Supreme Court No. 94653-1
Court of Appeals No. 47988-5

SUPREME COURT OF THE STATE OF WASHINGTON

Patrick Cuzdey,
Plaintiff/Appellant,

v.

Patricia Landes, et al.,
Defendant/Respondent

ANSWER TO PETITION FOR REVIEW

By:

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1. IDENTITY OF RESPONDENT

Patricia Landes ("Mrs. Landes"), Respondent and Appellee.

2. ANSWER TO ISSUES PRESENTED FOR REVIEW

Whether the Court of Appeals erred in dismissing Patrick Cuzdey's ("Mr. Cuzdey") quiet title claim on Mrs. Landes' real property? No; Mrs. Landes requests this Court deny review of the Court of Appeals decision terminating review. Alternatively, if review is accepted, Mrs. Landes specifies additional issues below, in Section 8, for this Court to take up.

3. INTRODUCTION

Mr. Cuzdey alleged an oral agreement, in 1984, made for the sale of real property with someone who has been dead since 2001. The claim was filed in 2014, after indicating in dissolution pleadings and final orders that he did not own any real property, and after Mrs. Landes attempted to evict him.

The only evidence Mr. Cuzdey submitted supporting this alleged real estate contract was a declaration from him, and one from his son, who was not even born when the alleged oral agreement was made. As a threshold matter, all of Mr. Cuzdey's testimony and claims are barred by the Deadman's Statute and other evidentiary objections. His son's declaration is barred by evidentiary objections, including child hearsay. Mr. Cuzdey has no other evidence; his second motion for a CR 56 continuance was denied after Mrs. Landes argued that he had not offered to produce any other

witnesses or evidence.

The trial court ruled that the Statute of Frauds, the Statute of Limitations, Laches, and Estoppel all barred his claims. Deciding the case with judicial economy in mind, the Court of Appeals chose to deny Mr. Cuzdey's claim to the real property on the merits, finding it unnecessary to rule on the other threshold grounds for dismissal. It was correct that Mrs. Landes presented documentary evidence demonstrating there never was an oral agreement to sell the real property and Mr. Cuzdey failed to rebut Mrs. Landes' showing; even ignoring her Deadman's and other evidentiary objections, his self-serving testimony did not objectively show a meeting of the minds on essential material terms. Thus, when viewing the evidence most favorably to Mr. Cuzdey, there was no enforceable real estate contract and summary judgment was appropriate.

Alternatively, the Court of Appeals correctly held that the doctrine of partial performance could not save Mr. Cuzdey's claim either. The partial performance exception to the Statute of Frauds allows a party to evidence unwritten—but orally agreed to and executed by performance—material terms of a contract. Parties utilize the doctrine by showing the agreed terms were executed by action on the subject real estate. Unfortunately for Mr. Cuzdey, the doctrine does not focus on a party's unilateral action on a piece of real estate, as he now argues. Rather, the action, i.e., performance, taken

on the property must be "referable to the contract[ual]" terms allegedly agreed on—and which the party asserting the doctrine is attempting to evidence—but failed to put in writing.

Arguendo, even if this Court somehow reversed the Court of Appeals, this Court would need to remand the case back to the Court of Appeals, or decide for itself, whether the Statute of Limitations, Laches, Estoppel, the Deadman's statute, and/or other evidentiary objections effectively barred all of Mr. Cuzdey's claims.

4. RESTATEMENT OF THE CASE

A detailed factual history, with full citations, is stated in Mrs. Landes' Response Brief on Appeal at 6-12, hereby incorporated by reference. In summation of the record, in 1983, the Landes purchased the real estate at issue; installed a well and electrical service; paid all property taxes; applied for, paid, and received a plethora of building permits; and built various structures on the property at their expense. In 1985, they took out a loan and purchased a Nova mobile home for Mrs. Wallen and her then husband, Mr. Cuzdey, to live in. In 1993, the Landes executed a community property agreement, and later purchased a Goldenwest manufactured home, by mortgaging the land. "The Repair Shop" by Mr. Landes and Mr. Cuzdey was a business set up on the property. Notably, Mrs. Landes paid "Karla Cuzdey" (Now Defendant Karla Wallen) $1,000.00 for help on the

property. For decades, the Landes kept hundreds of receipts, records, and checks demonstrating their ownership. CP 660-840, 842-908.

Mr. Landes died in 2001. Mrs. Landes inherited her husband's interest in the property pursuant to the Community Property Agreement, CP 914-18, that was recorded in 2002. CP 914-18. She continued payment of taxes, CP 920-21, refinanced the property, and recorded a deed of trust. CP 923-46. Title insurance and tax assistance was obtained. CP 948, 950-52.

Thirteen plus years passed since Mr. Landes died without Mr. Cuzdey filing any suit against the Landes.

In January 2014, Mr. Cuzdey got divorced, CP 954-57, 959-61, indicating he owned no real property. Mrs. Landes tried to evict him. CP 963-64. He filed suit in July of 2014 claiming an oral agreement between him and the Landes from 1984 as a defense.

5. ARGUMENT IN RESPONSE TO PETITION FOR REVIEW

5.1. The Court of Appeals was Correct; On the Merits There Was No Enforceable Contract as to the Real Property.

For a contract to exist, there must be a mutual intention or 'meeting of the minds' on the essential terms of the agreement. Sea-Van Investments Assocs. v. Hamilton, 125 Wash. 2d 120, 128, 881 P.2d 1035, 1039 (1994). "This court reaffirmed a 40-year-old decision outlining the 13 material terms of a real estate contract." Id.; Halbert v. Forney, 88 Wash. App. 669,

945 P.2d 1137 (Div. 1 1997). A vague contract—even if written—is unenforceable. Halbert, 88 Wash. App. at 676. "If the evidence leaves it at all doubtful as to whether or not a contract was entered into, the court will not decree specific performance." Granquist v. McKean, 29 Wash. 2d 440, 445, 187 P.2d 623, 626 (1947). "Specific performance is not an appropriate remedy" where "a 'meeting of the minds' as to the terms of that contract did not previously occur." Kruse v. Hemp, 121 Wash. 2d 715, 724, 853 P.2d 1373, 1378 (1993) holding modified by Berg v. Ting, 125 Wash. 2d 544, 886 P.2d 564 (1995).

The burden of proving each essential element of the contract is on the party asserting its existence. Becker v. Washington State University, 165 Wash. App. 235, 266 P.3d 893 (Div. 3 2011), review denied, 173 Wash. 2d 1033, 277 P.3d 668 (2012). Under CR 56, the moving party may show the absence of evidence supporting the nonmoving party's case and that no genuine dispute exists. See Young v. Key Pharmaceuticals, Inc., 112 Wash.2d 216, 225-26, 770 P.2d 182 (1989).

A nonmoving party may not rely on speculation, argumentative assertions, or in having its affidavits considered at face value; rather, it must set forth specific facts that sufficiently rebut the moving party's contentions. Becker, 165 Wash. App. at 246; Harberd v. City of Kettle Falls, 120 Wash. App. 498, 508, 513-14, 84 P.3d 1241, 1246, 1249 (2004).

Here, for purposes of being generous to Mr. Cuzdey, the Court of Appeals analyzed his quiet title claim on the merits. In doing so, it set aside the "in writing" requirement of the Statute of Frauds, excluded none of Mr. Cuzdey's evidence, and ignored the doctrines of Laches, Estoppel, and the Statute of Limitations that the trial court ruled barred Mr. Cuzdey's claim. Court of Appeals Decision at 6-7.

Even then, it still found no enforceable contract for the sale of Mrs. Landes' real property. This was because the evidence failed to demonstrate a contract was ever made; Mr. Cuzdey failed to show a meeting of the minds between the parties as to necessary material terms. Court of Appeals Decision at 7 (holding "The material terms and conditions supporting the claimed contract are far from clear and unequivocal."). For example, Mr. Cuzdey simply failed to plead and/or demonstrate agreement regarding the time and manner for transferring title, forfeiture provisions, risk allocation, or even the type of deed to be delivered. Court of Appeals Decision at 7.

In reaching this conclusion, the Court of Appeals did not depart from any prior precedent, and review by this Court is unnecessary. See Kruse, 121 Wash. 2d at 724 (holding "Specific performance is not an appropriate remedy" where "a 'meeting of the minds' as to the terms of that contract did not previously occur."); Sea-Van, 125 Wash. 2d at 128; Halbert, 88 Wash. App. 669; Granquist, 29 Wash. 2d at 445.

Mr. Cuzdey argues to the contrary, and believes error occurred. He claims that he "provided evidence of all the terms necessary to the relief he requested," i.e., the specific performance/quieting title. Petition for Review at 13-14. Stated another way, he believes that an enforceable real estate contract can exist, and specific performance can be ordered, where the parties never agreed to material terms this Court found necessary in Sea-Van, as well as a host of other cases. Petition for Review at 12.

Mr. Cuzdey is wrong on all points above. In his Second Amended Complaint, he did not allege several material terms—repeatedly found necessary by this Court—for an enforceable real estate contract. CP 1125-32. Moreover, he did not demonstrate with evidence that there was a meeting of the minds between the parties as to necessary material terms. Court of Appeals Decision at 7. Thus, there was no contract, and this Court cannot ignore the fact that evidence supporting his claim, i.e., showing agreement and a meeting of the minds as to those necessary material terms, does not exist.

Accordingly, the alleged agreement, as pled, was incomplete and vague—lacking necessary terms of a valid real estate contract—and it is unenforceable. See Halbert, 88 Wash. App. at 676; Sea-Van, 125 Wash. 2d at 128. Similarly, it is also unenforceable because Mr. Cuzdey failed to rebut—with evidence outside the pleadings—Mrs. Landes' assertion that

there was no meeting of the minds as to necessary material terms. See Halbert, 88 Wash. App. at 677 ("[N]egotiation, not litigation, is the proper method to agree upon these vital terms."); Kruse, 121 Wash. 2d at 723 (Reversing trial court where "No 'meeting of the minds' occurred as to material and essential terms").

5.2. No Part Performance.

Every conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by deed. . . ." RCW 64.04.010. "An agreement to convey real estate must be in writing." Georges v. Loutsis, 20 Wash.2d 92, 145 P.2d 901 (1944). An oral contract for the purchase of land is unenforceable. Pitman v. Smith, 158 Wash. 467, 291 P. 334 (1930). Part performance of a contract for the sale of real property may remove a contract from the statute of frauds if a party is able to show: (1) delivery and assumption of exclusive possession; (2) payment or tender of consideration; and (3) the making of permanent, substantial, and valuable improvements, *referable to the contract*. Berg, 125 Wash. 2d 544 (emphasis added).

"In addition, where specific performance of the agreement is sought, the contract must be proven by evidence that is clear and unequivocal and which leaves no doubt as to the terms, character, and existence of the contract." Id. at 556–57. "The acts relied upon as constituting part

performance must unmistakably point to the existence of the claimed agreement." Powers v. Hastings, 93 Wash. 2d 709, 719, 612 P.2d 371, 376 (1980). "If they point to some other relationship, such as that of landlord and tenant, or may be accounted for on some other hypothesis, they are not sufficient." Granquist, 29 Wash. 2d at 445.

Notably, services rendered between family members are generally presumed to be gratuitous in the absence of a contract, express or implied. Johnston v. Johnston, 182 Wash. 573, 575, 47 P.2d 1048, 1049 (1935).

Here, the Court of Appeals, again, excluded none of Mr. Cuzdey's evidence, and ignored the doctrines of Laches, Estoppel, and the Statute of Limitations that the trial court ruled barred Mr. Cuzdey's claim. Court of Appeals Decision at 8-9. It then, hypothetically speaking, assumed that Mr. Cuzdey somehow "could prove the essential terms of a real estate contract." Court of Appeals Decision at 8.

Even then, it still found no enforceable contract for the sale of Mrs. Landes' real property under the doctrine of partial performance. This was because the evidence failed to demonstrate that Mr. Cuzdey made permanent, substantial, and valuable improvements "referable to" the alleged contract. Court of Appeals Decision at 8-9.

Mr. Cuzdey argues this to be error. He believes the phrase "permanent, substantial, and valuable improvement, *referable to the contract*," does not

mean that the improvements must have been referred to in the alleged contract—which he is attempting to prove exists. Petition for Review at 15 (stating "permanent, substantial, and valuable improvement, referable to the contract—does not mean that the improvements must have been referred to in the contract.").

This argument is plainly contrary to the law. First, it would encourage and allow fraud. For example, a person could move onto property, take exclusive possession of a parcel when the true owner was away, make improvements to the property, and then simply claim he or she paid cash via an oral agreement to purchase the real estate. Such an erroneous view would be akin to allowing an adverse possession claim without the requisite elements of hostility or the requisite period of continuous possession.

Second, Mr. Cuzdey's erroneous reading of the law would easily allow dishonest parties to allege oral agreements that never took place. Then they could drag the true owners of these properties past summary judgment and into costly trials based on nothing more than extrinsic allegations/lies.

In other words, Mr. Cuzdey is arguing that an enforceable real estate contract can exist based on nothing more than (1) a purely alleged oral, unsupported by (non-extrinsic) evidence, agreement; (2) making improvements to property—that are not referable to necessary terms of the alleged, unwritten and unsupported by (non-extrinsic) evidence,

agreement—; and (3) an allegation of reasonable reliance on the unproven and unwritten agreement because he made improvements that do not evidence alleged terms in the agreement. See Petition for Review at 16.

The problem for Mr. Cuzdey is that this Court, en banc, has already rejected the same "reliance" and "change of position" argument in Berg, 125 Wash. 2d at 561. In Berg, property owners sought to establish they had an easement across their neighbor's property. The trial court granted summary judgment for the neighbors, ruling the property owners failed to establish part performance. The Court of Appeals reversed relying on the Restatement (Second) of Contract § 129:

> A contract for the transfer of an interest in land may be specifically enforced notwithstanding failure to comply with the Statute of Frauds *if it is established that the party seeking enforcement, in reasonable reliance on the contract and* on the continuing assent of the party against whom enforcement is sought, *has so changed his position that injustice can be avoided only by specific enforcement*.

Berg, 125 Wash. 2d at 559 (emphasis added). This Court, en banc, reaffirmed the trial court and dismissed the property owners' claim: "We decline to follow § 129." This was because "Where specific performance is sought, the party relying on the part performance doctrine must prove by clear and unequivocal evidence *the existence and all the terms of the contract*. . . . *in addition to establishing . . . the three [part performance] factors*. . . ." Id. at 561 (some emphasis added and some in original).

Stated another way, not mandating that Mr. Cuzdey's improvements be "referable to the contract" would erroneously apply § 129, "would require abandoning the evidentiary function of the part performance doctrine . . . and [would] leave the establishment of the [terms of the agreement] to extrinsic evidence[, i.e., evidence not embodied in the alleged agreement,] alone—a result at odds with the statute of frauds." See id. at 561–62.

Consequently, the most critical factor under the part performance doctrine is a plaintiff's "performance" on the alleged contract's terms, i.e., showing acts "referable to the contract." See id. That is the only objective way a court can determine there actually was an agreement, by linking performance to something other than extrinsic evidence. See id. Acts done otherwise could have been for any other reason, and thus, cannot "unmistakably point to the existence of the claimed agreement." See Powers, 93 Wash. 2d at 719. For example, if Mr. Cuzdey is not required to demonstrate the improvements he (allegedly) made to the property were referable to the contract, how can a court conclude Mr. Cuzdey rebutted Mrs. Landes' showing that such acts were the consequence of their "landlord and tenant" relationship? See Granquist, 29 Wash. 2d at 445; CP 963-64. Or how can a court conclude Mr. Cuzdey rebutted Mrs. Landes' showing that such (alleged) acts were done gratuitously for family members? See Johnston, 182 Wash. at 575.

In sum, to establish part performance, Mr. Cuzdey must prove the existence of necessary material terms of a real estate contract. See Berg, 125 Wash. 2d at 561; Sea-Van, 125 Wash. 2d at 128; Halbert, 88 Wash. App. 669. Then he must also prove actual payment or consideration, taking exclusive possession, and that improvements he made were "referable to" the terms of the alleged contract. See Berg, 125 Wash. 2d at 561.

Finally, the Court of Appeals correctly found that Mr. Cuzdey did not take exclusive possession of the property. Mr. Cuzdey's alleged agreement was between himself and the Landes'. The Landes' had control of, paid taxes on, and had possession of the property throughout the entire relevant time period at issue. See Court of Appeals Decision at 8. At one point, the Landes' paid Ms. Wallen $1,000.00 for doing work on the property; why would that happen if Mr. Cuzdey owned the property? CP 655. Furthermore, Ms. Wallen never joined Mr. Cuzdey's suit. In fact, Mr. Cuzdey expressly stated that any interest Ms. Wallen "may" have in the subject property was via "community property laws," not through any contract; thus, not through part performance doctrine. CP at 162.

Therefore, the Landes' and Ms. Wallen, the Landes' biological daughter, having possession and control of the property when Mr. Cuzdey was there—prevents Mr. Cuzdey from meeting the exclusivity element. See Court of Appeals Decision at 8.

6. MR. CUZDEY WAIVED ALL OTHER ISSUES ON APPEAL EXCEPT HIS QUIET TITLE CLAIMS

The Court of Appeals correctly held that Mr. Cuzdey waived all issues as to his claims for adverse possession, quantum meruit, constructive trust, and conversation by not raising them in his Opening Brief on Appeal. Court of Appeals Decision at 4.

7. ARGUENDO, EVEN IF THE COURT OF APPEALS ERRED, THIS COURT WOULD NEED TO REMAND OR DECIDE OTHER DISPOSITIVE ISSUES

The trial court held that Mr. Cuzdey's entire action was barred by operation of the Statute of Frauds and operation of the Deadman's Statute; however, in the alternative it held the Statute of Limitations, Laches, or Estoppel barred the action as well. (RP 65-66). Each of these alternative bases for affirming the trial court's decision were argued on appeal. Response Brief. If this Court accepted review and found error in the Court of Appeals decision, it would need to decide these threshold dispositive issues, or remand them back to the Court of Appeals. RAP 13.7.

8. IF THIS COURT ACCEPTS REVIEW, MRS. LANDES SEEKS REVIEW OF THE FOLLOWING ISSUES

Rule of Appellate Procedure 13.4(d) allows a party responding to a petition for review to seek review of "any issues that were raised but not decided in the Court of Appeals" as well as any issue "not raised in the petition for review." If this Court accepts review of Mr. Cuzdey's Petition,

Mrs. Landes formally requests the Court decide the following additional issues:

8.1. Review of All Issues Raised in Mrs. Landes' Response Brief on Appeal.

Mrs. Landes requests that this Court address all issues raised in her Response Brief on Appeal. This includes (1) whether the Deadman's Statute bars Mr. Cuzdey's testimony and all claims; (2) whether Mrs. Landes evidentiary objections bar Mr. Cuzdey's son's declaration and all claims; (3) whether the Statute of Limitations bars all claims; (4) whether the doctrine of Laches bars all claims; and (5) whether the doctrine of Estoppel bars all claims.

8.1.1. Deadman's Statute.

"One of the major purposes of this legislative enactment is to give protection to the writings and documents of a decedent or persons claiming thereunder, so that decedent's purposes in making a conveyance in writing will not be defeated by parol description of his acts and purposes after his death." Hampton v. Gilleland, 61 Wn.2d 537, 543, 379 P.2d 194, 197 (1963). The statute does so by "prevent[ing] interested parties from giving self-serving testimony about conversations or transactions with the decedent." Erickson v. Robert F. Kerr, M.D., P.S., Inc., 125 Wn.2d 183, 189, 883 P.2d 313 (1994).

Here, Mr. Cuzdey testimony is plainly barred by the Deadman's Statute as its contents is made up entirely of conversations and transactions with the decedent, Benny J. Landes. Mr. Cuzdey claims waiver occurred because Mrs. Landes original motion for summary judgment, never read by the trial court and subsequently amended in its entirety, attached declarations from Mrs. Landes and Ms. Wallen.

Mr. Cuzdey's argument fails. This is because an amendment replaces an original filing in its entirety to the degree that the original is no longer a part of the record. See Herr v. Herr, 35 Wash. 2d 164, 166-67, 211 P.2d 710, 712 (1949) (holding "An amendment which is complete in itself and does not refer to, or adopt, the prior pleading, supersedes it and the original pleading ceases to be a part of the record. . . .").

Mr. Cuzdey further argues that Herr deals with only pleadings and not motions, but this distinction has no logical support and the only other case, an unpublished opinion on point, supports that there is no distinction.

8.1.2. Other Evidentiary Objections.

Mrs. Landes made numerous other evidentiary objections to both Mr. Cuzdey's and his son's testimony. Response Brief at 47-50. This includes the fact Mr. Cuzdey's son essentially espoused unreliable or inadmissible child hearsay because he was not alive, or an adult, during relevant time periods.

8.1.3. Statute of Limitations.

Quiet title actions may be filed at any time. However, the underlying claims, e.g., breach of contract, are subject to applicable statute of limitation periods. Mr. Cuzdey's claims accrued after he allegedly fulfilled the terms of the alleged oral agreement "long ago," and those claims are now time barred. Alternatively, these claims accrued when Mr. Landes passed in 2001, or in 2002 when Mrs. Landes recorded her community property agreement. Mr. Cuzdey's claim that the alleged original oral contract was modified after Mr. Landes' death is unsupported by consideration and unenforceable. Moreover, the gravamen of his complaint is that Mr. and Mrs. Landes made misrepresentations and defrauded him; these claims are time barred.

8.1.4. Laches.

Under Carlson v. Gibraltar Sav. of Washington, F.A., 50 Wash. App. 424, 749 P.2d 697 (1988) and the doctrine of laches, this Court has every reason to affirm the trial court's dismissal of Mr. Cuzdey's claims. Mr. Cuzdey had reasonable opportunity to bring his potential claims for many years, and it was unreasonable for him to ask the trial court for relief based on an alleged 30-year-old oral agreement. This is especially true since the person that he allegedly agreed with cannot defend himself as he had been dead for 15 years, and since Mr. Cuzdey, essentially, wished to re-litigate

his dissolution.

8.1.5. Estoppel.

Mr. Cuzdey's action is barred by the doctrine of collateral estoppel because he signed a petition for dissolution and final dissolution decree, prior to this suit, indicating he owned no real property. Response Brief at 24-26.

8.1.6. The Court of Appeals Erroneous Decision Regarding the Nova Manufactured Home.

Mrs. Landes requests (6) that this Court review the Court of Appeals Decision to reverse the trial court and reinstate Mr. Cuzdey's claim on the Nova manufactured home. Court of Appeals Decision at 9-10. This includes the Court of Appeals decision to deny Mrs. Landes' Motion for an Order Allowing Leave to Complete the Record, with further Clerk's Papers, or Take Judicial Notice of the Trial Court Record.

On May 21, 2015, Mrs. Landes filed her Second Amended Answer and Affirmative Defenses. Appellee's Motion for Leave/Reconsideration, Att. 1. It was by order of the trial court and in Response to Mr. Cuzdey's Second Amended Complaint. CP 172-74. By mistake, it was not included in the Clerks Papers on review. The Court of Appeals denied Mrs. Landes leave to complete the record. Appellee's Motion for Leave/Reconsideration.

This matters as to the Nova because the Court of Appeals based its

decision to reverse the trial court on Mrs. Landes' First Amended Answer. Court of Appeals Decision at 9-10. By operation of law, however, the Second Amended Answer replaced the First Amended Answer in its entirety so that the first "ceas[ed] to be a part of the [trial court] record." See Herr, 35 Wash. 2d at 166-67. Therefore, the First Amended Answer could not properly be the basis of any Court of Appeals decision, see id., and it was error not to take judicial notice of the Second Amended Answer, or allow Mrs. Landes to complete the record with it, on appeal. See e.g, id.; RAP 1.2 (stating "Cases and issues will not be determined on the basis of compliance or noncompliance with these rules. . . ."); RAP 9.6 (allowing additional clerk's papers); RAP 18.8 (Waiver of rules to promote justice and decisions on the merits); ER 201 (stating "Judicial notice may be taken at any stage of the proceeding."); see also Swak v. Dep't of Labor & Indus., 40 Wash.2d 51, 53, 240 P.2d 560 (1952); In re Laack's Estate, 188 Wash. 462, 62 P.2d 1087; Spokane Airports v. RMA, Inc., 149 Wash. App. 930, 936, 206 P.3d 364, 368 (2009).

8.1.7. The Court of Appeals Erroneous Decision Regarding the Frivolity of Mr. Cuzdey's Claims.

Mrs. Landes requests (7) this Court review the Court of Appeals Decision to reverse the trial court and find that Mr. Cuzdey's claims were not frivolous in their entirety. Court of Appeals Decision at 10-11. Given

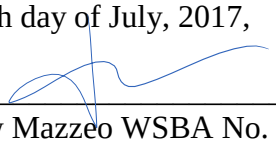
that all of Mr. Cuzdey's claims are barred by various doctrines of law, all of his claims are frivolous and the Court of Appeals erred in reversing this conclusion by the trial court.

8.1.8. The Court of Appeals Erroneous Decision Regarding Attorney Fees on Appeal.

The Court of Appeals decided that Mr. Cuzdey's claims were not frivolous in their entirety, and thus refused to grant attorney fees on appeal. It also stated that Mrs. Landes only made a bald assertion to fees on appeal.

Mrs. Landes' Response Brief detailed why each and every claim Mr. Cuzdey raised had no merit and was frivolous. She then devoted a section to her brief regarding fees on appeal. That section cited RCW 4.84.185, unlike the cases that the Court of Appeals cited and asserted were only "bald assertions" for fees on appeal. Thus, it was completely unnecessary, and redundant, for Mrs. Landes to argue anything more than she did regarding fees on appeal as her brief and her section devoted to fees on appeal were crystal clear as to why she was requesting fees; i.e., Mr. Cuzdey's claims were frivolous.

Respectfully submitted this 17th day of July, 2017,



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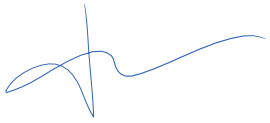
CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that I served the before going Answer on:

Appellant's attorney of record, Kevin Hochhalter, at Cushman Law Offices P.S. 924 Capitol Way South, WA, via email at

KevinHochhalter@cushmanlaw.com and
RhondaDavidson@cushmanlaw.com on May 15, 2017.

Signed this 17th day of July, 2017, at Tumwater, Washington, by:



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