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Court of Appeals No. 86535-8-I

**IN THE COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON**

In re: Quach Living Trust

BRYAN PEREZ and LINDA QUACH,

Appellants,

vs.

MARY PELENTAY,

Appellee.

BRIEF OF APPELLANT

Appeal from King County Superior Court
Case No. 23-4-03951-1

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I. IDENTITY OF THE PARTIES

Appellant in this action is Bryan S. Perez and Linda Quach, respondents in the action below. Mr. Perez's co-respondent, Linda Quach, has no interest in the property at issue and never should have been a party in this case, but nonetheless participates as an Appellant. Though this brief will refer to Mr. Perez as Appellant going forward, this in no way removes Linda Quach from the case or waives any of her rights in this appeal. Appellee is Mary Pelentay, petitioner below, who purported to bring this case on behalf of the Estate of Thi Ut Quach (also known as Betty Quach).

On appeal, Mr. Perez challenges multiple rulings of the trial court. First, he challenges whether Ms. Pelentay should have been able to bring this case on behalf of the estate, which had no interest in the property at issue because the decedent, Thi Ut Quach, deeded away all interest therein before her death, through five deeds—one Quit Claim deed, two Warranty Deeds, and two Transfer on Death Deeds. Next, he challenges

the trial court order denying his motion to amend his answer to include a counterclaim, entered on December 28, 2023, which he later resubmitted and the court again denied. He also challenges the grant of the motion for partial summary judgment to Ms. Pelentay on March 6, 2024, as well as the refusal of the court to strike, upon his motion, that motion and certain inadmissible documents that it relied upon to make its ruling on the motion for partial summary judgment. Mr. Perez also challenges on appeal the court's one-sentence denial of his motion for reconsideration, entered on March 22, 2024, which, though the court did not specify, effectively operated as a denial of any reconsideration of the motion to strike Ms. Pelentay's motion for partial summary judgment, Mr. Perez's motion to amend and file counterclaim, and the grant of partial summary judgment itself. Finally, Mr. Perez challenges each grant of attorneys' fees to appellees made by the court below, including those regarding the motion for partial summary judgment and

the motion to strike that motion, as well as the motion to hear that motion to strike on shortened time.

II. ASSIGNMENTS OF ERROR

A. The King County Superior Court erred in not ruling on whether the Parol Evidence Rule or Dead Man's Statute barred certain evidence prior to its summary judgment ruling. The court further erred in considering that evidence, and this Court should remand because the evidence should be barred by either the Parol Evidence Rule, the Dead Man's Statute or both.

B. The King County Superior Court erred in denying Mr. Perez's motion to amend his answer to include a counterclaim for technical reasons against the spirit of the rules, while at the same time allowing petitioner/appellee's motion for partial summary judgment to have over two hundred similar errors in violation of LCR 7.

C. The King County Superior Court erred in allowing this case to proceed in a probate venue in the first place because the estate had no interest in the property at issue.

D. The King County Superior Court erred in considering evidence extrinsic to the warranty deeds (signed July 24, and August 16, 2021) the quitclaim deed (signed July 24, 2021) and the Transfer on Death Deed (signed August 3, 2021) on petitioner/appellee's motion for partial summary judgment.

E. The King County Superior Court erred in refusing to allow parties the right to object in the hearing held on March 5, 2024, and in continuing to base its ruling on inadmissible evidence, questioning respondents in violation of the Dead Man's Statute and relying on evidence that violated the Parol Evidence Rule.

F. The King County Superior Court erred in granting partial summary judgment because either the warranty deeds or the quitclaim deed fully transferring the property to Mr.

Perez on July 24, 2021 or August 21, 2021 constituted a valid and effective transfer of all of Ms. Quach's interest in the property.

G. The King County Superior Court erred in determining that there is no genuine issue of material fact as to whether the warranty deeds or quitclaim deed conveying the property to Mr. Perez were valid.

H. The King County Superior Court erred in quieting title in favor of petitioner/appellee because petitioner failed to carry her burden of demonstrating the warranty deeds or quitclaim deed conveying the property to Mr. Perez was invalid.

I. The King County Superior Court erred in denying Mr. Perez's three motions for reconsideration in a single sentence without any reasoning or justification. This cavalier denial evidenced the trial judge's bias against both the respondents below and against the full

adjudication of the issues in this case, which were of utmost importance to the litigants before it.

J. The King County Superior Court erred in hearing this case as an action to quiet title in the name of the trust, because the action is, in substance, an action to set aside a deed granted in vivo by Thi Ut Quach to Bryan S. Perez.

K. The King County Superior Court erred in awarding attorney's fees to Petitioner/Appellee concerning any motion, including the motion to strike and the motion for partial summary judgment.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

A. Whether this action should have been brought as a probate matter pursuant to RCW 11.96A.040(1) or as a matter relating to trusts under RCW 11.96A.040(2) or, alternatively, whether Mary Pelentay had standing to bring an action to set aside the warranty deeds or

quitclaim deeds that granted the property to Bryan Perez while Thi Ut Quach was still alive?

B. Whether the trial court erred in denying Mr. Perez's motion to add a counterclaim, for supposedly failing to meet the rule requirement of including a proposed pleading, when he attached the counterclaim he wished to add, but merely failed to denominate it a "proposed" pleading, especially given Washington's presumption of trying to determine actions on the merits rather than by rote or legalistic application of the civil rules?

C. Whether, after rejecting Appellant's motion on this technical basis, the trial court erred in refusing to strike the petitioner/appellee's motion for partial summary judgment to despite over two-hundred technical errors therein?

D. Whether the trial court properly applied the parol evidence rule in looking outside the four corners of the warranty deeds or quitclaim deed to admit evidence that

ultimately demonstrated no more than that the decedent may have changed her mind after conveying the property to Mr. Perez?

E. Whether the warranty deeds signed on July 24, 2021 and August 16, 2021 (actually effective on August 21, 2021), which each recited consideration received in hand, or the quitclaim deed of July 24, 2021, were valid, or, alternatively, whether a genuine issue of material fact exists as to their validity, thus making summary judgment inappropriate?

F. Whether title could be properly quieted in the name of any person or entity other than Bryan S. Perez, given the valid warranty deeds and quitclaim deed conveying the property to him on July 24 and August 21, 2021.

G. Whether the trial court demonstrated bias against either Respondents/appellants or the litigation generally in repeatedly stating that the parties were somehow over-litigating the case, and in denying Mr. Perez's motion for

reconsideration in a single sentence that revealed no reasoning and did not even clarify which of the three motions for reconsideration (requesting that the court reconsider its rulings denying the motion for leave to amend and the motion to strike, as well as its ruling granting the motion for partial summary judgment) were being denied?

H. Whether the Superior Court of King County improperly awarded attorneys' fees to Petitioner/Appellee on Appellant's motion to strike?

I. Whether the Superior Court of King County improperly awarded fees to Petitioner/Appellee based on its erroneous grant of summary judgment?

IV. STATEMENT OF FACTS

While this may appear to be a complicated case, many of the "facts" about which the parties disagree are largely irrelevant to the central issue in this case, which is the determination of whether Thi Ut Quach executed a valid deed

and delivered it to Bryan S. Perez before she died. As Appellant will explain below, some of these supposed facts should never have been considered by the trial court at all. Thus, this statement of facts will focus on the essential, central facts that require a reversal of the trial court's grant of partial summary judgment, while summarizing the parties' contentions on extraneous matters.

A. The Property at Issue and the Ms. Quach's Valid Deed to Mr. Perez.

During her lifetime, Thi Ut Quach, also known as "Betty," owned property, including a single-family residence located at 426 S. 193rd Street in Des Moines, Washington. CP 2. The property is legally described as follows:

> Lot 14 of Normandy Vista Division No. 7, as per plat recorded in volume 64 of plats, page 19, records of King County Auditor, situated in the county of King, State of Washington

CP 872-874; 1676. This litigation concerns who owns that property. There are numerous deeds in the record, but the most important ones are the Quitclaim Deed and Warranty Deed

signed in favor of Bryan Perez on July 24, 2021 and the Warranty Deed to Mr. Perez signed August 16, 2021, to be effective August 21, 2021. CP 872-874. The first warranty deed recited consideration of $50,000 in hand paid. The record demonstrates proof that Ms. Thi Ut Quach signed one of the deeds on that date. CP 1511. Mr. Perez stated in court that this consideration reflected the more than $300,000 he spent in paying off the house and in taxes owed on it. Mr. Perez, as owner of the property, had no issues with Ms. Thi Ut Quach, Linda Quach's sister, living in the home due to her suffering from a terminal illness for at least 24 months. This is evidenced by significant email traffic between them and by the unsigned tenant agreement sent to Ms. Quach, who lived in the home until she passed, which no way changes the validity of transfer of property interest to Mr. Perez. CP 1020-1024.

At the point that Mr. Perez first legally obtained any deed to the property at issue from Ms. Quach before her untimely passing, she no longer had any interest in the property. On

August 3, she signed a Transfer on Death Deed, also to Mr. Perez, which stated that it revoked all prior deeds of that type (but said nothing about other types of deeds). The second valid warranty deed, which became effective on August 21, 2021 also recited consideration in hand paid of $10.00, and conveyed all of Ms. Quach's interests to Mr. Perez. CP 864. Finally, on August 27, more than a month after she had conveyed interest in the property to Mr. Perez, she signed a different Transfer on Death Deed in favor of Ms. Pelentay.

B. The Grantor's Alleged Change of Heart

While the petitioner/appellee has presented no evidence that any of the deeds are either ambiguous or fraudulent, she has presented evidence tending to show that Ms. Quach may have changed her mind after conveying the property to Mr. Perez. This evidence includes letters of last wishes written by Ms. Quach to Ms. Pelentay purporting to include the property in a trust to be created on her death. Petitioner/Appellee argues that this evidence somehow means that Ms. Quach did not

intend to deliver the deeds to Mr. Perez when she in fact delivered the deeds to Mr. Perez, as evidenced by his legal possession of the deeds prior to her death. The specifics of this evidence are irrelevant to this appeal because Appellant argues that the trial court should not have considered it. Even if any of this evidence is admissible, it demonstrates, at most, that there may be a genuine issue of material fact about whether the deeds are valid. If so, that would preclude summary judgment, not authorize the trial court to grant it.

C. The Lawsuit and the Court's Bias and Frustration

This lawsuit was brought by Mary Pelentay, purportedly on behalf of the estate of Thi Ut Quach, and as Trustee of the Quach Living Trust. CP 8. It is, at the very least, unclear whether this lawsuit should have been allowed to proceed in probate, because, as the evidence demonstrates, the property was conveyed to Bryan Perez through the warranty deed and quitclaim deed signed on July 24, 2021 and the warranty deed signed on August 16, 2021. Circumstantial evidence proves that

Bryan Perez took conveyance through uncontested possession August 16, 2021. Thus, the property never became a part of either the Quach Living Trust or Ms. Quach's estate.

The lawsuit was contentious from the very beginning, with Mr. Perez acting pro se for himself and Linda Quach, and Ms. Pelentay's attorneys consistently trying to enforce rules to trip him up or punish him when there was no prejudice to their client to allowing his contentions to be heard on the merits. Unfortunately, the court often agreed, though it also admonished both parties for the sin of supposedly taking up too much of its time. The court's bias against either Mr. Perez personally or pro se litigants generally also manifested itself in the judge repeatedly telling him to get an attorney, which he attempted to do, but was not successful until after the court's grant of summary judgment. The court also not only refused to allow further motions to shorten time, but explicitly told the litigants that the case had taken up too much of the court's time and that it was somehow a bad thing that the clerks at the court

knew about the case. VRP vol. III, 50-51. It is likely that part of the problem was that this case never should have been heard on the fast track of a TEDRA petition in probate in the first place, but officers of the court should not be telling litigants that their case is not important enough to merit the motions they have chosen to file.

This bias evidenced itself most substantively in the court's denial of Mr. Perez's motion to add a counterclaim. CP 598-600. Mr. Perez attempted to obtain the court's leave to file a counterclaim on multiple occasions, and the court stated in a hearing that it did not grant the motion because he failed to attach the proposed pleading as required by CR 15(a). Mr. Perez may have failed to comply with the strict letter of the rule, at least as it is typically interpreted by attorneys. He did not include a pleading with the title "proposed" that included his original answer and the counterclaim he proposed to add. However, he certainly complied with the spirit of the rule, since his motion included everything that he intended to put in the

counterclaim, denominated in the pleading as "Respondent's counterclaim cause of actions" which provided sufficient information for the court to fully evaluate his motion. CP 374-379. He also filed a renewed motion seeking the same relief, and containing the same information that should have been more than sufficient to allow the court to evaluate the amendment to his pleading, on January 29, 2024. CP 850-955.

D. The Court's Ruling on Partial Summary Judgment and the Evidence it Wrongly Considered.

Petitioner/Appellee moved for partial summary judgment, including for quiet title to the property at issue, on February 2, 2024. CP 956. The trial court held a hearing on this motion on March 5, 2024 (VRP. vol. III) and issued its order granting partial summary judgment at 9 am the following day. CP 1671. In this order, the court explicitly stated that it considered not only the motion and associated declarations, but all of petitioner-appellees exhibits (1-45). CP 1672. Mr. Perez had moved to strike petitioners' motion in its entirety, which

was denied, but had also raised objections to many of these individual exhibits, and the court considered these exhibits without ruling on those exhibits. Most of the exhibits are extrinsic to the deed at the center of this case and should have been barred pursuant to the parol evidence rule, absent a finding that the deed was ambiguous, which the court never made. Even if some of the exhibits were rightly considered, the court should have ruled on them individually.

V. STANDARD OF REVIEW

There are at least four issues for the Court of Appeals to review, each of which has a different standard of review.

A. Subject-Matter Jurisdiction

While Superior Courts generally have jurisdiction over probate matters, as well as extensive jurisdiction outside of probate matters, the question of whether this action is properly before the court as a probate matter remains consequential. See Matter of estate of Reugh, 447 P.3d 544 (Wash. App. 2019) ("superior courts hold subject matter jurisdiction over all

probate matters"). TEDRA petitions are probate matters that are generally placed on a fast track that limits discovery and does not allow a jury trial.

The question of whether this case, which revolves around the validity of an in vivo warranty deed, and in which Bryan Perez makes no claim whatsoever through the will or estate of Thi Ut Quach, was properly before the court on a TEDRA petition is either a matter of subject matter jurisdiction or a pure question of law. Either way, this court should review the question de novo. A defense of lack of subject-matter jurisdiction may be raised at any time, even on appeal. See, e.g., Matter of Saltis, 621 P.2d 716, 718 (Wash. 1980) (en banc) (citing RAP 2.5(a)(1)). Any time a court considers its subject matter jurisdiction, whether on motion, sua sponte, or on appeal, such review is de novo and the question "must be considered on its merits" Id. Pure questions of law are also reviewed de novo. Ramey v. Knorr, 124 P.3d 314, 322 (Wash. App. 2005) ("When an order is based on questions of law, the

standard of review is de novo and not abuse of discretion.") (citing Schneider v. City of Seattle, 24 Wash App. 251, 255; 600 P.2d 666 (Wash. App. 1979)

B. The Denial of the Motion for Leave to Amend

Typically, Washington appellate courts review the denial of a motion for leave to amend a pleading for abuse of discretion. See, e.g., Hick v. King County Sheriff, 143 Wash. App. 1050, 2008 WL 921842 at *7 (Wash. App. 2008) (citing Shelton v. Azar, Inc., 90 Wash. App. 923, 928; 954 P. 2d 352 (Wash. App. 1998)). This standard may not be changed, but should be informed, by the reason that the court denied Mr. Perez's motion, which was that he supposedly failed to follow the requirements of Rule 15 of the Washington Rules of Civil Procedure by failing to file a separate document denominated "proposed" that contained the amended pleading. . In general, Washington courts attempt to decide cases on the merits, not on the basis of "gotcha" legal rules. As the Court of Appeals explained in Carle v. Earth Stove, "modern rules of civil

procedure are intended to allow the court to reach the merits, as opposed to disposition on technical niceties.'" 670 P.2d 1086, 1089 (Wash. App. 1983) (quoting Fox v. Sackman, 591 P.2d 855 (Wash. App. 1979).

Rule 15 states that "leave [to amend] shall be freely given where justice so requires." CR 15(a). Generally a trial court should only "deny a motion to amend a pleading if the amendment would prejudice the opposing party." Ives v. Ramsden, 174 P.3d 1231, 1240 (Wash. App. 2008) (citing Caruso v. Local Union. No 690 of Intern. Brotherhood of Teamsters, 670 P.2d 240, 243 (Wash. 1983) (noting that "Rule 15 of the Federal Rules of Civil Procedure, from which CR 16 was taken 'was designed to facilitate the amendment of pleadings except where prejudice to the opposing party would result.") (quoting United States v. Hougham, 364 U.S. 310, 316 (1960))

C. The Grant of Partial Summary Judgment

"The standard of review for a summary judgment order is de novo … viewing the facts and reasonable inferences in the light most favorable to the nonmoving party." Watkins v. ESA Mgmt, LLC, 547 P.3d 271, 275 (Wash. App. 2024) (quoting Ramey v. Knorr, 130 Wash. App. 672, 685; 124 P.3d 314 (Wash. App. 2005). A motion for summary judgment may only be granted when there is "no genuine issue as to any material fact and…the moving party is entitled to judgment as a matter of law." Ramey, 130 Wash. App. at 685 (quoting CR 56). Courts approach summary judgment with a burden-shifting scheme in which "[t]he moving party bears the initial burden 'to prove by uncontroverted facts that there is no genuine issue of material fact.'" Welch v. Brand Insulations, Inc., 27 Wash. App. 2d 110, 114; 531 P.3d 265 (Wash. App. 2023) (quoting Jacobsen v. State, 89 Wash. 2d 104, 108; 569 P.2d 1152 (Wash. 1977). Only after the moving party has met this burden does any burden fall to the nonmoving party "to 'set forth specific

facts evidencing a genuine issue of material fact for trial.'" Id. (quoting Schaaf v. Highfield, 127 Wash. 2d 17, 21; 896 P.2d 665 (Wash. 1995)).

D. The Grant of Attorneys' Fees

Washington courts of appeals have noted that "[t]here is a two-part standard of review for a trial courts award or denial of attorneys' fees." Matter of Parenting and Support of Z.C., 28 Wash. App. 2d 1055; 2023 WL 7486472 at *10 (Wash. App. 2023). This two-part review is set forth as follows:

> (1) we review de novo whether there is a legal basis for awarding attorney fees by statute, under contract, or in equity and (2) we review a discretionary decision to award or deny attorney fees and the reasonableness of any attorney fee award for an abuse of discretion.

Park Place Motors, Ltd. v. Elite Cornerstone Constr., LLC, 18 Wash. App. 2d 748, 753; 493 P.3d 136 (Wash. App. 2021). Here, this means that the court must first determine de novo whether a statute that provides for the recovery of attorneys' fees applies to this case (namely whether the case should have

proceeded in probate as a TEDRA petition). If it determines that attorneys' fees are not available in this case, it must reverse and remand any and all orders in this case that awarded attorneys' fees to the Respondent in this appeal, but if it determines that fees are available, it should then review the grant of such fees for abuse of discretion. Fees on appeal should be awarded to the Appellant.

VI. ARGUMENT

Though it was purportedly brought on behalf of an estate or living trust, the purpose of this case was clear from the outset. Petitioner/Appellee's goal was to set aside a valid deed that was executed and delivered to Bryan Perez while Ms. Quach was still alive. This deed was valid in form and recorded in King County prior to the filing of the lawsuit. There were also an additional warranty deed and quitclaim deed that should have been considered presumptively valid as well. In such a case, Petitioner/Appellee should have borne the high burden of demonstrating that the deed was ambiguous or fraudulent in

some fashion. See, e.g., Newport Yacht Basin Ass'n of Condominium Owners v. Supreme Northwest, Inc., 277 P.3d 18, 22 (Wash. App. 2012). Instead, the trial court erroneously treated this case as one concerning the question of contract formation, ignoring the fact that the deed had been completed, delivered, and recorded, in compliance with all Washington statutes, including the statute of frauds.

A. The Warranty Deeds and Quitclaim Deed from Thi Ut Quach to Bryan S. Perez are Valid.

The evidence demonstrates that Ms. Quach signed and delivered (demonstrated by circumstantial evidence showing Mr. Perez's possession prior to her death) a warranty deed and quitclaim deed granting the property at issue to Bryan S. Perez on July 24, 2021.[1] It is true that Ms. Quach also later signed Transfer on Death Deeds on August 3, 2021 and August 27, 2021, which did not effect a present transfer of her interest and

[1] Though she no longer had any interest in the property to deed to anyone, circumstantial evidence demonstrates that Ms. Quach signed an additional warranty deed. This is evidenced by Mr. Perez having possession of the deed on August 16, 2021, which was the time of signing.

purported to revoke all previous Transfer on Death deeds, but not deeds of any other type. The order of deeds makes it clear that, whatever her later change of heart, the delivery of the Warranty Deed, signed on July 24, 2021 although not delivered to Mr. Perez until August 16, 2021, fully transferred the property to him. The Warranty Deed states:

> THE GRANTOR, THI UT QUACH (BETTY QUACH), unmarried woman
>
> for and in consideration of FIFTY THOUSAND DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION in hand paid, conveys and warrants to BRYAN SCOTT PEREZ, an unmarried man, the following described real estate, situated in the County of King, State of Washington:
>
> LOT 14 of NORMANDY VISTA DIVISION NO. 7, AS PER PLAT RECORDED IN VOLUME 64 OF PLATS, PAGE 19, RECORDS OF KING COUNTY AUDITOR
>
> SITUATED IN THE COUNTY OF KING, STATE OF WASHINGTON.
>
> GRANTOR ACKNOWLEDGES THAT TITLE TO THE PROPERTY IS MARKETABLE AT THE TIME OF THIS CONVEYANCE. THE FOLLOWING SHALL NOT CAUSE THE TITLE

> TO BE UNMARKETABLE: RIGHTS, RESERVATIONS, COVENANTS, CONDITIONS, AND RESTRICTIONS, PRESENTLY OF RECORD AND GENERAL TO THE AREA; EASEMENTS AND ENCROACHMENTS, NOT MATERIALLY AFFECTING THE VALUE OF OR UNDULY INTERFERING WITH GRANTEE'S REASONABLE USE OF THE PROPERTY, AND RESERVED OIL AND/OR MINING RIGHTS.

CP 872. The deed was signed by Thi Ut Quach on July 24, 2021, and properly notarized on the same date. On the same date, Ms. Quach also signed a quitclaim deed transferring all her interest to Mr. Perez. CP 873. Furthermore, an additional warranty deed to Mr. Perez, with the same substantive language and recitations (consideration in hand paid) was executed by Ms. Quach on August 16, 2021, to be effective August 21, 2021, and delivered (through circumstantial evidence demonstrated by Mr. Perez's possession prior to Ms. Quach's death) to Mr. Perez by that date. CP 874.

Each of these deeds satisfy Washington's statute of frauds with respect to real estate, which requires that "[e]very

conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by deed." R.C.W. § 64.04.010. See also Key Design v. Moser, 983 P.2d 653, 657 (Wash. 1999) (en banc) (noting that, "in order to comply with the statute of frauds, a contract or deed for the conveyance of land must contain a description of the land sufficiently definite to locate it without recourse to oral testimony.") (citing Martinson v. Cruikshank, 3 Wash. 2d 565, 567, 101 P. 2d 604 (Wash. 1940)). Because all conveyances of real estate must be made by deed (such as the conveyance made from Ms. Quach to Mr. Perez in this case), contractual details surrounding the sale are sometimes not recorded within those deeds, but the deed itself is the legal document of conveyance. Here the deed contained all the necessary components, including consideration, words of conveyance, and a legal description of the land involved sufficiently definite to locate it without recourse to any extrinsic evidence.

1. As a preliminary matter, this should not be a probate case.

From the beginning of this case, Mr. Perez has made it clear that the case has nothing to do with the probate of Ms. Quach's estate. While the Quach family has legitimate concerns with the idea of non-family-member Mary Pelentay acting as executor of the estate, Mr. Perez has not challenged her appointment or administration of the estate in any way. Nor does Mr. Perez claim any interest in the estate itself; rather he argues that the grant to him by warranty deed was made during Ms. Quach's life, before the existence of the estate. Instead, it is Ms. Pelentay, purporting to act on behalf of the estate, who challenges an en vivo grant of property from Ms. Quach to Mr. Perez. Because this grant was made and completed prior to Ms. Quach's death, the property at issue never became part of the estate, or part of Ms. Quach's trust. Thus, the expedited procedures of the TEDRA petition, which led to a rapid bench trial in this case and curtailment of Mr. Perez's ability to fully engage in discovery or prosecute his counterclaim (See Section

B, infra) and right to a jury trial. This case should have been brought as a standard Superior Court lawsuit with the full procedures attendant thereto. Furthermore, Ms. Pelentay makes her claim to the property through a Transfer on Death Deed, while Mr. Perez claims ownership through two Warranty Deeds and/or a Quitclaim deed. The dispute clearly centers on whether and which of these deeds executed ***during Ms. Quach's life*** are valid (the evidence clearly demonstrates those to Mr. Perez are), not on any question pertaining to probate or Ms. Quach's estate. Thus, this case clearly presents a property dispute rather than an estate claim.

As noted, Mr. Perez does not claim ownership of the land through the estate in any way. The evidence demonstrates that Ms. Quach deeded him the land in fee simple while she was still alive. All of the deeds at issue, including the Transfer on Death Deeds, though they were not valid because Ms. Quach had already deeded her interest in the property to Mr. Perez, make it absolutely clear that this is a simple property dispute

that should have been addressed through the lens of asking whether an in vivo deed was valid, rather than a probate dispute that can be addressed in a TEDRA petition. It must also be noted that, if Mr. Perez's claim were somehow through the estate, the court would still be barred from considering the extrinsic evidence offered by petitioner/appellee due to the Dead Man's Statute. R.C.W. § 5.60.030. This statute bars testimony "if the person wanting to testify has an interest adverse to the decedent's estate and the opposing party claims through the estate. Thor v. McDearmid, 817 P.2d 1380 (Wash. App. 1991).

2. The Petitioner/Appellee bears the burden of demonstrating the deed was invalid by clear and convincing evidence.

In Washington, a party who challenges the validity of a deed bears the burden of proving its invalidity. Snohomish County v. Hawkins, 89 P. 3d 713, 715-16 (Wash. App. 2004) (citing Town of Twisp, Wash. v. Methow Valley Irrigation

Dist., 646 P.2d 149 (Wash App. 1982) (citing in turn Truitt v. Truitt, 171 P. 532 (Wash. 1918)). Though here, each party is, de facto, challenging at least one deed, the order of the deeds makes it clear that the one that matters is the Warranty Deed dated July 24, 2021. Washington Courts of Appeals have held that "[w]here a grantee is in possession of a properly executed deed, there is a strong presumption that it has been duly delivered with an intent to make a present transfer of the property." In re Pappuleas' Estate, 5 Wash. App. 826, 828; 490 P.2d 1340 (Wash. App. 1971) (citing Raborn v. Hayton, 34 Wash. 2d 105; 208 P.2d 133 (Wash. 1949). "Anyone claiming that the deed in possession of a grantee was never delivered with such an intention has the burden of proving that fact, and the presumption of valid delivery can be overcome only by clear and convincing evidence."

Here it is unclear that the trial court ever put the burden of proving that the deed was not delivered with the intent of transfer on the petitioner/appellee despite clear Washington law

requiring this burden. Pappuleas' Estate, 5 Wash App. at 828; see also Hawkins, 89 P.3d at 715-716. It is entirely clear that the trial court did not properly approach the deed as presumptively valid or require clear and convincing evidence to overturn it. Id.; see also Gossett v. Farmers Ins. Co. of Wash., 133 Wash. 2d 954, 966; 948 P.2d 1264 (Wash. 1997) ("It is a long-standing rule that when property is conveyed by a deed absolute in form, with nothing in the collateral papers to show any contrary intent, the presumption is that the transaction is what it appears to be on its face and any party who claims that the transaction is other than what it appears to be must prove that claim by clear and convincing evidence.")

Far from being clear and convincing, much of the evidence in the trial court was not admissible at all. As will be explained in detail in Section C.1 below, the deed was unambiguous and the trial court's inquiry should have been confined to the four corners thereof. As a Washington Court of Appeals stated:

> Where the language of a recorded quitclaim deed unambiguously expresses the intent of the grantor to convey all of his or her interest in real property, extrinsic evidence may not be used to demonstrate an intent to convey some lesser interest.

Id. The court went on to state that "[i]t has long been the rule that a valid quitclaim deed 'passes all the right, title, and interest which the grantor has at the time of making the deed and which is capable of being transferred by deed, unless a contrary intent appears" on the surface of the deed. Id. (quoting McCoy v. Lowrie, 268 P.2d 1003 (Wash 1954). No intent contrary to the passing of title appears on the deed Thi Ut Quach signed on July 24, 2021. The same is true of the quitclaim deed signed the same day and the later warranty deed signed August 16, 2021, which would also be perfectly valid except for the fact that Ms. Quach had already deeded her interest to Mr. Perez. Further, the petitioner/appellee has not presented clear and convincing evidence to overcome this presumption of validity.

B. The Trial Court Erred in Denying Mr. Perez's Motion for Leave to Amend.

Rule 15 of Washington's Civil Rules makes it clear that leave to amend should be "freely granted where justice so requires." CR 15(a). To be clear, in the same subsection, the rule also states that "[i]f a party moves to amend a pleading, a copy of the proposed amended pleading, denominated "proposed" and unsigned, shall be attached to the motion." CR 15(a). It is the goal of the Washington courts, however, to decide cases on their merits, "as opposed to disposition on technical niceties" such as whether a pro se litigant writes the word "proposed" on the counterclaim that he includes within exhibits to his motion to amend. See Carle v. Earth Stove, 670 P.2d 1086, 1089 (Wash. App. 1983) (quoting Fox v. Sackman, 591 P.2d 855 (Wash. App. 1979).

Washington courts have also made it clear that "a pro se litigant is bound by the same rules of procedure and substantive law as a licensed attorney. Shavlik v. Jovee, 2021 WL 4521085

at *3 (Wash. App. 2021) (citing Holder v. City of Vancouver, 136 Wn. App. 104, 106, 147 P.3d 641 (Wash. App. 2006)). See also Edwards v. Le Duc, 238 P.3d 1187 (Wash. App. 2010) ("A trial court must hold pro se parties to the same standards to which it holds attorneys.") Mr. Perez would never claim that he should be allowed to flout the rules with impunity, but the record demonstrates that he substantially complied with the rule. The purpose of the proposed pleading requirement in CR 15 is to allow the court to evaluate the amendment the party plans to make. See Rodriguez v. Loudeye Corp., 189 P. 3d 168, 177-78 (Wash. App. 2008) (rejecting an amendment because, without a proposed pleading, there was no way for the court to evaluate whether the amendment would be futile).

However, when there is a proposed pleading, whether or not it conforms perfectly to the description in the rule, courts should not reject it for procedural reasons in the absence of prejudice to the opposing party. See Wilson v. Horsley, 974 P.2d 316, 324 (Wash. 1999) (Johnson & Madsen, JJ concurring)

(noting that trial judged "ignore[d]" CR 15 by "failing to articulate how Horsley's proposed amendments would prejudice Wilson"). See also Will v. Frontier Contractors, Inc., 89 P. 3d 242, 249 (Wash. App. 2004) (finding party's "contention of prejudice…is unpersuasive" where procedures were not technically followed but the party received a copy of the proposed amended complaint.)

During the course of the proceedings, Mr. Perez filed multiple motions seeking leave of the court to amend his response to the petition to add a counterclaim. It is only necessary to examine one of these motions to make it clear that Mr. Perez did, in fact, include the counterclaim that he proposed to assert, even if it was not technically labeled as such. One of the motions, filed on October 31, 2023, can be found, along with the exhibits attached to it, at pages 364 through 435 of the Clerk's Papers. One of the exhibits, located at pages 370 through 379 is entitled "Respondents Motion Amending Pleading and Adding Counterclaim." CP 370. This

document, while it also contains argument that would not normally be found in a complaint or counterclaim, clearly lays out the claim that Mr. Perez intended to add. Beginning on Page 374 is a section labeled "Respondents Counterclaim Cause of Actions (COA). CP 374. It lays out four causes of action against the Petitioner/Appellee, namely for bringing a frivolous lawsuit, malicious prosecution, "all expenses due to this lawsuit," and "unjust enrichment. CP 374-377. Another iteration of Mr. Perez's motion, filed January 29, 2024, can be found in the record at CP 850-955 and likewise demonstrates his substantial compliance with the rule, to which he prays this court orders the lower court to allow him to file. Mr. Perez focuses on the former motion above, simply because he never should have had to file the later one, because the court should have granted his October 31, 2023 motion.

Mr. Perez is not here to argue the merits of any of these claims, nor is it the place of the Court of Appeals to determine them in the first instance. However, it is clear that none of these

claims got a fair examination from the trial court, either on the merits, obviously, or even on the question of whether they were futile and should not be allowed in an amendment. Instead, the trial judge claimed in open court that she was "confused about what you're trying to do in this particular motion." VRP vol. II at 28. Mr. Perez submits that not only is it entirely clear from the face of the motion that he sought to add a counterclaim, but the substance of that counterclaim is found in pleading format within one of the exhibits to the motion. CP 374-377.

Thus, it is clear that the trial court did not reject Mr. Perez's proposed amendment because it evaluated the counterclaims and found them futile. Instead, there is no evidence that the court considered the substance of the amendment at all. Nor did it find that allowing the amendment would prejudice Petitioner/Appellee in any way, as there is no discussion of such prejudice to be found anywhere in the record. The only reason given in the record, and for all that appears the only thing the trial court considered, was the idea

that Mr. Perez's motion did not technically fully follow CR 15, because the proposed counterclaim he attached as an exhibit was not a fully separate document that had the word "Proposed" in the title. This is a textbook example of making a decision on "technical niceties," rather than on the merits. See Carle v. Earth Stove, 670 P.2d 1086, 1089 (Wash. App. 1983) (quoting Fox v. Sackman, 591 P.2d 855 (Wash. App. 1979). A decision to deny a motion to amend for lack of compliance with the rule might be justified in narrow circumstances where there is no proposed pleading for the court to evaluate (as in Rodriguez v. Loudeye Corp., 189 P. 3d 168, 177-78 (Wash. App. 2008)) or because there was some sort of prejudice to the other party. See Ives v. Ramsden, 174 P.3d 1231, 1240 (Wash. App. 2008) (citing Caruso v. Local Union. No 690 of Intern. Brotherhood of Teamsters, 670 P.2d 240, 243 (Wash. 1983) (noting that "Rule 15 of the Federal Rules of Civil Procedure, from which CR 16 was taken 'was designed to facilitate the amendment of pleadings except where prejudice to the

opposing party would result.") (quoting United States v. Hougham, 364 U.S. 310, 316 (1960)). Here, neither of those two conditions are present, and the leave to amend should have been freely given.

C. The Trial Court Erred in Granting Partial Summary Judgment.

Summary judgment should only be granted when "there is no genuine issue as to any material fact and … the moving party is entitled to a judgment as a matter of law." CR 56(c). A party moving for summary judgment, such as the petitioner/appellee in the present case "has the burden of proving that there is no genuine issue of material fact, irrespective of whether he or his opponent, at the trial, would have the burden of proof on the issue concerned." Balise v. Underwood, 381 P.2d 966, 969 (Wash. 1963) (citing Preston v. Duncan, 55 Wash. 2d 678, 682, 349 P.2d 605 (Wash. 1960)). A "material fact" for the purposes of the rule is "one upon which the outcome of the litigation depends." Id. (citing Zedrick v. Kosenski, 62 Wash 2d, 50, 380 P.2d 870) (Wash. 1963)). The

validity of the July 24, 2021 warranty and quitclaim deeds (the first deeds, which extinguished Ms. Quach's interest in the property) is certainly a material fact upon which the outcome of this litigation depends.

Evidence that is used to support a summary judgment motion must be admissible. See, e.g., Spohn v. Department of Labor and Industries, 499 P. 3d 989, 992 (Wash. App. 2021) (citing SentinelC3, Inc. v. Hunt, 181 Wash. 2d 127, 141; 331 P.3d 40 (Wash 2014)); Burmeister v. State Farm Ins. Co., 966 P.2d 921, 924 (Wash. App. 1998) ("but the court should consider only admissible evidence in a motion for summary judgment) (citing King County Fire Protection Dist. No. 16 v. Housing Authority, 123 Wash. 2d 819, 826; 872 P.2d 516 (Wash. 1994) and Dunlap v. Wayne, 105 Wash. 2d 529, 535; 716 P.2d 842 (Wash. 1986)); International Ultimate, Inc. v. St. Paul Fire & Marine Ins. Co., 87 P. 3d 774, 780 (Wash. App. 2004) ("In reviewing summary judgment orders, we consider

supporting affidavits and other admissible evidence that is based on the affiant's personal knowledge.");

A trial court must determine whether the substantive evidence it relies upon in granting summary judgment is admissible. See, e.g. Spohn, 499 P.3d at 992 (noting that the superior court erred to the extent it relied "on medical records as substantive evidence because the medical records were inadmissible hearsay.") This is especially true where a party moves to strike particular evidence at the trial court level; the court has a duty to rule on that motion. If the evidence is inadmissible the trial court should not consider it. SentinelC3, Inc. v. Hunt, 331 P. 40, 45 (Wash. 2014) ("Because the Hecker Report was not admissible, the trial court refused to consider it in the summary judgment proceeding."); Orris v. Lingley, 299 P.3d 1159, 1163 (Wash. App. 2012) ("Courts may not consider inadmissible evidence when ruling on motions for summary judgment.") (citing Cano-Garcia v. King County, 168 Wash. App. 223, 249; 277 P.3d 34 2012)) If the court does rely on

inadmissible evidence to grant summary judgment, that judgment must be reversed. Larson Motors, Inc. v. Snypp, 413 P.3d 632, 633 (Wash. App. 2018) (reversing summary judgment where the appellate court held that certain telephone calls "were not admissible at summary judgment.").

Here the trial court refused to even consider Mr. Perez's motion to strike many of the exhibits attached to petitioner/appellee's motion for partial summary judgment. In fact, the court recited that it considered all of the declarations filed with the motion, and their attached exhibits. CP 1672. As will be explained below, this was error because many of these exhibits were barred by the parol evidence rule, irrelevant, or both. The court definitively erred by failing to ever rule on Mr. Perez's motion to strike these exhibits and by considering them despite the fact that they should have been barred by the parol evidence rule or dead man's statute.

1. Because nothing about either deed was ambiguous, parol evidence should not be accepted to change the meaning.

The primary deed at issue, a warranty deed from Thi Ut Quach to Bryan S. Perez signed July 24, 2021, is found in the record at page 872 and purports to convey all interest in the real estate to Mr. Perez. Furthermore, an additional warranty deed was signed on August 16, 2021 to be effective August 21, 2021. CP 874. Ms. Quach also signed several other deeds. None of these constitute admissible evidence to change the meaning of the warranty deed signed July 24, 2021, it is worth noting the order in which they occurred. It was only on August 27, 2021, more than a month after she conveyed all her interest in the property to Mr. Perez, that Ms. Quach signed an additional Transfer on Death Deed in favor of Mary Pelentay.

As noted above, in Washington, a party asking a court to invalidate a facially valid deed (which everyone agrees this is) that a grantee has in hand should face a difficult battle. In re Pappuleas' Estate, 5 Wash. App. 826, 828; 490 P.2d 1340

(Wash. App. 1971) ("[w]here a grantee is in possession of a properly executed deed, there is a strong presumption that it has been duly delivered with an intent to make a present transfer of the property.") (citing Raborn v. Hayton, 34 Wash. 2d 105; 208 P.2d 133 (Wash. 1949). That presumption may only be rebutted by clear and convincing evidence. Gossett v. Farmers Ins. Co. of Wash., 133 Wash. 2d 954, 966; 948 P.2d 1264 (Wash. 1997) ("It is a long-standing rule that when property is conveyed by a deed absolute in form, with nothing in the collateral papers to show any contrary intent, the presumption is that the transaction is what it appears to be on its face and any party who claims that the transaction is other than what it appears to be must prove that claim by clear and convincing evidence.")

In Newport Yacht Basin Ass'n of Condominium Owners v. Supreme Northwest, Inc., a Washington court of appeals addressed the question of the validity of a quitclaim deed. 277 P.3d 18, 22 (Wash. App. 2012). The court began its opinion as follows:

> Where the language of a recorded quitclaim deed unambiguously expresses the intent of the grantor to convey all of his or her interest in real property, extrinsic evidence may not be used to demonstrate an intent to convey some lesser interest.

Id. The court went on to state that "[i]t has long been the rule that a valid quitclaim deed 'passes all the right, title, and interest which the grantor has at the time of making the deed and which is capable of being transferred by deed, unless a contrary intent appears" on the surface of the deed. Id. (quoting McCoy v. Lowrie, 268 P.2d 1003 (Wash 1954).

The Newport Yacht court next did something that this trial court seemingly never did – it took a close look at the language of the deed at issue. Id. at 26. The determination of what interests a deed gives should start with the language of the deed itself. If there is no ambiguity in it, and the words therein are sufficient to convey fee simple title, then extrinsic evidence should not be considered. The court then went on to reject the other party's contention that "a court must always consider extrinsic evidence

when determining the intent of the parties to a deed." Id. (distinguishing Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Lines Ass'n, 126 P.3d. 16 (2006) (a case about a deed for a railroad right of way.)) In cases not involving railroad deeds, the Washington Supreme Court has consistently required that "[t]he intent of the parties is to be derived from the entire instrument and, if ambiguity exists, the situation and circumstances of the parties at the time of the grant are to be considered." Niemann v. Vaught Community Church, 113 P.3d 463, 467 (Wash. 2005).

Here, the language of the deeds is clear and unambiguous. Not only is there no finding by the court that the deed is ambiguous, but Petitioner does not even argue that it was. That should end the inquiry. Thi Ut Quach conveyed her entire interest in the property to Bryan Scott Perez on July 24, 2021. The deed to that effect is clear and unambiguous. If Ms. Quach had any remaining interest in the property after conveying this deed (she did not), it would also have been conveyed to Mr. Perez by the

quitclaim deed of the same day, and by the additional warranty deed signed on August 16, 2021 with an effective date of August 21, 2021.

The conclusion that the deed must be presumed valid is reinforced by the parol evidence rule. Washington courts have long applied the rule, under which, "all conversations and parol agreements between the parties prior to a written agreement are so merged therein that they cannot be given in evidence for the purpose of changing the contract or showing an intention or understanding different from that expressed in the written agreement." Buyken v. Ertner, 205 P.2d 628, 632 (Wash. 1949). "The parol evidence rule is not a rule of evidence but is a rule of substantive law." Andersonian Inv. Co. v. Wade, 184 P. 327 (Wash. 1919). Although Newport Yacht does not expressly use the term "parol evidence rule," the case's prohibition on evidence extrinsic to the deed is clearly an application of that rule. Numerous cases have followed this to enforce deeds as written. See, e.g. Bale v. Allison, 294 P. 3d 789, 798 (Wash App. 2013)

(enforcing validity of deed that did not contain consideration); Matter of Marriage of Prentice, 2022 WL 17959243 (Wash. App. 2022) (enforcing quitclaim deed); Liffgens v. Dorny, 2022 WL 2128795 at *10 (Wash. App. 2022) (enforcing easement as written – "Where the plain language of the deed or easement is unambiguous, we will not consider extrinsic evidence.")

Here, the parol evidence rule requires the exclusion of all extrinsic evidence concerning conversations or documents prior to August 21, 2021, the date at which the latest warranty deed became effective. CP 874. It is beyond clear that the trial court heeded neither the parol evidence rule, nor the presumption that a deed is valid and can only be attacked by clear and convincing evidence. Instead, it considered every exhibit petitioner offered, from parol evidence found in declarations that purport to offer understandings of Ms. Quach's state of mind at various points (which is entirely inadmissible hearsay) to letters written long after she had already conveyed her interest in the property to Mr. Perez. Even if it were proper to look beyond the four corners of

the deed (it is not), the only evidence that would be relevant would be that pertaining to Ms. Quach's intention ***at the time she signed the deed***. Anything evidencing a later change of mind is entirely irrelevant. Even though Mr. Perez moved to strike many of the exhibits for these very reasons, the court considered every exhibit petitioner offered without examination or any rationale as to why they were admissible. This court should reverse and remand, to allow the trial court to consider (for the first time, seemingly) the effect of the parol evidence rule and the presumption of validity of the deed, with instructions to apply these longstanding tenets of Washington law to the present case.

2. Consideration of the barred evidence would not support the grant of partial summary judgment.

Even if the court could properly consider the evidence that is inadmissible because it is irrelevant or should be barred by the parol evidence rule, that evidence is not sufficient to demonstrate that there is no genuine issue of material fact, and that petitioner/appellee is entitled to a judgment as a matter of

law. As explained above, the deed should be treated as presumptively valid, but even if it is treated merely as evidence of Ms. Quach's intention to convey the property to Bryan Perez, it creates a genuine issue of material fact sufficient to preclude summary judgment. This is especially true when one takes into account the fact that Mr. Perez paid off more than $353,000 in loans, as the petitioner/appellee admitted in court. VRP Vol. III at 65. There was no reason for Mr. Perez to have done this except as consideration for the transfer of property. Mr. Perez also presented evidence that numerous members of the Quach family believe that Ms. Quach intended to convey the property to Mr. Perez and that he is the rightful owner thereof. CP 934-944.

Instead of determining what evidence was admissible on each side and deciding whether there were genuine factual disputes involved in the case, as would be proper at a summary judgment hearing, the trial court chose to evaluate the relative credibility of the parties, which would never be proper on

summary judgment, and which revealed her clear bias against Mr. Perez. It further showed a clear bias towards the opposing party through clear and concise credibility issues (11 issues easily extinguishable with exhibits backing claims) which was clearly defined in Respondents/appellant reply to motion to strike filed on February 22, 2024. CP 1534-1538. And, yet fell on deaf ears of King County Court such as many issues of fact, to which has brought us before this court. Ultimately, even if her credibility determinations were correct and unbiased, it had no place in a summary judgment proceeding.

Furthermore, even under petitioner/appellee's theory, which ignores the presumption of validity of the deed, the important question is whether Ms. Quach had the intent to deliver the deed at the time she signed it and actually gave it to Mr. Perez. Under this theory, it is only her mindset at the time of signing the deed that matters. Evidence that she signed the deed and conveyed it to Mr. Perez is direct evidence of her mental state at that time, but it was ignored in favor of evidence

that she later changed her mind, which is not direct evidence of what her mental state was at the time. Washington courts have been clear that a party that properly executes and delivers a deed cannot rescind this delivery simply because she later changes her mind. See, e.g., Snohomish County v. Hawkins, 89 P. 3d 713, 715-16 (Wash. App. 2004). In Hawkins, for example, a wife signed a quitclaim deed transferring all her interest to her husband, then attempted to argue that he could not transfer or encumber the property without her signature. 89 P.3d at 715-16. The court roundly rejected this argument, finding the original deed and subsequent deeds signed only by the husband valid. Id. at 716.

The case law that petitioner/appellee relied upon during the hearing on Summary Judgment to argue that evidence that Ms. Quach later changed her mind was somehow sufficient to support summary judgment is easily distinguishable. For example, Petitioner relied in part on Ross v. Kirner, 172 P. 3d 701, 703 (Wash. 2007). In Ross, the Washington Supreme Court

overturned summary judgment for the party claiming that a deed was valid where the other party claimed fraud in the sale, because the grantor did not disclose certain easements when the deed was executed. Id. Here, Petitioner can point to nothing fraudulent about the deed itself, and the court made no findings of fact that anything fraudulent occurred in Mr. Perez's conduct. Furthermore, the Supreme Court in Ross determined that whether negligent misrepresentation actually occurred was a matter for the trier of fact, not something to be determined on summary judgment. Id. In this case, where the trial court did not even purport to make a finding that any fraud or misrepresentation occurred, summary judgment was not appropriate.

Even if all the extrinsic evidence is considered, it does no more than create a genuine issue of material fact about the validity of the deed. It certainly does not eviscerate all genuine issues of material fact. This Court should reverse and remand, vacating the trial court's grant of partial summary judgment and

remanding for further proceedings that properly apply Washington law regarding the conveyance of deeds.

D. The Trial Court Erred in Granting Attorney's Fees and Refusing to Reconsider its Grant of Partial Summary Judgment.

For the reasons detailed above, the trial court erred in granting partial summary judgment. Thus, its refusal to reconsider this order and its grant of attorneys' fees to the petitioner/appellee were also in error and should be reversed. These rulings—the order on the motion to reconsider is a single sentence and does not show that the court reconsidered anything—reveal the continuing bias and disinterest of the trial judge. This case is one of the most important events in the lives of at least some of the litigants and involves the ultimate ownership of a piece of property dear to Mr. Perez that he spent a great deal of time and money to obtain perfectly legally, and the loss of which would essentially render himself and Linda Quach homeless. The idea that the judge would say that filings in the case were taking up too much of her time is ludicrous.

This is especially true where, as described above, the trial court denied an important motion to amend by the Respondent/Appellant for purely technical reasons that cannot be justified by the spirit of the rules. Furthermore, the transcript of the proceedings on the question of whether to stay the case pending appeal further reveal that the trial judge did not appear to be interested and informed about what was going on in the case and just wanted to make things easier on herself if it was reversed on appeal. VRP Vol. 14 at 104-105. This Court should reverse the order granting partial summary judgment.

CONCLUSION.

This case concerns a piece of property that was transferred by a living woman, with all proper formalities, and with the present intention of conveying the property to Bryan S. Perez. It should not even be a probate case, because by the time Ms. Quach created the living trust, and certainly long before her untimely passing, she had conveyed all interest in the property and had nothing left to give. The fact that she later changed her

mind about this issue is irrelevant, and fundamentally cannot support the grant of summary judgment in favor of anyone other than the person who holds the valid deed. This Court should reverse and remand.

To do otherwise, especially, as here, on the basis of parol evidence that should never have been admitted, would undermine the legitimacy of the unambiguous, statutorily-compliant deeds held by hundreds of thousands or millions of Washingtonians. They, like Bryan Perez, could face challenges to transactions that were entirely legitimate, aboveboard, and completed before anyone changed their mind or tried to influence one of the parties. The prevention of such challenges is the defining purpose of the parol evidence rule, the dead man's statute, and the presumption of the validity of deeds. To allow this case to stand is to weaken those fundamental precepts of Washington law. This Court should reverse its order on partial summary judgment (CP 1671) in its entirety. Furthermore, it should also reverse the denial of Mr. Perez's

motion to amend the complaint and add the counterclaim (CP 1694), and vacate all denials of motions for reconsideration (e.g., CP 1735) and all orders awarding attorneys' fees or any costs to petitioner/appellee. (e.g., CP 1677 and 1648) This court should award attorney fees, court cost, or any other costs related to this appeal to the Appellant, to include but not limited to motions related to stay of judgment and frivolous post-summary judgement motions.

This document contains 10,093 words, excluding the parts of the document exempted by the word county by RAP 18.17.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I, the undersigned declare: I am over the age of eighteen years and not a party to the cause; I certify under penalty of perjury under the laws of the United States and of the State of Washington that on October 7, 2024, I caused the following document(s):

BRIEF OF APPELLANT

To be served on the following via Email through the Courts E-service.

Holly Surface
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed on October 7, 2024.

/s/ Corey E. Parker
Corey E. Parker, Esq.
WSBA No. 40006
The Appellate Law Firm

THE APPELLATE LAW FIRM

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