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Court of Appeals  
Division III  
State of Washington  
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

No. 35793-7-III

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CHAD DAVIS, individually and as personal representative of the  
Estate of Steven Ward Hall, Appellant,

v.

RICHARD CZYHOLD, administrator of the Estate of Marianne E.  
Czyhold, and Persons or Parties with interest in these proceedings,  
Respondent.

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**APPELLANT'S REPLY BRIEF**

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## I. INTRODUCTION

Respondent's Brief concedes that both the Recorded Deed and Unrecorded Deed at issue in this case are fatally flawed, so this Court should rule that they fail to transfer title. Even if one of these deeds does somehow transfer title—and they do not—Respondent also does not dispute that any interest conveyed was a fee simple determinable with a reversion in the Hall Estate upon payment of property taxes, so this Court should also rule that this and not a fee simple absolute is all that was transferred to Respondent, if anything. For all of these reasons, the Court should rule in favor of the Estate of Steven Ward Hall.

## II. ARGUMENT

The deeds in this case are insufficient to transfer title as a matter of fact and law.

Respondent concedes that the Unrecorded Deed failed to include the legal description. Respondent's Reply Brief P. 14.<sup>1</sup>

Respondent also concedes that the Recorded Deed does not identify any consideration or state the transfer is a gift and lists addresses in the space for listing grantees. Respondent's Reply Brief P. 14.

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<sup>1</sup> Respondent describes his brief as a "reply" brief, but it is actually a response.

Respondent also concedes that the “intention of the grantor must be ascertained from the deed itself.” Respondent’s Reply Brief P. 14, citing *Cook v. Hensler*, 57 Wash. 392, 107 P. 178 (1910).

Finally, Respondent does not dispute that a valid deed must identify the: 1) consideration; 2) grantee(s); and 3) an adequate legal description of the property. See RCW 64.04.050.

Both of the deeds at issue lack at least one of these essential elements, so they do not provide sufficient evidence of Mr. Hall’s intent to convey title and do not have any legal effect.

Respondent raises a number of arguments to deflect from the fatal flaws in these deeds, but all of them lack merit.

1. Laches does not bar the Hall Estate’s lawsuit.

First, Respondent argues that the Hall Estate cannot challenge title due to laches, arguing that the personal representative’s four-month delay in challenging title somehow prejudiced Respondent. A successful laches defense requires showing that: (1) the plaintiff knew or reasonably should have known the facts giving rise to the action; but (2) unreasonably delayed bringing the action; and (3) the delay severely prejudiced the defendant. See *Davidson v. State*, 166 Wash.2d 13, 802 P.2d 1374 (1991) (laches blocked lawsuit after 60-year delay). The Court should reject this argument because:

- The trial court did not reach this issue, so there is nothing to appeal.
- The record contains no evidence that the Hall Estate knew or reasonably should have known about the facts giving rise to the action long before it brought suit.
- There is no evidence a four month delay between opening an estate and filing suit is unreasonable.
- The record contains no evidence that this delay prejudiced Respondent. Respondent assumes Ms. Czyhold could have provided testimony about grantor's intent or the meaning of the deeds, but her ability to testify about what Mr. Hall intended would have been limited by the dead man's statute because Mr. Hall predeceased her. RCW 5.60.030. Moreover, evidence of a party's unilateral or subjective intent is inadmissible. *See Hollis v. Garwall, Inc.*, 137 Wn.2d 683, 695-96, 974 P.2d 836 (1999) (declarations of unilateral/subjective intent excluded in interpreting restrictive covenant).

For these four reasons, the Court should give no weight to Respondent's laches argument.

2. Contextual evidence does not fix the fundamental defects in the deeds.

Second, Respondent argues that facts and evidence gleaned from the context surrounding these deeds proves an intent to transfer, but extrinsic evidence does not permit the Court to rewrite either of the deeds. "Extrinsic evidence is used to illuminate what was written, not what was intended to be written. We, however, do not consider extrinsic evidence that would vary, contradict or modify the written word or show an intention independent of the instrument." *Wilkinson v. Chiwawa*

*Communities Ass'n*, 180 Wash.2d 241, 251, 327 P.3d 614 (internal quotations and citations omitted).

The Unrecorded Deed contains no legal description. No legal description was written, so there is no description to illuminate. The Recorded Deed contains no grantees. There is no language for the Court to reasonably construe properly using extrinsic evidence to salvage these fatally flawed deeds. Respondent instead is arguing that this Court should improperly use extrinsic evidence to rewrite the deeds to reflect what “was intended to be written.”

The extrinsic evidence Respondent invites the Court to review also fails to support an intent to transfer. Respondent alleges that Mr. Hall and Ms. Czyhold were in a committed intimate relationship, but offers as evidence only that some of Mr. Hall’s utility bills were apparently sent to Ms. Czyhold’s residence. Nothing says, “I love you” quite like a utility bill! The record is completely devoid of any evidence that the parties had a relationship that was anything other than financial. There is not a single document in the record which fully conveys an intent by Mr. Hall to transfer the property at issue to Ms. Czyhold.

Other than the deeds, Respondent’s extrinsic evidence fails because it was not authenticated by affidavit or declaration. *SentinelC3, Inc. v. Hunt*, 181 Wash.2d 127, 331 P.3d 40 (2014). Respondent misses

the argument, contending that a summary judgment motion need not be supported by affidavit. This is true, but evidence that is submitted must be authenticated. Other than the deeds, Respondent failed to authenticate his extrinsic evidence, so it was inadmissible and the trial court erred in relying on it. The only admissible evidence in this dispute are the deeds, which are fundamentally flawed and fail to convey anything.<sup>2</sup>

Respondent seeks to ignore the rules of construction that place minimum requirements on effective deeds. In *Rasmussen*—which Respondent cites favorably—the court explained:

It has been said that it is a factual question to determine the intent of the parties. But the intent of the parties to a deed as well as the legal consequences of that intent are in reality mixed questions of law and fact: legal rules of deed interpretation determine how the underlying facts reflect the intent of the parties.

*King County v. Rasmussen*, 299 F.3d 1077, 1084 (9th Cir. 2002).

Filtered through Washington’s legal rules of deed interpretation, deeds that lack legal descriptions, consideration, or grantees as in this case

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<sup>2</sup> Respondent makes much of the fact that the Hall Estate did not provide any evidence regarding the effectiveness of the transfer other than the deeds, but the burden of production only shifts once the moving party has produced sufficient admissible evidence that a transfer occurred, which Respondent failed to do. Respondent failed to meet his initial burden of proof, so no other evidence is required, especially when all inferences at summary judgment are made in favor of the non-moving party. *Meissner v. Simpson Timber Co.*, 39 Wash.App. 466, 570 P.2d 1101 (1985).

are insufficient evidence of intent to transfer as a matter of law, so this Court should reverse the superior court and find that no transfer occurred.

3. To the extent the deeds conveyed anything, it was a fee simple determinable, so the property will revert to the Hall Estate upon payment of property taxes.

Respondent does not dispute that the deeds—at most—convey a fee simple determinable, meaning that title will revert to grantor (the Hall Estate) upon payment of any outstanding property tax. Instead, Respondent concludes that the fee determination is irrelevant because property tax is still due and owing. Respondent’s Brief P. 16.

This determination is critically important if this Court concludes the deeds conveyed title, because a fee simple determinable will automatically revert back to ownership by the Hall Estate whenever property taxes are paid.

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**II. CONCLUSION**

For the foregoing reasons and the reasons set forth in Appellant's Brief, this Court should reverse the decision of the trial court and rule that neither of the deeds transferred title. Alternatively, this Court should rule that the transfer was merely a fee simple determinable which will revert to the Hall Estate on payment of property taxes.

RESPECTFULLY SUBMITTED this 12th day of July, 2018.

BASALT LEGAL PLLC

BY 

\_\_\_\_\_  
JEREMY HYNDMAN, WSBA #44320  
Attorney for Appellant

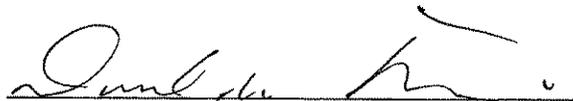
**DECLARATION OF SERVICE**

I, the undersigned, hereby declare that on this date, I caused to be served a true and correct copy of Appellant's Reply Brief upon the following parties in interest by depositing them in the U.S. Mail, first-class, postage pre-paid, addressed as follows:

Mona Geidl  
Minnick Hayner  
PO Box 1757  
Walla Walla, WA 99362

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

Signed this 12 day of July, 2018 in Walla Walla, Washington.

  
\_\_\_\_\_  
Donelda Todorovich

**BASALT LEGAL, PLLC**

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**Transmittal Information**

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