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

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Nicky Rowlette, Respondent

v.

Ted Morrison and Denise Morrison, Appellants

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**RESPONDING BRIEF OF RESPONDENT**

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**A. Assignments of Error**

**Assignments of Error**

As restated below under “Argument,” Respondent accepts Appellants’ listing of assignments of error.

**Issues Pertaining to Assignments of Error**

Respondent accepts Appellants’ listing of issues related to assignments of error.

**B. Statement of the Case**

Respondent does not wholly accept Appellants' statement of the case:

1. Appellants have alleged that they “offered Dale Rowlette a deed to the property if he would pay off the purchase money note and if they could buy the property back from him for \$30,000.” Appellants’ Opening Brief, p. 7. There is no written agreement to this effect between Appellants and Dale Rowlette. There is simply a written and recorded deed, through which Appellants sold the property outright to Dale Rowlette in August of 1983, more than 30 years ago, in return for him paying off another debt of Appellants—and this deed says nothing at all about Appellants being able to repurchase the property. Other than the testimony of Mr. Morrison, there is no evidence to support these allegations.

2. Appellants have alleged that they “developed the property” and “paid for the installation of electricity,” etc. *Id.* Other than the testimony of Mr. Morrison, there is no evidence to support these allegations.

3. Appellants have alleged that they “made principal payments, not counting tax payments, to Dale Rowlette exceeding

\$34,000,” Opening Brief, p. 7. Other than the the testimony of Mr. Morrison, there is no evidence to support Appellants’ contention that these were “principal payments.”

4. Appellants have alleged that Dale Rowlette “told the Morrisons they had repaid him and all they had to do was continue paying property taxes...and the property would pass to them upon his death.” Appellants’ Opening Brief, p. 8. Other than the testimony of Mr. Morrison, there is no evidence to support this allegation.

5. Appellants have alleged that they “objected to the provision in the will granting half of their home to Denise Morrison’s brother... The Morrisons asserted 100 percent ownership of the property because they had met the terms of their agreement with Dale Rowlette.” *Id.* However, Appellants never filed a petition to contest the will, and they never filed a claim with the probate estate. Other than the testimony of Mr. Morrison, there is no evidence to support these allegations.

6. Appellants have alleged that they “repeated enough facts for the Court to understand that the unlawful detainer was brought in spite of the Morrisons’ credible claim of ownership of the property.” *Id.* at 9. The Morrisons never had a credible claim of ownership of the property. They sold the property outright to Dale Rowlette in August of 1983, more

than 30 years ago. Other than the testimony of Mr. Morrison, there is no evidence to support this allegation.

Except as objected to and noted above, Respondent accepts Appellants' statement of the case and adds the following:

1. Dale Rowlette died in March of 2013, and a probate proceeding was commenced in June of 2013. Despite receiving notice and a copy of Dale Rowlette's will, Appellants never filed a petition to contest the will, and they never filed a claim with the probate estate.

2. Further, Appellants never commenced an action to quiet title.

3. Finally, Appellants never proved at trial or anywhere else that they had indeed made improvements to the property or the value of their alleged improvements.

### **C. Argument**

**1. The trial court did not err when it allowed Nicky and Randy Rowlette to maintain an unlawful detainer action against Ms. Morrison; Ms. Morrison was not an owner of the property, either under the will or under an oral agreement with Dale Rowlette.**

#### No Title Dispute

There has never been a dispute as to title. Even Appellants acknowledge that title to the property is now and has been for decades in

the name of Ms. Morrison's late father, Dale Rowlette. The property has not been titled in the name of Appellants since they sold it to Dale Rowlette in August of 1983. Appellants have never actually disputed title to the property. Instead, they have alleged that Dale Rowlette promised to leave the property to Ms. Morrison at his death and that they have made improvements to the property. These allegations do not give Appellants a "credible claim to ownership" or a "colorable claim of title." *See* Appellants' Opening Brief, pp. 3, 6, and 12.

#### No Will Contest or Probate Claim

If Dale Rowlette really had promised to leave the property to Ms. Morrison at his death, Appellants could have raised this issue with the probate court by commencing a will contest. If Appellants really had made improvements to the property, they could have submitted a claim to the probate estate. However, Appellants chose not to pursue either of these courses of action (and the time for doing so has now expired).

#### No Quiet Title Action

Further, it is Appellants who are the claimants here, not Dale Rowlette or his estate. Dale Rowlette already had clear title to his property, with no clouds on that title and no claims of adverse possession. Neither he nor his estate needed to commence an action to quiet title—title

to the property was already in the name of Dale Rowlette. As claimants, Appellants could have commenced an action to quiet title if they truly felt they had superior title to the property, or a “credible claim to ownership,” or a “colorable claim of title.” However, Appellants chose not to pursue this course of action either. Instead, they have squatted on land that belongs to someone else, hoping to wear down the rightful owner with clear title to the property.

#### No Co-Ownership of Property

Further still, Ms. Morrison did not become a co-owner of the property at the death of her father. Her father, Dale Rowlette, left a valid will; he did not die intestate. Consequently, Ms. Morrison is not an heir at law but a possible devisee. Because that will is still being probated, Ms. Morrison is not yet a devisee: “[N]o person shall be deemed a devisee until the will has been probated.” RCW 11.04.250.

#### No Valid and Enforceable Agreement

Even if Appellants had an agreement with Dale Rowlette concerning a subsequent buy-back of the property, it was not valid or enforceable. Such an agreement, if they actually had one, would need to be in writing to be valid and enforceable. By his own testimony, Mr. Morrison made it clear that, whatever agreement Appellants might have

had with Dale Rowlette, it was not in writing (and, therefore, not signed by Dale Rowlette); it was not to be performed within one year; and it did not include the legal description of the property. Consequently, whatever agreement Appellants might have had with Dale Rowlette, it was void. RCW 19.36.010 and RCW 64.04.010. *See also Key Design, Inc. v. Moser*, 138 Wash.2d 875, 983 P.2d 653, 654 (1999) (“a contract for the sale of real property which does not contain a correct legal description of the property violates the statute of frauds”); *Dowgialla v. Knevage*, 48 Wn.2d 326, 335, 294 P.2d 393 (1956) (“an oral express trust [concerning real property]...is unenforcible under the statute of frauds”); *Martin v. Seigel*, 35 Wn.2d 223, 229, 212 P.2d 107 (1950) (“every contract or agreement involving a sale or conveyance of platted real property must contain, in addition to the other requirements of the statute of frauds, the description of such property...”).

#### No Mere Tenancy at Will

Finally, while the Residential Landlord-Tenant Act may not govern tenancies at will, it does govern rentals of property “for an indefinite time with monthly or other periodic rent reserved...” and where a tenant “continues in possession in person or by subtenant after a default in the payment of rent...” RCW 59.12.030. *See also Turner v. White*, 20 Wn.

App. 290, 291, 579 P.2d 410 (1978) (“RCW 59.12.030 consists of six separate sections, outlining different circumstances under which a tenant may be guilty of unlawful detainer...includ[ing]... (b) Continuing in possession after a 20-day notice to vacate has been served when the tenancy is for an indefinite time with monthly or other periodic rent reserved; (c) Continuing possession after default in payment of rent and tenant has failed either to pay or vacate the premises within 3 days after service of the notice to do so...”)

Here, the trial court found that Appellants “made various payments to Mr. Rowlette over a period of time, providing some indication that there was an obligation to pay something for what was done.” VRPII at 8-9. In 2006, Appellants “instituted a conversation with Dale Rowlette. And he indicated to them that he was going to retain ownership of the property at that point. And then what he wanted them to do was pay the property taxes...” which Appellants agreed to do. *Id.* at 10. However, Appellants stopped paying property taxes as agreed and “were provided at least 20 days notice of the estate’s intention to terminate their tenancy on the property, which is owned by the estate. The Morrisons received that notice at least 20 days prior to the termination of the tenancy and have refused to

honor that notice and move out and continue to reside at 53 West Wildcat Road.” VRPII at 11.

The trial court did not conclude that Appellants necessarily had a “tenancy at will”; the trial court concluded that Appellants’ tenancy “at some point can be described as a tenancy at will.” *Id.* “[Y]ou can refer to it as tenancy from month to month or a tenancy at will.” VRPII at 12.

Importantly, the trial court found that Appellants “had an agreement allowing you to reside on the property,” *id.*, in return for “various payments to Mr. Rowlette over a period of time...” *Id.* at 8.

**2. The trial court did not err when it allowed the personal representative of an Oregon estate to evict a tenant from a Washington property.**

Foreign wills do not always need to be admitted to probate in Washington for all purposes. Here, Dale Rowlette’s will did not need to be admitted to probate in Washington before his personal representative in Oregon could move to evict tenants from property belonging to his probate estate. The eviction proceeding against Appellants was not intended to complete the disposition of the property; it was simply a first step in a process, a step which could be taken without admitting Dale Rowlette’s will to probate in Washington.

Dale Rowlette's will could have provided for the property to be held in trust for a period of time. Even though his will does not do so, the probate proceeding itself means that the property will be tied up as an asset of his probate estate for a protracted period of time, with its ultimate disposition occurring at some indefinite point in the future. During that interim period of time, the rightful owner of real property should not need to allow holdover tenants to continue to occupy the property rent-free. Indeed, if an apartment building owner were to die, would his property manager be precluded from evicting non-paying, holdover tenants until his probate proceeding had been concluded?

Randy Rowlette appeared at trial pursuant to a limited power of attorney *as a witness*—not as personal representative, not as fiduciary, not as owner or eventual owner of the property. (The power of attorney also gave him the authority to negotiate with Appellants “behind the scenes,” out of court, and off the record, but that authority did not come into play the day of the trial.) Randy Rowlette testified as to his knowledge of the facts, but he did not make any decisions for the probate estate. To testify as a witness, he did not need to be pre-approved by a Washington probate court. Further, as a mere witness, he owed no fiduciary duty or duty of loyalty to his sister, Ms. Morrison.

**3. The trial court did not err when it allowed the personal representative of an Oregon estate to delegate powers through a power of attorney.**

As noted above, Randy Rowlette appeared at trial as a witness only, which he could have done without a power of attorney.

**4. The trial court did not err when it allowed an attorney-in-fact to represent a foreign estate in an action against Ms. Morrison; Ms. Morrison was not a co-beneficiary to whom Randy Rowlette owed a duty of loyalty.**

As noted above, Randy Rowlette appeared at trial as a witness only, which he could have done without a power of attorney. Also as noted above, as a mere witness, Randy Rowlette owed no fiduciary duty or duty of loyalty to his sister, Ms. Morrison.

**5. The trial court did not err when it allowed attorney fees; the time spent was not wasted or unproductive.**

Respondent's attorney submitted a cost bill to the trial court, with a copy to Appellants. Despite objecting to many other aspects of this case, and despite having ample opportunity to do so, Appellants did not object to Respondent's cost bill.

Even if they had done so, the fees and costs requested were not excessive. Indeed, Appellants are responsible for much of the cost of this case. They forced Respondent's attorney to make multiple court

appearances. If they had not done so, the fees requested would have been significantly less.

**6. The trial court did not err in its Findings of Fact #1; the probate estate is indeed the owner of the property.**

As noted above, there has never been a dispute as to title. Appellants have never actually disputed title to the property. Instead, they have alleged that Dale Rowlette promised to leave the property to Ms. Morrison at his death and that they have made improvements to the property. Nevertheless, they have not pursued these claims, and the mere making of these claims does not change the fact that the property at issue is titled in the name of Dale Rowlette only and is, therefore, an asset of his probate estate. Neither do these claims give Appellants a “credible claim to ownership” or a “colorable claim of title.” Further, probate has not been concluded, so Ms. Morrison is not yet a devisee and co-owner of the property. Finally, the Statute of Frauds voids any oral agreement Appellants might have had with Dale Rowlette concerning a possible buy-back of the property.

There trial court was correct when it found, “Mr. and Mrs. Morrison, since you quitclaim deeded the property over to Dale Rowlette and you were aware that he maintained his title to and ownership of the

property at all times up until his death, that Dale was the legal owner of the property... And then that right passed over to the estate when...Dale Rowlette passed away.” VRPII at 11.

**7. The trial court did not err in its Findings of Fact #2; Dale Rowlette did indeed purchase the property, he did indeed rent it back to Appellants, and, although a tenancy at will may not be the subject of an unlawful detainer action, the tenancy at issue here may be.**

It was clearly established at trial that Appellants quitclaim deeded the property to Dale Rowlette in August of 1983. Appellants never disputed this. It was also clearly established at trial that Appellants had an agreement with Dale Rowlette that allowed them to reside on the property in return for various payments to him over a period of time. Appellants never disputed this either. Finally, as noted above, the trial court did not conclude that Appellants necessarily had a “tenancy at will”; the trial court concluded that Appellants’ tenancy “at some point can be described as a tenancy at will.” VRPII at 11. “[Y]ou can refer to it as tenancy from month to month or a tenancy at will.” VRPII at 12.

**8. The trial court did not err in its Findings of Fact #3; Respondent did indeed have the right to terminate Appellants' tenancy.**

As personal representative of his father's probate estate, Respondent has the right to manage estate property during the pendency of the probate proceeding. The real property at issue here belongs to that probate estate. Therefore, Respondent has the right to manage that real property during the pendency of the probate proceeding, including evicting holdover tenants who refuse to pay rent. He did not need to wait until the probate proceeding has been concluded to evict Appellants.

**9. The trial court did not err in its Findings of Fact #4; Appellants were not owners of the property, and they were indeed unlawfully detaining the property.**

Appellants have never disputed that they sold the property to Ms. Morrison's father, Dale Rowlette, in August of 1983 and that the property has been titled in his name ever since. Their claims of oral promises and improvements do not make them owners of the property they sold decades ago. Neither does their long-term occupancy make them owners of the property, since they occupied the property with the consent of the property's owner pursuant to an agreement that they make payments to him over time. However, their failure to comply with that agreement and

their failure to leave the land does mean that they were indeed unlawfully detaining the property.

**10. The trial court did not err in its Findings of Fact #5; attorney fees should have been awarded, and they were not excessive.**

As noted above, Respondent's attorney submitted a cost bill to the trial court, with a copy to Appellants, and Appellants did not object.

Further, Appellants themselves are responsible for a significant portion of Respondent's attorney fees.

**11. The trial court did not err in its Conclusions of Law #1 through 5 inclusive.**

The allegations in Respondent's complaint were indeed substantially true, Appellants were indeed guilty of unlawful detainer, Appellants should indeed have been evicted, Respondent should indeed have been awarded his attorney fees and costs, and Respondent should indeed have been granted a writ of restitution.

**12. Respondent should be awarded his costs and attorney fees if he prevails on appeal.**

If Respondent prevails on appeal, he should be awarded his costs and reasonable attorney fees pursuant to RCW 59.18.290(2).

**D. Conclusion**

The judgment of the trial court should be affirmed in full.

RESPECTFULLY SUBMITTED this 8th day of April 2016.

A handwritten signature in black ink, appearing to read "Jeffrey L. Olson", written over a horizontal line.

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**CERTIFICATE OF SERVICE**

I certify, under penalty of perjury under the laws of the states of Washington, that I served, via regular U.S. Postal Service mail and electronic mail, a true and correct copy of Responding Brief of Respondent on the following persons:

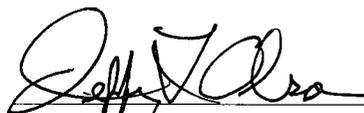
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