IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ELIN CHINN, Respondent, v. IVY CADMAN, Appellant.	)	DIVISION ONE No. 63453-4-I UNPUBLISHED OPINION FILED: December 13, 2010

Dwyer, C.J. — Ivy Little-Cadman appeals from the trial court's order of summary judgment, which quieted title to certain real property in favor of Elin Chinn. Little-Cadman contends that the trial court erred by granting Chinn's motion for summary judgment. Finding no error, we affirm.

I

Elin Chinn owns a parcel of real property in Bellingham. Chinn's son, John Cadman, and his wife, Ivy Little-Cadman, lived on Chinn's property in their "RV trailer" for a few years. They then moved into a modular home on the property. In August 2008, Chinn filed a complaint for ejectment and quiet title in order to remove Little-Cadman from the property. At this time, Cadman and

Little-Cadman were in the process of divorcing, and Little-Cadman was living alone in the modular home.

In defending against Chinn's complaint, Little-Cadman asserted that Chinn gifted the property to her and her husband. Little-Cadman contended that Chinn "delayed transferring the property by deed due to John's outstanding tax debt," and that Chinn informed them "that when the IRS debt was cleared, she would deed the property over to [them]." Clerk's Papers (CP) at 68. Little-Cadman also contended that she and Cadman improved the land under the assumption that they owned the property. Outside of her own affidavit, Little-Cadman submitted no additional evidence of these improvements.

Chinn disputed Little-Cadman's contentions that she had given the property to her son and Little-Cadman. Instead, she stated, she had allowed them to live on the property "until they got their affairs in order and could be independent" because they were practically homeless at the time. CP at 111. Chinn further asserted that, once the modular home was placed on the property, she requested $200 in rental payments each month from her son and Little-Cadman but never received any money. Chinn also submitted an affidavit from Cadman, in which he stated that Chinn never told him that she was gifting the property to him.

Chinn filed a motion for summary judgment asserting that Little-Cadman failed to raise a "genuine issue of material fact." CP at 180. The trial court

granted Chinn's motion. The trial court determined that Little-Cadman "failed to show clear, unequivocal, strong or convincing evidence that is definite in character to sustain a parol gift." CP at 23. It concluded that "[n]o genuine issue of material fact exists" that challenges Chinn's "right of occupancy" in the property and that Little-Cadman "does not have any further possessory right." CP at 24.

Little-Cadman appeals.

II

Little-Cadman contends that the trial court erred by granting Chinn's motion for summary judgment. We disagree.

We review de novo a trial court's order granting summary judgment. Estate of Haselwood v. Bremerton Ice Arena, Inc., 166 Wn.2d 489, 497, 210 P.3d 308 (2009). Summary judgment is appropriate "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." CR 56(c). In determining whether a genuine issue of material fact exists, we "must view all facts and reasonable inferences in the light most favorable to the nonmoving party." VersusLaw, Inc. v. Stoel Rives, LLP, 127 Wn. App. 309, 320, 111 P.3d 866 (2005). "Contentions not made to the trial court in its consideration of a summary judgment motion need not be considered on appeal." Concerned

Coupeville Citizens v. Town of Coupeville, 62 Wn. App. 408, 413, 814 P.2d 243 (1991).[1]

In the trial court, Little-Cadman defended against Chinn's complaint by asserting that Chinn had orally gifted the property to her and Cadman. There is no written evidence that Chinn gifted the property to them. Thus, in order to overcome Chinn's summary judgment motion, Little-Cadman was required to demonstrate a parol gift of real property.

> There are four requirements necessary to sustain a parol gift of real estate: First, it must be a gift *in praesenti*; that is, an absolute, present gift, not a promise, nor the expectation of some future act; second, possession must be given in furtherance of the gift; third, permanent and valuable improvements must be made which cannot be compensated for in damages; and, fourth, the donee must have changed his condition or circumstances or been induced to forego some benefit or assume some liability upon the strength of the gift such as would make it inequitable not to enforce the gift.

Reinhardt v. Fleming, 18 Wn.2d 637, 639, 140 P.2d 504 (1943). "The evidence to sustain parol gifts must be clear, unequivocal, strong, convincing, and definite in character." Reinhardt, 18 Wn.2d at 639.

Here, the trial court determined that Little-Cadman "failed to show clear, unequivocal, strong or convincing evidence that is definite in character to sustain a parol gift," and that "[n]o genuine issue of material fact exist[ed]" that

[1] Little-Cadman argues for the first time on appeal that Chinn *sold* the property to her and Cadman, and Little-Cadman proffers evidence in her opening brief that she claims supports this claim. See Appellant's Br. at 8. However, we "will consider only evidence and issues called to the attention of the trial court." RAP 9.12. Because Little-Cadman did not present this issue to the trial court, we will not consider this issue or the evidence that Little-Cadman presents for the first time on appeal.

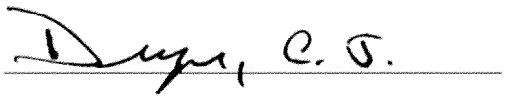
challenged Chinn's "right of occupancy" in the property. CP at 23, 24. Thus, we must determine whether the evidence presented below raises a genuine issue of material fact as to whether all of the requirements of a parol gift of real property are met.

Little-Cadman did not provide any evidence addressing the fourth requirement that she changed her circumstances, was induced to forego a benefit, or assumed any liability "upon the strength of the gift such as would make it inequitable not to enforce the gift." Reinhardt, 18 Wn.2d at 639. No evidence in the record suggests that Little-Cadman changed her circumstances or was induced to go without some benefit "*upon the strength of the gift*." Reinhardt, 18 Wn.2d at 639 (emphasis added). While there is evidence that Little-Cadman moved from property owned by other family members onto Chinn's property, this is not evidence that she changed her circumstances "upon the strength of the gift." Reinhardt, 18 Wn.2d at 639. Additionally, Little-Cadman did not demonstrate that she and her husband assumed any liability "upon the strength of the gift" of the property because she did not present any evidence that they accepted any legal or financial obligations as a result of being gifted the property. Reinhardt, 18 Wn.2d at 639.

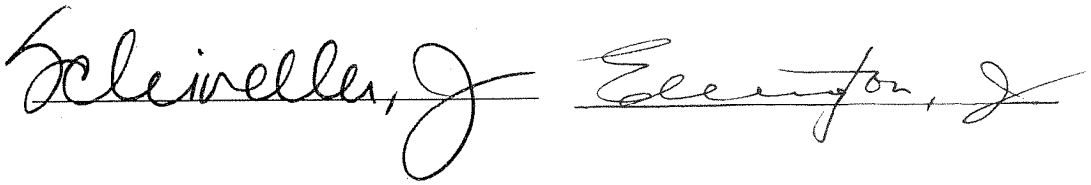
Little-Cadman presented no evidence establishing the fourth requirement of a parol gift of real property. All four requirements must be met. See Reinhardt, 18 Wn.2d at 639. Thus, we need not determine whether there was

evidence presented addressing the other three requirements of a parol gift. Because Little-Cadman raised no genuine issue regarding the purported gifting of the property or regarding any other material fact, summary judgment was properly granted.[2]

Affirmed.[3]



We concur:



[2] Little-Cadman also contends that the trial court impermissibly decided issues of credibility on summary judgment. However, the trial court did not rely on assessments of Little-Cadman's credibility in granting summary judgment. Rather, its order was based upon Little-Cadman's failure to raise a genuine issue of material fact that she had rights in the Bellingham property. The trial court did not err.

[3] Chinn contends that Little-Cadman should be sanctioned pursuant to RAP 18.9 for filing a frivolous appeal. In addition, Chinn asserts, in her motion to dismiss, to strike and for terms, and for judgment on the merits, that Little-Cadman should be sanctioned "for impermissibly attempting to supplement the record." Resp'ts' Motion at 14-15. We decline to impose sanctions in this case.