No. 86535-8-I

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

DIVISION 1

Bryan Perez and Linda Quach,

Appellants – Respondent

v.

Mary Pelentay, as Trustee of the Quach Living Trust and individually

Respondent - Petitioner

ON APPEAL FROM THE SUPRIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

The Honorable Nicole Gains-Phelps

BRIEF OF RESPONDENT

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I. INTRODUCTION

This appeal concerns delivery of a deed. The appellants' briefing confuses delivery of a deed in fact with delivery of a deed at law. It has long been the law in Washington that "delivery" of a deed at law concerns the grantor's intent to effectively to transfer title to real property, as opposed to "delivery" of a deed in fact, which concerns the physical delivery of a deed.

In Washington, cases concerning whether a deed has been delivered at law largely concern donative transfers. Commonly, there is some lack of certainty as to whether a grantor intended to gift a piece of real property to the grantee. In bargained-for transactions, as is the case at bar, delivery is seldom an issue. The grantor's intent or the lack thereof, as is the case here, to complete a transaction is clear, from the circumstances.

The appellants' opening brief fails to discuss or identify the key facts which show that Thi Ut "Betty" Quach lacked the intent to complete a transaction to convey her real property to

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Bryan Perez. Betty had a terminal illness and had discussed a plan with the appellants herein, Linda Quach, who is her sister, and Perez, Linda's committed intimate partner, for the purchase of her home. Betty initially contemplated conveying her property at her death for consideration of $50,000.00, paid during her lifetime, for the equity in her home. As she indicated in her correspondence to Perez, "[t]he agreement is upon death the property solely belongs to you with full ownership, in exchange for $50K cash in incremental payments through cash or transfer paid out by Linda Quach (agent on your behalf)". CP 984.

As of July 24, 2021, the date of the recorded Statutory Warranty Deed, CP 1186, Appellants had advanced only $5,600.00 of the $50,000.00. CP 984; 1010. Because Betty had not died or received full consideration as of July 24, 2021, there was no evidence that Betty had the necessary intent to complete the transaction as of the date of the recorded Statutory Warranty Deed.

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Appellants continued to advance cash towards the $50,000.00, and the parties continued to negotiate the deal. There were misunderstandings, and by August 21, 2021, they had not finalized any agreement. Perez's correspondence of that date indicates, "[c]all and we can talk through the spread sheet and agreement to get more clarity[.] [T]his is the last and final documents needed to seal the agreement with no misinterpretations." CP 1013.

On August 22, 2021, Betty stated that she was:

> [Q]uite stressed by this transaction and the affect it has had on Linda and my relationship, there is a ton of tension and she is very bothered and said we regrets making the offer. This really hurts me to the core. I cant go anyplace knowing I caused this. I have been able to recover most funds issued in cash by Linda and can pay her back if you want to opt out… Anyways, we can chat more but ***hopefully this helps you with a final decision***. ***Like I said I can pay most of what has already been cash paid to me back to Linda and pretend this never happened***.

CP 1020.

At that time, $27,600.00 had been advanced from Appellants to Betty. CP 1010.

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On September 2, 2021, Betty issued a cashier's check to Linda Quach in the amount of $27,600.00. CP 1101. Linda Quach accepted and deposited the check. CP 1113. The contemplated agreement was cancelled, and all parties were restored to their prior positions.

Perez, however, retained the July 24, 2021 Statutory Warranty Deed and recorded it after Betty's death, asserting title to her property when she could no longer verify that there was no deal. He persists with an argument that courts and the parties cannot look beyond the four corners of the deed because it is unambiguous on its face. However, he *knows* there was *NO DEAL!* Contrary to Perez's assertions, there are many situations in which the Court may look beyond the four corners of the deed, including whether the grantor's conditions were met in order to ascertain delivery at law.

Perez also insists that his payoff of the underlying mortgages is *good enough consideration* even though he *knows* that Betty did not receive any benefit that she desired during her lifetime.

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As discussed further herein, confusion over the amount of debt against the property was one of the reasons the parties never came to an agreement. CP 1015; 1020.

Appellants/Respondents provided no evidence whatsoever to contradict the evidence presented by Mary Pelentay ("Mary"), that the deal Betty contemplated never came to fruition. Furthermore, they never provided evidence of ***any*** completed agreement with Betty. The trial court properly granted summary judgment to Mary. This Court should affirm the trial court's grant of summary judgment and award of attorney fees. The Court of Appeals should affirm the trial court's order granting summary judgment and award Mary her attorney fees and costs on appeal.

II. STATEMENT OF ISSUES

1. Whether Appellants should be allowed to raise issues in their reply that are either new or issues they failed to adequately initially.

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2. Whether Mary Pelentay, Successor Trustee of the Quach Living Trust, properly brought this matter for recovery of real property belonging to Betty Quach's Living Trust under RCW 11.96A *et. seq,* "TEDRA" when RCW 11.96A.020(1)(b) specifically provides, "It is the intent of the legislature that the courts shall have full and ample power and authority under this title to administer and settle: ***all trusts and trust matters.*** *RCW 11.96A.020(1)(b)* ***(emphasis added)****.*
3. Whether the Court of Appeals needs to consider the propriety of evidence admitted when Appellants fail to adequately brief which documents they believe were admitted in error when RAP 10.3(6) requires "citations to legal authority and references to relevant parts of the record."
4. If the Court of Appeals determines Appellants adequately briefed their evidentiary objections, whether the trial court ruled properly in its evidentiary admissions.

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5. Whether the trial court properly granted Mary's Motion for Partial Summary Judgment ("MPSJ") when Appellants/Respondents presented no evidence to raise a genuine issue for trial.
6. Whether Mary met her burden to prove the invalidity of all deeds Betty executed in favor of Perez when she provided undisputed evidence that there was no agreement to convey title, and Betty received nothing for her equity during her lifetime.
7. Whether denial of a motion to amend pleadings is an appealable issue pursuant to RAP 2.2 when all denials were entered without prejudice.
8. If the Court of Appeals determines the issue is appealable, whether the trial court properly denied Appellant/Respondents' multiple motions to amend their "pleading" when the request so far deviated from the court rule that neither the court nor the petitioner could determine what pleading they were attempting to amend.

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9. Whether the trial court properly denied Appellant/Respondents' multiple motions for reconsideration when two of them were improperly noticed and none of them set forth a basis in law or fact to support reconsideration under CR 59.
10. Whether the trial court properly awarded attorney fees and costs to Mary for both of Appellants/Respondents' Motions to Strike her MPSJ and the MPSJ itself when Mary was not only required to file a lawsuit to recover Trust property, but within the lawsuit, was required to respond to Appellants/Respondents' **19** motions, most of which suffered from various flaws that violated Mary's rights to procedural due process.
11. Whether Mary should be awarded her attorney fees and costs on appeal, when she will be the prevailing party.

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III. COUNTER-STATEMENT OF THE CASE

A. FACTS

1. Betty Quach began preparing an estate plan after receiving a terminal diagnosis. CP 956. She engaged attorney Nicholas Alexander in July or August 2021 to establish the Quach Living Trust ("the Trust"). CP 1201.
2. Prior to executing the Trust, Betty began preparing letters of instruction to the Trustee. CP 46 – 86. The first instruction letter was dated August 11, 2021. CP 46 – 52. The letters of instruction identify that Mary was the designated beneficiary of Betty's life insurance policy and instruct Mary how to distribute the proceeds of approximately $1,140,000.00. *Id.*
3. Because Betty changed her mind frequently regarding the distribution of her assets, Nicholas Alexander recommended that she designate her friend Mary as the residual beneficiary and provide the letters of instruction to her. CP 1201. Mary was to receive the property and

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distribute as Betty instructed, thus providing Betty with the flexibility to change her mind without amending the trust. *Id.*

4. Betty also discussed a plan to sell her real property located at 426 S. 193rd Steet, Des Moines, WA 98148 ("the Subject Property") with Appellants/Respondents CP 957.
5. Betty outlined a plan that the "property gift **at death** is based on an agreement between you and I. The agreement is **upon death,** the property belongs to you with full ownership, in exchange for $50k cash in incremental payments through cash or transfer paid out by Linda Quach (agent on your behalf)." CP 984.
6. In addition, Betty wanted her significant other, Jason Bangs, to continue to reside at the property, "prepaid for 6 months if he chooses. If he chooses not to rent, please issue him the advance funds $17400." *Id.*

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7. The same correspondence reflects that Appellants/Respondents began advancing cash on July 11, 2021. *Id.* By July 24, 2021, they had advanced $5,600.00. *Id.*

8. Betty signed both a Statutory Warranty Deed, CP 1186, and a Quit Claim Deed, CP 1043, in favor of Bryan Perez on July 24, 2021. It is unclear why she signed two different deeds conveying different interests at that time.

9. However, no evidence exists that Betty had intent to deliver either deed at that time because her conditions had not been met. The parties had not reached an agreement, Betty had not received her desired consideration, and Betty was still living.

10. Betty's August 11, 2021 letter of instruction identifies the arrangement with Bryan Perez for the home transfer in exchange for $50k cash. CP 1088.

11. Previously, on August 3, 2021, Betty prepared a transfer on death deed ("TODD") using a template provided by

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her employer's insurance provider. CP 958, 1006, 1068. The instructions indicate the deed should be mailed to MetLife, who would then finalize and record the deed. CP 958, 1004. The deed was recorded September 17, 2021, approximately 6 weeks later, as indicated in the instructions. CP 1004, 1075-1077. This TODD revoked the prior, undelivered Statutory Warranty Deed and Quit Claim Deed, previously intended to transfer title upon Betty's death.

12. It appears that Betty Quach signed another Statutory Warranty Deed on August 21, 2021; however, the date of the notary signature is August 16, 2021. CP 1045. Perez failed to provide any testimony from the Notary Public to confirm the date of signature or to validate this facially defective deed. RP 76. In addition, he provides no factual or legal support for his claim that a Statutory Warranty Deed can be signed on one date to be effective on another. *Br. App. p. 1045.* RAP 10.3(6) provides that

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argument in support of the issues presented for review must be supported by citations to legal authority. *RAP 10.3(6).*

13. Text communications between Betty and Linda Quach reflect that as of August 17, 2021, a total of $27,600 had been advanced, $17k was to be held to pay for 6 months mortgage while Jason Bangs resided in the property, and $5,400 remained to be advanced to Betty. CP 1010 – 1011. Because Betty Quach had not been advanced the full $50,000.00, she lacked intent to deliver the August 2021 Statutory Warranty Deed (if sufficient testimony could ever be provided to establish its validity despite the conflicting dates of the signor and the Notary.)

14. Perez's correspondence to Betty dated August 21, 2021, reflects that he would like to talk through a spreadsheet and [rental] agreement to get more clarity and that "…this is the last and final document needed to seal the

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agreement with no misinterpretations." CP 1013. Such confirms no agreement had been reached by that point.

15. Betty's follow up correspondence on August 22, 2021 reflects that the unsigned rental agreement attached, CP1022 – 1024, had strange wording that needed to be updated. CP 1020. She, as well as Perez, felt that a final agreement was not reached.

16. Perez's spreadsheet reflects that there had been a misunderstanding about the amount of debt against the property. CP 1015. Initially, the parties understood that the Subject Property had debt of $271,686.10, and Bryan Perez and Linda Quach would pay $50,000.00 for a total purchase price of $321,686.10. *Id.* The spreadsheet also reflects that "what was discovered after" was the home actually had $366,509.22 in debt, the amount of cash paid out by that time was $21,600.00 and the total advance rent would be $13,079.22. *Id.* The spreadsheet

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reflects the total purchase price as of that date would be $401,188.92. *Id.*

17. Betty's responsive e-mail on August 22, 2021, asks if this price was "..higher than you anticipated?" CP 1020.

18. Betty went on to say that she was "quite stressed by the transaction and the affect it has had on Linda and my relationship" that Linda "regrets making the offer" and that Betty will pay Linda back the advanced funds if they wanted to "opt out." *Id.* Betty closed the e-mail by confirming that no final decision had been reached. "[H]opefully this helps you with a final decision. Like I said I can pay most of what had already been cash paid to me back to Linda and pretend this never happened." *Id.*

19. Appellants provided no evidence to refute these documents nor any evidence to establish any completed agreement. The subsequent evidence, which was also unchallenged by Appellants/Respondents, confirms that there was *no deal.*

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20. In addition, Appellants/Respondents did not provide a signed rental agreement for Jason Bangs to reside in the property, as Betty required. Mr. Bangs confirmed that he never signed an agreement with Perez, never received any rent advanced on his behalf, and ultimately moved out of the residence approximately one month after Betty's death, CP 1190 – 1192, contrary to her desire for him to have approximately six months to relocate. CP 984.

21. Also on August 22, 2021, Betty texted Mary and relayed her decision to sell the home upon death and split the proceeds among her family. CP 1098. She also indicated she was "calling Nick [Alexander] now." *Id.* This is not an indication that Betty had merely changed her mind about the property as Appellants argue. There was NO DEAL! Betty began making different arrangements.

22. On August 27, 2021, Betty Quach executed the Quach Living Trust, CP 1115 – 1127.

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23. That same day Betty signed a Bill of Transfer and Notice of Assigmnent of the Subject property to the Quach Living Trust. CP 1568 – 1569.

24. In addition, Betty executed a TODD for the Subject Property in favor of Mary. CP 1131 – 1132. This deed revoked the earlier TODD to Bryan Perez. *Id.*

25. She also prepared and signed a new letter of instruction which no longer reflected an agreement with Perez to transfer title to her home for $50,000.00. CP 1144. This letter of instruction identified the TODD to Mary and instructions to sell the property and divide proceeds among specific friends and family members. *Id.*

26. On September 2, 2021 Betty withdrew $27,600.00 from her bank account to obtain a cashier's check to return the advanced funds to Linda. CP 1101. Linda endorsed and deposited the check for $27,600.00. CP 1113.

27. Appellants/Respondents did not provide any evidence to refute the check or that any cash had later been provided.

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28. On November 16, 2021, Betty prepared her final letter of instruction to Mary as trustee. CP 1151. This letter reflected the TODD to Mary, instructions to sell the property, and distribution of 1/3 of the sale proceeds to Jason Bangs, 1/3 to Mary, and the remaining 1/3 to pay any remaining outstanding debt and then be divided between three charities. *Id.*

29. Betty later texted multiple family members, including Linda Quach:

> Regarding the house it has gone back and forth too much and no one has a suggestion that works for me so there a transfer upon death deed which saves the sale from probate and taxes. The proceed will go to Jason 1/3 Mary 1/3 fee to sell house and taxes and stuff rest goes to charity.

CP 1154 – 1156.

30. Appellants presented no evidence that they had questioned her about selling the property if they sincerely believed there was a completed agreement to transfer title to either Bryan Perez and/or Linda Quach.

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31. Betty Quach passed away on December 19, 2021. CP 1164.

32. Thereafter, Mary engaged Betty's selected real estate agent, Betty's sister Jennie Quach, to list the property. CP 1176 – 1180. Jennie Quach recommended significant work to prepare the Subject Property for sale. *Id.*

33. Mary engaged Sunset Painting, LLC to complete the work beginning in January 2022. CP 1182, 1184.

34. Appellants/Respondents admitted being aware of the work being performed and made no objection. CP 1036, 1039, 1040.

35. By late February 2022, Mary had received the $1,140,000.00 life insurance payout and had distributed the amounts as indicated in Betty's November 16, 2021 instruction letter. CP 1065.

36. On March 1, 2022, Bryan Perez asserted title to the Subject Property. *Id.* He recorded the July 24, 2021 Statutory Warranty Deed on March 14, 2024. CP 1186.

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37. Sunset Painting, LLC later sued Mary. CP 1065. Mary personally paid them $80,267.01 to avoid having her wages garnished or having an outstanding judgment affecting her credit. *Id;* CP 1188.

38. Thereafter, Perez aggressively confronted, bullied, and threatened anyone who challenged his ownership of the Subject Property. CP 887 – 889. He acknowledged that he induced parties to agree to finalize Betty's affairs without lawyers prior to asserting title to the Subject Property. CP 887. He accused Mary of "fraud" and stated that she and her attorney may find civil and criminal charges pending against them. CP 888. He thanked Mary for her "donation" of payment to the contractor. CP 889. Perez further stated, "If you want a WAR get your combat boots on. I have had mine on for 34 years. Battle ground will be the King County Court house. Or better yet, lets settle this in a cool and cheap way, "BOW

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YOUR HEAD, ASK FOR FORGIVENESS and GO AWAY!!!" *Id.*

39. Perez also threatened the other parties involved, if they should retain a lawyer.

> The following is due to direct threats of lawsuits. From this point forward, I will not fulfill any agreements that may have been implied or may have been stated until such time as parties can reach an agreement following the conditions given to Ms. Pelentay (that no lawyers will be involved). All parties directly involved will need to sign an agreement accepting the terms and refusal to litigate the action in the future, which will put a complete closure on this ridiculous action of continued threats.

CP 1196.

40. Jason Bangs' undisputed testimony reflects that Perez called and offered him "ten to fifteen thousand dollars 'if everything went his way'", CP 1192, and if [Mary Pelentay or her attorneys] ask any questions, "tell them you forgot". *Id.*

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41. Exhibit B to the Declaration of Jason Bangs is an e-mail from Bryan Perez in which he states:

> I want you to know what I told you on the phone still holds true, I have not and will not forget about you. Just waiting for the buffalo to finish the bullshit court stuff. Looks like they are going to sue me according to the Nov hearing. So I am waiting for their next move. I have never seen a lawyer so slow and ignorant. I guess that is why the buffalo and her get along so well.

CP 1198.

B. PROCEDURAL FACTS

42. On May 25, 2023, Mary filed an action in her capacity as Trustee of the Quach Living Trust and individually, pursuant to RCW 11.96A *et. seq.*, to Claim and Distribute Asset on Behalf of Trust, Quiet Title, Ejectment, and other causes of action. CP 7.

43. Respondents/Appellants, led by Bryan Perez, filed an Answer CP 182-186. The trial court did not decide the matter at the initial hearing and the case was certified for trial. CP 170-171.

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44. Thereafter, Perez set course for voluminous and frivolous motion practice. Each motion contained numerous procedural defects. This ranged from filing a Notice of Hearing pursuant to KCLCR 7(b)(5) for each motion, evidentiary violations, and service defects. *Record generally*. Further, the motions failed to provide Mary with the required response times pursuant to court rules. *Id.* Accordingly, Mary began a series of motions to shorten the time required for her to strike the motion. CP 218-19. Mary's briefing identified the procedural violations and the correct procedure, CP 219; however, Perez continued to file subsequent motions with the same procedural violations.

45. After a few untimely motions, Mary's counsel simply reached out and agreed to a 3-month extension of the trial date, CP 296-297, in order to avoid an entire case of helter skelter procedural violations from a pro se party

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who either failed to figure out how to properly file a motion, or willfully disregarded the rules.

46. Yet, Perez did not retain counsel and continued in the same vein of chaotic, frivolous, and procedurally defective motion practice. *Record generally.* Between September 2023 and March 2024, Perez filed at least **19** original motions. CP 1739.

47. Perez filed the first motion to amend their response on October 31, 2023, with improper notice and other defects. CP 364. Mary again moved to shorten time, CP 436 – 438, to note a motion to strike for improper notice, service, and filing during a period of each party's unavailability. *Id.*

48. On November 8, 2023, the trial court granted Mary's Motion to Strike. CP 455. The trial court also ruled that motions could be filed in accordance with either LCR 7(b)(4) or LCR 98.04(b). *Id.* The trial court denied Mary's request for attorney fees but issued a warning that

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future fee awards would be granted if Perez continued the untimely motion practice. *Id.*

49. Perez's second Motion to Amend included complete briefing on the CR 15 requirements for filing an amended pleading; CP 463, however, they attached a "Motion Amending Pleading and Adding Counterclaim" as opposed to an unsigned copy of the proposed amended response. CP 465 – 475.

50. The court requested a status conference on December 28, 2023, RP 27, at which it continued its conservative approach to containing Perez's haphazard motion practice. RP 27-28. The court identified that, given the voluminous motion practice thus far, Perez should be able to achieve proper service and timing, *id,* and that Mary's briefing literally pointed out the correct rules, timing, and service requirements, RP 31, yet the same procedural rules were violated repeatedly. *Id.* However, the court again only gave warnings. CP 28.

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51. The trial court further stated that Perez's motion to amend was so unclear that it was "confused about what you're trying to do in this particular motion that you've set before me…" RP 28. However, the court did not want to deny the motion (again) "without going on the record…to explain why it was being denied," RP 30, which was that Perez needed to include a copy of the pleading with the amended information in it. CP 35. The court also provided Perez with resources to assist him. RP 31, 32, 34, 38.

52. The court concluded the status conference, noting that the motion was being denied "without prejudice" but that Perez had to comply with all rules regarding amendments. RP 43.

53. On January 29, 2024, Perez filed his third motion for leave to amend to add counterclaims to his response. CP 851. However, the attached pleading was another "Motion to Amend Response ("Opposition") to

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Complaint to Add Counterclaims and Defenses." CP 856 – 871. The court denied the motion, again for failure to comply with CR 15, despite numerous explanations. CP 1650 – 1651. The court also directed that neither party was allowed to file any more motions before the hearing on summary judgment. *Id.*

54. Mary filed her MPSJ on February 2, 2024. CP 956.

55. Perez filed two Motions to Strike the MPSJ, continuing his defective procedural practice. He filed the first motion on February 7, 2023, with a request to shorten time for the court to hear the motion on February 9, 2024. CP 1222. Shortening time was not necessary when the MPSJ was, at that time, scheduled for hearing on March 1, 2024. CP 1223.

56. Instead of re-noting the motion, he filed a new Motion to Strike the MPSJ with additional claims and arguments. CP 1280 – 1290. The court denied the motion on its merits. CP 1645 – 1648.

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57. Mary's MPSJ was heard and granted on March 5, 2024, which included an award for her attorney fees.

58. Thereafter, Perez filed three improper motions for reconsideration.

IV. COUNTER-ARGUMENT

a. To the extent Appellants failed to adequately brief their appeal already, they should be precluded from doing so in Reply.

Appellants' opening brief contains minimal references to the record and multiple legal assertions unsupported by law as required by RAP 10.3(6). *Br. App., generally*. Some examples (of the many) include, that Linda Quach has no interest in the property and should never have been a party to the case. *App. br. p. 1* and Bryan Perez took conveyance through uncontested possession on August 16, 2021. *Br. App. p. 14; 24; 26*.

It is not Mary Pelentay's job, nor the burden of this Court, to guess what Appellants refer to or try to determine

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what argument they will make, to then preemptively rebut it. Additionally, "Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after a diligent search, has found none." *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962).

Mary lodges a general objection to any arguments that Appellants may attempt to make in reply that were not explicitly set forth and fully briefed in their opening brief, based on prejudice to her, since she would then be deprived of her due process right to respond to such new arguments. *See e.g., Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 829 P.2d 549 (1992) ("issue raised and argued for the first time in a reply brief is too late to warrant consideration"). If Appellants' Reply brief raises new issues, arguments, or theories, the Court of Appeals should not consider it.

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b. Mary properly petitioned under the Trust and Estate Dispute Resolution Act *"TEDRA"*.

King County Superior Court has jurisdiction to hear Mary's claims. A tribunal lacks subject matter jurisdiction only when it attempts to decide a type of controversy over which it has no authority to adjudicate. *Sloans v. Berry*, 189 Wn. App. 368, 358 P.3d 426 (2015). "The superior court shall have original jurisdiction in all cases at law which involve the title or possession of real property…" *Wash. Const. art. IV, § 6.* A superior court acting in probate is the same court when it hears an ordinary civil action. Sloans v. Berry, 189 n. App. 368, 377. Procedural requirements must not be elevated to the level of a jurisdictional imperative. *Id.* Thus, the superior court had jurisdiction, whether Mary brought her action under TEDRA or as an ordinary civil action, to adjudicate her claims.

Mary is a "party" with standing entitled to "have a judicial proceeding for the declaration of rights or legal relations with respect to any matter", pursuant to *RCW*

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11.96.080, under TEDRA, as both a Trustee of a Revocable Trust, *RCW 11.96A.030(5)(a)(i),* and as a qualified beneficiary, *RCW 11.98.002; 11.96A.030(5)(b)(ii)* and Trustee *11.96A.030(5)(b)(i)* when the Trust became irrevocable upon Betty's death. CP 23, ¶3.2.

Appellants seem confused as to whether Mary brings any claims with respect to the Estate of Betty Quach. Although she is not, she would be entitled to judicial proceedings related to such in her capacity as Administrator of the estate. CP 1070 – 1073; RCW *11.96A.030(5)(c)(i).*

"Matter" is broadly defined. In this case, RCW 11.96A.030(2)(c) applies. "'Matter' includes ***any*** issue, question, or dispute involving… [t]he determination of ***any*** question arising in the administration of an estate or trust… or ***any*** other asset or property interest passing upon death…" ***Emphasis added.***

Mary Pelentay brought the action in her capacity as Trustee of Quach Living Trust seeking to recover property

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belonging to the trust. CP 7. Mary also brought this action individually because the second TODD names her as Grantee. CP 1131 – 1132. If the court were to find that deed valid, Mary's intent was to claim it on behalf of the trust and distribute it pursuant to the terms of the trust. CP 1062. Mary is also a beneficiary of the Trust. CP 24. Thus, Mary is entitled to judicial proceedings under TEDRA. Recovery of a trust asset and funds Mary has personally spent on behalf of the Trust, are well-within matters defined as judiciable under TEDRA. Thus, Appellants fail to identify any way in which Mary has not properly brought this action under TEDRA.

c. The trial court properly admitted Mary's evidence.

The Appellants' case hinges on the exclusion of Mary's evidence. They simply have no evidence to refute that an agreement to transfer title to the Subject Property was

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contemplated, then abandoned, and all advanced consideration was returned and accepted.

Appellants argue that the trial court should have ruled on whether the Parol Evidence Rule or Dead Man's Statute barred certain evidence *prior to* the summary judgment ruling, *Br. App. p. 3*, but do not support this contention with any relevant law. At summary judgment, the trial court has *discretion* to rule on a motion to strike. *Allen v. Asbestos Corp.*, 138 Wn. App. 564, 157 P.3d 406 (2007) *(emphasis added)*. However, a court may not consider inadmissible evidence when ruling on a motion for summary judgment. *Id*. Evidentiary rulings are reviewed for manifest abuse of discretion. *Id.* Furthermore, the trial court need not give a reason for admitting evidence, and if the trial court volunteers a wrong reason for admission of evidence, there is no error if the evidence is admissible for any purpose. *Raborn v. Hayton*, 34 Wn. 2d 105, 208 P.2d 133 (1949).

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A review of the record indicates the trial court *did* consider, and rule on, Appellants' evidentiary objections.

> … I will deal with the request to strike the pleadings as part of …my rulings…about what the Court's going to consider and…isn't going to consider. I'm going to allow everyone to make their arguments they want to make, and then I will make a record about what is appropriately before the Court …

RP 51.

The court specifically questioned Mary's counsel regarding the Dead Man's Statute. RP 70 – 73. Perez made no argument concerning the admissibility of documents in his rebuttal. RP 73 – 88. The trial court's ruling identified which documents were admitted and considered. CP 1671 – 1672.

Appellants have failed to demonstrate that the trial court abused its discretion in admitting the documents it considered on summary judgment. They hope this Court will adopt a black and white view of the parol evidence rule, such being that the court may never look beyond the four corners of the deed if there are no ambiguities on its face. However:

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> As stated in *16 Am.Jur. 687, Deeds, § 445*: 'There are certain situations in which parol evidence is admissible. Parol evidence is admissible to show the circumstances under which a deed was made and the relation of the parties to the contract of conveyance and to each other with respect to it... A parol agreement in pursuance of which a deed is executed is frequently admissible in evidence. The purpose for which property is conveyed … *The statute of frauds does not exclude parol evidence of a contract to the effect that the deed was to be made to the grantee* … (Italics ours.)

Standring v. Mooney, 14 Wn. 2d 220, 227–28, 127 P.2d 401, 404 (1942). Thus, parol evidence of the circumstances surrounding the making of the deed and the contract to which it gives effect are admissible. In this case, the circumstances of the deed creations were in contemplation of reaching an agreement, thus the parties' various related correspondence is admissible. Furthermore, if a contract to which a deed gives effect is admissible, then evidence showing the parties failed to reach a final agreement is also admissible.

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Also, parol evidence is admissible to show the grantor's purpose in making the deed. *Id.* Here, Betty attempted six conveyances of her property in approximately two months, but with one purpose – to craft her estate plan. When her first contemplated plan did not materialize, she moved on. The existence of multiple attempts at conveyance in a short period certainly, each purporting to convey a different interest at a different time to a different entity, creates an ambiguity outside any of the attempted deeds. This necessitates an analysis of the grantor's intent and purpose. Where ambiguity arises outside the deed, parol evidence is always admissible to resolve ambiguity albeit not for the purpose of contradicting a deed. *Vavrek v. Parks*, 6 Wn. App. 684, 495 P.2d 1051 (1972).

Mary does have an evidentiary burden to meet. Possession of a deed by a grantee raises a presumption of delivery, with its included intent by the grantor that delivery should take effect, and that presumption can be rebutted only by clear and convincing evidence. *Raborn v. Hayton*, 34 Wn. 2d

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105, 208 P.2d 133 (1949); *Br. App. 31, 45*. Notably, in *Raborn,* the Respondent challenged extrinsic evidence admitted at trial that the Supreme Court upheld. Also, like the instant case, the grantor in *Raborn* intended delivery only upon receipt of the bargained for consideration. Upon the Respondents' admission that he had lied about paying the consideration, the trial court found the deed in question had not been validly delivered, even though the Respondent had it in his possession. The trial court's judgment was affirmed.

Appellants attempt to blend the burden of proof with an incorrect application of the parol evidence rule to keep Mary's evidence out. They argue that Mary must meet a high burden of proof – clear, cogent, and convincing evidence – but cannot admit evidence extrinsic to the deeds in so doing. This argument creates an impossible evidentiary burden to bury the fact that there was ***NO DEAL!***

Ironically, Appellants cite to *Gossett v. Farmers Ins. Co. of Wash.,* 133 Wn. 2d 954, 966, 948 P.2d 1264 (1997) to

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support the burden of proof. "[I]t 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, cogent and convincing evidence" (***emphasis added***). The *Gossett* court reviewed substantial "collateral papers" extrinsic to the deed to determine whether the burden was met.

Appellants have similarly failed in their exclusionary arguments pursuant to RCW 5.60.030. Their briefing on the Dead Man's Statute is de minimis; simply, that the 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*, 63 Wn. App. 193, 817 P.2d 1380 (1991); *Br. App. p. 30*.

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However, the statute is complex and extremely nuanced. The Dead Man's Statute refers to the party to be protected as the "adverse" party.

> …That in an action or proceeding where the adverse party sues or defends as executor, administrator, or legal representative of any deceased person, …then a party in interest or to the record, shall not be admitted to testify in his or her own behalf as to any transaction had by him or her with, or any statement made to him or her, or in his or her presence, by any such deceased…

RCW *5.60.030*.

Thus, Mary is the protected party; she is suing as the representative of the deceased. Mary, as Trustee, is a gate keeper of the testimony adverse to the estate. Appellants are not entitled to the protections of the statute.

Furthermore, not all testimony by an interested party is precluded. An interested witness may testify as to his or her own feelings and impressions of a decedent's intent, as long as it does not reveal a statement by the decedent or relate to a transaction with the decedent. *Jacobs v. Brock*, 73 Wn.2d 234,

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437 P.2d 920, (1968). In addition, testimony concerning statements or transactions by an interested party in inadmissible documents written or executed prior to the disability or death of the protected party are generally admissible. *Wildman v. Taylor*, 46 Wn. App. 546, 553, 731 P.2d. 541 (1987).

Appellants also fail to brief the applicability of *waiver* of the Dead Man's Statute. A common way for the protected party (Mary) to waive the benefit of the statute is to fail to object to the testimony when it is introduced. *In re Dand's Estate,* 41 Wn.2d 158, 167, 247 P.2d 116 (1952). Perez assigns error to the trial court "questioning respondents in violation of the Dead Man's Statute", *Br. App. p.4,* but thereafter fails to cite to or brief the questions he finds objectionable. The record reflects that Mary did not object to or argue against any testimony; thus, the Dead Man's Statute with respect to that testimony (whatever it is) is likely waived. RP Vol. III, generally.

Furthermore, Perez offers no briefing as to which documents he believes were admitted in violation of this

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complex statute (or any other evidentiary rules) and why or how the documents were inadmissible! The Court of Appeals is not required to consider arguments that are not developed in the briefs and for which a party has not cited authority. *American Federation of Teachers, Local 1950 v. Public Employment Relations Commission,* 18 Wn. App. 2d 914, 921 n.3, 493 P.3d 1212 (2021). Thus, Appellants fall far short of showing that the trial court manifestly abused its discretion by admitting all or any of Mary's evidence.

d. The trial court properly granted Mary's Motion for Partial Summary Judgment.

The Court of Appeals reviews summary judgment orders de novo, engaging in the same inquiry as the trial court. *Kim v. Lakeside Adult Family home,* 185 Wn.2d 532, 547, 374 P.3d 121 (2016). A party seeking summary judgment must show, among other things, that there is no genuine issue of material fact. *CR 56(c).* The judgment sought shall be rendered forthwith

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if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Id.*

During the summary judgment proceedings, Perez offered no evidence that would have raised a material fact as to whether any of the deeds had been validly delivered at law, whether the parties had ever reached an agreement concerning the Subject Property, or whether the contemplated consideration for the deal had been provided. Perez further offered NO affidavits that refuted any of the affidavits Mary offered in support of her motion.

The deeds themselves do not raise a material factual issue because their existence is not contested. The remainder of Perez's responsive materials did not even address issues before the court at summary judgment. CP 1403 – 1406. Perez's rebuttal argument at the hearing did not identify any factual issues and focused on fabricated evidentiary standards that

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Mary should be required to meet. RP 78 – 81. For example, Perez argued that Mary had to provide evidence that Betty and Perez never reached an agreement to end any previous agreement… in regard to the "foresaid property…" RP 79.

Appellants assert that the validity of the deeds is a factual issue but failed to identify any evidence that the deeds had been delivered, which would have been necessary to raise a factual question about their validity. Perez also argues that even if the deed were treated as evidence of Betty's intent to convey the property to him, it creates a genuine issue of fact. *Br. App. p. 51.* This argument relies on Perez's erroneous assertion that courts cannot look beyond the four corners of the deed. Perez failed to provide any evidence which raises an issue of fact as to whether Betty intended to deliver the deed. Mary's undisputed evidence reflects she did not.

Perez next argues that his payoff of $353,000.00 in loans against the Subject Property somehow raises an issue of fact. Mary does not dispute the payoff. However, Perez's argument

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that this is "good enough" consideration, falls flat. The realtor testified that the unimproved value of the home was around $400,000.00. CP 1543, 1554. Therein lies the $50,000.00 in equity for which Betty desired to receive cash and housing security for her significant other during her lifetime. Perez's assertion that his payoff, after death, of the underlying debt equates to his provision of all contemplated consideration removes all doubt as to whether Betty received anything she attempted to bargain for during her lifetime. Mary's undisputed evidence further supports that lack of certainty as to the amount of debt against the home was one of the issues that caused the parties' deal to fall apart. CP 1015. Interestingly, after Mary engaged the contractor (and believing that she would be reimbursed) the value of the improved property rose to $650,000.00 to $700,000.00, CP 1543, 1554, thus Perez's attempt to thieve equity is that much more egregious.

Appellants argue extensively that the court may only consider admissible evidence on summary judgment but then

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point to a letter signed by various members of Betty's family attempting to raise a material issue of fact about her intent. *Br. App. p. 51.* The letter is not under oath nor was an affidavit of any family member offered by Perez concerning Betty's intent with respect to the Subject Property. Thus, the letter is not admissible for summary judgment. CR 56(c). Even if it were, the family acknowledges its lack of knowledge of real estate law, CP 936, and they make no indication of their opinion as to Betty's intent. CP 934-944.

Perez makes additional arguments that the Court was biased against him, which will be discussed below, and that Betty's "change of mind", CP 53, not to convey her property to Perez, raises a material factual issue. Perez's briefing pertaining to Betty's alleged "change of mind" is irrelevant. Mary did not argue that Betty changed her mind. Mary produced significant and unopposed evidence that Betty made alternate plans for the disposition of the Subject Property upon her death when the contemplated deal with Perez fell through. In sum, Appellants

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failed at the trial court level to identify any issue of material fact that was sufficient to defeat summary judgment and have again failed to do so on appeal.

e. Mary has met the burden of clear, cogent, and convincing evidence.

It has long been the law in Washington that a deed for an interest in land must take effect upon its execution and delivery, or not at all. *Puckett v. Puckett*, 29 Wn. 2d 15, 18, 185 P.2d 131, 133 (1947). In the context of transfer of title to real property, "delivery" does not mean the physical transfer of the deed from the Grantor to the Grantee; rather, "delivery" is the "intent" of the Grantor to fully complete the transaction. Before a conveyance of real property can be found to be validly delivered, ***the grantor's present intention to consummate the transaction so as to fully vest the title in the grantee must be clearly shown***. *See Matson v. Johnson*, 48 Wn. 256, 258–59, 93 P. 324, 324–25 (1908) ***(emphasis added)***. The appellants'

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possession of three deeds does not establish such intent. Rather, it creates a rebuttable presumption that can be overcome by clear, cogent, and convincing evidence, including evidence of circumstances surrounding the deed, that Betty did not intend to consummate a transaction. *Rayborn v. Hayton*, 34 Wn.2d 105.

At summary judgment, Mary met and exceeded that standard by providing *undisputed* evidence that Betty lacked intent to consummate any transaction with Perez or Linda Quach. When a party must prove a fact by clear, cogent, and convincing evidence, the Court of Appeals incorporates that standard of proof in its assessment of the evidence on summary judgment. *Kitsap Bank v. Denley,* 177 Wn. App. 559, 569, 312 P.3d 711 (2023). Mary has also exceeded the burden on appeal.

Mary established that Betty and the appellants, discussed a transaction whereby ***upon Betty's death***, the Subject Property would be conveyed to Perez, in exchange for incremental cash payments, through Linda Quach as agent for Perez, totaling $50,000.00. CP 984. Betty's terms also required that her

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significant other, Jason Bangs, have an option to reside in the property for 6 months if he chose. *Id.* If he did not, he was to receive advanced rent of $17,400.00. *Id.* Appellants did not provide any evidence that they had accepted the terms Betty desired.

Mary also established that as of July 24, 2021, the date of the first Statutory Warranty Deed, Appellants had advanced $5,600.00 of the contemplated $50,000.00. CP 984; 1010. Respondents did not provide any evidence that full consideration had been provided as of July 24, 2021, or any other evidence, which may have been sufficient to establish an issue of material fact as to Betty's intent to fully consummate the transaction.

In addition, Mary established that Betty and Appellants failed to ever reach a meeting of minds concerning the terms of any contemplated conveyance of the Subject Property. Perez's August 21, 2021 correspondence to Betty reflects that they had previously had misinterpretations, more clarity was needed, and

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further understanding and documents were needed to "seal the deal". CP 1013.

Betty's response on August 22, 2021, stated that she was stressed about the transaction and the tension it created between her and Linda. The correspondence reflects that a final decision as to the agreement had not been reached and that she could pay back the cash Appellants advanced and "pretend this never happened". CP 1020. As of that date, the amount of cash advanced was $27,600.00. CP 1010. Perez confirmed this amount at the summary judgment hearing. RP 80.

Mary provided further *undisputed evidence* that Betty repaid the $27,600.00 and that Linda Quach accepted and deposited the check. CP 1101, CP 1113. Jason Bangs provided *undisputed* testimony that he never entered into a residential agreement with Perez for the Subject Property nor received a refund of advanced rent. CP 1190 – 1192. Perez failed to provide any evidence that any of Betty's contemplated consideration for the property transfer was given to her.

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Under these undisputed facts, the trial court correctly found that there was no meeting of the minds with respect to any contemplated agreement for conveyance of the Subject Property to Appellants. Washington courts apply the "objective manifestation" test to contract formation and require that the parties have objectively manifested their mutual assent to the contract terms. *Keystone Land & Dev. Co. v. Xerox Corp.*, 152 Wn.2d 171, 177–78, 94 P.3d 945, 949 (2004). To reach mutual assent, the parties must achieve a meeting of the minds, and the acceptance of the offer must be identical to the offer made *Johnson v. Safeco Ins. Co. of Am.*, 178 Wn. App. 828, 840 316 P.3d 1054 (2013). Normally, the issues of mutual assent and meeting of the minds are questions of fact for the fact finder; however, the court may decide these issues as a matter of law if reasonable minds could not differ over the resolution. *P.E. Sys., LLC v. CPI Corp.*, 176 Wn. 2d 198, 207, 289 P.3d 638, 643 (2012). Because Mary's evidence that no meeting of the minds

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had occurred was undisputed, the court correctly decided the issue as a matter of law.

Appellants also never provided any evidence whatsoever that Betty intended a present interest to pass to either appellant through either of the July 24, 2021 deeds, or why Betty felt both a Statutory Warranty Deed and a Quit Claim deed were necessary. Mary presented *undisputed* testimony from Betty's estate planning attorney that Betty's intent was for her property to pass upon her death. CP 1201. Betty's correspondence identifies her intent that her property pass at death. CP 984. Betty executed a TODD to Bryan Perez on August 3, 2021 that revoked the two undelivered July 24, 2021 deeds that were intended to transfer the Subject Property upon her death. CP 1075 – 1077.

Perez altogether failed to establish even facial validity of the August 2021 Statutory Warranty Deed which Betty purportedly signed on August 21, 2021, but that was apparently notarized five days earlier on August 16, 2021. CP 1045; RP

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76. Perez fails to provide factual support or cite any Washington authority that a deed "executed by Ms. Quach on August 16, 2021, to be effective August 21, 2021…" *Br. App. p. 26*, is possible.

The August 27, 2021 TODD in favor of Mary revoked the TODD in favor of Perez. However, at Betty's death this deed did not come into play because Betty's interest in the Subject Property transferred by way of her August 27, 2024 Bill of Transfer and Notice of Assignment to the Trust. CP 1568 – 1569. *Estate of Wimberley,* 186 Wn. App. 475, 349 P.3d 11 (2015).

Perez's briefing appears to suggest that *both* the statutory warranty deeds *and* the quit claim deed are valid conveyances to him. In reality, only one of the six attempted conveyances of title, the four to Perez being conditional, Betty issued between July and September 2021 is valid to have legally and actually conveyed her interest in the Subject Property.

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Perez has additional factual and evidentiary failures. He did not record the deed until March 14, 2022, after Betty died and could have refuted it, CP 1186, and did not take possession of the Subject Property until May 2022, CP 1586, five months after Betty's death. Perez did not provide an executed lease agreement whereby Betty would have retained possession if she had conveyed a present interest to them, and he did not provide evidence that he had assumed any responsibilities of ownership, such as payment of taxes, mortgage, or other expenses associated with the property at the time he alleges an interest was transferred to him. Perez did not challenge the major repairs and upgrades that Mary initiated on the property in January 2022 until such were nearly complete, and he provided no evidence to suggest he or Linda questioned Betty's text to family members (including Linda Quach) in November 2021 that stated:

> Regarding the house it has gone back and forth too much and no one has a suggestion that works for me so there is a transfer upon death

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> deed which saves the sale from probate and taxes. The proceed will go to Jason 1/3 Mary 1/3 fee to sell house and taxes and stuff rest goes to charity.

CP 1154 – 1156.

Perez waited until after Betty had died, until after Mary had paid out over $1 million dollars in life insurance benefits, and until Mary had contractors nearly complete $80,267.01 worth of repairs and upgrades to the home before he asserted title. Thereafter, Perez threatened and shouted down anyone who questioned his ownership, CP 887 – 889; 1196, and refused to communicate with Mary through her lawyer. CP 1196. These are not the actions of someone who believed he had a valid ownership interest at any point.

On the other hand, Mary provided *unchallenged* evidence that Betty lacked intent to consummate any transaction with Appellants/Respondents. Accordingly, Mary met her evidentiary burden both at summary judgment and on appeal.

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f. Perez created his own problems in the trial court and then complained of bias against him.

Perez claims that the trial court was biased against him or against pro se parties in general, *Br. App. p. 14,* and that Mary's counsel intentionally tried to "trip him up or punish him" when there was no prejudice to allowing Perez's motions to be heard on the merits. *Id.* Perez fails to mention that between September 2023 and March 2024, he filed at least **19** original motions. CP 1729. Each motion was deficient in some way; either he failed to file a Notice of Hearing as required by KCLCR 7(b)(5), failed to properly serve, or failed to give proper notice and response times to Mary (among other issues). Mary has the right to procedural due process including proper response times. Due to Perez's ineptitude or wanton violations of the rules, Mary responded to nearly all of his motions, either substantively or by motion to strike, without the full time allowed by the court rules. Mary responded to Perez's Motion to Quash the same day. CP 300; CP 348. Due to the trial court's

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denial of a Motion to Shorten Time, Mary responded to a dispositive motion in only four days. CP 668 – 669; 671. Although Mary requested multiple fee awards for the improper motion practice, the court did not grant any until six months into the lawsuit, after Mary responded to Perez's first motion to strike her MPSJ in just two days. CP 1645 – 1648.

In support of his assertion that the court was biased against him, Perez offers multiple red herring credibility issues he supposedly identified regarding Mary and her counsel. *Br. App. p. 52.* The issues identified reflect either issues decided by the court on which Perez did not prevail, or legal arguments. CP 1534 – 1535.

One such issue is the August 2021 Statutory Warranty Deed in which Perez characterizes Mary's assertion that the deed was notarized on August 16, 2021 but signed by Betty on August 21, 2021 as a **complete lie to the court.** *Id.* A basic review of the deed identifies that it is facially invalid for that reason. CP 1045.

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Pro se parties are held to the same standard as represented parties, including compliance with all procedural rules. *In re Marriage of Olson*, 69 Wn. App. 621, 626, 850 P.2d 527 (1993). Perez's allegations of bias ring hollow. The court only issued warnings to him for the same procedural violations for 6 months, called a status conference to personally explain some issues, provided references to resources, and otherwise addressed the issue conservatively.

After six months of Perez ignoring the court's warnings, the trial court was understandably displeased. It is also noteworthy that Mary's counsel was not spared admonishment from the court for her vigorous responses to Perez's barrage of frivolous motions. RP 50. The trial court, although frustrated with both parties, correctly decided the case. Perez's disregard, or inability, to follow rules and understand the law, created his problems. The court is not to blame.

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g. The trial court properly denied Perez's multiple motions for leave to amend.

Denial of multiple motions to amend is not appealable as none of the motions were denied with prejudice and were not final orders with respect to that issue as required by RAP 2.2. CP 455 - 456, 598, 1650 - 1651. Presumably, in the highly unlikely event the Court of Appeals reverses the grant of summary judgment and remands to the trial court for further proceedings, he will continue trying to amend his answer and file counterclaims.

RAP 2.2(a)(1) restates the traditional rule that an appeal is allowed from a final judgment. Although RAP 2.2(a)(1) does not define the term, a final judgment is one that disposes of all issues as to all parties. *See CR 54(a)(1).* Denial of the motions to add counterclaims did not dispose of all issues as to all parties.

RAP 2.2(a)(3) allows an appeal from "[a]ny written decision affecting a substantial right in a civil case that in effect

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determines the action and prevents a final judgment or discontinues the action." Here, if Perez can amend his answer in the future, the denial of his motions to amend does not determine the action, prevent a final judgment, or discontinue the action. Thus, the issue is not appealable under RAP 2.2(a)(3). The other criteria under RAP 2.2 by which Perez could bring an appeal are clearly not met in this situation.

Should the Court of Appeals entertain this argument, denial of a motion to amend a pleading is reviewed for manifest abuse of discretion. *Ives v. Ramsden* 142 Wn. App. 369, 174 P.3d 1231 (2008). Such motions are generally granted unless the amendment would prejudice the opposing party. *Id.* Appellants acknowledge that the trial court may deny a motion to amend when the proposed pleading is not attached for the court to evaluate. *Rodriguez v. Loudeye Corp.,* 144 Wn. App. 709, 729, 189 P.3d 168, 177 (2008).

Perez filed the motion to amend three times. The first was stricken for untimely service, but each motion failed to

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attach an unsigned version of the proposed, amended pleading. Instead, each motion to amend requested authority to file another motion. Perez was given multiple explanations of the correct procedure, briefed the correct procedure in his motion, and was given a personal explanation of the correct procedure by the judge at a status conference. Yet, he inexplicably failed to correct the error. The court did not issue "Gotcha!" rulings, as claimed.

In this case, the proposed pleading was so confusing the court could not determine what it was evaluating, and Mary's counsel could not determine what to respond to. RP 28, 30. Thus, if Mary's counsel could not discern whether to respond to a motion by way of filing a response or respond to a counterclaim by filing an answer, she would be prejudiced in filing either one. Perez demands extreme leniency so his motion can be decided on the merits, but he has to come close enough to the rule for others to determine what he is trying to do.

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h. The trial court properly denied Perez's motions to strike Mary's Motion for Summary Judgment.

Perez argues two bases for which the trial court's denial of his motions to strike Mary's MPSJ was in error. The first is for evidentiary reasons which, as set forth above, is not compelling.

The second is that the court was biased against him. It had denied his Motions to Amend due to technical niceties, *Br. App. p. 20*, but refused to strike Mary's MSPJ because it "contained over two hundred technical errors". *Id., p. 7.*

This is one of numerous statements in Appellants' briefing that are not supported by either citations to the record or law, or argument in the brief. It is well established that assignments of error not argued in the brief will not be considered on appeal. *Valente v. Bailey*, 74 Wn. 2d 857, 447 (1968).

Without waiver of the Court of Appeals' refusal to consider this argument, Mary's summary judgment materials

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did not contain multiple procedural errors. Mary assumes that Perez is referring to his allegations that Mary should have consecutively numbered her exhibit pages pursuant to KCLCR 7(b)(5)(B)(vii). CP 1410. However, summary judgment motions are governed by CR 56, which does not require consecutive page numbering, as opposed to KCLCR 7. *CR 56; CR 7.* KCLCR 56 also does not direct that exhibit pages be consecutively numbered. While KCLCR 56(2) does provide "[t]he deadlines for moving, opposing, and reply documents shall be as set forth in CR 56 …. In all other regards, parties shall file and deliver documents and the court shall set all hearings in conformance with LCR 7." *KCLCR 56(2).* This does not refer to "form" of pleadings such as consecutive numbering of exhibit pages.

In addition, Mary had previously argued that KCLCR 98.04 governed TEDRA proceedings when assigned to an individual judge. CP 446 – 447. The court ruled that the parties could bring their motions pursuant to either KCLCR 7 or

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KCLCR 98.04. CP 455. Thereafter, Mary brought motions pursuant to KCLCR 98.04, which also does not require consecutive numbering for exhibits. *KCLCR 98.04*. Thus, Mary's pleadings followed all court rules.

Predictably, the Motions to Strike Mary's MPSJ suffered from procedural flaws. The first motion was not considered because Perez requested to have it heard on shortened time, giving Mary only two days to respond, when the MPSJ was not scheduled to be heard for almost a month. CP 1222. His Motion to Shorten Time was denied, but the court continued to be lenient and did not assess fees. CP 1278 – 1279. Rather than re-noting the motion, Perez then filed a new motion to strike the MPSJ with additional requests for relief and presenting additional arguments. That motion was also denied and, after 6 months of warnings to Perez about disregarding the civil rules, the court awarded attorney fees to Mary for her responses to the two additional violative motions. CP 1645 – 1648.

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To the extent that Appellants are referring to any other procedural violations, Mary fully avails herself to the requirements of RAP 10.3(6) which requires "citations to legal authority and references to relevant parts of the record." *RAP 10.3(6)*. Furthermore, Mary objects to Appellants' attempting to raise issues in the reply brief that were not raised in the initial brief. Mary would then be deprived of her right to procedural due process to respond to any such issues. *See e.g. Cowiche Canyon Conservancy v. Bosley,* 118 Wn.2d 801, 809.

The Court of Appeals reviews denial of a Motion to Strike for abuse of discretion. *Allen v. Asbestos Corp.*, 138 Wn. App. 564. Here, Perez requests a nuclear option, striking a motion for summary judgment, for what he apparently alleges is a page numbering issue. He is unpersuasive in alleging that the court erred by not granting his several deficient motions to strike Mary's MPSJ.

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i. The trial court properly denied the Appellants' Motions for Reconsideration.

Similarly, there was no bias in the court's denial of Perez's Motions for Reconsideration. He again failed to follow the court rules regarding reconsideration. King County requires that a Notice of Court Date be filed with each motion. *KCLCR 7(b)(5)(A)*. Perez noted two of the motions with one Notice. CP 2193 – 2195. Early in the litigation the court informed Perez that a Notice of Hearing needed to be filed with each motion for them to be reviewed. CP 212. Perez observed the petitioner's counsel file a separate Notice of Hearing for each motion, even if the motions were to be heard on the same date for 6 months. *Record generally.* The undersigned counsel's experience is that a hearing is not scheduled if a Notice of Hearing is not filed with each motion. This is consistent throughout King County Superior Court, no matter which judge or department. Perez knew the proper procedure, chose not to follow it, and now complains of bias.

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Perez also failed to follow CR 59 regarding his Motion for Reconsideration of the Order Granting Summary Judgment. CP 1713. CR 59 identifies 9 bases by which the trial court may grant reconsideration. *CR 59*. Perez's motion did not identify any basis by which the court could grant reconsideration. He also requested the additional relief of returning his money that he paid towards the mortgages and repairs to the home. In addition, he asked for an additional 60 days before ejectment. CP 1714. He then proceeded to respond to each finding of fact and conclusion of law in the Order Granting Summary Judgment as though it was a complaint, stating whether he felt the ruling was correct or not. CP 1713 – 1728.

Denial of motions for reconsideration are reviewed for abuse of discretion. *Weems v. North Franklin School Dist.* 109 Wn. App. 767, 37 P.3d 354 (2002). Perez identified no basis in law or in fact to support reconsideration; he simply attempted to reargue his previously failed arguments. Reconsideration is not designed to grant one last bite at the apple or to request

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additional relief. The trial court did not abuse its discretion by denying the motion for reconsideration. On the contrary, Perez appears to rely upon leniency from the court and acts as if he can do as he pleases, without regard for the law.

j. The trial court properly awarded attorney fees and costs to Ms. Pelentay.

The Court of Appeals reviews the trial court's attorney fees decision under RCW 11.96A.150 for abuse of discretion; which means that the Court will uphold the decision unless it is manifestly unreasonable or based on untenable grounds or reasons. *Bale v. Allison*, 173 Wn. App. 435, 294 P.3d 789 (2013).

Here, the trial court awarded Mary her attorney fees and costs for responding to Perez's Motion to Strike her MPSJ on shortened time and when he brought the motion a second time. CP 1645 – 1648. At summary judgment, the court awarded Mary her attorney fees and costs, pursuant to RCW

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11.96A.150, but reserved ruling on the amount until it reviewed the invoices. RP 1677. Due to the stay of proceedings, the trial court has not ruled on the amount of either award of attorney fees.

The trial court adopted a conservative approach to containing Perez's improper and frivolous motion practice. In total, he filed at least **19** original motions, each procedurally violative in some respect. CP 1739. Mary's responsive documents, *record generally,* and the court's instructions, RP 31 outlined the correct procedures; however, he proceeded either without comprehension or regard, or both, to make the same mistakes. Mary made multiple fee requests, but the court initially only gave warnings. CP 455, RP 28.

After approximately 6 months of this, the trial court awarded Mary her attorney fees and costs for responding to another improper motion that Perez noted in 2 days on an emergency basis, when sufficient time remained to note the motion under normal time constraints. CP 1647. When

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considered, the motion was found to be frivolous, thus this award was completely reasonable.

More importantly, Perez and Linda Quach's actions in asserting title to property properly belonging to the Quach Living Trust were *wrongful*. Their attempt at equity theft from Betty's estate is blatant. They were both fully aware that the negotiations had fallen apart, the contemplated transaction had been rescinded, all consideration that had been advanced was returned, and Linda Quach accepted and deposited the check. CP 1113. ***There was no deal!***

Yet, Perez waited until after Betty died, the life insurance proceeds were distributed, and $80,267.01 worth of repairs and upgrades to the property were completed before recording a wrongfully retained and undelivered deed. Thereafter, for over a year, he threatened and bullied anyone who tried to challenge his "ownership" of the property. CP 887 – 889; 1196.

Perez refused to speak to Mary unless it was without her attorney, such that the only way forward for him was through

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hostility, and further subterfuge of Mary and the trust administration. *Id*. Thus, Mary had no alternative but to file a lawsuit. Thereafter, she agreed to a trial extension to allow Perez to locate an attorney, CP 296 - 297, but instead he filed one baseless, frivolous, procedurally violative motion after another for over 6 months. Mary responded vigorously to the improper motions, with multiple motions to shorten time and to strike Perez's motions, as is her right to protect her procedural due process. CP 218-9.

RCW 11.96A.150 gives the court discretion to award attorney fees to any party from any party in the proceedings, and in this case, the court properly awarded her attorney fees and costs against Bryan Perez and Linda Quach. They have fallen far short of their burden to show this award was manifestly unreasonable or based on untenable grounds or reasons.

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k. Mary is Entitled to an Award of Attorney Fees and Costs on Appeal.

Pursuant to RAP 14.2, RAP 18.1, and RCW 11.96A.150, this Court should award Mary her attorney fees and costs incurred on appeal.

Here Mary was the prevailing party in the superior court and should be awarded her reasonable attorney fees for having to relitigate the issues. RCW 11.96A.150 gives the superior court "or any court on appeal" discretion to order costs, including reasonable attorney's fees to any party from any party. RAP 18.1 ensures an award of attorneys' fees if allowed under applicable law. RAP 14.2 allows an award of costs to any party that substantially prevails on appeal.

Additional considerations are that Appellants' brief is grossly inadequate under RAP 10.3(6), thus Mary's counsel was required to spend additional time reviewing the record to determine what they were referring to for multiple issues.

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Most importantly, Appellants' actions are *wrongful*. They know Betty got nothing that she desired in exchange for the equity in her property during her lifetime. It is unconscionable that Appellants have perpetuated this farce through the trial court, attempting to argue that their cherry-picked and narrow perspectives of the law supports their egregious conduct, and now perpetuate it on appeal. The Court of Appeals should award attorney fees to Mary on appeal because there was ***NO DEAL!***

V. CONCLUSION

For the reasons outlined above, Mary prays this Court will affirm the Order Granting Partial Summary Judgment including her award of attorney fees and costs. In addition, Mary prays this Court will award her attorney fees and costs for the instant appeal.

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SIGNED AND DATED this 16th day of December 2024 at Des Moines, Washington.

Presented by:

DES MOINES ELDER LAW

"I certify that this pleading contains a word count of 11,612 excluding portions of the document exempted from word count, consistent with RAP 18.17(b)."

By: */s/ Holly A. Surface*_____

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that on the date and place below, I caused a true and correct copy of the document to which this certificate is attached to be served upon all parties and/or their counsel of record in the manner indicated below:

Corey E. Parker
Attorney for Appellants
300 Lenora St., Ste. 900
Seattle, WA 98121

☐ Personal Service
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☒ Court E-Service if Opted
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SIGNED AND DATED this 16th day of December 2024, at University Place, Washington.

BY: Elias Surface, Paralegal

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