

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

HENRY ROGERS,	)	NO. 66537-5-I
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	
	)	
DARRON CAGE,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: May 29, 2012
	)	

Lau, J. — Darron Cage argues the evidence fails to support the court’s findings of fact interpreting an oral lease agreement he entered with condominium owner Henry Rogers. Because Rogers testified regarding the lease agreement’s terms and Cage’s testimony corroborated Rogers’ testimony, substantial evidence supports the court’s findings. We affirm.

**FACTS**

The following facts are undisputed. In August 2008, Henry Rogers purchased a condominium located in Renton, Washington, from Darron Cage. Cage orally leased

the condominium back from Rogers. From August 2008 through June 2010, Cage made monthly payments to Rogers. Each monthly payment for this period included the full amount of the mortgage payment, plus homeowner association dues. After making his June 2010 payment, Cage ceased all payments to Rogers. Rogers sued for unlawful detainer and default rent. On November 16, 2010, Rogers, through a man whom he granted a power of attorney, moved to continue the trial date until he could return to the country from travel abroad. The court granted this motion. On December 17, 2010, the court heard testimony from Rogers and Cage and considered exhibits. The court then entered findings of fact, conclusions of law, judgment in Rogers' favor, and an order granting attorney fees and writ of restitution to Rogers. The court denied Cage's motion for reconsideration. Cage appeals.

#### ANALYSIS

Cage argues the court abused its discretion when it granted Rogers' motion to continue the trial date because a nonattorney filed the motion. Cage acknowledges he failed to raise this argument below, but urges the court to consider the issue because we "should not allow Rogers to reap the benefit of RAP 2.5(a) due to the misrepresentation of an individual who merely held power of attorney for Rogers." Appellant's Reply Br. at 4. Cage also argues we should review the claimed error because the court entered an order continuing the trial before Cage filed his opposition. Rogers argues that Cage failed to raise these arguments below.

The appellate court may refuse to review any claim of error which was not raised in the trial court. However, a party may raise the following claimed errors for the first time in the appellate court: (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. . . .

RAP 2.5. Because Cage failed to present these arguments to the trial court and none of the RAP 2.5 exceptions apply, we decline to review this assignment of error. RAP 2.5. And even if we reviewed the claimed error, we conclude Cage fails to demonstrate any prejudice resulting from the continuance.

Cage assigns error to two of the court's findings of fact:

1.3 Defendant(s) now occupy the above described premises at a rent of \$1522.11 per month plus condo fees and utilities (\$50.74 per day), payable on the 1st day of each calendar month.

1.4 Defendant(s) are in default of the payment of rent in the amount of \$9564.45 for the period set forth on notice, on file herein, which amount is now past due and owing to the plaintiff(s).

Cage also assigns error as follows: "The trial court erred in determining that the oral month-to-month lease at issue required the appellant to pay 100% of the monthly mortgage and condominium dues." Appellant's Br. at 4. Cage asserts, "The above findings fly in the face of Rogers' acknowledgment that he paid Cage a substantial sum of money around the time which Rogers claims Cage was in default for rent (i.e. July-December, 2010)." Appellant's Br. at 15. Rogers counters that substantial evidence supports the court's findings of fact.

When the trial court has weighed the evidence, we review the trial court's factual findings for substantial evidence to support them. We then determine whether the findings of fact support the conclusions of law and judgment. Brin v. Stutzman, 89 Wn. App. 809, 824, 951 P.2d 291 (1998). "Substantial evidence is evidence in sufficient

quantum to persuade a fair-minded person of the truth of the declared premise.” Brin, 89 Wn. App. at 824 (quoting Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 819, 828 P.2d 549 (1992)). There is a presumption in favor of the trial court’s findings, and the party claiming error has the burden of showing that a finding of fact is not supported by substantial evidence. Fisher Props., Inc. v. Arden-Mayfair, Inc., 115 Wn.2d 364, 369, 798 P.2d 799 (1990). We defer to the trier of fact for purposes of resolving conflicting testimony and evaluating the persuasiveness of the evidence and credibility of the witnesses. Boeing Co. v. Heidy, 147 Wn.2d 78, 87, 51 P.3d 793 (2002). And an appellate court may not substitute its evaluation of the evidence for that made by the trier of fact. Goodman v. Boeing Co., 75 Wn. App. 60, 82-83, 877 P.2d 703 (1994). “The substantial evidence standard is deferential and requires the appellate court to view all evidence and inferences in the light most favorable to the prevailing party.” Lewis v. Dep’t of Licensing, 157 Wn.2d 446, 468, 139 P.3d 1078 (2006). We review legal issues de novo. Goodman v. Goodman, 128 Wn.2d 366, 373, 907 P.2d 290 (1995). Unchallenged findings of fact are verities on appeal. In re Estate of Jones, 152 Wn.2d 1, 8, 93 P.3d 147 (2004); see also RAP 10.3(g).

At trial, Cage and Rogers provided conflicting testimony about their oral lease agreement but agreed about which payments Cage made. Rogers testified:

Well, the reason why I bought the condo in the first place is [Cage] came to me and said that his nephew, Bernard Cage, was going to prison and he was going to lose some property that he had over in Covington if he didn't make the payments on it. And so I agreed I would buy the condo from [Cage], [Cage] was going to take the money and pay for whatever he had to bail his nephew’s property out.

He was supposed to make all the payments, all the condo assessment

fees and all the utility bills, it wasn't going to cost me anything. And that when Bernard got out of prison, he was going to sell off some of his assets and buy the condo back from me. And that never happened.

Report of Proceedings (Dec. 17, 2010) (RP) at 8. It is undisputed that Cage paid the full amount of the monthly mortgage payments and association dues from August 2008 through June 2010. Cage testified that he made the payments to Rogers because "Rogers wanted to make the payments so he could get credit for his bank account, or whatever he got points for, using his card or something." RP at 7.

It is also undisputed that Cage stopped making these payments after his June 2010 payment. Rogers testified that Cage made no lease payments in July, August, September, October, November, or December 2010. Cage admitted that he stopped making payments after June 2010. Despite paying the full amount of mortgage payments and association dues for nearly two years, Cage testified, "[T]he lease was that Mr. Rogers and I were gonna split the lease 50/50, that I was gonna stay there. I initially sold the place to Mr. Rogers, and Mr. Rogers never paid; he was gonna stay there part time. He was gonna stay in Thailand part time and he was gonna stay there part time." RP at 5-6. Rogers testified that he lived at the Renton property with Cage from April 1, 2010, until the latter part of June 2010.

Cage's argument centers on a \$3,000 check from Rogers to Cage in August 2010. He argues that this check shows that Rogers owed money to Cage because Cage paid more than his share of the lease. But Rogers offered conflicting testimony.

Rogers testified that while in Thailand, Cage sent him an e-mail stating that

Rogers was eligible for a first time home buyer's tax credit. An accountant prepared Rogers' income tax return, which included this tax credit. Rogers received a check from the Internal Revenue Service for \$7,400. Cage then told Rogers, "[T]hat money's my money because I been making the payments on this condominium." RP at 9.

Rogers testified:

And that's when the next day he brought these papers right here to me that he had printed out on the Internet from the IRS website that said I had obtained this first time home buyer's tax credit illegally, and if I didn't give him the money he was going to call the IRS and turn the wife and I both in.

And I read this to talk about the fine and imprisonment. I got scared, so I made him out a check for \$3,000. He wanted – the next day he wanted the rest of the money or he was going to call the IRS.

RP at 9-10. After consulting an accountant who told him he was not eligible for the credit, Rogers then sent a check to the IRS for \$7,687.04.

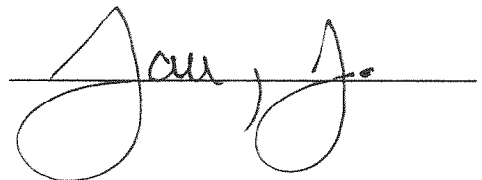
The \$3,000 payment made by Rogers to Cage does not undermine the court's findings. The court was entitled to believe Rogers' explanation rather than Cage's. "Credibility determinations cannot be reviewed on appeal." Morse v. Antonellis, 149 Wn.2d 572, 574, 70 P.3d 125 (2003).

Our review of the record shows that substantial evidence amply supports the court's challenged findings. Rogers testified that Cage agreed to an oral lease that required monthly payments constituting the full amount of mortgage payments and association dues. Cage admitted he made these payments for nearly two years. This provides not only substantial but also overwhelming evidence supporting the court's findings.

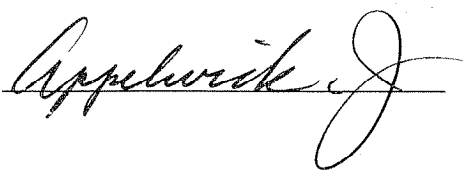
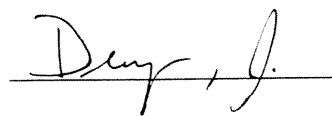
Cage's other arguments also relate only to credibility issues. Rogers testified that he lived at the property for several months in 2010 upon his return from Thailand because Cage offered him a place to stay. The court was entitled to believe this testimony. The court also was entitled to disbelieve Cage's explanation for why he paid the full amount of the mortgage and association dues for nearly two years if he was only obligated to pay half. We conclude substantial evidence supports the court's findings, and these findings support the conclusions of law.

Rogers requests attorney fees under RAP 18.1 and 18.9, arguing that Cage's appeal is frivolous. "A frivolous action is one that cannot be supported by any rational argument on the law or facts." Rhinehart v. Seattle Times, 59 Wn. App. 332, 340, 798 P.2d 1155 (1990). We resolve doubts in favor of the appellant. Lutz Tile, Inc. v. Krech, 136 Wn. App. 899, 906, 151 P.3d 219 (2007). Because we conclude that Cage's appeal is not so devoid of merit that sanctions or fees are appropriate, we decline to award Rogers fees and costs.

Affirmed.

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WE CONCUR:

A handwritten signature in cursive script, appearing to read "Appelwick", written over a horizontal line.A handwritten signature in cursive script, appearing to read "Dwyer, J.", written over a horizontal line.

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