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SUPREME COURT
STATE OF WASHINGTON
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No. 100471-1
Court of Appeals No. 365514

SUPREME COURT
OF THE STATE OF WASHINGTON

Jerry Lee Redwine, Appellant/Petitioner,

v.

Virgil Dale Redwine and
Tera Redwine, Respondents.

Respondents' Answer to Petitioner's Petition for Review

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TABLE OF CONTENTS

I.	**Identity of Respondents**	Page 1
II.	**Court of Appeals Decisions**	Page 1
III.	**Issues Presented for Review**	Pages 1-2
IV.	**Statement of Case**	Pages 2-12
V.	**Argument**	Pages 13-27
1.	The Petition for Discretionary Review must be denied because none of the legal standards governing the acceptance of review under RAP 13.4(b) are supported by the trial court record or any legal authority cited by Petitioner and the Petition is merely critical of the trial court and its findings that are supported by substantial evidence.	Page 13
2.	Respondents rightfully prevailed at the trial court level and the appellate court level under existing law.	Page 19
3.	Petitioner's Petition for Review is filled with form and content defects that are inconsistent with the RAPs.	Page 25
VI.	**Conclusion**	Pages 27-28

TABLE OF AUTHORITIES

TABLE OF CASES:

Holland v. Boeing Co., 90 Wn.2d 384, 390–91, 583 P.2d 621 (1978)	Page 19
Nearing v. Golden State Foods Corp., 114 Wn.2d 817, 818, 792 P.2d 500 (1990)	Page 19
Robinson v. Safeway Stores, Inc., 113 Wn.2d 154, 157, 776 P.2d 676 (1989)	Page 19
Schmidt v .Cornerstone Invs., Inc., 115 Wn.2d 148, 169,795 P.2d 1143 (1990)	Page 19
Viewcrest Cooperative Ass'n v. Deer, 70 Wn.2d 290, 294-95, 422 P.2d 832 (1967)	Page 22
Brown v. Superior Underwriters, 30 Wn.App. 303, 305-306, 632 P.2d 887 (1980)	Page 20
Consulting Overseas Mgmt., Ltd. v. Shtikel, 105 Wn. App. 80, 86-87, 18 P.3d 1144 (2001)	Page 21
Dave Johnson Ins., Inc. v. Wright, 167 Wn.App. 758, 778, 275 P.3d 339 (2012)	Pages 19
Davenport v. Wash. Educ. Ass'n, 147 Wn. App. 704, 737, 197 P.3d 686 (2008)	Page 22
Eckert v. Skagit Corp., 20 Wn.App. 849, 851, 583 P.2d 1239 (1978)	Page 22
Korst v. McMahon, 136 Wn.App. 202, 206, 148 P.3d 1081 (2006)	Pages 19-20
Matter of Gilbert Miller Testamentary Credit Shelter Trust and Estate of Miller, 13 Wn.App.2d 99, 106-108, 462 P.3d 878 (2020)	Pages 21-22

STATUTES:

RCW 4.16.080(3)	Page 22
RCW 4.16.080(3) and (5)	Page 24

COURT RULES:

RAP 13.4(b)	Pages 2, 13, 17, 26- 27
RAP 13.4(c)(2), (4), (5), (6), (7), and (8)	Pages 25
RAP 18.17(b)	Page 28
ER 609(a)(2)	Page 25

I. Identity of Respondents

Respondents, Virgil Redwine and Tera Redwine ("Respondents"), husband and wife, by and through their attorney, Michael M. Wyman of Wyman Law, hereby respectfully request that the Court summarily deny Petitioner Jerry Lee Redwine's Petition for Review of two (2) Decisions of the Court of Appeals and decline to accept for review said Decisions.

II. Court of Appeals Decisions

Petitioner, Jerry Lee Redwine ("Petitioner"), has asked this Court to accept discretionary review of the Court of Appeals Decision filed on September 14, 2021 and the Court of Appeals Order Denying Motion for Reconsideration dated November 16, 2021.

III. Issues Presented for Review

Respondents request and present no issues for discretionary

review by this Court. Unfortunately, it is not entirely clear from the conclusory statements set out in the section of Petitioner's Petition for Review entitled "ISSUES PRESENTED FOR REVIEW" which specific legal issues that Petitioner is requesting that the Court review other than those related to the sufficiency of the evidence presented to the trial court and considered by the Court of Appeals to support their respective decisions favorable to the Respondents. What is clear to Respondents is that none of those statements made by Petitioner constitutes or creates a substantive legal issue that justifies the Court to accept review based on the four (4) discretionary review acceptance considerations delineated in RAP13.4(b).

IV. Statement of the Case

Although not a family law case in the traditional sense, this case arises out of strained family ties and several bitter legal

disputes between brothers battling over real estate situated in Grant County, Washington. The ongoing war between the brothers had been simmering for several years and ultimately came before the trial court for resolution in 2018, over four (4) years after the case was initially filed with the trial court. The legal disputes were primarily between brothers Virgil Redwine ("Virgil"), Jerry Redwine ("Jerry"), and David Redwine ("David"). However, David's claims were dismissed with prejudice by the trial court prior to trial, and David is not a party to this appeal.

Virgil and Jerry are farmers and conducted agricultural activities in the Columbia Basin for over 25 years. Virgil purchased and acquired certain real estate known as Farm Unit 120 situated in Grant County, Washington ("Farm Unit 120") from his parents over 30 years ago. Virgil paid the sum of Forty Thousand Dollars ($40,000.00) to his parents for Farm Unit 120.

Farm Unit 120 consists of a small homestead less than five (5) acres in size and farmground comprised of approximately one hundred twenty-five (125) acres. Virgil has conducted farming operations on Farm Unit 120 for over 30 years and has paid all real estate taxes and insurance premiums associated with Farm Unit 120 since he started conducting farming operations. Jerry has acknowledged and has not disputed that Virgil is the legal owner of the farmground portion of Farm Unit 120.

Not long after his mother's death, Jerry alleged that he had an interest in the homestead portion of Farm Unit 120. In 2006, Jerry sent a letter dated April 16, 2006 to Virgil (the "2006 Letter") whereby Jerry claimed an interest in the Farm Unit 120 homestead and demanded that Virgil "act in a righteous and honorable way" which Jerry believed required an equal division of the homestead between Jerry, Virgil and David. In the 2006 Letter, Jerry also acknowledged that the homestead is not in a

trust and that Virgil could "buy out" Jerry's and David's interests in the homestead implying that Jerry believed that he and David had some interest in the homestead at that time. Jerry and David commenced this case in 2013, more than six (6) years after the 2006 Letter was sent by Jerry to Virgil.

Prior to 1987, Jerry financed the purchase of different real property known as Water Delivery Unit 45 or Farm Unit 45 ("Farm Unit 45") with a loan from Farm Credit Services ("FCS"), the predecessor of which was Federal Land Bank and the successor of which is Northwest Farm Credit Service. Said loan was secured by a mortgage that encumbered said real property. Farm Unit 45 is comprised of a homestead and a surrounding fruit tree orchard ("Homestead") and eighty (80) acres of irrigated farm ground ("Farm Ground"). Jerry ultimately defaulted on the payment of the FCS loan. FCS judicially foreclosed on the loan and mortgage in the Grant County Superior Court. All of Jerry's

interests in Farm Unit 45 were foreclosed upon and terminated (except his statutory right of redemption) in 1987 pursuant to a Decree of Foreclosure. Thereafter, Jerry resisted FCS's enforcement of the Decree of Foreclosure and was legally forced to vacate the homestead.

Without any involvement by Jerry, Virgil negotiated his purchase of Farm Unit 45 from FCS in the late 1980s. Jerry did not contribute any of his own personal funds to pay any portion of the down payment on Farm Unit 45 or the purchase price of Farm Unit 45. In 1989, Virgil purchased Farm Unit 45 from FCS for a price of $160,000.00, $20,000.00 of which was paid at closing by Virgil with his own personal funds. Under the Real Estate Contract, the remaining balance of $140,000.00 was to be paid in annual installments over 20 years. The only parties to the Real Estate Contract were Virgil and FCS.

Virgil was initially receptive to allowing his brother, Jerry,

to participate in the farming operations conducted on Farm Unit 45. He and Jerry discussed the payment of expenses related to Farm Unit 45, including real estate contracts payments, irrigation water assessments, and property taxes (the "Property Expenses"). At that time, Jerry and Virgil did not discuss what would happen if Jerry failed to reimburse Virgil for some or all of the Property Expenses or if Virgil paid off the FCS real estate contract early. In addition, Jerry did not give Virgil any monetary consideration at the time the discussion took place.

From 1989 through 2004, Virgil made several payments on the Real Estate Contract directly to FCS. The Contract was paid in full by Virgil on October 18, 2004 with Virgil's personal funds. FCS issued a deed conveying Farm Unit 45 to Virgil in July of 2005. Jerry did not make any contract payments directly to FCS.

From 1989 through the present time, all real property taxes assessed against Farm Unit 45 and all premiums on insurance

policies covering Farm Unit 45 crops and improvements were paid exclusively by Virgil. At all times, Virgil was solely responsible for all obligations owed under the Real Estate Contract. Virgil assumed all risks associated with the purchase of Farm Unit 45 from FCS while Jerry assumed no risks. Whether or not Jerry paid any sums to Virgil, Virgil remained liable for all obligations owed to FCS. Virgil, and not Jerry, was subject to any future litigation for failing to meet the requirements of the Real Estate Contract and risked harming his own personal financial position if there were any payment defaults to FCS under the Real Estate Contract.

Virgil allowed Jerry to manage the Farm Ground from 1989 through an unknown date between the first day of 2001 and the last day of 2004 ("Final Date") and to remit annual payments to Virgil. After Jerry made annual payments to Virgil from 1993 until the Final Date, Virgil and Jerry had a falling out, and Virgil

prohibited Jerry from farming the Farm Ground from and after the Final Date. No payments were made by Jerry to Virgil after the Final Date.

From 1992 through the Final Date, Virgil had sufficient income and operating loan proceeds to fully pay all Property Expenses and real estate contracts payments to FCS and exclusively paid said Property Expenses and contract payments. The payments made by Jerry to Virgil from 1992 through the Final Date were insufficient to cover all Property Expenses.

In October of 2004, Jerry sent a letter to Virgil whereby Jerry specifically stated his belief that Farm Unit 45 would eventually be put into a "different name" implying that he believed that Virgil was holding the real property for someone else. By January of 2005, there was tension mounting between Virgil and Jerry about Farm Unit 45, Jerry's farming practices, and the payment of the Property Expenses.

On or about February 5, 2005, Jerry again sent a letter to Virgil (the "2005 Letter"). In the 2005 Letter, Jerry unequivocally communicates to Virgil that he believes that Virgil is holding Farm Unit 45 for his benefit and that such arrangement is not working, explicitly stating that "[h]aving the place in your name is not working out any more [sic]". In the 2005 Letter, Jerry requests that Virgil transfer and sell Farm Unit 45 to a third party, Jerry's daughter named "Maggie". While Jerry may have hoped that Virgil would be willing to transfer Farm Unit 45 to the third party, Virgil was not willing nor required to do so. Jerry never paid to Virgil a sum equal to his total Property Expenses incurred after 2005. At no time thereafter did Virgil inform Jerry that he was willing to transfer Farm Unit 45 to Jerry.

Despite Jerry's false, overly broad and conclusory statement that he fully paid to Virgil an amount equal to all Property Expenses, Jerry did not in fact pay to Virgil an amount

equal to all of said Property Expenses. No written agreement exists whereby Virgil ever promised or agreed to gift, convey or sell Farm Unit 45 to Jerry. Virgil committed no actual or constructive fraud in acquiring or retaining Farm Units 45 and 120. Virgil was not unjustly enriched at the expense of Jerry when he refused and denied Jerry's requests to transfer FU 45 and the homestead portion of FU 120 to a 3rd party or him.

At trial, Jerry failed to pursue and essentially abandoned all claims previously asserted by him against Respondents except the claims for the impression of constructive and express trusts against Farm Unit 45 and a constructive trust against Farm Unit 120.After Jerry rested at trial, the trial court dismissed with prejudice all claims of Jerry pertaining to Farm Unit 120 on the basis that the applicable statute of limitations time-barred said claims. Following the multi-day trial in 2018, the trial court entered appropriate Findings of Fact and Conclusions of Law and

a Final Judgment whereby the trial court ultimately ruled in favor of Respondents and denied all claims of Jerry. The trial court determined all real property in dispute is owned by one or both of the Respondents.

While Jerry filed a timely Notice of Appeal with the Court of Appeals, the appeal was delayed for several months based on questionable motions to secure the waiver of his appeal costs and the appointment of an appeal attorney at public expense filed by Jerry. After several months passed, the Court of Appeals issued a Decision favorable to Respondents that fully affirmed the trial court's decision. Thereafter, Jerry filed a Motion for Reconsideration of the Decision of the Court of Appeals that was denied by Order dated November 16, 2021. Jerry then filed a Petition for Review with this Court seeking discretionary review of the Court of Appeals Decision and Order.

V. Argument

1. The Petition for Discretionary Review must be denied because none of the legal standards governing the acceptance of review under RAP 13.4(b) are supported by the trial court record or any legal authority cited by Petitioner and the Petition is merely critical of the trial court and its findings that are supported by substantial evidence.

Pursuant to RAP 13.4(b), this Court may accept discretionary review of appellate court decisions when the appellate decisions are in conflict with a decision of the Supreme Court or a published decision of the Court of Appeals or involve a significant state or federal constitutional question or an issue of substantial public interest that should be determined by this Court. It is abundantly clear from the Petition for Review and the record on appeal that none of the foregoing considerations are present in the Petition or this appeal.

Rather than addressing the discretionary review considerations, Petitioner brashly asks this Court to usurp the role

of the trial court as trier of fact and irrationally accept Petitioner's distorted and one-sided view of the evidence previously rejected by the trial court. Like the Court of Appeals, this Court should decline Petitioner's invitation to reargue the enter case without factual or legal justification. Entirely consistent with the past practice of Petitioner, Petitioner's Petition for Review is replete with *ad hominem* attacks and personal insults, which merely perpetuate the blood feud waged by Petitioner to financially enrich himself at the expense of others.

This case arises out of a personal quarrel between brothers that does not touch upon or concern any constitutional questions or issues or any issues of public import. Petitioner randomly and somewhat incoherently cherry picks information from the trial court record to bolster his subjective belief that the trial court and appellate court decisions are simply unfair from his own perspective.

In his Petition for Review, Petitioner confusingly focuses on and questions the trial court's findings and not the actual Decisions of the Court of Appeals that should be the primary topics of argument in the Petition. Petitioner asserts that this Court should accept review mainly because the trial court was somehow mandated to blindly accept Petitioner's version of events and should have adversely assessed the credibility of all parties except the Petitioner. (Petition, pps. 6, 11, and 17). In multiple instances, Petitioner contends that Respondent "lied" or "lies" and that there were some "inconsistencies" in the written and testimonial evidence of Respondent that were presented to the trial court. (Petition, pps. 12 and 15). Moreover, the Petitioner argues that Respondent "took" or "stole" property from Petitioner when no such finding or legal conclusion was made by the trial court. (Petition, pp. 13). While the trial court certainly considered the admissible evidence presented by both parties at

trial, the trial court was under no obligation or duty to resolve any contradictory evidence or credibility issues favorable to Petitioner or to consider fabricated evidence that the Petitioner never made part of the trial court record.

Contrary to existing law, the Petitioner apparently asserts that the Court of Appeals should not have relied upon the same trial court record and findings adopted by the trial court when disposing of the appeal. As properly acknowledged by the Court of Appeals, it is the precise function of the trial court at a bench trial to hold the trial and make fact findings based on the admissible evidence, together with reasonable inferences therefrom, and witness credibility assessments and apply those facts to applicable law. The trial court did not err when it made those facts and credibility determinations, and, similarly, the Court of Appeals committed no error when it issued its Decisions in line with the factual findings of the trial court supported by

substantial evidence.

The ER and case law citations and legal argument that Petitioner does provide in the Argument section of his Petition are less than compelling. Because of the lack of explanation and legal analysis by the Petitioner, it is difficult to surmise or even speculate how said citations and arguments qualify the appellate decisions in question for discretionary review. The mere recitation of rules of evidence and certain court decisions interpreting the evidentiary rules does not further the legal analysis of or satisfy the review factor requirements set out in RAP 14.4(b). Regardless, the Respondents submit that the Petitioner never preserved and likely waived any evidentiary objections of the nature mentioned at trial or as an assignment of error in its opening brief filed with the Court of Appeals.

In the Petition for Review, Petitioner generally mentions in passing a few provisions of the Washington State Constitution

concerning the right to appeal and seek redress and for the administration of justice. (Petition, pps. 17, 19, and 20). However, Petitioner then acknowledges that he was given every opportunity to express his views, present his evidence, make argument, and seek redress before the trial court and also to appeal as a matter of right the trial court's adverse decision to the Court of Appeals. Those constitutional provisions were not disregarded by the courts or the Respondents and cannot be construed to dictate or guarantee any particular result or disposition of the legal disputes favorable to the Petitioner. At all times, the Petitioner was able to exercise his constitutional rights even though he may not now agree with the end result, *i.e.*, the denial and dismissal of his claims against the Respondents. This case does not implicate any constitutional provisions or issues for this Court to review or resolve.

2. Respondents rightfully prevailed at the trial court level and the appellate court level under existing law.

Washington case law makes it abundantly clear that any unchallenged findings of fact and any findings of facts supported by substantial evidence are verities on appeal. *Nearing v. Golden State Foods Corp.*, 114 Wn.2d 817, 818, 792 P.2d 500 (1990); *Schmidt v. Cornerstone Invs., Inc.*, 115 Wn.2d 148, 169, 795 P.2d 1143 (1990). Substantial evidence is "evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premise." *Robinson v. Safeway Stores, Inc.*, 113 Wn.2d 154, 157, 776 P.2d 676 (1989) (quoting *Holland v. Boeing Co.*, 90 Wn.2d 384, 390–91, 583 P.2d 621 (1978)).

An appellate court's review of a trial court's findings and party and witness credibility determinations is deferential to the trial court. *Dave Johnson Ins., Inc. v. Wright*, 167 Wn.App. 758, 778, 275 P.3d 339 (2012) (citing *Korst v. McMahon*, 136

Wn.App. 202, 206, 148 P.3d 1081 (2006)). Appellate courts must view the evidence and all reasonable inferences in the light most favorable to the prevailing party. *Id.* When a trial court's findings of fact are grounded in conflicting evidence and there is substantial evidence to support the findings entered, appellate courts do not re-weigh the evidence and substitute their judgment even though the appellate courts might have resolved the factual dispute in a different manner. *Id.*; *Brown v. Superior Underwriters*, 30 Wn.App. 303, 305-306, 632 P.2d 887 (1980).

The primary claim pursued by the Petitioner at the trial was a claim for constructive trust over Farm Unit 45 and the homestead portion of the Farm Unit 120 based on unjust enrichment. The trial court made several findings and conclusions which supported its decision denying and dismissing with prejudice the unjust enrichment claim of the Petitioner. The Court of Appeals decisions recognized that said findings,

conclusions and decision were properly supported by substantial evidence following the trial's court consideration of admissible evidence, which, at times, may have been contradictory.

Likely due in part to the fact that a constructive trust is an equitable remedy, the state legislature has not adopted a specific statute of limitations for a constructive trust imposed by a trial court. *Matter of Gilbert Miller Testamentary Credit Shelter Trust and Estate of Miller*, 13 Wn.App.2d 99, 106-108, 462 P.3d 878 (2020). A constructive trust is an equitable remedy by which a court may restore property that another has gained through questionable means, such as fraud, misrepresentation, or overreaching or when unjust enrichment has occurred. *Consulting Overseas Mgmt., Ltd. v. Shtikel*, 105 Wn.App. 80, 86-87, 18 P.3d 1144 (2001). The applicable statute of limitations for any given constructive trust claim is based on the nature of the underlying substantive claim that allegedly forms the legal basis for the

constructive trust equitable relief request. *Miller Trust/Estate*, 13 Wn.App.2d at 106-108; *Viewcrest Cooperative Ass'n v. Deer*, 70 Wn.2d 290, 294-95, 422 P.2d 832 (1967). The statute of limitations applicable to a common law cause of action for unjust enrichment is three (3) years under RCW 4.16.080(3). *Davenport v. Wash. Educ. Ass'n*, 147 Wn. App. 704, 737, 197 P.3d 686 (2008). Generally, a cause of action for unjust enrichment begins to run when a party has a right to apply to a court for relief. *Eckert v. Skagit Corp.*, 20 Wn.App. 849, 851, 583 P.2d 1239 (1978).

During the trial, the Petitioner offered certain documents as exhibits, including letters authored and sent by the Petitioner to the Respondent in 2005 and 2006 expressing dissatisfaction with the ownership of the Farm Units. The Petitioner claimed that the Respondent held the Farm Units for his benefit. The Respondent orally disputed that claim in communications with the Petitioner

and never signed any documents supporting the Petitioner's subjective ownership beliefs. In February of 2005, the Petitioner sent the Respondent the 2005 Letter in which the Petitioner unequivocally communicates to the Respondent that he believes that the Respondent is holding Farm Unit 45 for his benefit and that such arrangement is not working, explicitly stating that "[h]aving the place in your name is not working out any more [sic]". In the 2005 Letter, the Petitioner requests that the Respondent transfer and sell Farm Unit 45 to a third party, Jerry's daughter named "Maggie". As the trial court properly concluded, the Respondent was neither willing nor required to do so.

In April of 2006, the Petitioner transmitted to the Respondent the 2006 Letter whereby the Petitioner claimed an interest in the Farm Unit 120 homestead and demanded that the Respondent "act in a righteous and honorable way" which the Petitioner believed required an equal division of the homestead

between the 3 brothers. In the 2006 Letter, the Petitioner also acknowledged that the homestead is not "in the [Chilson] trust" and that the Respondent could "buy out" Petitioner's and David's interests in the homestead giving the impression that the Petitioner thought that he and David had some interest in the homestead at that time.

Given the foregoing, the Petitioner knew or should have known that he had the ability and was required to apply to the trial court for relief based on unjust enrichment and/or fraud no later than April of 2009 as to his Farm Unit 120 claim and no later than February of 2008 with regard to his Farm Unit 45 claim. This case was filed by the Petitioner in 2013, more than 3 years after that date that said claims should have been filed to avoid being time barred by the applicable statute of limitations. Said claims are time-barred pursuant to RCW 4.16.080(3) and (5). Even if we assume *arguendo* that the statute of limitations was triggered and

started to accrue on dated after 2006, the Respondents submit that there is substantial evidence that supports the trial court's findings, conclusions and final decision providing that the Respondents committed no fraud and were not unjustly enriched at the expense of the Petitioner.

3. Petitioner's Petition for Review is filled with form and content defects that are inconsistent with the RAPs.

Respondents hereby object to and request that the Court decline to consider the following parts of the Petition for Review as noncompliant with RAP 13.4(c)(2), (4), (5), (6), (7), and (8):

A. Tables: No court cases/decisions cited in the Petition are listed, and ER 609(a)(2) is erroneously listed as a statute rather than a court rule.

B. Citations to Court of Appeals Decisions: This section is argumentative, contains superfluous disputed facts and highly contentious legal

argument, and erroneously refers to Petitioner's Appeal Brief and parts of the trial court record.

C. Issues Presented for Review: This section is rife with disputed facts and legal arguments and fails to pose issues regarding the considerations set forth in RAP 13.4(b).

D. Statement of the Case: This section is argumentative and contains extra-record statements contradicted by the findings of the trial court and personal invectives against the Respondents having no place in a court filing.

E. Argument: This section relies on extra-record statements contradicted by the findings of the trial court, contains irrelevant personal insults and false commentary, and fails to address the discretionary review considerations of RAP 13.4(b).

F. Conclusion: This section is duplicative of and redundant to other sections of the Petition and is not in the nature of a short summary of the legal arguments made and relief requested by the Petitioner.

VI. Conclusion

The Decisions of the Court of Appeals favorable to Respondents for which Petitioner seeks discretionary review are well-reasoned, are supported by existing law, and should stand to give certainty and finality to the resolution of the legal disputes between the parties. For too long, these personal legal disputes have plagued the parties and been allowed to exist.

More importantly, the Petition for Review filed by Petition is fatally flawed and deficient. Said Petition fails to address or meet any of the mandatory criteria of RAP 13.4(b) required for discretionary review of the prudent Decisions of the Court of

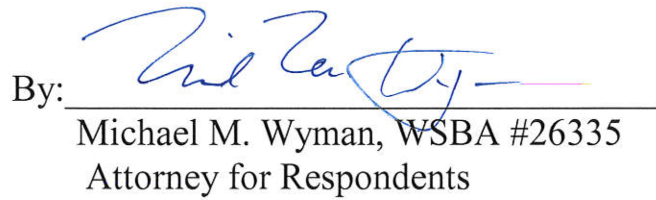
Appeals favorable to Respondents.

For the within and foregoing reasons, this Court should decline to accept and summarily deny Petitioner's Petition for Discretionary Review.

Certificate of Compliance with RAP 18.17(b): Respondents hereby certify that the number of words contained in the document, exclusive of words contained in the appendices, the title sheet, the table of contents, the table of authorities, the certificate of compliance, the certificate of service, signature blocks, and pictorial images (e.g., photographs, maps, diagrams, and exhibits), is approximately 4,178 words, which number is less than the 5,000 word limitation for this document.

RESPECTFULLY SUBMITTED this 18th day of January, 2022.

WYMAN LAW



By:________________________________

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JERRY LEE REDWINE, Appellant/Petitioner, vs. VIRGIL DALE REDWINE and TERA REDWINE, Respondents.	**No. 100471-1** **Court of Appeals No. 365514** **DECLARATION OF MAILING**

The undersigned declares under penalty of perjury under the laws of the state of Washington as follows:

On January 19, 2022, the undersigned deposited and placed a sealed envelope containing a copy of the Respondents' Answer to Petitioner's Petition for Review in the U.S. Mail at Moses Lake, Washington, postage prepaid, addressed as follows:

Jerry Lee Redwine
16537 Road 26 SW
Mattawa, WA 99349

■ U.S. Mail
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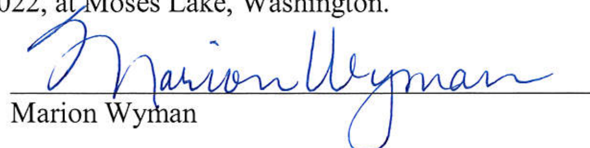
EXECUTED this 19th day of January, 2022, at Moses Lake, Washington.



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