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Washington State
Court of Appeals
Division Two

July 10, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

DAVID B. CATLIN, Respondent/Cross Appellant, v. RAEANN PHILLIPS, Personal Representative of the ESTATE OF HEIDI M. CATLIN, Appellant/Cross Respondent.	No. 50276-3-II UNPUBLISHED OPINION

WORSWICK, J. — David Bradley Catlin (Brad) and Heidi Catlin divorced in 2013. In the dissolution decree, the dissolution court ordered Heidi[1] to leave the marital home within two months and ordered Brad to repair and sell the home. The court also awarded Heidi a judgment in the amount of $220,402, to be paid by Brad at the time of the sale. Heidi did not leave the marital home as ordered, and later died after causing significant damage to the property.

Brad initiated an action against Heidi's estate (Estate), seeking damages for the costs related to repairing the property. After a bench trial, the trial court entered findings of fact and conclusions of law, awarding Brad $165,847.71 in total damages and imposing an interest rate of 5.7 percent on the judgment. The trial court's order provided that Brad had 18 months to repair

[1] Because Brad and Heidi share the same last name, we refer to them by their first names for clarity. We intend no disrespect.

and sell the property and that interest would begin to run on the $220,402 dissolution award only after the 18 months passed.

The Estate appeals, arguing that the trial court erred by admitting inadmissible hearsay at trial, that one of the court's findings of fact and one of the court's conclusions of law are not supported by substantial evidence, and that the trial court improperly modified the existing dissolution decree by abating the interest on the dissolution award. Brad cross appeals, arguing that the trial court erred by not awarding him damages for commissive waste and for the lost rental value of the home, and by setting the interest rate on his judgment too low.

Regarding the Estate's appeal, we hold that the trial court made one evidentiary error, but this error is harmless; the contested finding of fact is supported by substantial evidence; the contested conclusion of law is supported by the findings of fact; and the Estate's interest abatement argument fails because the trial court did not have authority to award interest arising out of the dissolution decree. Regarding Brad's cross appeal, we hold that the trial court did not err in its classification of certain waste as permissive, Brad waived his rental value claim, and the proper calculation for interest rate on the judgment is 6 percent. Thus we affirm the trial court's damages order and judgment except for the interest calculation. We reverse the trial court's 5.7 percent interest rate on Brad's damages award, and we remand for further proceedings consistent with this opinion.

FACTS

I. BACKGROUND

Brad and Heidi married in 1991. In 2006, Heidi father's deeded real property to her. The property contained a house, a barn with horse stalls, a shop, and two adjoining parcels of land.

Brad renovated and upgraded the house.[2] The renovations included gutting the house, installing new plumbing and electrical components, installing new floors and carpets, adding sheetrock to the sides of the building, rebuilding the stalls in the barn, and building a shop and carport. Brad completed a bulk of the work himself but also employed contractors as necessary.

In 2010, the couple moved into the home on the property. Heidi later became addicted to prescription pain medication and in 2012 Brad moved out of the home. Brad continued to pay the bills for the home and Heidi continued to live on the property. Heidi filed for divorce in April 2013.

Before the couple finalized the divorce, residential appraiser Scott Hamilton assessed the property. Hamilton classified the exterior of the home as being in "good" condition and the interior of the home as being in "average" condition. Report of Proceedings (RP) at 249. Hamilton appraised the two adjoining parcels of land to be worth $52,000 and $44,000 and appraised the house's value at $420,000.

In December 2013, the court entered a decree of dissolution, dissolving the Catlins' marriage. At the time of the dissolution, the couple owed $177,000 on the home's mortgage to a credit union. In the dissolution decree, the court ordered:

> The [property] is awarded to [Brad] to allow [him] to sell the property. The proceeds of sale shall be applied first to the indebtedness owed to [the credit union] that is secured by part of the real estate awarded to [Brad]. To equalize the division of property, [Heidi] is awarded judgment against [Brad] in the amount of $220,402.00 to be paid to [Heidi] at the time of the sale of the real property. [Brad] will thereafter be reimbursed for any costs for labor and materials expended to make repairs upon the property to facilitate a sale. Any remaining balance of sale proceeds will be divided equally between the parties.

[2] Brad has experience working as a carpenter, as a co-owner of a construction and remodeling company, and as a construction manager for a commercial and industrial construction company.

Clerk's Papers (CP) at 25. The court left the space for the interest rate blank for Heidi's $220,402 judgment.

The decree also ordered Heidi to vacate the property by February 28, 2014. Despite the decree, Heidi did not leave the property.

In October 2014, Heidi committed suicide. On October 21, Brad visited the property and observed extreme damage. The inside of the home smelled of urine, mold, and mildew and contained cat feces. The house was cluttered and full of items, multiple doors were damaged, and windows and screens were broken. Paint was splattered all over the interior home, and urine and an unknown sticky substance ran down some of the home's walls. The stove, dishwasher, and microwave in the kitchen were all damaged, and cupboards were warped due to moisture. Carpeting was torn up, and the walls and a medicine cabinet in a bathroom were broken. Some of the bedroom walls contained holes. Light switches were broken, trim was missing from walls, and dead bolts had been mounted to an interior door.

The floor of the home had sustained severe water damage, and vinyl flooring was swelled from the moisture. Black mold growing in the home had permeated down to the underfloor, plumbing in parts of the home had been dismantled, and toilets were broken. Parts of the home's hardwood floors were warped.

Outside of the home, paint was splattered on concrete and holes were drilled into the siding of the house. The masonry on the outside steps of the home was damaged and the gravel on the driveway had been removed. A public utility meter had also been tampered with.

Garbage littered the surrounding property which also contained multiple burn barrels, burn piles, and hundreds of syringes. An outside water pump had been improperly repaired and the shop had been boarded up with plywood. A wood stove in the shop had also been incorrectly installed and the shop's roof was burned. Items from the horse barn were missing and many automobile parts were left inside of the barn.

Brad contacted various contractors in an attempt to gather estimates for the costs to bring the property back to its original condition. Brad was unable to secure a contractor or estimates for the entire job, so he obtained individual estimates on smaller projects from various subcontractors and compiled those estimates.

In March 2015, after some repairs had been made, Hamilton assessed the property again. Hamilton's second assessment noted that the occupant of the property had allowed it to fall into "disrepair." Ex. 13 at 8. The assessment stated that Brad had provided an estimate of the costs to repair the property based on contractor estimates and that the total cost of repairs was $160,000.

Brad continued to clean and repair the property. He enlisted the help of his friends to clean up debris and help repair damage to the home. Brad also utilized his own construction skills. Brad agreed to pay his friends an hourly rate, and he also paid himself.[3]

[3] Brad agreed to pay his friends as follows: Mike McEwen at a rate of $57 per hour; Janelle Tiegs at a rate of $52 per hour; Roger Fraidenburg at a rate of $30 to $32 per hour; Ryan Desmet at a rate $15 per hour; Lori McEwen at $700 total; Nancy Tiegs at a rate of $30 per hour; Taylor Desmet at a rate of $15 per hour; Seth Owens at $165 total; Jared Coffee at $165 total; Ted Tiegs at a rate of $30 per hour; and Chris Fraidenburg at a rate of $15 per hour. Brad also paid himself at a rate of $45 per hour for his work on the property.

On March 4, 2015, Brad submitted two creditor's claims to the Estate. Brad's first claim totaled $180,356.06, and the second claim totaled $9,412.00. At the time Brad submitted the claims, the property still needed substantial repair work. In September 2015, the Estate accepted Brad's claim for $9,412.00 but rejected Brad's claim for $180,356.06. Brad then sued the Estate in the superior court.

II. ACTION FOR DAMAGES

In his complaint, Brad alleged that Heidi's actions caused damage to the home, rendering the property unmarketable, and that the damage "substantially impaired the value" of Heidi's dissolution award. CP at 2. Brad alleged that Heidi's actions caused him to incur cleanup and repair expenses in the amount of $189,765.06. Brad further alleged that Heidi committed waste under RCW 64.12.020, entitling him to attorney fees and treble damages.[4]

The Estate filed an answer, affirmative defenses, and counterclaims. The Estate asserted that Brad breached the dissolution decree by failing to sell the property and pay Heidi her

[4] RCW 64.12.020 provides:

> If a guardian, tenant in severalty or in common, for life or for years, or by sufferance, or at will, or a subtenant, of real property commit waste thereon, any person injured thereby may maintain an action at law for damages therefor against such guardian or tenant or subtenant; in which action, if the plaintiff prevails, there shall be judgment for treble damages, or for fifty dollars, whichever is greater, and the court, in addition may decree forfeiture of the estate of the party committing or permitting the waste, and of eviction from the property. The judgment, in any event, shall include as part of the costs of the prevailing party, a reasonable attorney's fee to be fixed by the court. But judgment of forfeiture and eviction shall only be given in favor of the person entitled to the reversion against the tenant in possession, when the injury to the estate in reversion is determined in the action to be equal to the value of the tenant's estate or unexpired term, or to have been done or suffered in malice.

dissolution award of $220,402. The Estate also stated that it sought to enforce the dissolution decree within the damages action "rather than [within] the dissolution action in the interests of judicial economy." CP at 17. The Estate further alleged that Brad's claims were frivolous and later amended its answer and asserted an affirmative defense that the damage to the property was committed by someone other than Heidi. The Estate requested that the court dismiss Brad's claims and order him to immediately sell the property and pay the amount owed under the dissolution decree, including accrued interest.

III. PRETRIAL PROCEEDINGS

Prior to trial, the parties exchanged ER 904 notices.[5] Brad filed multiple ER 904 notices that detailed a series of potential exhibits. Brad's notices contained documents such as receipts, invoices, and checks representing repair costs Brad incurred. The invoices and receipts included computer-generated receipts from retailers such as The Home depot, as well as invoices from smaller businesses for certain specialty materials. The notices also contained estimates that Brad obtained from contractors on the cost to repair certain parts of the property.

The Estate objected to the ER 904 documents on the basis of hearsay. The Estate argued that the receipts were hearsay and generic store receipts and did not establish that Brad was the purchaser or that the materials were purchased for repairing the property. Prior to trial, the court ruled on Brad's ER 904 submissions. The court did not admit the challenged invoices, receipts, or some of the contractor estimates under ER 904, and reserved the evidentiary issues for trial.

[5] Under ER 904, certain documents are deemed admissible and authentic before trial unless the party opposing admission properly objects.

IV. TRIAL

The case proceeded to a bench trial. At trial, Brad testified to the background facts described above. He also stated that he was testifying as an expert, and he described his training and experience. At the time of trial, Brad was working as a general contractor and had 24 years of experience in the construction industry. Brad also testified about multiple exhibits. Regarding estimates marked as exhibits 6.1 through 6.17, Brad explained that the estimates were the type that a general contractor would reasonably rely on in order to form an estimate for the total cost of a project. Brad's counsel moved to admit the estimates and the Estate objected on hearsay grounds. The trial court sustained the Estate's objection and did not admit the estimates.

Brad also testified regarding copies of the nearly 100 invoices and receipts marked as subsections of exhibit 6. Brad testified that the copies of the invoices and receipts were true and accurate copies, and he also testified to the circumstances of each receipt. When Brad moved to admit the invoices and receipts into evidence, the Estate objected asserting that they contained inadmissible hearsay. The court, noting that Brad had provided testimony regarding all of the invoices and receipts, overruled the objection for all of the exhibits except one.

Brad also testified about the estimated cost to finish repairing the home. Brad specifically provided his own estimate for each area of the property still in need of repairs. He testified that it would cost: $22,000 to repair hardwood floors; $8,500 to repair the exterior paint; $500 to repair electrical components in the shop; $450 to replace doors in the shop; $3,000 for repairs to the exterior paint of the shop; $350 to purchase a new water pump and anywhere from $57 to $125 to install the pump; and $500 to purchase gravel and $2,000 to spread the gravel. Brad also testified in detail that he had spent close to $60,000 on materials.

Brad also introduced a spreadsheet he had prepared that showed Brad's estimate of the total cost to repair the property. The spreadsheet contained amounts compiled from the various subcontractor estimates that Brad had previously sought to admit under ER 904. Brad testified about the various components of the spreadsheet estimate and also testified that he has generated around 400 similar estimates during his career.

Brad moved to admit the evidence and the Estate objected arguing that the spreadsheet contained hearsay because it was prepared by Brad to support his own case and because it "incorporate[d] quoted amounts that are represented in the estimates that have already been excluded as hearsay." Report of Proceedings (RP) at 426. The court overruled the Estate's objection, stating that the evidence was allowed under ER 703.[6]

Aaron Craig, a general contractor, testified as an expert witness for Brad. Craig testified that he prepares estimates by relying on bids and estimates from subcontractors. Craig said that he visited Brad's property in early 2015 and stated that the property was in "very poor condition" at the time. RP at 169. Craig opted not to give Brad an estimate to repair the property because of the "unknowns," such as the extent of water and mold damage. RP at 169. Craig also testified that the estimated numbers compiled by Brad in the spreadsheet in exhibit 17 appeared to be "within reason." RP at 172.

[6] ER 703 provides:

> The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

The Estate called Nadyne Tauscher, a real estate appraiser who estimated the total damage to the home to be $59,740.77. Tauscher described how she determined the costs for each project and testified about how she determined the total damage to the home.

V. TRIAL COURT'S INITIAL RULINGS

At the conclusion of trial, the court gave an oral ruling and stated that it based its award for labor on Brad's testimony regarding the amount he had paid his friends to work on the property. The trial court further stated that the invoices and receipts for materials Brad had purchased came to a total of $30,946.71.

Regarding the work that remained to be done, the trial court considered Tauscher's and Brad's testimony for the various remaining projects. The court stated that most of the damage to the home was permissive waste and not commissive waste. The trial court further ruled that Brad had 18 months to finish the repairs to the home and sell the home. The trial court denied the Estate's counterclaims for breach of the dissolution decree and frivolity.

On March 31, 2017 the trial court held a hearing for the presentation of the final orders. At the hearing, the court affirmed that the interest rate on Brad's $165,847.71 judgment accrues at a rate of 12 percent. After the Estate asked the court about the interest rate on its $220,402 dissolution judgment, the court stated that it was not ruling on the interest on the dissolution award because that issue was not before the court. The court entered a judgment the same day.

VI. MOTION FOR RECONSIDERATION AND NOTICE OF APPEAL

On May 5, 2017, the Estate filed a motion to alter or amend judgment or for reconsideration under CR 59(h) and CR 59(a). The Estate argued that the trial court erred in refusing to make a ruling on the applicable interest rate on the dissolution judgment, claiming

that without the interest information the parties could not give effect to the final judgment. The Estate further argued that the postjudgment rate applicable to Brad's $165,847.71 judgment should be 5.75 percent and not 12 percent because Brad's action was based in tort.

On April 14, court held a hearing on the Estate's motion for reconsideration. Regarding the interest rate on the $220,402 dissolution judgment, the trial court ordered that Brad would pay no interest on the dissolution judgment for 18 months from the date of the damages action judgment. The court reasoned that Brad had not paid the judgment at an earlier time because

> the house couldn't be sold and it couldn't be sold because of the damage that had been done to the p1ace which was done by Heidi Catlin. So, I'm just thinking out loud here. It seems to me to be a bit unfair to punish [Brad] for not having paid [the dissolution judgment] and imposing interest when it's not his fault that it couldn't be paid because the damage was done [by Heidi].

RP at 702-703. As to the interest rate that the Estate owed on Brad's $165,847.71 judgment, the court ruled that the Estate would be subject to a 5.7 percent interest rate because Brad's action was an action for waste and negligence, and therefore, a lower tort-based interest rate applied.

VII. FINDINGS, CONCLUSION, AND AMENDED JUDGMENT

On May 19, 2017, the trial court entered an amended judgment setting the interest rate on Brad's damages award at 5.7 percent. The amended judgment also stated, "Beginning September 16, 2018 interest on the judgment entered in favor of Heidi Catlin in the amount of $222,402.00 in [the dissolution case] shall accrue at 12% per annum." CP at 323. At the same time, the trial court entered its written findings of fact and conclusions of law. The court's pertinent findings stated:

> Y. Some of the damage caused by or attributable to Ms. Catlin has been satisfactorily repaired. At the time of trial, the repair work that still needed to be

> performed (and the cost attributable to the Estate of Heidi Catlin as damages) is as follows:
>
> a. Replace 1,049 square feet of carpeting: $12,000
> b. Replace tile: $3,460
> c. Replace hardwood floors: $22,000
> d. Replace missing interior and exterior doors: $7,877
> e. Fix broken gutters: $1,170
> f. Repaint exterior of home $4,814
> g. Repair electrical wiring issues in shop: $500
> h. Replace two doors to the shop: $450
> i. Paint the shop: $1,500
> i. This amount of $1,500 represents one half of the cost to paint the shop. The other half is allocated to Mr. Catlin.
> j. Repair damage to shop roof and siding: $300
> k. Replace pump: $500
> 1. Repair barn roof and replace hardware missing from barn: $1,300
> m. Replace missing gravel: $2,500

CP at 319-320. The court additionally found that Brad was "well acquainted with estimating construction costs" and had been in the construction industry for over 20 years. CP at 318. The trial court's conclusions of law stated:

> A. The decedent caused damage to Plaintiff in the sum of $165,847.71. This is calculated as follows:
>
> 1. $74,320.00 in labor charges (including those of Brad Catlin);
> 2. $30,946.71 for costs incurred by the Plaintiff as shown by the portions of exhibit 6 admitted into evidence;
> 3. $58,381 for the estimated costs of work to be done;
> 4. Reduced by $1,100 for the commissive waste committed. The Court concludes that shop stove damage of $300 and fixing two doors of $800 was commissive waste, and that these should be trebled.
> 5. This equals $162,547.71 in permissive waste.
> 6. Add back in $3,300 for the commissive waste.

CP at 320.

The Estate appeals the trial court's judgment and findings of fact and conclusion of law.[7] Brad cross appeals the trial court's decision.

ANALYSIS

I. EVIDENTIARY ISSUES

The Estate argues that the trial court abused its discretion by admitting inadmissible hearsay. Specifically, the Estate claims that the trial court improperly admitted Brad's spreadsheet as exhibit 17 because the spreadsheet contained inadmissible hearsay under ER 702 and ER 802. The Estate also argues that the trial court erred by admitting invoices and receipts as part of exhibit 6 because the invoices and receipts constituted inadmissible hearsay under ER 802. We disagree that the trial court erred by admitting exhibit 17. We agree with the Estate that the trial court erred by admitting the invoices and receipts in exhibit 6; however, we hold that the court's error was harmless.

[7] Because of the unique procedural posture of this case, we must exercise our discretion to reach the merits of the parties' arguments. On April 26, following the trial court's reconsideration hearing, the Estate filed its notice of appeal with this court. The Estate attached the trial court's initial March 31 judgment to this notice of appeal. On May 19, the trial court entered an amended judgment, as well as findings of fact and conclusions of law. The Estate never notified this court of the existence of the amended judgment or findings of fact and conclusions of law. The Estate's failure to inform this court of the trial court's action was improper.

RAP 7.2(e) authorizes the trial court to change or modify its decision without our permission only if the subsequently entered order or judgment does not affect the outcome of any issues accepted for review. *State ex rel. Shafer v. Bloomer*, 94 Wn. App. 246, 250, 973 P.2d 1062 (1999). Here, entry of the amended judgment affected the outcome of some issues.

Neither party calls this to our attention. However, because the parties' briefs address only the amended judgment and associated findings of fact and conclusion of law, and because the record on appeal contains the amended judgment, findings of fact, and conclusions of law, we exercise our authority to grant the trial court permission to enter the amended judgment and the findings of fact and conclusions of law, and we accept review of the issues in this case despite the procedural flaw. RAP 1.2(a); RAP 12.2.

A. *Legal Principles*

We review the trial court's decision to admit or exclude evidence for an abuse of discretion. *Engstrom v. Goodman*, 166 Wn. App. 905, 910, 271 P.3d 959 (2012). An abuse of discretion occurs when the trial court bases its decision on untenable grounds or exercises discretion in a manner that is manifestly unreasonable. *In re Marriage of Chandola*, 180 Wn.2d 632, 642, 327 P.3d 644 (2014). We leave credibility determinations to the trier of fact. *Kim v. Lakeside Adult Family Home*, 185 Wn.2d 532, 551, 374 P.3d 121(2016). Evidentiary rulings are subject to harmless error analysis. *State v. Bourgeois*, 133 Wn.2d 389, 403, 945 P.2d 1120 (1997). An evidentiary error is harmless and not prejudicial if, within reasonable probabilities, it did not affect the trial's outcome. *Driggs v. Howlett*, 193 Wn. App. 875, 903, 371 P.3d 61, *review denied*, 186 Wn.2d 1007, 380 P.3d 450 (2016).

B. *Exhibit 17*

The Estate asserts that Brad's spreadsheet is hearsay and the data in the spreadsheet is also hearsay because the data came from inadmissible subcontractor repair estimates. The Estate argues that, although ER 703 allows for the admission of estimates to support the basis of an expert opinion, here there was no expert opinion being offered. The Estate also claims that no witness authenticated the information in the spreadsheet and that no witness provided independent evidence or testimony supporting the data. We disagree.

"Hearsay" is a statement, "other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." ER 801. ER 703 permits an expert to base his or her expert opinion on facts or data not otherwise admissible, provided they are of a type reasonably relied on by experts in the particular field.

Thus, the rule allows expert opinion testimony based on hearsay that would otherwise be inadmissible. *Det. of Marshall v. State*, 156 Wn.2d 150, 163, 125 P.3d 111 (2005). ER 705 also grants the court discretion to allow the expert to relate hearsay or otherwise inadmissible evidence to the trier of fact to explain the reasons for his or her expert opinion, subject to appropriate limiting instructions. *Det. of Marshall***,** 156 Wn.2d at 162-63.

Here, Brad asserted that he was an expert in compiling construction estimates and as such could rely on the estimates in order to formulate an opinion on the estimated costs for repair. The trial court correctly ruled that exhibit 17 was admissible under ER 703. The information in Brad's spreadsheet was the type of information that is commonly relied on by general contracting experts to create an estimate as to the cost to repair a home after damage. Brad testified not just as a homeowner, but also as an expert witness—specifically an experienced general contractor. The court found that Brad was "well acquainted with estimating construction costs" and that using his extensive background in the construction industry, he pulled together an estimate of the costs and expenses required to return the homes to its original state. CP at 318.

Brad testified that when creating an estimate, he compiles estimates from various subcontractors and uses those estimates to calculate the project's total cost. Aaron Craig, a contractor, also testified that he prepares estimates by relying on bids and estimates from subcontractors in the same manner as Brad, and that Brad's estimate in this case was "within reason." RP at 174. Because Brad, as an expert, may rely on otherwise inadmissible hearsay to base his expert opinion, the trial court did not err in allowing exhibit 17, which contained otherwise inadmissible hearsay to be admitted.

C. *Invoices and Receipts*

The Estate also argues that the trial court erred by admitting the invoices and receipts in exhibit 6 because the documents were inadmissible hearsay.[8] We hold that the trial court improperly admitted the invoices and receipts but that the admission was harmless.[9]

"Hearsay" is a statement, "other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." ER 801(c). Brad used the invoices and receipts in exhibit 6 to assert that he purchased the items and to assert the dollar amount he spent on the items. Contrary to the trial court's conception, the invoices and receipts served to prove the truth of what they asserted and, therefore, were hearsay. ER 801(c).

The Estate asserts that no court in Washington has addressed whether invoices and receipts are hearsay. This is not accurate. Washington courts have held that computer-generated

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[8] Brad appears to argue that the invoices and receipts were properly admitted because he submitted the documents in an ER 904 notice. Brad is incorrect. ER 904 provides that documents offered under the rule will be deemed authentic and admissible without testimony or further identification, *unless an objection to them is made*. Under ER 904(c), if a party objects to a document submitted by the opposing party on the basis of authentication, and the court finds that the objection was made "without reasonable basis," then the party who submitted the document is entitled to an award of expenses and reasonable attorney fees for the costs expended to obtain the required proof of authentication.

[9] In light of this case, we question whether it is sensible to continue to consider common computer-generated retail receipts as hearsay, when the receipts are presented to the court by a party to the transaction. The purpose of the hearsay rule is to allow a party to test assertions by cross-examination. *State v. Ryan*, 103 Wn.2d 165, 175, 691 P.2d 197 (1984). Exceptions to this rule recognize that some statements are sufficiently free from the risk of inaccuracy and untrustworthiness, to make the test of cross-examination unnecessary. *Ryan*, 103 Wn.2d at 175.

Computer-generated receipts from a major retailer, created contemporaneously to a transaction and propounded by a party to the transaction, may contain a sufficient level of reliability or trustworthiness to merit admission. Because this issue is not briefed or argued, and because it does not affect the outcome of this case, we leave its resolution for another day.

billing statements and similar documents are regarded as hearsay but are routinely held to be within the hearsay exception for business records, when they are properly authenticated by a business records custodian. *See* 8 LEWIS H. ORLAND & KARL B. TEGLAND, WASHINGTON PRACTICE: RULES PRACTICE ER 803, (6th ed. 2013).

No records custodian testified to the authenticity of the documents despite the Estate's objection to the ER 904 documents. After the Estate's ER 904 objection, Brad was on notice that he needed to take action to authenticate the invoices and receipts. Brad failed to do so.[10]

Because the invoices and receipts are hearsay and because Brad failed to produce a qualified witness to testify to the authenticity of the documents, the trial court erred in admitting the invoices and receipts in exhibit 6 into evidence.

However, the Estate fails to establish prejudice. Even without the invoices and receipts, sufficient evidence existed for the court to award Brad the costs of materials. As discussed below, all of the trial court's findings of facts are supported by Brad's testimony. Brad testified in detail that he had spent close to $60,000 on materials.

Considering all other evidence and the testimony at trial, it is not likely that the outcome at trial would have been different had the trial court excluded the challenged invoices and receipts. Accordingly, any error in admitting the invoices and receipts in exhibit 6 was harmless.

[10] Had Brad subpoenaed the appropriate records custodian from the businesses to authenticate the records, the Estate would likely have borne the costs and attorney fees expended to obtain the required proof. ER 904(c)(2).

II. FINDING OF FACT Y AND CONCLUSION OF LAW A

The Estate argues that the trial court erred in entering Finding of Fact Y and Conclusion of Law A because neither were support by substantial evidence. Br. of App. at 24. We hold that Finding of Fact Y is supported by substantial evidence, and Conclusion of Law A is supported by the findings of fact.

A. *Standard of Review*

We review the trial court's decision following a bench trial to determine whether the findings are supported by substantial evidence and whether those findings support the conclusions of law. *Herring v. Pelayo*, 198 Wn. App. 828, 832, 397 P.3d 125 (2017). Substantial evidence is "a quantum of evidence sufficient to persuade a rational fair-minded person the premise is true." *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 879, 73 P.3d 369 (2003). The party challenging the trial court's findings of fact has the burden to prove they are not supported by substantial evidence. *Fisher Props., Inc. v. Arden-Mayfair, Inc.*, 115 Wn.2d 364, 369, 798 P.2d 799 (1990). We consider factual findings and legal conclusions for what they are even though they may be mislabeled as a finding or a conclusion. *Scott's Excavating Vancouver, LLC v. Winlock Properties, LLC*, 176 Wn. App. 335, 342, 308 P.3d 791 (2013).

We defer to the trial court on issues of conflicting evidence, witness credibility, and persuasiveness of the evidence. *City of Univ. Place v. McGuire*, 144 Wn.2d 640, 652-53, 30 P.3d 453 (2001). Unchallenged findings of fact are verities on appeal. *Merriman v. Cokeley*, 168 Wn.2d 627, 631, 230 P.3d 162 (2010). And an unchallenged conclusion of law becomes the law of the case. *Nguyen v. City of Seattle*, 179 Wn. App. 155, 163, 317 P.3d 518 (2014).

We leave the determination of damages to the fact finder, and we do not disturb it unless it is outside the range of substantial evidence in the record. *Bunch v. King Cty. Dep't of Youth Servs.*, 155 Wn.2d 165, 179, 116 P.3d 381 (2005). A court's damages award need not be mathematically exact so long as it falls within the range of the evidence presented. *Harmony at Madrona Park Owners Ass'n v. Madison Harmony Dev., Inc.*, 160 Wn. App. 728, 737, 253 P.3d 101 (2011).

B. *Finding of Fact Y*

We must first determine if the challenged finding of fact is supported by substantial evidence. The Estate challenges the court's Finding of Fact Y, which states:

> Some of the damage caused by or attributable to Ms. Catlin has been satisfactorily repaired. At the time of trial, the repair work that still needed to be performed (and the cost attributable to the Estate of Heidi Catlin as damages) is as follows:
>
> a. Replace 1,049 square feet of carpeting: $12,000
> b. Replace tile: $3,460
> c. Replace hardwood floors: $22,000
> d. Replace missing interior and exterior doors: $7,877
> e. Fix broken gutters: $1,170
> f. Repaint exterior of home $4,814
> g. Repair electrical wiring issues in shop: $500
> h. Replace two doors to the shop: $450
> i. Paint the shop: $1,500
> i. This amount of $1,500 represents one half of the cost to paint the shop. The other half is allocated to Mr. Catlin.
> j. Repair damage to shop roof and siding: $300
> k. Replace pump: $500
> 1. Repair barn roof and replace hardware missing from barn: $1,300
> m. Replace missing gravel: $2,500

CP at 319-320. Specifically, the Estate challenges subsections c, f, g, h, i, k, and m of this finding.

This finding is supported by substantial evidence. At trial, Brad testified about the repairs listed in each subsection. He provided his opinion as to how much the repairs would cost for each individual project, including hardwood floor repair, painting, and electrical work, pump repair, and gravel repair. Brad's testimony at trial about the cost of repairs supports each subsection of the court's finding. Accordingly, finding of fact Y is properly supported by substantial evidence in its entirety.

C. *Conclusion of Law A*

The Estate next argues that Conclusion of Law A is not supported by substantial evidence and that the trial court erred in concluding $162,847.71 to be the total damages. We disagree.

1. *Standard of Review*

As a preliminary issue, we address the proper standard of review for conclusion of law A. As discussed above, we consider factual findings and legal conclusions for what they are even though they may be mislabeled as a finding or a conclusion. *Scott's Excavating Vancouver, LLC*, 176 Wn. App. at 342.

Here the trial court's conclusion of law A actually contains findings of fact and one conclusion of law. Subsections 1 through 6 are more properly considered findings of fact. Accordingly, we hold that each challenged subsection is supported by substantial evidence, and further hold that the court's findings of fact support its conclusion that Brad incurred damages in the amount of $162,847.71.

2. *Findings Properly Supported*

Conclusion of Law A states:

> The decedent caused damage to Plaintiff in the sum of $165,847.71. This is calculated as follows:
>
> 1. $74,320.00 in labor charges (including those of Brad Catlin);
> 2. $30,946.71 for costs incurred by the Plaintiff as shown by the portions of exhibit 6 admitted into evidence;
> 3. $58,381 for the estimated costs of work to be done;
> 4. Reduced by $1,100 for the commissive waste committed. The Court concludes that shop stove damage of $300 and fixing two doors of $800 was commissive waste, and that these should be trebled.
> 5. This equals $162,547.71 in permissive waste.
> 6. Add back in $3,300 for the commissive waste.

CP at 320. The Estate only assigns error to subsections 1, 2, 3, and 5 of this conclusion.

i. S*ubsections 1, 2, and 3*

Substantial evidence supports the court's findings of facts here. Brad testified about the rate that he paid each person who worked on the project, about the amount that he spent on the project at the time of trial, and about his estimate of the dollar amount of the work that remained to be completed. The trial court relied on Brad's and Tauscher's testimonies in determining the amounts expended on the repairs and in determining the remaining repairs to be done. The testimony supports the court's findings about the labor costs, general material costs, and remaining repair costs. Accordingly, the court's findings are supported by substantial evidence.

ii. *Subsection 5—Conclusion of Law*

The Estate challenges the trial court's ultimate conclusion that the total damages for the permissive waste equals $162,547.71. The Estate specifically argues that the trial court's award for the cost of materials was not supported by substantial evidence and argues that without

evidence supporting the reasonableness of the costs, the costs could not be an appropriate basis for an award. The Estate asserts that allowing the court's conclusion to stand would give plaintiffs the ability to recover "radically-inflated damages" through self-serving testimony. Br. of App. at 30. Because the trial court's conclusion that the award of damages totals $162,547.71 is properly supported by the findings, we disagree.

Evidence sufficiently proves damages when it "'affords a reasonable basis for estimating the loss and does not subject the trier of fact to mere speculation or conjecture.'" *Madison Harmony Dev.*, 160 Wn. App. at 737. (quoting *Eagle Point Condo. Owners Assoc. v Coy*, 102 Wn. App. 697, 704, 9 P.3d 898 ((2000)). Mathematical certainty is not required, and a fact finder has discretion to award damages that are within the range of competent evidence in the record. *Madison Harmony Dev.*, 160 Wn. App. at 738. Generally, "[a]n appellate court will not disturb an award of damages made by the fact finder unless it is outside the range of substantial evidence in the record, or shocks the conscience, or appears to have been arrived at as the result of passion or prejudice." *Madison Harmony Dev.*, 160 Wn. App. at 737 (alteration in original) (quoting *Mason v. Mort. America*, 114 Wn.2d 842, 850, 792 P.2d 142 (1990)).

Here, the evidence provided a reasonable basis for calculating Brad's labor costs at $74,320, materials costs at $30, 946.71, and remaining repair costs at $58,381. Although the Estate argues that Brad failed to show competent evidence regarding the labor costs and materials cost, the Estate is mistaken because Brad adequately testified at trial about how much he spent on labor and materials. Thus, the trial court, acting as the fact finder, had the discretion to enter its award for costs incurred so long as the award was within the range of competent testimony at trial.

Further, the Estate's argument that adopting Brad's position would give plaintiffs the ability to recover "radically-inflated damages" through self-serving testimony is unsound. Br. of App. at 30. The trial court found Brad to be an expert witness with ample experience in the construction industry. Brad properly testified to amounts he personally spent on materials to repair the home without an obligation to submit and invoices or receipts to the court. We leave credibility determinations to the trier of fact. *Kim*, 185 Wn.2d at 551.

Because all of the trial court's findings are either supported by substantial evidence or not challenged, the trial court's conclusion that the award of damages totals $162,547.71 is properly supported by the findings.

III. FAILURE TO AWARD INTEREST ON DISSOLUTION JUDGMENT

The Estate argues that the trial court improperly "abated" Brad's requirement to pay the Estate a postjudgment interest on its dissolution award. Br. of App. at 33. The Estate asserts that the issue of the dissolution decree's postjudgment interest award was never properly before the court and that by awarding no interest for 18 months from the date of the damages action judgment, the trial court improperly modified the dissolution decree. Because the court did not award interest on the original dissolution judgment, we hold that the trial court did not improperly "abate" interest on the judgment.[11]

[11] Brad argues that because the damages action came about due to Heidi's breach of the dissolution decree, the trial court had equitable authority to not require Brad to pay interest on the dissolution judgment. We do not decide this issue on principles of equity.

A. *Issue Properly Before the Court*

On appeal the Estate asserts that the issue of interest abatement was not properly before the trial court. We disagree.

In its answer to Brad's complaint, the Estate counterclaimed, arguing that it was harmed by Brad's failure to comply with the dissolution decree. The Estate sought enforcement of the terms of the dissolution decree, including enforcement of the interest rate. The Estate explained that it sought to enforce the dissolution decree in the damages action "rather than [within] the dissolution action in the interests of judicial economy." CP at 17.

Moreover, at the hearing for the presentation of orders following the trial, the Estate asked the trial court about the interest rate on its $220,402 dissolution judgment. The court stated that it was not ruling on the interest on the dissolution award because that issue was not before the court. In its motion for reconsideration, the Estate argued that the trial court erred in refusing to make a ruling on the applicable interest rate on the dissolution judgment, and requested that the court address the interest rate issue.

The invited error doctrine applies here. Under the invited error doctrine, a party may not set up an alleged error and then complain about the error on appeal. *Angelo Prop. Co. v. Hafiz*, 167 Wn. App. 789, 823, 274 P.3d 1075 (2012). Because the Estate requested that the trial court address how much interest rate the Estate could collect on the dissolution decree award, the Estate may not now argue on appeal that the trial court lacked the ability to address the interest rate issue. Accordingly, the interest rate issue was properly before the trial court.

B. *Improper Modification*

The Estate also asserts that by awarding no interest for 18 months from the date of the damages action judgment, the trial court improperly modified the dissolution decree. We agree that the court improperly modified the dissolution decree, but we hold that the improper modification occurred when the court entered an order awarding any interest at all to the Estate.[12]

When a court fails to provide for interest in a dissolution decree, that failure is the equivalent of denying interest. *Young v. Young*, 44 Wn. App. 533, 537, 723 P.2d 12 (1986). A trial court does not have the authority to modify even its own decree in the absence of conditions justifying the reopening of the judgment. *In re Marriage of Thompson*, 97 Wn. App. 873, 878, 988 P.2d 499 (1999). A decree is modified when rights given to one party are extended by the court beyond the decree's original scope or otherwise reduced. *In re Marriage of Thompson*, 97 Wn. App. at 878.

Here, the dissolution decree does not state an interest rate. The trial court left blank the line on the decree where postjudgment interest would normally be awarded. This omission by the trial court operates as a denial of interest on the postjudgment award.

The Estate provided no basis for the trial court to modify the dissolution decree. Because the trial court ruled that the Estate could collect interest on the dissolution decree, the trial court improperly modified the decree. Accordingly, the Estate's argument that the trial court should have awarded it 12 percent interest from the date of the dissolution decree fails.

[12] Because Brad did not appeal this issue, we do not award him affirmative relief.

IV. CROSS APPEAL

On cross appeal, Brad argues that the trial court erred by classifying much of the damage to the property as permissive waste, by not allowing damages for the rental value of the home, and by setting the interest rate on the damage award owed to Brad by the Estate at 5.7 percent. We reject Brad's arguments regarding commissive waste and rent, but we hold that the trial court erred by setting the interest rate at 5.7 percent.

A. *Permissive Waste*

Brad first argues that the trial court erred by classifying certain damage to the property as permissive waste as opposed to commissive waste. We disagree.

An appellant must assign error to each finding of fact improperly made and include reference to the finding by number. RAP 10.3(g). Unchallenged findings of fact become the established facts on appeal. *Cokeley*, 168 Wn.2d at 631. "Commissive waste" is the "'commission of some deliberate or voluntary destructive act.'" *Fisher Properties, Inc. v. Arden-Mayfair, Inc.*, 106 Wn.2d 826, 852, 726 P.2d 8 (1986) (quoting *Graffell v. Honeysuckle*, 30 Wn.2d 390, 398, 191 P.2d 858 (1948)). Permissive waste "implies negligence or omission to do that which will prevent injury, as, for instance, to suffer a house to go to decay for want of repair or to deteriorate from neglect." *Graffell*, 30 Wn.2d at 398.

The trial court here found that most of the waste was permissive waste because "[Heidi] allowed things to happen. . . . She didn't take care of things." RP at 686. Brad does not contest this finding. The court ruled that only the holes in the doors and the hole in the wall of the shop were commissive in nature. Because Brad failed to assign error to any of the trial court's findings of fact, they are verities on appeal, and the findings support the court's conclusions

regarding the nature of the waste. Accordingly, we reject Brad's arguments regarding the trial court's classification of waste.

B. *Rental Value*

Brad argues that the trial court erred in not allowing damages for the rental value of the home while it was uninhabitable, as well as the mortgage, tax payments, and electricity payments. The Estate argues that Brad failed to raise this issue below, and therefore, he is precluded from arguing this claim on appeal. We agree with the Estate.

A party may not generally raise an issue for the first time on appeal. RAP 2.5(a). Here, Brad failed to make any argument to the trial court below about damages for his loss of possession and use of property. Thus, there is no trial court ruling for us to review.[13] Thus, we do not review Brad's claim regarding damages for these additional damages.

C. *Interest Rate on Judgment*

Brad finally argues that the trial court erred in setting the interest rate on the $165,847.71 judgment award at 5.7 percent. He argues that the trial court should have awarded interest at the higher rate of 12 percent because his action was "based on a statute" and based on the "breach of a marital contract." Br. of Resp't. at 23. Brad appears to alternatively argue that should we decide that the damages action sounds in tort, and we should reverse the trial court's decision on the interest rate because the interest rate at the time the court entered its final judgment was 6 percent.

[13] Additionally, Brad provides no citations to the record and provides only one citation to case authority. Brad also failed to assign error to the court's findings or conclusions.

We hold that Brad's action was based in tort, and therefore, the trial court did not err by failing to impose a 12 percent interest rate. However, because the statutory interest rate at the time the courted entered its amended judgment was 6 percent, we hold that the trial court erred by setting the interest rate at 5.7 percent.

1. *Appropriate Lower Interest Rate*

Awards of postjudgment interest are mandatory under RCW 4.56.110. Accordingly, we review an award of postjudgment interest de novo. *TJ Landco, LLC v. Harley C. Douglass, Inc.*, 186 Wn. App. 249, 256, 346 P.3d 777 (2015). RCW 4.56.110 sets the interest rate for four categories of judgments: (1) breach of contract where an interest rate is specific, (2) child support, (3) tort claims, and (4) all other claims. A judgment based on more than one type of claim is subject to only one interest rate. *Woo v. Fireman's Fund Ins. Co.*, 150 Wn. App. 158, 164, 208 P.3d 557 (2009). In determining the appropriate interest rate, we examine the component parts of the judgment and determine what the judgment is primarily based on. *Woo*, 150 Wn. App. at 173.

Here, it is clear that the trial court based the judgment primarily on Heidi's tortious conduct. The bulk of the judgment award was based on Heidi's permissive waste. Permissive waste "'implies negligence or omission to do that which will prevent injury, as, for instance, to suffer a house to go to decay for want of repair or to deteriorate from neglect.'" *Fisher Properties, Inc.*, 106 Wn.2d at 852-53 (quoting *Graffell*, 30 Wn.2d at 398). Accordingly, because the majority of the judgment is based on permissive waste, which implies negligence, the trial court did not err in imposing the lower interest rate for tort actions on the judgment.

2. *Proper Interest Rate Amount*

Although the trial court properly imposed the tort action interest rate, the trial court here failed to impose the correct interest rate on Brad's damages award.

RCW 4.56.110(3)(b) requires that for judgments founded on "tortious conduct" the interest rate should be "two percentage points above the prime rate." *Hidalgo v. Barker*, 176 Wn. App. 527, 551, 309 P.3d 687 (2013). Because the judgment was based in tort, the proper interest rate for Brad's judgment award is two percentage points above the prime rate. RCW 4.56.110(3). Courts calculate interest rate at the date of entry of the judgment. RCW 4.56.110(3)(b).

Here, at the time the court entered its amended judgment, the applicable interest rate was 6 percent.[14] Accordingly, the trial court erred in setting the interest rate at 5.7 percent. Because of this error, we strike the court's imposition of the 5.7 percent interest rate and set interest on Brad's judgment at 6 percent.

CONCLUSION

We affirm the trial court's judgment awarding Brad $165,847.71 in damages. We also reverse the trial court's imposition of an interest rate of 5.7 percent on Brad's judgment, and we remand to the trial court to set the rate on Brad's judgment against the estate at 6 percent.

[14] *Historical Judgment Rates Archive for RCW 4.56.110(3)(a) and (b)*, Wash. St. Treasurer, https://tre.wa.gov/about-us/resources/historical-judgment-rates/ (last visited Apr. 19, 2018).

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Worswick, J.

We concur:

Maxa, C.J.

Lee, J.