IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

LINCOLN F. LOCKHART, his separate property, Appellant, v. HAROLD V. ROBINSON and JUDY S. ROBINSON, husband and wife, Respondents.	No. 40214-9-II UNPUBLISHED OPINION

Van Deren, J. — Lincoln Lockhart appeals the trial court's order enforcing its judgment quieting title to a disputed pie-shaped wedge of property in the boundary area between Lockhart's property and the property belonging to his neighbors, Harold and Judy Robinson. Lockhart argues that the trial court erred in concluding that the parties did not agree to resolve the matter differently after the trial court rendered its judgment following trial through a valid

and enforceable settlement agreement.[1] We affirm.

FACTS

In August 1979, Lockhart purchased real property in Port Orchard, Washington. In August 1990, the Robinsons purchased an adjoining lot. A property line dispute arose between the Robinsons and Lockhart over "a pie shaped wedge" of property and the Robinsons had Aspen Land Surveying, LLC, survey the land based on the original surveyor's (McGinnis) written plat descriptions. Clerk's Papers (CP) at 4. The Aspen survey revealed an error in either the original land markers or the original plat description that resulted in Lockhart potentially having a larger lot than that to which he was entitled. Thus, a garage/carport structure Lockhart had constructed on his lot violated the established setback requirements under the Aspen survey but not under the lot as indicated by the original land markers.

Lockhart filed an adverse possession and quiet title action for the pie-shaped portion of the property.[2] The Robinsons defended and counterclaimed for ejectment and asked that the trial court quiet title to that portion of Lockhart's lot that should have been included in their property

[1] Lockhart argues for the first time on appeal that the settlement agreement should be enforced against the Robinsons because he detrimentally relied on the settlement in abandoning his appeal of the trial court's quiet title judgment. But argument raised for the first time on appeal is waived unless it falls within RAP 2.5(a) exceptions. RAP 2.5(a) provides that "a party may raise the following claimed errors for the first time on appeal: (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right." Lockhart does not argue that his claim of detrimental reliance falls within the RAP 2.5(a) exceptions. RAP 10.3(a)(6). Lockhart's failure to file a notice of appeal demonstrates that he could not have detrimentally relied on the Robinsons' offer of settlement in abandoning an existing appeal. And Lockhart did not reply to the Robinsons' June 24 letter until July 31, well beyond the 30 days allowed to file an appeal following final judgment.

[2] The clerk's papers do not contain the complaint or answer, thus, we rely on the trial court's description of the issues raised by the parties.

description.

On April 16, 2008, the trial court entered its findings of fact and conclusions of law describing the lawsuit as recited above. The trial court fashioned an equitable remedy that redrew the parties' boundary line.[3] Additionally, the trial court determined that, "[s]ince the Robinsons bore the expense of the Aspen survey, Mr. Lockhart should pay for the partial revision" and that "[b]oth parties should pay half the costs of preparing and filing the necessary documents" to effectuate its decision. CP at 5. The trial court did not award either party attorney fees. The trial court entered a judgment quieting title between the parties based on its redrawing the property line and reiterated its conclusions of law. On June 11, the trial court denied Lockhart's reconsideration motion, thus, the judgment became final that day.

On June 24, 13 days into Lockhart's 30 day appeal period, after receiving what appeared to be Lockhart's notice of appeal, the Robinsons sent Lockhart a letter stating that his "appeal came as quite a disappointment" because the parties were fighting over very little.[4] CP at 43. The Robinsons suggested that (1) they "[s]ettle the boundary line as a straight line between the

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[3] The trial court's conclusions of law stated:

> A. The boundary shall be resurveyed and redrawn with the necessary legal documents prepared and processed to perpetuate the new boundary.
>
> B. The new line shall begin at the agreed pin (Aspen & McGinnis) at the South end of the joint boundary between their respective lots; it shall follow the Aspen line to a point six feet South of Mr. Lockhart's garage/carport and return to the McGinnis line to allow the necessary set back [sic] for Mr. Lockhart's structure so that it is not in violation of any county ordinance; then continue North to the North property line at a point [illegible] the McGinnis marker.

CP at 5.

[4] The record does not contain Lockhart's notice of appeal to challenge the trial court's judgment quieting title along the redrawn boundaries. But the parties appear to agree that the Robinsons received a copy of a notice of appeal from Lockhart that prompted the June 24 letter from the Robinsons to Lockhart proposing settlement of the matter to avoid further litigation.

'McGinnis pins'"; (2) Lockhart "survey that line, professionally, to the end that physical markers will be placed on the line so that the parties will not be able to again question or mistake their boundary line as so established"; and (3) "[i]f the Lockharts' structure encroaches on the County setback, it will be moved so that it does not." CP at 43. The Robinsons suggested that the settlement benefit to Lockhart was both avoiding appeal costs and acquiring additional property. The Robinsons' benefit was a clear boundary between the properties and litigation finality.

More than a month later, on July 31, 50 days after final judgment, Lockhart's counsel responded to the Robinsons' offer. He indicated that he was authorized to accept their offer and that he would prepare a settlement document. Lockhart then sent "a proposed form of [s]ettlement" to the Robinsons. CP at 46. Neither Lockhart nor the Robinsons signed Lockhart's proposed settlement agreement. In an August 5 letter, Lockhart informed the Robinsons that Aspen Land Surveying had been contacted and was ready to resurvey the land, contingent on the Robinsons confirming that they wanted to proceed with the proposed settlement.

On August 6, the Robinsons e-mailed Lockhart that they would no longer consider the proposed settlement due to "Lockhart's 'passive-aggressive' approach to [the] boundary line dispute resolution," by piling garbage along their mutual boundary line. CP at 51. On August 20, Lockhart asserted that they had reached a binding settlement agreement and denied that he had piled garbage at the boundary line.

Over a year later, on October 26, 2009, the Robinsons moved to enforce the trial court's quiet title judgment because Lockhart "ha[d] continued to encroach upon the lands of the [Robinson]s, and ha[d] failed to provide for the resurveying, staking, and recording of the parties' common boundary line as provided in the [April 16, 2008] Order and Judgment." CP at 27.

Lockhart opposed the motion, contending that on June 24, 2008, the Robinsons proposed a settlement offer that Lockhart accepted on July 31.

The trial court ordered enforcement of its original quiet title judgment.[5] Lockhart unsuccessfully moved for reconsideration. The trial court stated:

> The letter of June 24 contained some beginnings of a settlement, and then there was a settlement agreement drafted and it talked about who pays what and this type of thing, which was not in that letter, but that settlement agreement was never signed, and so I find that the June 24 letter was not sufficient to be a binding settlement between the parties, and deny your [re]consideration [motion].

Report of Proceedings at 9-10. Lockhart appeals the trial court's order enforcing the quiet title judgment and the order denying his reconsideration motion.

ANALYSIS

I. Appealability of the Order Enforcing the Quiet Title Judgment

The Robinsons argue that the trial court's order enforcing the quiet title judgment did not involve a substantial right from which an appeal can be taken under RAP 2.2(a)(13) because "the order appealed from . . . only iterated the duties of [Lockhart] that [were] spelled out in the underlying Judgment." Br. of Respondent at 7-8. We disagree.

To determine whether to enforce the quiet title judgment, the trial court had to first decide whether the parties entered a binding settlement agreement changing the terms of the judgment. Thus, the trial court's ruling on the motion to enforce the 2008 quiet title judgment involved a substantial right, namely, whether the terms of the judgment were mutually changed by subsequent agreement of the parties. *See Werlinger v. Warner*, 126 Wn. App. 342, 347-48, 109

[5] The transcript of the hearing on the motion to enforce the judgment is not in the record before us. The only report of proceedings provided on appeal is the December 18, 2009, hearing on Lockhart's motion for reconsideration.

P.3d 22 (2005) (holding that an order that a settlement agreement was unreasonable was appealable even though it was not a final judgment because the order effectively determined the action). Additionally, orders enforcing settlement agreements are frequently the subject of appeal. *E.g.*, *Brinkerhoff v. Campbell*, 99 Wn. App. 692, 696, 994 P.2d 911 (2000); *Morris v. Maks*, 69 Wn. App. 865, 868, 850 P.2d 1357 (1993). Thus, Lockhart may appeal the trial court's November 6 order enforcing the final judgment quieting title.

II. Trial Court's Order Enforcing Quiet Title Judgment

A. Standard of Review

Neither party addresses the standard of review we should employ. Lockhart appeals the decision on the motion to enforce the judgment, which we "review de novo where the evidence consist[ed] of only declarations and affidavits." *Veith v. Xterra Wetsuits, LLC*, 144 Wn. App. 362, 365, 183 P.3d 334 (2008). We review the trial court's decision on reconsideration motions for an abuse of discretion. *Rivers v. Wash. State Conference of Mason Contractors*, 145 Wn.2d 674, 685, 41 P.3d 1175 (2002).

Here, in support of his opposition to the Robinsons' motion to enforce judgment, Lockhart submitted (1) a declaration from his trial attorney, (2) the Robinsons' June 24 letter suggesting settlement, (3) Lockhart's July 31 response, (4) the unsigned draft settlement agreement from Lockhart's attorney, (5) the letter from Lockhart discussing the necessary land survey, (6) the Robinsons' August 6 e-mail stating that the Robinsons were no longer willing to enter a settlement agreement, and (7) Lockhart's August 20 letter stating that he still wished to settle. It appears that the Robinsons submitted only a copy of the quiet title judgment along with their motion to enforce that judgment. The parties did not provide us with a transcript of the

motion hearing or any findings that the trial court may have entered. It is unclear whether the trial court evaluated any additional evidence or testimony presented at the hearing but, based on the record before us, it appears that the trial court decided the motion without oral testimony; thus, we stand in the same shoes as the trial court and review its decision to enforce the quiet title judgment de novo. *Veith*, 144 Wn. App. at 365.

B. Proposed Settlement Agreement

Lockhart contends that "[t]he parties entered into a fair and knowing settlement that should [have been] enforced." Br. of Appellant at 6 (boldface omitted). Again, we disagree.

CR 2A applies to disputed settlements and stipulations. CR 2A states:

> No agreement or consent between parties or attorneys in respect to the proceedings in a cause, the purport of which is disputed, will be regarded by the court unless the same shall have been made and assented to in open court on the record, or entered in the minutes, or unless the evidence thereof shall be in writing and subscribed by the attorneys denying the same.

"[T]he 'purport' of an agreement is disputed only when its existence or material terms are disputed." *In re Marriage of Ferree*, 71 Wn. App. 35, 40, 856 P.2d 706 (1993). If an agreement is not made on the record in open court or memorialized in a writing signed by the disputing party, CR 2A precludes enforcement, "whether or not common law requirements are met." *Ferree*, 71 Wn. App. at 40 (citing *Eddleman v. McGhan*, 45 Wn.2d 430, 432, 275 P.2d 729 (1954)).

Here, the parties dispute the existence of a settlement agreement. The Robinsons' June 24 letter suggested that the parties discuss settling the dispute instead of proceeding on an appeal. Lockhart waited over a month to respond to the June 24 letter, during which his time for appeal expired. His response offered to draft a settlement document. The letter attached to the draft

settlement agreement from Lockhart's attorney stated, "I have enclosed for your review a proposed form of Settlement Agreement." CP at 46. The draft settlement agreement contained different terms than the Robinsons' June 24 letter. Lockhart's draft settlement agreement stated that all actions and claims surrounding the dispute would be dismissed "[u]pon execution of this agreement." CP at 48. On August 6, the Robinsons e-mailed Lockhart, stating that they would no longer consider settling the case due to Lockhart piling garbage on the boundary line. The Robinsons' motion to enforce the judgment informed the trial court that the parties "tried to negotiate a settlement" but that the Robinsons now wished to enforce the previous judgment. CP at 54.

The record reveals no evidence[6] that an agreement was made on the record or that both parties signed an agreement resolving this case, and the parties do not dispute that neither party signed the agreement Lockhart drafted. Because the requirements of CR 2A are not met, the trial court need not have enforced the proposed settlement agreement between Lockhart and the Robinsons and, thus, the trial court did not err. Moreover, it was unreasonable for Lockhart to rely on the Robinsons' settlement offer, as Lockhart argues he did, without communicating his acceptance of their offer before the time allowed to file an appeal of the trial court's ruling expired and without actually filing the original notice of appeal, a copy of which he sent to the Robinsons.

Lockhart's reliance on *Oregon Mutual Insurance Co. v. Barton*, 109 Wn. App. 405, 36 P.3d 1065 (2001) and *Gill v. Waggoner*, 65 Wn. App. 272, 828 P.2d 55 (1992) is misplaced, as

[6] It is the appellant's burden to perfect the record on appeal so that we have before us all of the information and evidence relevant to the issues raised. *See* RAP 9.2(b); *Bulzomi v. Dep't of Labor & Indus.*, 72 Wn. App. 522, 525, 864 P.2d 996 (1994).

the issue of whether the parties entered into a settlement agreement was not the issue in either case. Rather, in *Barton*, Division Three of our court addressed whether an insurance settlement agreement was induced by fraudulent misrepresentations and therefore should be voided. 109 Wn. App. at 409.

In *Gill*, there was a valid settlement offer and acceptance between an injured party and an insurance company. 65 Wn. App. at 275. The injured party followed up with a confirmation of the agreement in writing and the insurance company acknowledged receipt of the confirmation. *Gill*, 65 Wn. App. at 275. When the insurance company realized that it had agreed to pay more than it should have, it attempted to rescind the settlement. *Gill*, 65 Wn. App. at 275. The injured party sued to enforce the agreement and the insurance company claimed the settlement agreement should be voided based on either mistake or unconscionability. *Gill*, 65 Wn. App. at 275. Thus, *Gill* and *Barton* are inapplicable to our analysis because the parties disputed only the validity of settlement agreements acknowledged by both.

The trial court did not err in ordering enforcement of its quiet title judgment, nor did it abuse its discretion in denying Lockhart's motion for reconsideration and, thus, we affirm.

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

Van Deren, J.

We concur:

No. 40214-9-II

Quinn-Brintnall, J.

Worswick, A.C.J.