IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

SHANGRI-LA COMMUNITY CLUB, INC., a Washington nonprofit corporation,	)	No. 66611-8-I
Respondent,	)	DIVISION ONE
v.	)	
MELVIN STRUCK and MARY STRUCK, husband and wife,	)	UNPUBLISHED OPINION
Appellants.	)	FILED: September 24, 2012

Becker, J. — Melvin and Mary Struck own two lots in a Skagit County recreational community managed by the Shangri-La Community Club. The Strucks appeal a summary judgment order in favor of Shangri-La in a foreclosure action for the couple's unpaid water dues on lot 17, where they have a house. Melvin Struck contends summary judgment was improper because there are disputed issues of fact regarding lot 16, an empty parcel that was subject to foreclosure, but which is not before us on appeal. Struck claims he quit paying water assessments on both lots because the community club refused to tell him where the water source was on lot 16. We affirm summary judgment for Shangri-

La Community Club because we find no genuine issue of material fact as to the unpaid dues for lot 17, and Struck's concerns about lot 16 are the subject of a separate foreclosure action that was still pending below.

When reviewing an order for summary judgment, we engage in the same inquiry as the trial court. Lake v. Woodcreek Homeowners Ass'n, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010), citing Berrocal v. Fernandez, 155 Wn.2d 585, 121 P.3d 82 (2005). Summary judgment is appropriate only if the pleadings, affidavits, depositions, and admissions on file demonstrate the absence of any genuine issues of material fact, and the moving party is entitled to judgment as a matter of law. CR 56(c).

Struck appeared pro se before the trial court and on appeal. Pro se litigants must comply with all procedural rules on appeal and are held to the same standard as attorneys. In re Marriage of Olson, 69 Wn. App. 621, 626, 850 P.2d 527 (1993). An appellant must provide "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). An insufficient record on appeal precludes review. Bulzomi v. Dep't of Labor & Indus., 72 Wn. App. 522, 525, 864 P.2d 996 (1994).

Struck provides a limited and confusing record on appeal, from which we cull the following facts. Shangri-La on the Skagit is a residential and recreational development served by a private water system. Shangri-La's

restrictive covenants, adopted in 1968, authorize its community club to collect dues for making water service available to lot owners. The Strucks, who live in King County, have owned lot 17 for more than 30 years and have shared ownership of lot 16 with their daughter, Karen Struck, for about 15 years. According to Melvin Struck, for many years, he "paid water without any difficulty" on both lots.

Sometime around 2005, Struck bought a trailer to put on lot 16, and reportedly asked the Shangri-La Community Club where the water source was on that lot, so he could connect to it. Struck claims that after repeated efforts, the Shangri-La president told him the club would not provide him with the location of the water hookup on lot 16, but would put in water meters in the future. Struck then stopped paying his water assessments for both lots.

In October 2006, Shangri-La filed two lien claims for the unpaid water dues for lot 16 and lot 17, then $115 each. In December 2009, Shangri-La filed complaints in Skagit County Superior Court to foreclose on the liens. Shangri-La filed two separate suits because ownership differed on the lots, with the Strucks owning lot 17, and the couple co-owning lot 16 with their daughter.[1] In November 2010, the community club moved for summary judgment on both foreclosure actions.[2]

[1] As aforementioned, only the foreclosure action for lot 17, Skagit County Superior Court cause number 09-2-02464-5, is before us on appeal. The foreclosure action for lot 16 is cause number 09-2-02466-1 and was still pending at the trial court, according to the record on appeal.

[2] Although the summary judgment motion for lot 17 confuses the two lot

Struck opposed summary judgment and/or moved to dismiss on several grounds, including improper service of process regarding lot 16 and false entry of liens. At a hearing on the motions on January 3, 2011, Struck asserted the defense that he had stopped paying the water bills on both lots because Shangri-La failed to provide him access to the water on lot 16:

> THE COURT: If I could summarize your protest, if you will, for lack of a response as to the empty lot location of the water source, you decided not to pay the water source on the lot you were utilizing at the same time?
>
> MR. STRUCK: That's correct because I had no clout with these people. They would not help me and tell me where the water was. . . . All I needed to know was where is it, to make sure the valve operates on that empty lot. They refused to do it. There's multiple correspondence with the community telling them that very thing.

The trial court reviewed the declarations of service on Struck for the lot 17 foreclosure complaint, as well as for the lot 16 complaint, and found service was proper.[3] The court also examined the 2006 liens on lot 17 and lot 16, and found that both liens were properly filed.[4] The court found the amounts as to lot 17 had been established, and the community club was entitled to costs and attorney fees, as per Shangri-La's restrictive covenant. Thus, the trial court entered

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numbers, it is evident this is a typographical error, as the subject property is described as "Lot 17, 'Shangri-La on the Skagit, Div. 1', as per plat recorded in Volume 9 of Plats, pages 52 and 53, records of Skagit County, Washington."

[3] Struck argued unsuccessfully that his daughter, Karen Struck, was improperly served by publication, as she lived at the same address where he and his wife were served. Shangri-La's counsel mistakenly thought Karen Struck lived in Michigan.

[4] Struck argued unsuccessfully that because both liens appeared under lot 17 on the Skagit County Auditor's web site and the original recorded liens from 2006 had the same property tax parcel number, they were invalid. The court found that the county web site was not the official record, and that the original liens, which were the official record, contained the legal description for lot 17 and lot 16.

summary judgment in favor of Shangri-La as to lot 17, and entered judgment and a decree of foreclosure for $2,312.94 in unpaid water dues and interest, $317.50 in costs, and $787.50 in attorney fees. Interest on the judgment, costs, and attorney fees would accrue at a rate of 12 percent.

But as for lot 16, the trial court treated Struck's defense about the missing water source as a counterclaim and allowed for the possibility of an offset against the amount owed on that lot:

> THE COURT: . . . I do agree that creates a significant concern if someone is billing you for a water supply and refuses to tell you where that water comes to your lot; that is a separate issue from the issue that's been filed in both of these cases before me today. That issue is the assessments have been made on each lot over the course of years, but they have not been paid, by your own admission, for the reasons that you stated. And I don't find that to be a valid defense in the lawsuit that's been brought by the Shangri-La Community Club.
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> . . . I will allow the summary judgment to the Shangri-La Community for the amounts claimed at this point in time. But I will keep alive your counterclaim for the failure to allow you access to the water for potential future trial if we get that far.

The trial court denied summary judgment as to lot 16 and gave Struck 30 days to provide supporting documentation for his counterclaim, noting "there is no documentation other than a single line in your response indicating refusal to allow you water supply."

Although summary judgment was entered only as to lot 17, Struck filed a notice of appeal attempting to appeal both cases because they "affect the same properties with the same owners." On February 25, 2011, Struck filed a motion

for an injunction, stay, and sanctions, seeking to prevent the Skagit County Sheriff from complying with the foreclosure order.

On March 18, 2011, this court's commissioner heard arguments regarding finality and appealability and considered Struck's motion. The commissioner ordered that Struck's appeal proceed *as to lot 17* because the trial court orders in that case "taken together leave nothing to be done and allow execution on the judgment by foreclosure." See notation ruling, March 23, 2011, citing Anderson & Middleton Lumber Co. v. Quinault Indian Nation, 79 Wn. App. 221, 225, 901 P.2d 1060 (1995). Noting that foreclosure proceedings appeared to be going forward, the commissioner said Struck was entitled to seek a stay of the trial court orders regarding lot 17, pending review, by filing a bond, cash, or other security with the Skagit County Superior Court.[5] The commissioner also noted that the claim and counterclaim as to lot 16 remained pending before the trial court.

Nonetheless, Struck disregards the commissioner's ruling and directs his arguments on appeal to the lot 16 case. His arguments regarding service by publication on his daughter for lot 16 are misplaced and irrelevant here, as the record indicates that case is still pending below. Moreover, Skagit County

[5] According to Struck, he paid "the full amount of the judgment, $4,235.63, to the Skagit County Clerk pending outcome of this appeal." Shangri-La asserts, "The amount paid was insufficient to pay off the judgment," but the community club "has refrained, of its own volition, from pursuing an execution sale pending the outcome of this appeal." The record contains no evidence of when Struck paid the judgment, or how much interest had accrued at that time.

Superior Court Judge Dave Needy examined the declarations of service and found Melvin Struck had been properly served both the lot 17 and the lot 16 complaints. Struck argues the cases must be reviewed together because ownership is the same;[6] at the same time, he asserts that because ownership differs, notice was insufficient, even though he, his wife, and his daughter all reside at the same address where he was served.[7] This is incongruous.

Struck also revives the losing argument that because both lien claims appeared under lot 17 on the Skagit County Auditor's web site, the liens are invalid. We agree with the trial court that the official record is not the county web site, but the original liens themselves, which contain the legal description of lot 17 and lot 16 and are thus valid.

Struck mistakenly claims the trial court entered summary judgment on lot 16, whereas the court gave him 30 days to gather declarations in support of his counterclaim about the missing water source on that lot. It is unclear why Struck repeatedly asserts this, as he includes in his reply brief a copy of the order on lot 16, which plainly reads:

> Defendant shall have 30 days, to Feb. 4th 2011 at 4:30 p.m., to file a specific counterclaim concerning the alleged refusal on the part of the plaintiff to provide information as to the location

[6] As aforementioned, Struck seeks to appeal both cases "in tandem" because they "affect the same properties with the same owners." Before the trial court and in his filings, however, Struck explained that he and his wife have owned lot 17 for 30 years, while they have co-owned lot 16 with their daughter for 15 years.

[7] Struck told the trial court he only learned of the lot 16 foreclosure action in November 2010 when he went to check the Skagit County court file on lot 17. But counsel for Shangri-La submitted declarations of service as to the lot 17 and lot 16 complaints, showing copies for Melvin and Mary Struck had been left with Melvin Struck on December 14, 2009. The trial court found these to be valid.

> of the water hookup on the subject property.*
>
> . . . .
>
> *If no such filing is made, plaintiff may present for entry a judgment and decree of foreclosure without further notice.

Struck apparently assigns error to the fact that a "visiting" or "roving" judge was not assigned to his cases, asserting that any Skagit County Superior Court judge would automatically have a conflict of interest with counsel practicing in Skagit County. We find no merit to this global claim, and Struck provides no support for the argument that the judge in the instant case was prejudiced. Arguments that are not supported by references to the record or by citation to relevant authority need not be considered. Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

Here, the trial court zeroed in on the issue at the heart of this case: Struck received water assessments for lot 16 and lot 17 over the course of years, and by his own admission, did not pay them, in protest over the alleged missing water source on lot 16. We agree this is not a valid defense for failing to pay the water dues on lot 17, where Struck was using water. See Panther Lake Homeowner's Ass'n v. Juergensen, 76 Wn. App. 586, 887 P.2d 465 (1995) (holding that defects in association's capital improvements did not provide members with a defense to assessments imposed to pay for such improvements).

The trial court allowed Struck to file a counterclaim on the lien for lot 16, in the event his concerns about the water source proved valid and an offset for

that lot. We agree that the two foreclosure actions should remain distinct and separate despite past confusion, and affirm summary judgment for Shangri-La Community Club as to lot 17.

Finally, Shangri-La seeks an award of attorney fees on appeal. Shangri-La's restrictive covenant provides that in a foreclosure action for unpaid assessments, "the community club shall recover all costs including costs of searching title and reasonable attorneys fees." Because Shangri-La is the prevailing party on appeal in an action to collect delinquent assessments, we conclude that an award of reasonable attorney fees and costs is proper under RAP 18.1. See Roats v. Blakely Island Maint. Comm'n, Inc., __ Wn. App. __, 279 P.3d 943, 956 (2012) (reasoning homeowners association entitled to attorney fees on appeal where collection of delinquent assessments is issue on appeal and governing documents contain provision for such an award).

Affirmed.

Becker, J.

WE CONCUR:

Grosse, J.

Cox, J.