No. 86535-8-I

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

In re: Quach Living Trust

LINDA QUACH AND BRYAN PEREZ

Appellants,

v.

MARY PELENTAY

Respondent.

MOTION FOR RECONSIDERATION

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I. IDENTITY OF MOVING PARTY

Appellants Bryan Perez and Linda Quach, by and through their attorney-of- record Appellate Counsel, move for the following relief:

II. STATEMENT OF RELIEF SOUGHT

Pursuant to RAP 12.4 and CR 59(a), Appellants move this Court to reconsider its June 30, 2025 opinion affirming the superior court's grant of partial summary judgment to Respondent Mary Pelentay.

The Court erred in finding the July 24, 2021 warranty and quitclaim deeds (CP 872-873) and August 21, 2021 warranty deed (signed August 16, 2021, CP 874) conditional and undelivered during Betty Quach's lifetime. Perez's possession of these executed, notarized deeds, his payment of $353,000 to clear the mortgage (VRP Vol. III at 65), and a family letter confirming Betty's intent (CP 1498-1508) establish valid inter vivos delivery.

The Court's reliance on inadmissible post-deed statements (CP 984, 1098) violates the parole evidence rule, dead man's statute (RCW 5.60.030), and statute of frauds (RCW 64.04.010). Even so, the Court failed to apply the clear, cogent, and convincing standard to overcome the presumption of delivery and a valid deed, which would eviscerate subject matter jurisdiction under TEDRA.

Even so, summary judgment was inappropriate as with the extrinsic evidence, there is a clear issue of fact which is improper for summary judgment. Reconsideration is warranted.

III. GROUNDS FOR RECONSIDERATION

A. Improper TEDRA Jurisdiction

The Court found "The superior court had subject matter jurisdiction to hear the TEDRA petition. This was an action brought by the trustee, Pelentay, for the recovery of property alleged to have passed to the Quach Living Trust upon Betty's death. This was a trust matter and, therefore, within the original

subject matter jurisdiction of the superior court under TEDRA.3 RCW 11.96A.040(2).” (Opinion at 9).

What the court is overlooking is that since title passed via the July 24, 2021, and/or August 21, 2021 deeds—executed before the trust’s creation August 27, 2021 (CP 1201)—the property could never become part of the trust, and thus there is no subject matter jurisdiction.

The Court dismissed the jurisdictional argument, overlooking that TEDRA’s application is improper as Betty had no legal right to transfer the property into the trust as it was already deeded prior to that or to Mary through a TODD. It was noted that “She changed her mind in that regard on more than one occasion.” This is exactly what occurred, however, once the deed was validly transferred, as it was prior to this date, any changing of her mind was invalid.

TEDRA’s application limited Perez’s discovery and counterclaim rights (CP 364-379). The Court’s dismissal of this

argument (Opinion, Footnote 3) overlooked prejudice to Perez's defense, warranting reconsideration (CR 59(a)(9)).

B. Valid Delivery of Deeds

Plaintiff's TEDRA Petition titled her First Cause of Action "Quiet Title and Lis Pendens", wherein she asserted Mr. Perez's deed was invalid due to lack of consideration. CP 15. Her Second Cause of Action, titled "Constructive Trust" asserted a constructive trust on the property based on grounds of equity. CP 16. Mr. Perez filed an "Opposition to TEDRA Petition", arguing a valid warranty deed granted him ownership of the property. CP 155-158. Petitioner then filed a "Reply to Opposition" claiming, for the first time, that the warranty deed was invalid under RCW 64.04.010 because the grantor lacked intent to consummate conveyance of the deed. CP 166-167. Mr. Perez objected to conveyance of that argument, arguing it had not been properly pled in the Petition. VRP Vol. III at 75-76.

The trial court relied on Petitioner's "intent to consummate conveyance" argument, ruling that Betty lacked

intent to deliver the July 24, 2021 warranty and quitclaim deeds. To support this ruling, the court cited Betty's email to Pelentay on August 11, which portrayed Betty's decision to deed the property to Perez as "not yet final". CP at 1083. Betty's later text message to Pelentay on August 22 clearly stated Betty's decision to sell the property upon Betty's death. (Opinion at 13). These communications with Pelentay prove Betty was playing both sides, as acknowledged by Petitioner's counsel. CP 1202. They are not dispositive regarding Betty's intent to consummate conveyance, which was most accurately captured on the face of the August 21, 2021, deed.

For these reasons, the trial court's conclusion that Betty lacked intent to deliver the July 24, 2021, warranty and quitclaim deeds—based on the idea of a $50,000 conditional payment (CP 872-873)—is contrary to law and fact, overlooking key legal principles and evidence.

C. Presumption of Delivery Not Rebutted

Where 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 which may be overcome only by clear, cogent and convincing evidence. *In re Pappuleas' Estate*, 5 Wn. App. 826, 828, 490 P.2d 1340 (1971) *citing Raborn v. Hayton*, 34 Wn.2d 105, 109, 208 P.2d 133 (1949). The Court failed to properly apply this presumption, claiming "Perez did not refute Pelentay's evidence to create a genuine issue of material fact", requiring reconsideration. (Opinion at 14).

Moreover, whether the presumption of delivery with intent to make a present transfer was rebutted by clear, cogent and convincing evidence is a factual question. *Id*. As explained below, even if consideration of extrinsic evidence is proper to rebut the presumption—which it is not—summary judgment is not proper. Nor does the Court find that the presumption was rebutted with respect to the August 21, 2021

deed. The Decision should be reconsidered for this reason alone.

Perez had clear possession of the July 24, 2021 warranty and quitclaim deeds (CP 872-873, 1423, 1425) which the Court recognized. (Opinion at 14). The Court did not discuss the August 21, 2021, warranty deed (signed August 16, 2021, CP 874, 1510-1511). As described below, Perez established this presumption. The deeds were executed and notarized, with no evidence in the record showing Betty withheld delivery or lacked intent on July 24, 2021 (CP 1423, 1425). The Real Estate Excise Tax Affidavit (CP 1733) and tenant agreement (CP 1022-1024) further evidence delivery and ownership at the time of the deeds.

However, the Court relied on the post-deed communications, such as emails and texts, to find a lack of intent "on that date", without any finding or consideration of evidence that she did not have every intention to transfer the property on that date, thought it was done, then changed her

mind and acted as if it was not. and thus the July 24 deeds were invalid. (Opinion at 14). These reflect Betty's later indecision, (CP 1201), not her intent at signing, and there was no finding of such. This decision essentially undoes a completed real estate transaction, allows the improper transfer of the property into a trust despite prior conveyance, and proceeding with a case without subject matter jurisdiction, improperly affecting Mr. Perez's rights as the Grantee. *See Coleman v. Larson*, 49 Wash. 321, 325; 95 P. 262, (Wash. 1908); *Bryant v. Stablein*, 28 Wash. 2d 729, 747;184 P.2d 45 (Wash. 1947).

Further, the Court recognized that Betty executed multiple deeds purporting to convey the property—six deeds during a five-week period, but this does not rebut delivery yet establishes indecision and her attempt to "make everyone happy" as noted by her attorney. (CP 1202) (Opinion at 13). These later improper TODDs do not rebut by clear and convincing evidence her intent at execution on July 24 and August 21, 2021, or proper delivery of same, and cannot undo a

completed transaction. *Coleman v. Larson*, 49 Wn. 321, 325, 95 P. 262 (1908). The Court's failure to consider the fact that Betty gave Perez multiple deeds, and determining her actions with other people was clear and convincing evidence to rebut delivery is a manifest error of law requiring reconsideration. (CR 59(a)(7)).

1. Deeds Were Unambiguous and Unconditional:

a. July 24, 2021 Deeds

Deeds must comply with the statute of frauds (RCW 64.04.010), requiring conveyances to be in writing. Washington law interprets deeds within their four corners and any conditions altering a deed's terms must be written within the deed or a referenced contract. *Newport Yacht Basin Ass'n v. Supreme Nw., Inc.*, 168 Wn. App. 56, 60, 277 P.3d 18 (2012)("[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." (*quoting McCoy v. Lowrie*, 268 P.2d 1003 (Wash. 1954))). Upon the execution and delivery of a deed, it will be presumed that the instrument is what it purports to be, and the burden is on the one asserting otherwise. *McCoy v. Lowrie*, 42 Wn.2d 24 (1954) *citing Moore v. Gillingham*, 22 Wn. (2d) 655, 157 P. (2d) 598. Furthermore, "When it is determined that the proved intent of the grantor was to pass title upon his or her death, the legal requirement of "delivery" is satisfied." *In Re Estate of O'Brien* 109 Wn.2d 913 (1988).

The July 24, 2021 deeds state the property was conveyed for "FIFTY THOUSAND DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION in hand paid" (CP 872, 873), with no conditions or attachments. There was no additional contract, nor was there any understanding past "in hand paid". The deeds are facially valid, executed, and notarized (CP 872, 873). Further, what is overlooked is that "AND OTHER GOOD AND VALUABLE CONSIDERATION" is clearly written on the deed (CP 872).

What is interesting that one of the July 24, 2021 deeds states "love and affection" as the consideration.

The Court also overlooked that it is undisputed that Perez paid $353,000 to clear the mortgage (VRP Vol. III at 65; Br. of Appellee at 43). In this regard, if there was no intent to transfer the deed, yet the Appellee accepted Mr. Perez paying off the debt on the home (well above the $50,000, satisfying consideration), indicates fraud against Mr. Perez, later trying to transfer the property into a trust for distribution in an alternative way after discussing with Appellee. Intent was there at the time of the transfer, there is absolutely no evidence to show it was not. There was no reason for him to have done this except as consideration for the transfer of property. After the fact reconsideration by Betty is not evidence that at the time she signed it and delivered it to Perez, she did not have that intent.

Instead, the Court found the deeds conditional based on extrinsic evidence (Opinion at 14). This violates and RCW 64.04, as no written conditions appear in the deeds other than

"in hand paid". The Court's imposition of unwritten conditions is contrary to law (CR 59(a)(7)).

b. August 21, 2021 Warranty Deed

The Court's focus on the July 24 deeds overlooked an additional valid deed, depriving Perez of his property rights.

A warranty deed conveys all the grantor's interest unless otherwise stated. *Crafts v. Pitts*, 162 P.3d 382, 384-385 (Wash. 2007). The August 21, 2021 deed (CP 874) conveys the property for "TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION," was signed and notarized on August 16, 2021 with a stated effective date of August 21, 2021 (CP 874, 1510-1511) and was delivered to and accepted by Perez (CP 1709-1734). Notably the August 21, 2021 deed clearly states "GRANTOR ACKNOWLEDGES THAT TITLE TO THE PROPERTY IS MARKETABLE AT THE TIME OF THIS CONVEYANCE" (CP 874). This is clear and unambiguous that the transfer was made at the effective date of August 21, 2021. The deed even says "at the time of this

conveyance" indicating that the property is being conveyed at that time. The Real Estate Excise Tax Affidavit (CP 1733) supports its validity.

Even if, *arguendo*, both the warranty deed and quitclaim deed in favor of Mr. Perez on July 24, 2021 are voided—which they cannot be—this deed is clearly transferring title on August 21, 2021 with no conditions. Mr. Perez's possession, payments of $353,000 (VRP Vol. III at 65) and tenant agreement (CP 1022-1024) align with transfer of ownership, not conditions to transfer in the future. The trial court did not properly approach the deed as presumptively valid or require evidence establishing intent at the time—but rather after—to overturn it.

Similarly, the Court failed to analyze this deed's validity, assuming it was superseded by later actions (Opinion at 14). This affects not only the claims, but the subject matter jurisdiction itself, which the Court failed to review. All other discussions or deeds after this are simply the result of the grantor changing her mind after the fact. This oversight ignores

its compliance with RCW 64.04.030 and evidence of delivery, warranting reconsideration (CR 59(a)(9)).

2. Reliance on Extrinsic Evidence Was Erroneous

Extrinsic evidence is inadmissible absent a finding of ambiguity within the four corners of the deed's terms. *Bale v. Allison*, 294 P.3d 789, 797 n.5 (Wash. App. 2013); *Mountain Park Homeowner's Ass'n, Inc. v. Tydings*, 883 P.2d 1383, 1387 (Wash. 1994) (en banc) ("Only in the case of ambiguity will the court look beyond the document to ascertain intent from surrounding circumstances"). In this regard, extrinsic evidence will not be considered in determining the intent of the parties if the plain language from the deed as a whole is unambiguous. *Sunnyside Valley Irrig. Dist. v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003) *citing Zobrist v. Culp,* 95 Wash.2d 556, 560, 627 P.2d 1308 (1981); *City of Seattle v. Nazarenus,* 60 Wash.2d 657, 665, 374 P.2d 1014 (1962).Extrinsic evidence is only allowed upon a showing of ambiguity to show the intentions of the original parties, the circumstances of the property at

conveyance, and the practical interpretation given the parties' prior conduct or admissions. *Id.*

Even when used, extrinsic evidence cannot contradict the unambiguous terms on the deed's face. *Newport Yacht Basin*, 168 Wn. App. at 60; *Niemann v. Vaught Cmty. Church*, 113 P.3d 463, 467 (Wash. 2005). Parole evidence may clarify terms but not set aside the deed's purpose, which is the error of law the Court committed. *Vavrek v. Parks*, 6 Wn. App. 684, 690, 495 P.2d 1051 (1972).

The deeds' terms are undisputed (CP 872-873), stating clear conveyance to Perez with no ambiguous language. Nor does anyone point out any ambiguous language. The extrinsic evidence relied upon by Petitioner shows at best, that Betty experienced conflicting and complicated feelings regarding her desire to deed the property to her family in the face of Petitioner's advice as a friend who "had experience administering trusts."

In this regard, there is no finding that the post-deed communications, such as the August 2 email, August 11 letter, August 16 text, and August 22 email, meet the burden and do not address the deeds' terms but suggest Betty's later change of mind, which cannot undo the completed transaction. *Coleman*, 49 Wash. at 325. Interestingly, Betty executed a new deed transferring the property to Mr. Perez on August 21, 2021 at the same time she was setting up her trust. Even if the extrinsic evidence is allowed, it is for the finder of fact and cannot be determined as a matter of law.

The Court committed manifest error in using these post-transfer communications to infer a lack of intent for a prior deed, contradicting the deeds' clear terms. This sets a dangerous precedent for any transfer where a person may have remorse for the transfer; they can just email someone else and act as if the conveyance wasn't completed. This error warrants reconsideration (CR 59(a)(7)).

3. Invalid Transfer on Death Deeds:

A Transfer on Death Deed cannot supersede a valid Warranty Deed or Quit Claim Deed. A TODD only revokes prior TODDs. It is axiomatic that a grantor with no interest cannot convey via TODD. The August 27, 2021 TODD (CP 1131-1132) only revokes prior TODDs, not the July 24 or August 21 deeds. Betty had no interest to convey after July 24, 2021 (CP 872-873).

The Court's suggestion that the August 27 TODD revoked prior deeds (Opinion at 3-4) misapplies RCW 64.80. In fact, after Betty's interest in the property was transferred to Mr. Perez via the warranty and quit claim deeds, Betty did not have any interest to transfer via a TODD. With title passing no later than August 21, 2021, it passed an immediate title which cannot be defeated by subsequent attempts to exercise dominion and control over the property. *Pappuleas citing Miller v. Miller,* 32 Wn.2d 438, 202 P.2d 277 (1949). This legal error requires correction (CR 59(a)(7)).

4. Dead Man's Statute Bars Post-Deed Statements:

RCW 5.60.030 prohibits testimony about transactions with a deceased person unless waived, as the opposing party cannot cross-examine. Betty's post-deed statements to other people (e.g., CP 984, 1098) involve the agreement with Perez, who cannot cross-examine her about these third-party communications. These communications, all after July 24, 2021, include emails to Pelentay (CP 1083) and texts (CP 1095), who Betty then entrusted to administer her estate, after she transferred the property to Perez.

These statements, only reflecting Betty's later indecision and attempt to "make everyone happy", cannot undo completed conveyances *Coleman v. Larson*, 49 Wn. 321, 325, 95 P. 262 (1908)). However, the Court relied on these statements without even looking at the practical considerations or performing an analysis of the timeline of events to negate intent (Opinion at 14-15), violating RCW 5.60.030. This misapplication of law requires correction (CR 59(a)(7)).

D. Genuine Issue of Material Fact Precludes Summary Judgment

Summary judgment is improper if a genuine issue of material fact exists, viewed in the light most favorable to the non-moving party, which is Appellant Perez in this instance. *Watkins v. ESA Mgmt. LLC*, 547 P.3d 271, 275 (Wash. App. 2024).

Because intent is a question of fact, and there are conflicting facts on intent, the court err in ruling on summary judgment that there were no material issues of fact without even considering the light most favorable to Perez, See Newport, 168 Wn. App. at 64. Betty's post-deed statements (e.g., CP 984, 1098) conflict with Perez's testimony (CP 1709-1734) and her execution of *three* deeds to Perez (CP 872-873). Pelentay's concession (CP 1578) that ownership was not contested if consideration was paid, and all of the above highlight a factual dispute, ignore "love and affection" as a consideration, as well

as the August 21 deed which eliminated the $50,000precluding summary judgment.

Even when using extrinsic evidence, the Court ignored the July 21, 2021 Real Estate Excise Tax Affidavit (CP 1733), confirming the July 24, 2021 transfer, and texts verifying notarization of the August 21 deed (CP 1510-1511). Perez's declarations (CP 1709-1734) and tenant agreement (CP 1022-1024) affirm his consistent claim of ownership and acceptance.

Further, and perhaps most interestingly, the Court overlooked the fact Betty's father, Thong A. Quach, wrote a letter dated April 12, 2022, which all the other members of the family signed on to, stating, *inter alia*, that Mary was not following Betty's wishes, filed the petition to use the court process to overturn the agreement for her own personal gain, to mis lead the court, that non-family member Pelentay should not be handling Betty's affairs, (CP 1498-1508).

Further, the Court's finding that the September 2, 2021 cashier's check (CP 1590) refunded payments, negating deed

validity, is erroneous. First, evidence of a deceased person's intent is inadmissible under RCW 5.60.030 unless waived. Second, the cashier's check lacks notation of purpose, and no evidence links it to the deeds (CP 1709-1712). Third, even if funds were not a gift from Betty to Linda—which there is no evidence it was not—a real estate deed cannot be unilaterally revoked simply by the return of funds.

Fourth, the cashier's check was made to Linda Quach, not Mr. Perez. Actions by a non-authorized party do not bind the grantee. Linda had no power to act for Perez (CP 1709-1712). The check was issued without Perez's consent and was not paid to Perez (CP 1590). The Court assumed the check refunded payments and that Linda acted for Perez without any admissible evidence proving such (Opinion at 14), warranting reconsideration and correction.

E. Improper Denial of Motions to Amend

The superior court's denial of Perez's motions to amend pleadings (CP 364-379, 850-871) violated CR 15(a), which

permits amendments liberally when justice requires, absent prejudice to the opposing party (*Wilson v. Horsley*, 137 Wn.2d 500, 505, 974 P.2d 316 (1999)). The proposed amendments, including counterclaims to affirm Perez's property rights (CP 856), were timely and relevant to the deed validity dispute.

Perez clearly laid out all of the counterclaims and provided plenty of notice. The courts determined that there was no properly marked pleading, without acknowledging that there was no dispute; these were valid counterclaims. Nor was there dispute or discussion that the substance was there, it was just not properly labeled with "Proposed."

No prejudice to Pelentay was shown or even argued, as the amendments would not have delayed proceedings or fundamentally alter the case's scope (CP 1651). However, there was prejudice to Perez, as the denial limited Perez's ability to fully present his defense, and herein significantly influenced the evidence to be viewed at summary judgment and appeal states.

This procedural error prejudiced his rights (*Vos*, p. 12). This warrants reconsideration under CR 59(a)(9).

F. Improper Attorney's Fees

Attorney's fees are improper if based on an erroneous ruling. The appeal addresses significant issues of deed validity and flawed summary judgment. Such arguments are non-frivolous and do not justify fees.

The Court upheld fees despite the erroneous ruling (Opinion at 19), ignoring the appeal's merit. This error warrants reconsideration (CR 59(a)(9)).

IV. CONCLUSION

The Court's June 30, 2025 opinion misapplied law and overlooked evidence of lifetime delivery, depriving Perez of property rights. Reconsideration is necessary to correct these manifest errors and ensure substantial justice.

V. REQUEST FOR RELIEF

Appellants respectfully request:

1. Grant reconsideration under CR 59(a)(7) and (9).
2. Dismiss the entire action for lack of subject matter jurisdiction.
3. Vacate the partial summary judgment and remand for trial, recognizing the validity of the July 24, and August 21, 2021 deeds.
4. Vacate attorney's fees and reconsideration denials.
5. All other relief as just and warranted.

This document contains 3,707 words, excluding the parts of the document exempted by the word count by RAP 18.17.

DATED: July 21, 2025

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 July 21, 2025 I caused the following document:

MOTION FOR RECONSIDERATION

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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.

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THE APPELLATE LAW FIRM

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