

FILED
COURT OF APPEALS
DIVISION II
10 MAR 16 AM 10:08
STATE OF WASHINGTON
BY 

NO. 39142-2-II

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II**

LAWRENCE AND TINA TONN.

Appellants

v.

BRENT AND VICKI EGGLESTON,

Respondents

THE HONORABLE JUDGE DIANE M. WOOLARD, JUDGE

CLARK COUNTY CAUSE NO. 08-2-01371-9

REPLY BRIEF OF APPELLANT

**SUZAN L. CLARK, WSBA #17476
Attorney at Law
1101 Broadway Street, Suite 250
Vancouver, WA 98666
(360) 735-9434**

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RESPONSE

Without reiterating all of the previous facts and arguments set forth in the Appellants brief, the Tonns will rely on the previous brief and argument and respond to portions of the Eggleston brief that require amplification or clarification.

The Egglestons claim that the sole purpose of purchasing the property was for residential use. (Brief of Appellant, page 8) The Tonn and Eggleston families clearly used the property as both a home in the country and as a small farm. Although Larry purchased more of the trees, both families contributed labor and money to the planting of the Sequoia trees. (RP-69 to 70) The tree planting endeavor clearly shows a mutual effort of the Tonns and the Egglestons to plant a crop on the acreage and create a profit. Established Sequoia trees are a profitable crop, fetching a market price of \$1000 per tree as nursery stock. (RP-70) The Egglestons never disputed that the land was used to plant Sequoia trees and Brent testified as to his efforts regarding this endeavor. (RP-259 to 260) Whether the tree farm business made a profit or not, the families clearly engaged in activities that were designed to generate a profit.

The Egglestons claim that there is substantial evidence to support the trial court's findings that the Tonn's contributions were gifts to the Egglestons. (Brief of Appellant, page 11)

The record is replete with evidence explaining the transfer of funds as outlined in the Appellant's brief and the Egglestons never claimed that the money was a gift. (RP-361)

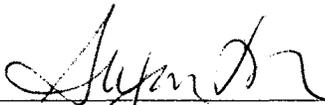
When confronted with Exhibit 11 at trial, Brent admitted that he wrote "Redwing loan to Eggleston, \$17,000," but denied knowing what it meant. (RP-292 to 293) Likewise he admitted writing "Farm six, Redwing loan to Eggleston, \$2551." (RP-293) Brent admitted that Larry offered him a fifty percent credit against their share of the down payment for any reduction Brent negotiated in the asking price on the farm. (RP-294) He agreed that \$4,175 corresponds to fifty percent of the reduction in the asking price that he obtained on behalf of the two families. (RP-294) Brent acknowledged that "Loan from R.W. to Egglestons" in his handwriting referenced a loan from Redwing to the Egglestons, but Brent denied that such a loan was made. (RP-296) The fact that the parties split household expenses further bolsters the fact that the Tonns were not randomly gifting money to the Egglestons. (RP-239 to 240)

A gift will ordinarily not be presumed. In re Estate of Gallinger, 31 Wn.2d 823, 829, 199 P.2d 575 (1948). An *unexplained* transfer of money from a parent to a child raises the presumption that the parent intended a gift. Wakefield v. Wakefield, 59 Wn.2d 550, 551, 368 P.2d 909 (1962). The cases cited by both sides for this proposition generally involve a deceased donee. Supra.

As our state Supreme Court has put it, presumptions are also "in some areas an almost impenetrable jungle, in others a mist-laden morass . . ." Burrier v. Mutual Life Ins. Co., 63 Wash. 2d 266, 274, 387 P.2d 58 (1963).

The Tonns respectfully submit that Egglestons inappropriately seek refuge behind the presumption set forth in Wakefield, supra because there is overwhelming evidence in the record as set forth in the brief of the appellant explaining the down payment loan and the monetary contributions to the property, thus clearly establishing that the Tonns never intended to make gifts to the Egglestons, nor did the Egglestons believe that money was gifted to them.

Respectfully submitted this 11th day of March, 2010.

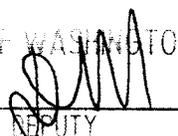


SUZAN L. CLARK, WSBA #17476
Attorney for the Appellant

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DECLARATION OF MAILING

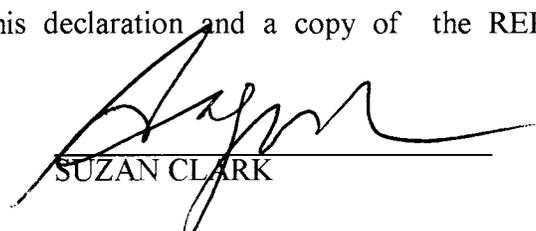
I, Suzan Clark, declare:

That I am a citizen of the United States of America; that I am over the age of 21 years, not a party to the above-entitled action and competent to be a witness therein; that on the 11th day of March, 2010 declarant deposited in the mails of the United States of America properly stamped and addressed envelopes directed to the following named individuals, to-wit:

Mr. David Ponzoha
Division II Court of Appeals
950 Broadway, Suite 300
Tacoma, Washington 98402

Mr. Joseph Vance
Attorney at Law
500 E. Broadway Street, Suite 400
Vancouver, WA 98660-3324

said envelope containing a copy of this declaration and a copy of the REPLY BRIEF OF APPELLANT.


SUZAN CLARK