**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

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| MAYFIELD COVE ESTATES HOMEOWNERS ASSOCIATION, a Washington non-profit corporation,<br><br>Respondent,<br><br>v.<br><br>JOHN J. HADALLER, an individual,<br><br>Appellant. | No. 40426-5-II<br><br><br><br><br><br>UNPUBLISHED OPINION |

Quinn-Brintnall, J. — Following a bench trial, the trial court entered a declaratory judgment finding that Mayfield Cove Estates Homeowners Association (HOA) had ownership, management, and control over a water system servicing the subdivision. The trial court ordered John J. Hadaller, the former HOA treasurer, secretary, and subdivision developer, to deliver to the HOA all documents and funds related to the HOA and water system in his possession and control. The trial court also awarded the HOA attorney fees and costs. Hadaller appeals, assigning error to the trial court finding that he (1) had only two votes at an HOA meeting, (2) created the water system in the HOA's name, and (3) dedicated the water system to the HOA. Hadaller argues that the trial court erred when it permitted the HOA to prosecute an issue he asserts the parties agreed they would argue in a separate action, denied his motion for reconsideration or new trial, and

awarded the HOA attorney fees. We affirm.

## FACTS

Between 2003 and 2007, Hadaller developed eight residential lots[1] near Lake Mayfield in Lewis County, Washington. On August 8, 2003, Hadaller prepared and recorded against the eight lots a "Declaration of Covenants, Conditions, Restrictions, Road Maintenance Agreement, Water System" (2003 CCRs) for the HOA, a then unincorporated Washington association. Hadaller named himself both the HOA's secretary and its treasurer and maintained all documents, records, and funds thereafter.

Between 2003 and 2005, Hadaller sold Lots 1, 2, 3, and 4 to four separate buyers.[2] Hadaller recorded "Amended Covenants" on October 27, 2006, which included a section requiring Hadaller's affirmative vote in addition to a two-thirds HOA majority vote to adopt future covenant amendments. As required by Lewis County Code, Hadaller constructed Mayfield Cove Estates Water System #1 to serve Plat 010, and Mayfield Cove Estates Water System #2 to serve Plat 017.[3] On April 13, 2007, Hadaller recorded with Lewis County a notice to future

[1] Hadaller recorded Short Subdivision No. SP-02-00010 (Plat 010) on September 25, 2003, and recorded Short Subdivision No. SP-05-00017 (Plat 017) on May 17, 2007, with the Lewis County Auditor. For clarity, we refer to Lots 1-4 as those associated with Plat 010, and Lots 5-8 as those associated with Plat 017.

[2] Clifford L. and Sheilah Lynn Schlosser purchased Lot 1 on October 7, 2003. Dean and Pam Rockwood entered a lease-option agreement for a portion of Lot 4 on January 31, 2004 (obligating Hadaller to sell that portion of Lot 4 to the Rockwoods by January 30, 2009). Maurice L. and Cheryl Greer purchased Lot 2 on July 15, 2004. Randy L. Fuchs purchased Lot 3 on September 13, 2005.

[3] The parties clarified at oral argument that there is one water system with two separate wells serving Mayfield Cove Estates. For clarity, we refer to the well serving Plat 010 as "Water System #1," and the well serving Plat 017 as "Water System #2."

property owners of his ownership of "Mayfield Cove Estates #2 Water System." Clerk's Papers (CP) at 513. On October 16, Hadaller sold Lots 5, 6, and 7 to attorney David Lowe and, Sherry, Lowe's wife. The Lowes' short form deed shows a list of encumbrances, including the 2003 CCRs, Amended Covenants, and 2007 notice of Hadaller's Water System #2 ownership. Hadaller retained ownership of Lot 8 and voting rights for Lot 4.

The HOA incorporated on September 3, 2008. At a December 30 meeting, Hadaller challenged the incorporation, asserting that he was entitled to four votes because he owned undeveloped acreage in Plat 010. Specifically, it appears Hadaller had intended to divide Lot 4 into two separate lots; thus, he asserted that he was entitled to vote once on behalf of his own lot, once on behalf of the portion of Lot 4 then leased by the Rockwoods, and twice more for two additional (and yet undesignated) unoccupied "lots." The HOA majority rejected Hadaller's challenge because the bylaws did not recognize the undeveloped property as granting him additional votes. The HOA bylaws granted votes to those lots recognized under separate tax parcels only. Hadaller did not subdivide Lot 4 into separate parcels until 2010.

The HOA members voted to replace Hadaller as the secretary and treasurer and directed him to make available all HOA-related records and funds in his control. Hadaller refused. The HOA attempted to gain access to the records twice more, once by providing Hadaller with HOA meeting minutes showing its decision to direct Hadaller to transfer the records and funds, and once by an email request dated January 3, 2009. Hadaller again refused and the HOA filed suit pursuant to ch. 64.38 RCW on January 14.

On January 22, in support of the HOA's motion for order to show cause, Fuchs submitted a declaration in which he stated he had never signed the Amended Covenants and that Hadaller

had forged his signature. Following a January 26 show cause hearing, the trial court ruled in the HOA's favor and ordered Hadaller to transfer all HOA-related documents and funds to the HOA pursuant to RCW 64.38.045[4] by February 25. On February 27, the trial court entered a written order awarding the HOA interim attorney fees and costs.

Hadaller moved for reconsideration on March 5. In support of his motion, Hadaller included a declaration of an expert document examiner, Travis King, stating that Fuchs's signature in the Amended Covenants was not forged. The HOA opposed reconsideration, arguing that King was not a proven expert, the trial court should disregard King's statement as inadmissible hearsay, and that the Amended Covenants were unenforceable and invalid.

By early March, Hadaller had delivered just a few documents to the HOA, none relating to the water system. Hadaller refused to transfer the funds, asserting that as the water system owner, the funds should stay under his control. Hadaller also argued that the transfer order dealt with HOA or road maintenance funds only, not water system-related funds. The HOA filed a motion asking the trial court to find Hadaller in contempt for failing to timely comply with the

[4] RCW 64.38.045 provides, in relevant part,

> (1) The association or its managing agent shall keep financial and other records sufficiently detailed to enable the association to fully declare to each owner the true statement of its financial status. All financial and other records of the association, including but not limited to checks, bank records, and invoices, in whatever form they are kept, are the property of the association. Each association managing agent shall turn over all original books and records to the association immediately upon termination of the management relationship with the association, or upon such other demand as is made by the board of directors. . . . (2) All records of the association, including the names and addresses of owners and other occupants of the lots, shall be available for examination by all owners, holders of mortgages on the lots, and their respective authorized agents on reasonable advance notice during normal working hours at the offices of the association or its managing agent.

February 23 transfer order. On March 13, the trial court entered a second order directing Hadaller to relinquish the original documents. The trial court reserved the issues of transferring the water system-related documents and additional HOA attorney fees. The trial court ordered the funds placed into the court's registry.

Hadaller failed to comply with the March 13 order and the HOA filed a second motion for contempt. On April 3, the trial court denied Hadaller's motion for reconsideration and again ordered Hadaller to either deliver the HOA-related documents or face sanctions. The trial court entered a contempt order on April 13, and awarded the HOA attorney fees and costs due to Hadaller's failure to timely comply with the previous transfer orders.

Meanwhile, on April 8, the HOA filed a motion to confirm its water system ownership and to compel transfer of related documents and funds. Hadaller asserted that he had transferred the documents and funds to the HOA as ordered. The trial court ordered Hadaller to submit a declaration under oath describing the documents and funds he had transferred and the dates of the purported transfers. The trial court found that the HOA was entitled to the balance of its attorney fees and costs and awarded additional attorney fees incurred while attempting to obtain the records since the time of the interim award. The award did not include attorney fees related to the water system ownership issue. The trial court acknowledged that the parties contested the validity of the Amended Covenants and ruled that the factual issues of the ownership, control, and management of the water system and related funds required trial.

On June 19, the trial court entered an order awarding the HOA additional attorney fees and costs. Hadaller sought discretionary review of the trial court's February 23 transfer order and June 19 attorney fees and costs award. We denied review on August 26. The HOA sought

collection of the ordered attorney fees through garnishment, but the trial court stayed collection pending review because Hadaller posted a $15,000 supersedeas bond on July 21 pursuant to RAP 8.1(b)(1). On September 11, the trial court ordered the court clerk to disburse to the HOA $5,520.15 plus $355.71 interest in satisfaction of the February 27 order, and $8,125.63 plus $224.40 interest in satisfaction of the June 19 order.

On July 3, the HOA held its annual meeting and voted to adopt amended CCRs (2009 CCRs). The HOA recorded the 2009 CCRs with Lewis County on July 6. Over the July 4 holiday weekend, Hadaller trespassed onto the Lowes' property, turned off the Lowes' water, and locked the water meter. The HOA obtained a temporary restraining order (TRO) requiring Hadaller to unlock the meter and turn the Lowes' water back on. The TRO prevented Hadaller from adversely affecting any other HOA member's water supply pending a full hearing. On August 7, the trial court converted the TRO into a preliminary injunction. In doing so, the trial court found that Hadaller had no authority to unilaterally shut off or deny other members' water access and that the HOA had the responsibility to manage the water systems.

Despite the preliminary injunction, Hadaller continued to shut off the water supply to the subdivision periodically throughout October and November. In particular, on October 20, Hadaller damaged the main water line to Water System #1, flooding and contaminating the water system. Several HOA members were without water for over six hours and, once restored, were unable to drink their water for several days due to contamination concerns. The same incident led to other damages necessitating further water shut offs over the next several weeks. Hadaller refused HOA requests to correct the damage and pay for a professional inspection.

On September 23, the HOA served Hadaller with its first set of interrogatories and

requests for production of documents. Hadaller did not respond to either discovery request. The HOA moved for contempt of the August 7 preliminary injunction, to compel discovery, and for related sanctions.

On December 10, the trial court began a two-day bench trial on the issue of the water system's ownership, control, and management. The HOA's trial brief presented three arguments: (1) the HOA owned the water system, (2) Hadaller had dedicated the water system to the HOA, and (3) the HOA was the proper and sole manager of the water system. Hadaller, Cheryl Greer, Fuchs, and Pamela Rockwood testified at trial on the water system ownership, Amended Covenants, preliminary injunction, and HOA incorporation issues.

The trial court ruled in favor of the HOA. On December 30, the trial court entered written findings of fact and conclusions of law. The relevant findings are as follows: (1) Plats 010 and 017 show "express dedication by Hadaller of the required water system to the lots of each plat" (CP at 336); (2) Hadaller informed the purchasers of Lots 1 through 7 that they were obtaining guaranteed water rights and that the HOA owned, controlled, and managed the water system; (3) Hadaller created the water system in the HOA's name and confirmed the HOA as owner; (4) the 2003 CCRs designate the HOA as the water system's owner and manager; (5) the Amended Covenants confirm all aspects of the original CCRs with respect to the water system; and (6) the owners of Lots 1, 2, and 3 dispute the validity of their unnotarized signatures on the Amended Covenants.

As to the water system ownership, control, and management, the trial court concluded that Hadaller manifested a clear and unmistakable intent to dedicate Water Systems #1 and #2 to the HOA by express plat language, indicating HOA ownership of the water system to

governmental bodies, and by the express language of the 2003 CCRs and Amended Covenants. The trial court found the 2009 CCRs consistent with the 2003 CCRs and Amended Covenants in confirming HOA ownership and exclusive control and management of the water system. Thus, the trial court entered declaratory judgment that the HOA owned, controlled, and managed the water systems. The HOA recognized and the trial court found that, subject to certain restrictions, Hadaller had an irrevocable right to add two residential connections to each well.

The trial court further found the Amended Covenants null and void and unenforceable for failing to meet the statutory requirement for acknowledgement of a real property transaction. As to the HOA incorporation, the trial court found that the HOA is the sole governing body for the Mayfield Cove Estates subdivisions. For violating the preliminary injunction, the trial court found Hadaller in contempt and imposed sanctions of $100 for each day the HOA members were left without potable water. Pursuant to the authority in RCW 64.38.045, the trial court ordered Hadaller to transfer to the HOA all remaining original documents and directed the clerk to disburse all funds in the court's registry to the HOA. Last, the trial court awarded the HOA attorney fees and costs as the aggrieved, prevailing party under RCW 64.38.050 and the CCRs.

Hadaller filed a motion for reconsideration or new trial or amendment of judgment. The trial court denied the motion, finding a lack of basis under CR 59. Hadaller timely appeals.[5]

## DISCUSSION

Hadaller assigns error to the trial court finding that he (1) had only two votes at the December 30 HOA meeting, (2) created the water system in the HOA's name, and (3) transferred

[5] David Lowe, an attorney-landowner who is also an HOA member, represents the HOA. Hadaller appears pro se.

ownership of the water system by dedication or when he sold the lots. Hadaller asserts that the trial court erred when it (1) allowed the HOA to challenge the validity of the Amended Covenants "by surprise at trial" (Br. of Appellant at 1); (2) denied his motion for reconsideration, new trial, or amendment of judgment; (3) disallowed evidence of the Amended Covenants in the quiet title action under res judicata;[6] and (4) awarded the HOA attorney fees under RCW 64.38.050. We discern no error and affirm.

After a trial court has weighed the evidence in a bench trial, our review is limited to determining whether substantial evidence supports the findings of fact and, if so, whether the findings support the conclusions of law. *Keever & Assoc., Inc. v. Randall*, 129 Wn. App. 733, 737, 119 P.3d 926 (2005) (citing *City of Tacoma v. State*, 117 Wn.2d 348, 361, 816 P.2d 7 (1991)), *review denied*, 157 Wn.2d 1009 (2006). Substantial evidence is evidence sufficient to persuade a fair-minded person of the truth of the asserted premise. *Keever*, 129 Wn. App. at 737 (citing *Fred Hutchinson Cancer Research Ctr. v. Holman*, 107 Wn.2d 693, 712, 732 P.2d 974 (1987)). We review alleged errors of law de novo. *Trotzer v. Vig*, 149 Wn. App. 594, 612, 203 P.3d 1056 (citing *Sunnyside Valley Irr. Dist. v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003)), *review denied*, 166 Wn.2d 1023 (2009). Unchallenged findings are verities on appeal. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 808, 828 P.2d 549 (1992).

[6] Hadaller has been involved in multiple lawsuits regarding different aspects of this subdivision. One lawsuit appears to involve a quiet title action regarding the HOA's authority to grant an easement. Hadaller had attempted to cross claim or join parties in a challenge to that easement-granting authority in the instant case. On April 3, the trial court found that the easement issue was unrelated to the water system issue and dismissed the easement-related claims without prejudice so that Hadaller could bring a separate quiet title action. It appears from the parties' briefs that the trial court entered judgment in the quiet title action in the HOA's favor and Hadaller has appealed. Because this assignment of error relates to the quiet title action appeal, we do not address it in this case.

Hadaller is a pro se appellant. We hold a pro se litigant to the same standard as an attorney. *Batten v. Abrams*, 28 Wn. App. 737, 739 n.1, 626 P.2d 984, *review denied*, 95 Wn.2d 1033 (1981). An appellant's brief must contain "argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record." RAP 10.3(a)(6). And "[p]assing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration." *Holland v. City of Tacoma*, 90 Wn. App. 533, 538, 954 P.2d 290, *review denied*, 136 Wn.2d 1015 (1998); *see Camer v. Seattle Post-Intelligencer*, 45 Wn. App. 29, 36, 723 P.2d 1195 (1986) (citing RAP 10.3(a)(5)), *review denied*, 107 Wn.2d 1020, *cert. denied*, 482 U.S. 916 (1987).

Amended Covenants—Validity Issue

Hadaller asserts that the trial court erred by admitting evidence on the issue of the validity of the Amended Covenants. Hadaller asserts that the trial court indicated during an April 3 hearing on his motion for reconsideration of the February 27 order and subsequent attorney fees that the issue would be addressed in a separate quiet title action and that the parties stipulated the issue would be left out of trial. The HOA counters that because Hadaller did not object to the admission of any evidence or testimony with respect to this issue at trial, he has failed to preserve it for appeal. Alternatively, the HOA argues that the trial court never indicated that the issue of the validity of the Amended Covenants would be reserved for a separate proceeding, that Hadaller had acknowledged the validity issue would be part of trial, and that the parties never stipulated to limit the issues. We agree with the HOA.

Hadaller asserts that he "personally" objected three times to the trial court allowing the HOA to argue the issue of the validity of the Amended Covenants. Hadaller cites to the verbatim

report of proceedings of December 12, 2009, at page 36, lines 21-25, for his "objections" but cites no legal authority to support his assertion. Rather than putting forth argument in his brief, Hadaller merely questions whether the trial court had a duty to respond to his testimony and whether his statements during trial "suffices for a proper objection to satisfy CR 59(a) 1,3,or 9 [sic]."[7] Br. of Appellant at 44. The cited portion of the record, as well as the question preceding it, is as follows:

> Q You attempted with [the 2007] amendment to secure for yourself veto power over any changes to the C.C. & R's, correct --
> A As long as I own property in that -- yes.
> Q -- which means if you have one lot and there were seven other owners and they all wanted -- the majority clearly wanted to do something or make a change, you would have the authority to veto that and that's what you were aiming for?
> A That wasn't what the aim of the C.C. & R's and the aim of it is not on trial today. It's something that will be brought up in the next trial. That's really irrelevant in this trial. I don't see the relevance in the trial.

Report of Proceedings (RP) (Dec. 10, 2009 filed Apr. 20, 2010) at 36. Hadaller's counsel did not object to this line of questioning or any other evidence presented at trial with respect to the validity issue.

Hadaller fails to cite any legal authority to support his contention that the trial court was required to treat his personal view of the relevancy of questions asked during cross-examination as if it were a timely and specific evidentiary objection. We hold that Hadaller has failed to both preserve his validity issue challenge for appeal and to support his argument with legal authority. RAP 2.5(a), 10.3(a)(6); *see DeHaven v. Gant*, 42 Wn. App. 666, 669, 713 P.2d 149 (ER 103

[7] To the extent this portion of Hadaller's brief may also be considered an appeal of the trial court's denial of his motion for reconsideration or new trial pursuant to CR 59, we address that issue separately.

requires objections to be timely and specific; failure to raise an objection at the trial court precludes a party from raising it on appeal (citing *Symes v. Teagle*, 67 Wn.2d 867, 873, 410 P.2d 594 (1966); *State ex rel. Partlow v. Law*, 39 Wn. App. 173, 178, 692 P.2d 863 (1984))), *review denied*, 105 Wn.2d 1015 (1986). Even if Hadaller's testimony could be considered a timely and specific objection to evidence submitted at trial on relevancy grounds, which it could not, his claim on appeal fails because (1) whether the Amended Covenants were valid and controlling was relevant because it affected whether the HOA validly incorporated, and (2) his unsupported argument on appeal is that the parties agreed to limit the issues at trial, not that the validity issue was irrelevant to the water system issue. *DeHaven*, 42 Wn. App. at 669 (a party may only assign error in the appellate court on the specific ground of the evidentiary objection made at trial (citing *State v. Guloy*, 104 Wn.2d 412, 422, 705 P.2d 1182 (1985), *cert. denied*, 475 U.S. 1020 (1986); *State v. Boast*, 87 Wn.2d 447, 451, 553 P.2d 1322 (1976))).

Amended Covenants—Statute of Frauds

Hadaller next asserts that the trial court erred when it found the Amended Covenants null and void and unenforceable for failing to meet the statutory requirement for acknowledgement of a real property transaction. The statute of frauds directs that "every contract creating or evidencing any encumbrance upon real estate, shall be by deed." RCW 64.04.010. RCW 64.04.020 requires that "[e]very deed shall be in writing, signed by the party bound thereby, and acknowledged by the party before some person authorized by this act to take acknowledgements of deeds." RCW 64.08.010[8] provides a comprehensive list of those authorized to take

[8] RCW 64.08.010 provides,

> Acknowledgments of deeds, mortgages and other instruments in writing, required to be acknowledged may be taken in this state before a justice of the supreme court, or the clerk thereof, or the deputy of such clerk, before a judge of the court

acknowledgments.

Here, Hadaller recorded the Amended Covenants on October 26, 2006. Irrespective of the forgery issue, the signatures on the Amended Covenants were neither notarized nor otherwise acknowledged as required by RCW 64.04.010 and .020. Accordingly, we hold that the trial court did not err when it found the Amended Covenants invalid and unenforceable under the statute of frauds. RCW 64.04.010, .020.

HOA Formation and Vote

Hadaller assigns error to the trial court's finding that the HOA carried enough votes to validly incorporate, adopt bylaws, and elect officers. Specifically, Hadaller argues that the trial court erred by finding that he had two, rather than three or four, votes during the December 30 meeting. Hadaller asserts that the trial court erred by not determining the vote tally according to the 2003 CCR's definition of "lot." Hadaller also argues that because both the 2003 CCRs and Amended Covenants were silent on the majority voting requirements for either amending the CCRs or adopting bylaws, the RCW bound the HOA to a unanimous vote requirement to take either action. We disagree.

First, the 2003 CCRs granted each lot owner (but not lessee) one vote and defined "lot" to "mean and refer to any plat of land, which has been assigned a tax parcel number." Ex. 3, at p. 3. Here, the Schlossers purchased Lot 1 in 2003, the Rockwoods leased a portion of Lot 4 in 2004,

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> of appeals, or the clerk thereof, before a judge of the superior court, or qualified court commissioner thereof, or the clerk thereof, or the deputy of such clerk, or a county auditor, or the deputy of such auditor, or a qualified notary public, or a qualified United States commissioner appointed by any district court of the United States for this state, and all said instruments heretofore executed and acknowledged according to the provisions of this section are hereby declared legal and valid.

the Greers purchased Lot 2 in 2004, Fuchs purchased Lot 3 in 2005, and the Lowes purchased Lots 5, 6, and 7 in 2007. Hadaller testified that Plats 010 and 017 each had four lots. Hadaller testified that he contemplated subdividing either Lot 8 or the portion of Lot 4 the Rockwoods had not leased. But Hadaller had not done so by the December 30 meeting. Nothing in the record supports Hadaller's assertion that, at the time of the meeting, he owned a separate lot in either plat that was assigned a separate tax parcel number. Accordingly, we hold that substantial evidence in the record supports the trial court's finding that at the time of the December 30 meeting, Hadaller had only two votes: one for Lot 4 and another for Lot 8.

Second, Hadaller avers that the HOA could not incorporate or adopt bylaws absent a statutorily imposed unanimous vote. Hadaller does not cite to any statute to support his argument. RAP 10.3(a)(6). Instead, Hadaller asserts that we should apply "the new statutory amount of control stated in Section 20 of SB 6054" as an equitable solution to this issue. Br. of Appellant at 32. Hadaller attaches to his opening brief a copy of a "Final Report" of the "Homeowner Association Act Committee" dated December 2007, and a copy of "Senate Bill 6054."

Generally, we do not consider documents appended to a party's brief that are not part of the appellate record. *City of Moses Lake v. Grant Cnty. Boundary Review Bd.*, 104 Wn. App. 388, 391, 15 P.3d 716 (2001), *review denied*, 151 Wn.2d 1032 (2004); *see* RAP 10.3(a)(8) (an appendix to a brief may not include materials not contained in the record on review without permission from the appellate court). But if a party presents an issue that requires study of a statute, rule, regulation, jury instruction, finding of fact, exhibit, or the like, the party should designate them for inclusion in our record and include them by copy in an appendix to the brief.

RAP 9.6; RAP 10.4(c).

As an initial matter, our independent review of the statutes reveals that there is no unanimity requirement in ch. 64.38 RCW. Next, proposed Section 20 of S.B. 6054, 61st Leg., Reg. Sess. (Wash. 2009), provides that any "declarant," defined as "any person who executes as a declarant a declaration" (Section 3(11)), which in turn is defined as "the declaration of covenants, conditions, and restrictions or any other document . . . that provides for the establishment of an association to govern the community" (Section 3(12)), may reserve veto power over an HOA's board of directors for a period which terminates at the earlier of either 60 days after conveyance of 75 percent of the lots or 2 years after the last lot conveyance. The Washington legislature has not enacted S.B. 6054 and nothing in ch. 64.38 RCW suggests Hadaller is entitled to such relief. Accordingly, Hadaller's assertions that the HOA could not incorporate or adopt bylaws absent a unanimous vote and that he was entitled to retain veto power over the HOA, are meritless.

Water System Ownership, Control, and Management

Hadaller does not challenge the HOA's ownership, control, or management of Water System #1. With respect to Water System #2, however, Hadaller asserts that the trial court erred when it found that Plats 010 and 017 show his express dedication of Water Systems #1 and #2, and that he created each water system in the HOA's name. We affirm the trial court's declaratory judgment that the HOA owned, controlled, and managed the water system.

Ordinary rules of appellate procedure apply to an appeal from a declaratory judgment. *Lakewood Racquet Club, Inc. v. Jensen*, 156 Wn. App. 215, 223, 232 P.3d 1147 (2010) (a declaratory judgment is an appealable final judgment (citing *Schneider v. Snyder's Foods, Inc.*, 116 Wn. App. 706, 713, 66 P.3d 640, *review denied*, 150 Wn.2d 1012 (2003)). We review

declaratory judgments the same way as any other civil action. RCW 7.24.070. We must determine whether substantial evidence supports the trial court's findings of fact and, if so, whether those findings of fact support the trial court's conclusions of law. *Schneider*, 116 Wn. App. at 713 (citing *Landmark Dev., Inc. v. City of Roy*, 138 Wn.2d 561, 573, 980 P.2d 1234 (1999)). Unchallenged findings are verities on appeal. *Schneider*, 116 Wn. App. at 713 (citing *Goodman v. Bethel Sch. Dist. No. 403*, 84 Wn.2d 120, 124, 524 P.2d 918 (1974))

> A dedication may be either express (i.e., the intent is expressly set forth in a deed, or by oral or written declaration) or implied (i.e., evidenced by some act or course of conduct by the property owner from which a reasonable inference of dedication may be drawn). Black's Law Dictionary 412 (6th ed. 1990). . . .
>
> By dedicating the property, the owner reserves no rights that would either be incompatible or interfere with the full public use. The intent to dedicate property for public use is evidenced by presenting for filing a final plat or short plat that shows the dedication on its face. Acceptance by the public is evidenced by approval of the final plat or short plat for filing with the appropriate governmental unit. RCW 58.17.020(3).
>
> A party asserting that a dedication exists has the burden of establishing that all the essential elements are present under the facts of the case. *Karb v. City of Bellingham*, 61 Wn.2d 214, 218-19, 377 P.2d 984 (1963). The owner's intent to dedicate will not be presumed; the party asserting it must prove the intent is unmistakable. *See Cummins v. King County*, 72 Wn.2d 624, 627, 434 P.2d 588 (1967).

*Richardson v. Cox*, 108 Wn. App. 881, 890-91, 26 P.3d 970, 34 P.3d 828 (2001), *review denied*, 146 Wn.2d 1020 (2002).

Here, Hadaller recorded Short Plats 010 and 017 with Lewis County, each stating that a compliant water supply system was a condition of development. Article I, section 6 of the 2003 CCRs defined "water system" to "mean that certain approved water system along with all easements and utilities filed in conjunction with the Mayfield Cove Estates plat and as depicted on the attached Exhibit C by this reference incorporated herein." Ex. 3, at p. 3. Exhibit C of Exhibit

3 provides,

> Section 1. Mayfield Cove Estates water system is hereby created with the purpose of supplying domestic potable water exclusively to the members of the Mayfield Cove Estates home owners association, which are owners of lots 1-6 of Mayfield Cove Estates. . . . This system is an extension of article 6[9] of the Declarations of Covenants, Conditions and Restrictions [sic] all management of this system is governed by the Covenants.

Ex. 3, at Ex. C. The water plan assigns to the "association treasure/secretary [sic]" assessment and utility bill paying duties. Ex. 3, at Ex. C.

Plat 010, signed by Hadaller on September 22, 2003, states,

> The undersigned does hereby certify that he is the sole vested owner of the property shown in this short plat and does hereby dedicate same to the use of the lot owners thereof; together with all easement(s) shown thereon for ingress, egress and utilities; and does further, represent and warrant said easement(s) and access to be true and adequate for the purposes of [Lewis County Code] 16.10.300 and 16.10.400.

CP at 430. Plat 017, also signed by Hadaller, contains similar language. Hadaller testified that it was his intention to leave the water system in place to provide water for the lots. He admitted that as part of gaining plat approval from Lewis County, he "expressly dedicated water to [Lots 1 through 8]" and provided guaranteed access to the water system for each of the lots. RP (Dec. 10, 2009) at 30. Hadaller further testified that article I, section 6 of the 2003 CCRs expressly defined the HOA water system to refer to and incorporate by reference Water Systems #1 and #2 as described in the subdivision's plats. Last, Hadaller testified that he intended to give the HOA management responsibilities over the water system and that the Amended Covenants did not alter clauses related to the water system.

Hadaller had submitted several forms to local and state government agencies and satellite

[9] There is no article 6 of the 2003 CCRs. It appears he intended to reference article I, section 6.

management companies listing the HOA as the owner of the water systems. For example, on July 29, 2002, Hadaller submitted to Lewis County Environmental Services a "Well Site Inspection Form" listing "Mayfield Cove Estates Home Owners Association" as owner. Ex. 6. On December 1, 2003, the HOA was again listed as the owner on a "Water Facilities Inventory

(WFI)" form submitted to the Washington State Department of Health. Ex. 7; *see also* Exs. 8 (June 30, 2003 "Mayfield Cove Estates Water System Engineering Report"), 9 (September 15, 2003 "Mayfield Cove Estates Water System Engineering Report"), 10 (Skyline "Satellite Management Contract"), 11 (February 13, 2007 WFI form), 12 (November 7, 2006 Pacific Water Systems, Inc. "Satellite Management Contract").

Substantial evidence supports the trial court's finding that Hadaller expressly dedicated both water wells to the HOA and consistently acted as if that were his intention. The trial court could reasonably infer Hadaller's intent that the HOA should own and control the water system from Hadaller's conduct and testimony. *See Cox*, 108 Wn. App. at 892. Accordingly, we hold that the findings support the trial court's declaratory judgment that the HOA owned, controlled, and managed the water system. *Schneider*, 116 Wn. App. at 713 (citing *Landmark*, 138 Wn.2d at 573).

Trial Court Bias—Evidentiary Rulings

Hadaller alleges that the trial court was biased because it did not allow him to testify as to his intent to create Water System #2 in his own name and because it admitted Cheryl Greer's testimony regarding her understanding of the purpose of the Amended Covenants. Under RAP 2.5(a), we may "refuse to review any claim of error which was not raised in the trial court." Washington courts apply the doctrine of waiver to bias and appearance of fairness claims. *In re Marriage of Wallace*, 111 Wn. App. 697, 705, 45 P.3d 1131 (2002) (appellate court will not review an appearance of fairness issue raised for first time on appeal (citing *State v. Bolton*, 23 Wn. App. 708, 714, 598 P.2d 734 (1979), *review denied*, 93 Wn.2d 1014 (1980))), *review*

*denied*, 148 Wn.2d 1011 (2003); *Matter of Welfare of Carpenter*, 21 Wn. App. 814, 820, 587 P.2d 588 (1978) ("a litigant who proceeds to trial knowing of potential bias by the trial court waives his objection and cannot challenge the court's qualifications on appeal"); *Brauhn v. Brauhn*, 10 Wn. App. 592, 597, 518 P.2d 1089 (1974) ("One who claims a judge trying claimant's case is biased may waive his right to complain thereof by not timely raising the objection and proceeding with trial or continuing with a pending trial as if the judge were not disqualified."). Here, Hadaller did not raise the issue of trial court bias below and has failed to preserve his appearance of fairness and related evidentiary challenges for appeal. RAP 2.5(a). We do not address these unpreserved claims further.

Motion for Partial New Trial, Reconsideration, and Judgment

It appears Hadaller argues that the trial court abused its discretion in denying his pro se motion for partial new trial and reconsideration because the trial court had permitted the HOA to prosecute the Amended Covenant validity issue at trial.[10] Specifically, Hadaller asserts he was unable to produce testimony from his handwriting expert to prove the validity of the Amended Covenants because he was unaware the validity issue would be addressed at trial. Hadaller's "surprise" argument has no merit and we hold that the trial court did not abuse its discretion when it denied Hadaller's motion.

We review a denial of a CR 59 motion for reconsideration for an abuse of discretion. *Kleyer v. Harborview Med. Ctr. of U. of Wash.*, 76 Wn. App. 542, 545, 887 P.2d 468 (1995) (citing *Meridian Minerals Co. v. King County*, 61 Wn. App. 195, 203-04, 810 P.2d 31, *review*

[10] It further appears that Hadaller invites us to reverse the trial court's denial of his CR 59 motion because he asserts that the trial court's bias resulted in an irregularity under CR 59(a)(1). Because Hadaller failed to preserve his trial court bias claim for appeal, we decline his invitation. RAP 2.5(a).

*denied*, 117 Wn.2d 1017 (1991)). On the motion of an aggrieved party, a trial court may reconsider its judgment for any one of the following causes materially affecting the substantial rights of such parties:

> (1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial;
>
> . . . .
>
> (3) Accident or surprise which ordinary prudence could not have guarded against;
>
> . . . .
>
> (9) That substantial justice has not been done.

CR 59(a).

The record does not support Hadaller's contention either that the trial court expressly ordered the validity issue separated from the instant bench trial or that the parties stipulated to limit the issues at trial. The only stipulation between the parties in the record before us is the stipulated trial exhibit list, which included the Amended Covenants. And at the April 3 motion for reconsideration hearing, the trial court merely stated that Hadaller's attempted cross claims challenging the HOA's easement granting authority were inappropriate in the instant case because the instant action dealt with the water system-related documents and funds. The trial court stated that the easement-related issues should be addressed in a separate action and dismissed the cross claims without prejudice. For its part, the HOA acknowledged that the validity issue was not dispositive of the motion for reconsideration. The HOA did not stipulate it would not prosecute the validity issue at trial.

Moreover, during the May 15 hearing on the HOA's motion for contempt held one month after the April 3 hearing, Hadaller argued that *because* there was a factual issue as to the validity

of the Amended Covenants due to Fuchs's assertion that his signature was forged, the "appropriate thing for the Court to do would be to have a trial on the issue." RP (May 15, 2009) at 4. The trial court agreed and found that the validity issue created issues of fact regarding the water system's ownership, control, and management and the transfer of water system-related documents and funds. Accordingly, the record does not support Hadaller's contention he was unaware the parties would address the validity issue at trial. We hold that the trial court did not abuse its discretion when it denied Hadaller's motion for reconsideration and a partial new trial on this issue.

HOA Attorney Fee Award

Last, Hadaller contends that "[t]he trial Court erred when it awarded attorney fees under authority of RCW 64.38.050 to an 'Association' that was establishing itself, which was more of a hostile takeover of a development by competing developers which is contradictory to the legislatures [sic] intent of the provisions for RCW 64.38." Br. of Appellant at 1-2. Hadaller argues that the legislature enacted RCW 64.38.050 "intend[ing] to protect non-profit associations to enforce their existing covenants and by-laws against established law, not attempt to take ownership of a water system and development by a separate new association." Br. of Appellant at 48. We affirm.

Whether a party is entitled to attorney fees is an issue of law we review de novo. *Ethridge v. Hwang*, 105 Wn. App. 447, 460, 20 P.3d 958 (2001) (citing *Tradewell Group, Inc. v. Mavis*, 71 Wn. App. 120, 126, 857 P.2d 1053 (1993)). RCW 64.38.050 provides that "[a]ny violation of the provisions of this chapter entitles an aggrieved party to any remedy provided by law or in equity. The court, in an appropriate case, may award reasonable attorneys' fees to the prevailing

party." Despite Hadaller's assertion that he "delivered the other books and records lickety –split [sic] once he had Fuchs' signature verified" (Br. of Appellant at 49), the record supports, and Hadaller does not assign error to, the trial court's findings that Hadaller repeatedly failed to timely comply with the orders to deliver to the HOA all original documents and funds. *Cowiche Canyon*, 118 Wn.2d at 808. That Hadaller failed to timely transfer to the HOA documents and funds to which it was entitled, especially those unrelated to the water system, is a violation RCW 64.38.045. The violation is sufficient to entitle the HOA to attorney fees under RCW 64.38.050. Accordingly, we affirm the HOA attorney fees awards.

Attorney Fees

Hadaller's opening brief table of contents cites to page 47 regarding attorney fees. However, page 47 of the brief makes no mention of attorney fees or costs. The most relevant statement is as follows:

> Hadaller is aware of the legal consequences the court does not provide regarding attorney negligence he is not pleading for relief from his attorneys negligence, rather he is pleading on the strips of ground left standing that possibly have not been crumbled by his negligence. There certainly exist some and Hadaller would appreciate the full relief that any may provide.

Br. of Appellant at 47. It is unclear whether this is a request for attorney fees. In any event, Hadaller does not cite to any applicable law granting him attorney fees, and we deny his "request." RAP 18.1. Hadaller also contends that he is entitled to attorney fees because he should be the prevailing party on the water system ownership issue. Because the trial court did not err in declaring that the HOA owned, managed, and controlled the water system, we also deny Hadaller's request for attorney fees on that issue.

In addition, we grant the HOA's request for attorney fees and costs on appeal pursuant to RAP 18.1, RCW 64.38.050, and the CCRs.

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

QUINN-BRINTNALL, J.

We concur:

ARMSTRONG, J.

WORSWICK, A.C.J.