of lying. *Id.* The conversation was “really difficult” for Mrs. Gardner and “it was very hard for [her] to get a word in

and explain the situation to her.” *Id.* 52. Mrs. Gardner had to end the conversation by hanging up and then called Paul Picolet to tell him that she “was no longer willing to deal with him ever again in real estate.” *Id.*

On May 1, 2017, Paul Picolet called Mrs. Monetta, Mr. O’Neal’s realtor, and asked “if there was some way to eliminate the Life Estate.” CP 65. Mrs. Monetta “told him the life estate is on the title and could not be removed without the approval of Helen [Krinke].” *Id.* She also suggested he speak to Mrs. Gardner who “could help him understand the Life Estate and how that all [a]ffects the title” and that it “also might be helpful to speak with an attorney about [the] life estate and the title.” *Id.*

The Picolets and O’Neals decided to complete the purchase of the property without further involving either of the realtors. Instead, they retained Robert Flock to draw up a life estate agreement for Mrs. Krinke, apparently without informing him of the existence of the original Life Estate Agreement. Tr. 54, 78-79. The document prepared by Mr. Flock purported to grant Mrs. Krinke only the right to occupy the house and one foot around it. *Id.* 143-43. This agreement, though signed by the O’Neals and the Picolets, was neither presented to nor signed by Mrs. Krinke, and does not reference the original Life Estate Agreement.

Immediately thereafter, the Picolets’ began showing up on the Life Estate Property without notice or permission. Krinke Decl. 5-6. They also

placed large structures including a horse trailer, shipping container and large single-wide manufactured home within a few dozen feet of her residence, bulldozed around her property and set up motion activated cameras trained on Mrs. Krinke's residence. *See id.* Having the Picolets "simply take over [her] Property without permission" caused Mrs. Krinke severe emotional stress. *Id.* at 3 and 4. Indeed, Mrs. Krinke felt so threatened that she called her niece Nita Mahaffey, who is 85 years old and lives in Wenatchee, to come to Twisp to stay with her. *Id.*

One day, Paul Picolet came by and threatened to have Mrs. Krinke committed if she didn't stop complaining about them. RSD, Declaration of Nita Mahaffey "Mahaffey Decl."), Sup. Court Docket No. 6 at 2; CP 38. The situation deteriorated so far that the police had to be called several times. Mahaffey Decl. at 2. The officer eventually stated that if he got another call about the situation everybody was going to go to jail. *Id.* Mrs. Krinke and her niece no longer felt safe calling the police. *Id.*

In late July or August Kent Woodruff, a neighbor of Mrs. Krinke's, stopped by her home. Mrs. Krinke was very upset, and told him that despite having sold the property a long time ago she had retained the right to live there and "not have to look at a trailer every day." CP 37. The next time he visited, he asked if Helen had the document that described her rights regarding the property, and they located the original, recorded and

executed Life Estate Agreement in Mrs. Krinke's cedar chest. *Id.*

On August 22, 2017, Karen Picolet came by Mrs. Krinke's house and "screamed" at Mrs. Mahaffey "that they could do anything they wanted to her place." Mahaffey Decl. at 2. The following day, counsel for Mrs. Krinke met Karen Picolet on the Life Estate Property and discussed the Life Estate Agreement with her. Tr. 114-16. During this conversation, Karen Picolet indicated familiarity with the Life Estate Agreement. *See id.* She corrected counsel that the relevant date was "actually May 16th, 1979", the date the County Auditor's Office's taxfinder website incorrectly listed it has having been recorded. Tr. at 115-116. She also corrected counsel on the size of the tax parcel subject to the Life Estate Agreement, noting that it was only 3.45 acres rather than approximately 5 acres. *Id.*

Mr. Woodfruff, too, spoke to Karen Picolet on August 23rd, and she told him that the recorded Life Estate Agreement was "null and void". CP 39. Shortly after these interactions, Cecil O'Neal called counsel for Mrs. Krinke and left two threatening voicemails. First Kuehler Decl. at 2. He then called a third time, threatened counsel personally and was so agitated that it was impossible to have a conversation. RSD, Declaration of Mark Ryan, Sup. Court Docket No. 3, at 1-2.

That same day, counsel for Mrs. Krinke also called Robert Flock, the Picolets' attorney at the time, emailed him a copy of the Life Estate

Agreement, and requested the Picolets' voluntary vacation of the Life Estate Property. First Kuehler Decl. at 2. Mr. Flock confirmed later that day that the Picolets would not voluntarily vacate the premises. *Id.* The following day, Mrs. Krinke filed this lawsuit.

B. Procedural Background

The trial court held an initial hearing on Mrs. Krinke's vulnerable adult petition on September 7, 2017, at which Karen Picolet appeared. Tr. 2. Although the Picolets' had hired counsel to represent them, counsel chose not to attend the hearing and Ms. Picolet instead requested that the hearing be postponed. Tr. 32-33. Mrs. Picolet's request was granted. Tr. 37. The witnesses who had previously submitted declarations in support of Helen Krinke's petition and were present for cross-examination at this initial hearing, however, were excused from having to re-appear for cross-examination, and the declarations of Helen Krinke, Kent Woodruff, Nita Mahaffey and Ellen Bump were admitted into evidence. Tr. at 20 and 38.

The trial court held a second hearing on the merits on September 13, 2017, at which Paul and Karen Picolet and Kent Woodruff testified. Tr. at 51 In the meantime, additional evidence had been placed into the record, including a declaration by Susannah Gardner, business records from Mrs. Monetta, and two expert reports on damages. *See* CP 45-65. This additional evidence was not objected to. Helen Krinke did, however,

object to a document titled “Affidavit of Cecile [sic] D. O’Neal and Adele M. O’Neal” that was submitted by counsel for the Picolets. Tr. 59. This unusual submission, which is not in proper declaration format, appears to have been typed or dictated by Cecil O’Neal. *See* Appellant’s Supp. Designation of Clerk’s Papers (“ASD”), Sup. Court Docket No. 16.

It states, among other things, that Adele O’Neal is currently on life support, including “a trac, G-tube and catheter, suction, tube, feeding bag and oxygen.” *Id.* at 2. Indeed, following a stroke five years ago, she apparently has communicated with her husband only “with eye blinks and hand squeezes” because she has been unable to “speak.” *Id.* at 2 and 4. Mr. O’Neal nevertheless averred in his document that Adele O’Neal was “of sound mind” because she many times watches “three movies in a row” and “gets tears at sad movies and smiles at the ones with happy ending [sic].” *Id.* at 2. He further stated that he had read her the document and she had agreed, with eye blinks, to the veracity of all his allegations in it, including that she never signed the Life Estate Agreement. *Id.*

At the conclusion of the proceedings and after weighing all the evidence presented, the trial court found that Paul and Karen Picolet had willfully abused Helen Krinke and entered an oral order for protection. Tr. 163-166. The trial court, however, reserved resolution of Helen Krinke’s claims on damages and attorney’s fees. *Id.* 167.

The Picolets then filed a motion for reconsideration of the trial court's decision on liability, which was denied. Tr. 189. The trial court entered its written order confirming its findings on liability (the "Order"). CP 2-12. The court held that the Picolets' had acted deliberately, with knowledge and with intent in abusing Mrs. Krinke and violating her rights under the Life Estate Agreement. *See id.* The trial court again reserved ruling on Mrs. Krinke's claim for attorney's fees and damages. Tr. 192.

At this hearing, counsel for the Picolets notified the trial court that they would be filing a motion arguing that damages were not available for Mrs. Krinke's claim under the Vulnerable Adult statute. TR. 192. Rather than file that motion, however, the Picolets filed this interlocutory appeal of the trial court's entry of the protective order, thereby staying further proceedings on Mrs. Krinke's claims for damages and attorney's fees.

Despite the stay, the Picolets next filed motions in the trial court seeking to perpetuate their own testimony by deposition. The trial court exercised its discretion to grant the Picolets' motions, but limited the subject matter of the depositions to damages and attorney's fees and the use of the depositions to further proceedings in this case. The Picolets' depositions were taken on February 5, 2018. On February 20, 2018, after their depositions were taken, the Picolets filed further notices of appeal seeking interlocutory review of the trial court's orders on their motions to

perpetuate testimony. Those appeals were dismissed as frivolous.

Finally, while all their appeals were pending, the Picolets filed a further motion to perpetuate testimony pending appeal in the trial court – this time to depose Mrs. Krinke. The motion was granted, and the subject matter and use of this deposition was also limited to the issues of attorney’s fees and damages in the ongoing trial court proceedings. The Picolets later voluntarily withdrew the deposition notices following the submission of evidence that the Picolets had engaged in witness tampering.

III. ANALYSIS

This appeal should be dismissed because the trial court’s Order is neither appealable by right under RAP 2.2, nor is permissive appellate review of the Order available under RAP 2.3. In the alternative, the trial court’s Order should be upheld because ample evidence supported the trial court’s finding that Respondents knew of the Life Estate Agreement, and Washington’s well-established law that such agreements are valid even if they have not been notarized has no “alleged fraud” exception.

A. The Order is Not Appealable as of Right

RAP 2.2 lists the decisions of a superior court that may be appealed as of right. RAP 2.2(d) provides in relevant part:

Multiple Parties or Multiple Claims or Counts. In any case with multiple parties or multiple claims for relief, ... an appeal may be taken from a final judgment that does not dispose of all

the claims or counts as to all the parties, but only after an express direction by the trial court for entry of judgment and an express determination in the judgment, supported by written findings, that there is no just reason for delay. The findings may be made at the time of entry of judgment or thereafter on the court's own motion or on motion of any party.... In the absence of the required findings, determination and direction, a judgment that adjudicates less than all the claims or counts, or adjudicates the rights and liabilities of less than all the parties, is subject only to discretionary review...

See also Fluor Enters., Inc. v. Walter Constr., Ltd., 141 Wn. App. 761, 767, 172 P.3d 368 (to be appealable under RAP 2.2(d) judgments on less than all the issues must under CR 54(b) include an express determination that there is no just reason for delay, written findings supporting this determination, and an express direction for entry of judgment.)

Absent unusual circumstances, "entry of a final judgment should await the resolution of all claims for and against all parties." *Fluor Enters.*, 141 Wn. App. at 767. The reasons for this rule are simple: to avoid a multiplicity of appeals and the disruptive effects of enforcement and appellate activity while trial court proceedings are still occurring. *Id.* This case squarely illustrates the wisdom of – and need for – this rule.

Here, the trial court entered an order of protection, but reserved ruling on Mrs. Krinke's damages and attorney's fees claims against the Picolets. CP 5, 11. No certification that there was no just reason for delay was requested, and the trial court did not of its own include any such

determination in the Order. *See id.* Indeed, the Order contains no indication that the trial court considered CR 54(b) or attempted to ascertain whether no just reason for delay existed. *See id.* The Order, therefore, is not a final judgment that is appealable as of right.

B. The Order Does Not Qualify for Discretionary Review

RAP 5.1(c) provides that a notice of appeal of a decision that is not appealable as of right will be treated as a notice for discretionary review. Such review, however, is rarely granted to avoid piecemeal litigation and multiple appeals. *See* RAP 2.3(b); *State v. State Credit Ass'n, Inc.*, 33 Wash. App. 617, 622, 657 P.2d 327 (1983). This case is a good illustration of the inefficiency of permitting interlocutory appeals: the Picolets have already filed prior appeals, notified the trial court that they will oppose any grant of damages on Mrs. Krinke's remaining claims, and all the while continued to file motions and conduct discovery at the trial court level.

To avoid such piecemeal litigation, discretionary review under RAP 2.3(b) may be accepted only if the superior court has (1) committed an obvious error that would render further proceedings useless; (2) committed a probable error that substantially alters the status quo or limits a party's freedom to act; (3) far departed from the accepted and usual course of judicial proceedings; or (4) certified, or all the parties stipulated, that the order involves a controlling question of law. *See* RAP 2.3(b).

Here, the Picolets appear to assume that they are permitted to appeal as of right, and make no showing that discretionary review should be granted on any basis. Construing their submission liberally, they are seeking discretionary review on the basis that the trial court committed an obvious error that would render further proceedings useless, or a probable error that alters the status quo. However, even in cases of obvious or probable error by the trial court, interlocutory review is disfavored. *See Right-Price Recreation, LLC v. Connells Prairie Community Council*, 105 Wash. App. 813, 821, 21 P.3d 1157 (2001).

In this case, moreover, the trial court committed no error at all – much less an obvious or probable error that would qualify the Order for discretionary appellate review. To the contrary, as discussed in more detail below, the trial judge properly weighed the evidence presented that the Picolets had actual and record notice of the Life Estate Agreement against the Picolets’ own testimony, made his credibility determinations of the witnesses, and concluded that the Picolets had known about the Agreement before they moved their belongings on to the Life Estate Property. Such decisions are squarely within the trial court’s discretion. *See, e.g., Quinn v. Cherry Lane Auto Plaza, Inc.*, 153 Wash. App. 710, 717, 225 P.3d 266 (2009) (the weighing of conflicting evidence is committed to the sound discretion of the trial court).

Similarly, it is the Picolets, not the trial court, who are misapplying the law. The trial court properly concluded that the recorded Life Estate Agreement was valid despite not having been notarized. Contrary to the Picolets' assertions on appeal – and as confirmed in the very case law they cite – there is no “alleged fraud” exception to the centuries-old principle that signed, recorded documents are valid as to the original parties, any successors in interest and any other party having knowledge of the recorded document. *See, e.g. Edson v. Knox*, 8 Wash. 642, 646, 36 P. 698, 699-700 (Wash. 1894) (a deed that is not acknowledged or witnessed “certainly can be maintained as a contract for a deed” such that “the grantor, and those holding under him, will now be estopped from asserting his legal title”); *In re Deaver's Estate*, 151 Wash. 454, 456, 276 P. 296, 296-97 (1929) (deeds are valid despite the lack of notarization between the parties and all persons with knowledge “claiming under the grantor”).

In issuing the Order, the trial court therefore neither committed an obvious nor a probable error. *See* RAP 2.3(b). Accordingly, no grounds lie for granting a discretionary review and the Picolets' second interlocutory appeal should be denied.

C. Solid Evidence Supports the Trial Court's Conclusion that the Picolets had Knowledge of the Life Estate Agreement.

In the proceedings below, the trial court reviewed and weighed a

substantial amount of at-times contradictory evidence, and concluded that Mrs. Krinke had satisfied her burden of establishing that the Picolets were aware of – and intentionally violated – the Life Estate Agreement. The evidence submitted to the trial court included seven declarations, a notarized statement submitted by Mr. O’Neal, business records subpoenaed from Windermere Real Estate, police records received from the Okanogan County Sheriff’s Office, records from the Okanogan County Auditor’s Office, photographs and witness testimony from three witnesses. The weight of the evidence established that Paul and Karen Picolet were aware of the Life Estate Agreement and actively tried to circumvent it.

The only admissible evidence to the contrary was the Picolets’ self-serving testimony that they had no knowledge of the Agreement. Still, the Picolets’ now argue that the trial court erred in concluding that they knew of the Life Estate Agreement because “there is utterly no evidence” that they “or anyone else knew about the written life estate agreement” at the time. Appellants’ Brief at 15. This argument is without merit.

To succeed, the Picolets’ must meet a “substantial” standard of review. *Bott v. Rockwell Intern.*, 80 Wash. App. 326, 332, 908 P.2d 909, 912 (1996). This type of challenge to the sufficiency of the evidence “admits the truth of opposing party’s evidence and all inferences that reasonably can be drawn therefrom and requires that the evidence be

interpreted most strongly against the moving party and in the light most favorable to the party against whom the motion is made.” *Holland v. Columbia Irr. Dist.*, 75 Wash.2d 302, 204, 450 P.2d 488, 490 (Wash. 1969).” Indeed, the standard requires a conclusion by the reviewing court “that there is *no* evidence or inference derived therefrom by which th[e] verdict can be sustained.” *Bott*, 80 Wash. App. at 332. (emphasis added).

Far from there being “utterly no evidence in the record,” there is substantial support for the trial court’s conclusion that the Picolets had actual and record notice of the Life Estate Agreement and the fact that it extended to the entirety of the tax parcel on which Mrs. Krinke’s home is located. The real estate listing by Delene Monetta noted that “the Sale house parcel (3322200068) is subject to A life Estate of Helen Krinke.” CP 64. Susannah Gardner, the Picolets’ realtor, declared that she informed Paul Picolet that “one of the three parcels was subject to a life estate”, and that he at the time already seemed familiar with the life estate as well as the fact that Mrs. Krinke was 104 years old. CP 50. Indeed, Mrs. Gardner noted that “Paul seemed to know of Helen and as of lot of people in the valley knew, it was common knowledge that she had a life estate.” *Id.*, CP 61. Paul Picolet then asked Mrs. Gardner to submit a low counter-offer “‘because of all the issues concerning the property’, including ‘of course the life estate.’” CP 51.

The Picolets next attempted to remove the Life Estate Agreement to secure a loan and, when Mrs. Gardner refused to assist “because it was not ethical,” approached the seller’s realtor, Mrs. Monetta instead. *Id.*, CP 65. Mrs. Monetta also told Paul Picolet that “the life estate is on the title and could not be removed without the approval of Helen [Krinke]. *Id.* The Picolets then proceeded to purchase the property directly from Cecil O’Neal without further involving the realtors, and attempted an end-run around the Life Estate Agreement by hiring Bob Flock to draft a separate agreement between the Picolets and the O’Neals that purported to limit Mrs. Krinke’s life estate to the house itself an one foot around it. Tr. 55.

After completing the purchase, the Picolets began showing up on the Life Estate Property without notice or permission. Krinke Decl. at 5-6. They placed large structures immediately around Mrs. Krinke’s home, and caused her to feel so threatened that the not only requested her elderly nieces to stay with her for protection but also called the police multiple times. *Id.* at 3-4 and Mahaffey Decl. at 2-3. When counsel for Mrs. Krinke approached Karen Picolet on the Life Estate Property on August 23, 2017, moreover, Mrs. Picolet acknowledged familiarity with the Life Estate Agreement, correcting counsel on the date of the Agreement as well as the acreage it covered. Tr. at 114- 117. Karen Picolet also testified that Bob Flock had “taken care of it.” *Id.* at 115.

Finally, uncontradicted evidence established that the Life Estate Agreement had been duly recorded in the Okanogan County Auditor's Office for nearly forty years before the Picolets purchased the property, and that the Agreement was – and is – listed on the County's publicly accessible taxfinder website as attached to the parcel in question. First Kuehler Decl. at 42. Thus, at the very least, the Picolets' had constructive notice of the Life Estate Agreement. *See Ackerson v. Elliott*, 97 Wash. 31, 41, 165 P. 899, 903 (Wash. 1917) (“it seems to be wellsettled law that the recording of an instrument is ... constructive notice to those acquiring interests subsequent to the execution of the instrument”); *Kendrick v. Davis*, 75 Wash. 2d 456, 464, 452 P.2d 222, 228 (Wash. 1969) (same); *Tomlinson v. Clarke*, 118 Wash. 2d 498, 500, P.2d 706, 707 (Wash. 1992) (“Constructive notice exists if the prior interest is recorded.”).

This evidence, viewed in the light most favorable to Mrs. Krinke, is more than sufficient for the trial court's conclusion that the Picolets had actual and record knowledge of the written Life Estate Agreement, that they were aware that this Agreement covered the entirety of the tax parcel on which Mrs. Krinke's house is located, and that they determined not only to ignore the Agreement but to actively undermine it. *See Holland*, 75 Wash.2d at 204 (all inferences must be drawn, and all evidence be interpreted “most strongly against the moving party and in the light most

favorable to the party against whom the motion is made”).

Because substantial evidence supports the trial court’s conclusion, Appellants cannot show any error below. *See Bott*, 80 Wash. App. at 332 (to succeed, appellants must prove “that there is *no* evidence or inference derived therefrom by which th[e] verdict can be sustained”) (emphasis added). As this Court explained in *Quinn*, 153 Wash. App. at 710:

The function of the appellate court is to review the action of the trial courts. Appellate courts do not hear or weigh evidence, find facts, or substitute their opinions for those of the trier-of-fact. Instead, they must defer to the factual findings made by the trier-of-fact.... It is one thing for an appellate court to review whether sufficient evidence supports a trial court’s factual determination. That is, in essence, a legal determination based upon factual findings made by the trial court. In contrast, where a trial court finds that evidence is insufficient to persuade it that something occurred, an appellate court is simply not permitted to reweigh the evidence and come to a contrary finding. It invades the province of the trial court for an appellate court to find compelling that which the trial court found unpersuasive.

Yet, as in *Quinn*, that is what Appellants ask this Court do based on the selective reading of the record they provide. *See id.* As the court in *Quinn* noted, “[t]here was conflicting evidence in this case. The trial judge weighed that conflicting evidence and chose which of it to believe. That is the end of the story.” *Id.*

D. The Trial Court Properly Concluded that the Life Estate Agreement is Valid.

The trial court also properly concluded that the signed and

recorded Life Estate Agreement was valid. The Picolets' argument to the contrary is misplaced for two reasons: First, there is no "alleged fraud" exception to the well-established principle that recorded, non-notarized deeds are valid as to later parties in interest. And second, there was no credible evidence of fraud presented to the trial court.

It is well-established that recorded, non-notarized instruments are valid as to successors in interest, and a mere allegation of fraud is insufficient to overcome this legal principle. Indeed, in *In re Deaver's Estate*, cited by Appellants in support of their theory, the court did not refer to fraud at all in holding that a recorded, non-notarized instrument of conveyance was valid as between the parties and their successors in interest. *See* 151 Wash. at 456. Instead, the language quoted by Appellants appears in the court's separate analysis of the adequacy of consideration involved. *See id.* ("... no fraud or other ulterior purpose appearing, the consideration of love and affection would be ample to support the deed.")

The *OneWest Bank* court similarly explained that "a defectively acknowledged deed is still valid against the grantor's successors and those with notice of the deed" under common law and RCW 65.08.030, "which states that an improperly acknowledged deed that is recorded 'shall impart the same notice to third persons' as if it were properly acknowledged." 185 Wash. 2d 43, 73 (2016) (quoting RCW 65.08.030). In the context of

summary judgment, where the burden of proof was diametrically opposite to the burden of proof here, the court merely stated in a footnote that that “it is notable that [the plaintiff] does not allege any facts involving fraud.” *Id.* FN 13. And in *Bloomingtondale*, the court held that a deed of assignment was valid despite its lack of notarization because the court was “unable to find from the evidence that the assignment was fraudulent.” 29 Wash. 611, 635, 70 P. 94 (Wash. 1902). A mere allegation of fraud, therefore, is not sufficient to render a non-notarized instrument of conveyance invalid – fraud must actually have been found to exist.

Here, Helen Krinke declared that, in 1969, she sold the real estate but “received a life estate agreement for the Property from the buyers, Thomas Devins and Marjorie Adele Devins. That agreement was never changed.” Krinke Decl. at 2. The recorded agreement was signed by all parties. First Kuehler Decl. at 6. Indeed, it was disclosed on the recent real estate listings for the property, and was commonly known in the Methow Valley. CP 55, 61. Its validity and Mrs. Krinke’s control of the Life Estate Property was never challenged, including during the nearly forty years the Agreement has been on record with the Okanogan County Auditor’s Office. Until, that is, Cecil O’Neal submitted a questionable notarized statement, purportedly on behalf of himself and his incapacitated wife, in an apparent attempt to prevent any claims by the Picolets against him in

connection with their purchase of the property. *See* O’Neal Statement at 2-5. Mr. O’Neal, of course, was himself not a party to the Life Estate Agreement. And his allegations of fraud – even if admissible, which counsel argued they were not – are based entirely on his speculative belief that his wife “would have never signed such a paper.” *Id.* at 2-3.

The trial judge weighed the probative value of this statement against the other evidence and concluded that the Life Estate Agreement is valid. *See* Orders at 3 (“The Court, having heard and considered” all of the evidence presented” finds that “Petitioner holds a valid life estate interest in the 3.45 acre property ... pursuant to an Agreement Creating Life Estate dated June 4, 1969, and recorded in the files of the Auditor of Okanogan County on May 16, 1978). That, in the words of the *Quinn* court, “is the end of the story.” *Quinn*, 153 Wash. App. at 710.

IV. THIS APPEAL IS FRIVOLOUS AND HELEN KRINKE SHOULD BE AWARDED HER ATTORNEY’S FEES

“An appeal is frivolous if there are no debatable issues upon which reasonable minds might differ, and it is so totally devoid of merit that there was no reasonable possibility of reversal.” *Millers Casualty Ins. Co., of Texas v. Briggs*, 100 Wash. 2d 9, 15, 665 P.2d 887 (Wash. 1983). The Picolets have failed to demonstrate any basis for an appeal as of right or discretionary review of the trial court’s Order.

Moreover, as noted by the trial court and in the copious citations to the record in this brief, solid evidence exists to show that the Picolets were aware of the Life Estate Agreement. This court, therefore, has no authority to second-guess the trial court's well-reasoned decision. Finally, the Picolets are unable to substantiate their argument that a mere allegation of fraud invalidates Washington's long-standing statutory and common law that recorded, non-notarized real property agreements are valid as to subsequent purchasers.

This appeal, therefore, is frivolous and must be dismissed, and Mrs. Krinke should be awarded her attorney fees. *See* RAP 18.9.

V. CONCLUSION

This appeal should be dismissed as procedurally improper or, in the alternative, denied, and Mrs. Krinke should be awarded attorney fees.

Respectfully submitted on July 27, 2018.

/s/ Natalie N. Kuehler
NATALIE N. KUEHLER, WSBA No. 50322
Principal
RYAN & KUEHLER PLLC
PO Box 3059
Winthrop, WA 98862
Phone: (509) 996-2832
Attorney for Helen Krinke, a vulnerable adult

RYAN & KUEHLER PLLC

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