

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

**DIVISION II**

LAWRENCE TONN and TINA TONN,  
husband and wife,

Appellants,

v.

BRENT EGGLESTON and VICKI  
EGGLESTON, husband and wife,

Respondents.

No. 39142-2-II

UNPUBLISHED OPINION

Quinn-Brintnall, J. — Following a bench trial, the trial court quieted title to residential property in Vicki and Brent Eggleston (collectively the Egglestons)<sup>1</sup> and ordered a constructive trust, which provided Vicki's parents, Lawrence and Tina Tonn (collectively the Tonns), with half of any net proceeds from a future sale of the property. The Tonns appeal, asserting that the trial court's constructive trust order is inconsistent with its finding that they did not overcome the Egglestons' record title and did not prove the existence of a partnership or joint venture. The Tonns also contend that substantial evidence does not support the trial court finding that the parties did not enter into a business relationship and that their contributions to the property were

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<sup>1</sup> We refer to individuals by his or her first name for clarity.

gifts to the Egglestons. We disagree and affirm.

### FACTS

The Tonns lived one house over from their daughter and her husband, the Egglestons, in Vancouver, Washington. In approximately 1996, the Tonns and the Egglestons began looking for a house where they could all live together. In 1997, the couples decided to purchase a house located at 900 NW Carty Road, Ridgefield, Washington (Ridgefield Property). The asking price on the house was \$284,900; Brent negotiated it down to \$270,665, a difference of \$8,350, with a down payment of \$40,000.

Before purchasing the Ridgefield Property, Lawrence owned Courtesy Moving and Storage Company, but he sold the company after it filed for bankruptcy; he also filed for personal bankruptcy. Lawrence then incorporated and became sole owner of Redwing Services (Redwing). Redwing provided the couples with \$40,000 for a down payment on the Ridgefield Property; the parties contest whether this was a gift or a loan. The Egglestons admit that they could not afford the down payment without the Tonns' help. The Tonns admit that they could not be parties to the purchase contract because they had filed for personal bankruptcy and had IRS-imposed restrictions.

From the purchase of the property until November 2007, the Egglestons and the Tonns contributed equally to a household account that the couples used to pay household expenses, which included mortgage costs, insurance, maintenance, and general household repairs.

After moving to the Ridgefield Property, Lawrence converted a hot tub room into a fourth bedroom and converted the garage into a second living room and additional bathroom. Over the years, Lawrence made several other improvements to the property, including work on the house's

water system, trucking in approximately 700 loads of fill dirt, remodeling a small barn for storage and parking space, and remodeling a large barn to accommodate his dump truck business. The Tonns borrowed money from Redwing to finance the improvements; the Egglestons did not contribute any money toward the projects, but Brent contributed his labor to improve the small barn. The Tonns and the Egglestons planted and maintained over 500 sequoia trees on the Ridgefield Property; both couples contributed money and labor to the tree project.

In 2006, Lawrence began operating a dump truck business out of the large barn on the Ridgefield Property without obtaining the required county permits. After receiving an anonymous complaint, Clark County came to the Ridgefield Property to investigate the alleged code violations. Clark County began assessing a \$500-a-day fine on the Ridgefield Property for Lawrence's operating a business without the required permits. Clark County advised the Egglestons that it would stay enforcement of the fines if they agreed to sell the property. In November 2007, the Tonns stopped contributing to the household account but continued to reside at the property. Around this time, the Egglestons decided to list the property for sale.

On February 22, 2008, the Egglestons had their attorney send a letter to the Tonns stating that they were selling the Ridgefield Property and that they would split the net proceeds with them. The Tonns did not respond to the letter and on March 4, 2008, filed a complaint in the Clark County Superior Court to quiet title, for imposition of an equitable trust, and for dissolution of a joint venture. The Egglestons counterclaimed to quiet title, for ejectment, and for nuisance.

#### Procedural Facts

A bench trial began on February 20, 2009. Lawrence testified that the couples had agreed to contribute equally toward the Ridgefield Property's \$40,000 down payment and that he had

promised to reduce the Egglestons' down payment contribution by 50 percent of any reduction in the sale price that Brent could negotiate with the seller. He stated that Redwing provided \$20,000 to each of the couples to make the down payment and that the Egglestons would settle their loan from the sale of their Vancouver home. Lawrence further testified that the Egglestons sold their home but received only \$13,948 in equity from the sale. He stated that Brent offered this money to him as a payment on Redwing's loan but that he told Brent to deposit it in the household account. When asked why he did not accept Brent's check and apply it to the loan, Lawrence responded, "I don't know why. I can't remember." 2-A Report of Proceedings (RP) at 54. Lawrence also testified that Brent had executed two promissory notes to repay his loan from Redwing, one for \$17,000 and the other for \$2,551, but implied that either Brent or Vicki took the notes while he was in the shower, thus, he could not produce them; he admitted that he did not confront the Egglestons regarding the alleged missing notes.

Lawrence also testified as to the various improvements he had made to the Ridgefield Property. He testified that he spent \$50,000 to remodel the hot tub room and garage, \$50,000 to remodel the small barn, \$10,000 to improve the water system, \$200,000 to improve the large barn, and \$40,000 to truck in fill dirt. Lawrence stated that he financed these projects through loans from Redwing and that the Egglestons did not contribute financially to any of the projects. He further stated that the Egglestons were "involved" in the decision to undertake each of these projects, except for the big barn project, which he admitted he undertook without consulting them. When asked whether he thought the Egglestons should have contributed financially to the big barn project, Lawrence responded, "I didn't really ask them because I knew [they] didn't have the money to -- to come along with me on it anyway." 2-A RP at 76.

At trial, Lawrence produced a box of receipts to prove his various expenses in improving the Ridgefield Property. The following exchange took place regarding the box of receipts,

Q. Why were you saving receipts?

A. Well, I don't know, I -- I do that all the time.

Q. Well, what was your intent?

A. Well, my intent was this is stuff that I spent money on and --

Q. And -- ?

A. You know, if they don't believe me with the numbers, then I got something --

Q. But you spent money on it. To what end, what -- to what -- to what end? Were you looking to get compensated in some form, or you just spent the money, period?

A. Well, in case I needed to show somebody that I needed it --

Q. Why would you need to, for what?

A. I don't know.

2-A RP at 135-36. On cross-examination, Lawrence admitted that some of the receipts were unrelated to improvements to the property, including a receipt for a Christmas present to the Egglestons.

Brent testified that the couples did not have any agreement about the down payment on the Ridgefield Property but that there was an understanding that they would pool their resources; the Tonns would contribute more money and they would provide the credit that the Tonns did not have because of their bankruptcy. He also denied any agreement to pay the Tonns back for any portion of the down payment. Brent further testified that the Tonns did not discuss any of Lawrence's plans to improve the property and that, if they had discussed the projects, he would not have agreed to help finance them because he could not afford it. Brent also stated that the Tonns did not request any financial contribution from him prior to the end of 2007, when this litigation began.

Tina Weeks, the real estate agent for the Ridgefield Property, testified that, because the

county rezoned the property for use as a business park, the improvements made to the Ridgefield Property had not added any value to the property. On March 6, 2009, the trial court entered its findings of fact and conclusions of law. The trial court dismissed the Tonns' quiet title claim and quieted title to the Ridgefield Property in the Egglestons. The trial court also ordered the Tonns to pay the Egglestons \$17,909.87 for their share of household expenses, which they had not paid since November 2007. Additionally, the trial court imposed a constructive trust on the net proceeds from sale of the property. The Tonns were to receive 50 percent of the net sale proceeds, less any amounts paid by the Egglestons to correct code violations and any amounts owed by the Tonns for household expenses. Only the Tonns appeal.

#### ANALYSIS

##### Standard of Review

We review a trial court's decision following a bench trial to determine whether substantial evidence supports the trial court's findings of fact and whether those findings support the trial court's conclusions of law. *Hegwine v. Longview Fibre Co. Inc.*, 132 Wn. App. 546, 555, 132 P.3d 789 (2006), *aff'd*, 162 Wn.2d 340, 172 P.3d 688 (2007). Substantial evidence exists when there is a sufficient quantity of evidence to persuade a fair-minded, rational person that a finding is true. *In re Estate of Jones*, 152 Wn.2d 1, 8, 93 P.3d 147 (2004). Unchallenged findings of fact are verities on appeal. *Davis v. Dep't of Labor & Indus.*, 94 Wn.2d 119, 123, 615 P.2d 1279 (1980). We view the evidence in the light most favorable to the prevailing party, here the Egglestons, and defer to the trial court on issues regarding witness credibility and conflicting testimony. *Weyerhaeuser v. Tacoma-Pierce County Health Dep't*, 123 Wn. App. 59, 65, 96 P.3d 460 (2004). We review the trial court's conclusions of law de novo. *Sunnyside Valley Irrigation*

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*Dist. v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003).

Title to the Ridgefield Property

The Tonns first contend that the trial court erred when it quieted title to the Ridgefield Property in the Egglestons. Although the Tonns concede that the Egglestons hold record title in the Ridgefield Property, they assert that the trial court's imposition of a constructive trust is inconsistent with its conclusion that they did not overcome the Egglestons' record title and that they did not prove the existence of a partnership or joint venture. We disagree.

In a quiet title action, the superior title, whether legal or equitable, must prevail. RCW 7.28.120; *Finch v. Matthews*, 74 Wn.2d 161, 166, 443 P.2d 833 (1968). Here, it is undisputed that the Egglestons hold record title in the Ridgefield property. The Tonns appear to argue that they have overcome the Egglestons' record title by proving that they acquired it through fraud, citing *White v. McSorley*, 47 Wash. 18, 20, 91 P. 243 (1907). But the Tonns do not argue that the trial court's findings of fact support a conclusion that the Egglestons committed fraud when they acquired record title, and they do not identify any evidence in the record supporting their claim of fraud. Moreover, the Tonns do not request that we vacate the trial court's imposition of a constructive trust on their behalf. Instead, they appear to argue that the trial court's imposition of a constructive trust is inconsistent with its finding that the parties had not entered into a business relationship and its order quieting title in the Egglestons. Even assuming without deciding that the constructive trust is inconsistent with the trial court's findings and conclusions, the Tonns are not aggrieved by that portion of the trial court's ruling. Thus, they lack standing to appeal the order. RAP 3.1 ("Only an aggrieved party may seek review by the appellate court."); *see also City of Tacoma v. Taxpayers of City of Tacoma*, 108 Wn.2d 679, 685, 743 P.2d 793

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(1987) (a party that merely objects to the reasoning underlying a trial court order is not “aggrieved” under RAP 3.1 (citing *In re Estate of Lyman*, 7 Wn. App. 945, 953-54, 503 P.2d



1127 (1972), *aff'd*, 82 Wn.2d 693, 512 P.2d 1093 (1973))). Because the Egglestons are the only party aggrieved by the constructive trust and do not cross-appeal, the order stands.<sup>2</sup>

#### Joint Venture/Partnership

Next, the Tonns contend that the trial court erred when it concluded that they failed to prove the existence of a partnership or joint venture. They, thus, assert that they are entitled to an accounting upon dissolution of the partnership. We disagree.

RCW 25.05.055 controls the formation of partnerships and provides in relevant part,

(1) . . . [T]he association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.

. . . .

(3) In determining whether a partnership is formed, the following rules apply:

(a) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

The burden of proving a partnership rests on the party alleging its existence, here the Tonns. *Curley Elec., Inc. v. Bills*, 130 Wn. App. 114, 120-21, 121 P.3d 106 (2005) (citing *Eder v. Reddick*, 46 Wn.2d 41, 49, 278 P.2d 361 (1955)), *review denied*, 158 Wn.2d 1007 (2006). Whether a partnership exists depends on the parties' intentions, which are facts based on the parties' actions and conduct and the surrounding circumstances. *Malnar v. Carlson*, 128 Wn.2d 521, 535, 910 P.2d 455 (1996). Like other contracts, a partnership cannot be created without the voluntary consent of all alleged partners. *Ferguson v. Jeanes*, 27 Wn. App. 558, 564, 619 P.2d

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<sup>2</sup> We note that a trial court sitting in equity will impose a constructive trust if there is clear, cogent, and convincing evidence of the basis for it. *Baker v. Leonard*, 120 Wn.2d 538, 547, 843 P.2d 1050 (1993). When sitting in equity, as in a quiet title action, the trial court may fashion broad remedies to do substantial justice to the parties and end the litigation; when equity jurisdiction attaches, it extends to the entire controversy. *Eichorn v. Lunn*, 63 Wn. App. 73, 80, 816 P.2d 1226 (1991).

369 (1980) (citing *Beebe v. Allison*, 112 Wash. 145, 192 P. 17 (1920)).

A joint venture is similar to a partnership but is limited to a particular transaction or project. *Pietz v. Indermuehle*, 89 Wn. App. 503, 510, 949 P.2d 449 (1998). The essential elements of a joint venture are (1) a contract, express or implied; (2) a common purpose; (3) a community of interest; (4) an equal right to a voice, accompanied by an equal right to control. *Paulson v. Pierce County*, 99 Wn.2d 645, 654-55, 664 P.2d 1202, *dismissed*, 464 U.S. 957 (1983).

Here, the trial court found that the Tonns and the Egglestons did not enter into an agreement to carry on a business for profit. Specifically, the trial court found,

All of the money spent on the improvements by the Tonns, or the companies they controlled, was spent willingly and voluntarily without any expectation that they would be reimbursed or compensated by the Egglestons. There was never any agreement that the Egglestons would share in the cost of these improvements. Nor, prior to the dispute leading to this lawsuit, did the Tonns ever request that the Egglestons share in the cost of these improvements.

Clerk's Papers at 69.

Substantial evidence supports the trial court's finding. Lawrence testified that the couples sought to purchase the Ridgefield Property as a residence and did not testify that the parties had agreed to purchase the property as a business investment. Although Lawrence stated that he had spent a large sum of money to improve the property and that the Egglestons were aware of some of his improvements, he did not testify that the Egglestons had agreed to contribute financially to those improvements. More important, Brent and Vicki each testified that they had not agreed to reimburse the Tonns for any extra money they (the Tonns) contributed toward the down payment or improvements to the property; the Egglestons further testified that the Tonns had not sought

any reimbursement from them until this litigation. The trial court found the Egelstons' testimony credible and we defer to the trial court regarding witness credibility and conflicting testimony. *Choi v. Sung*, 154 Wn. App. 303, 313, 225 P.3d 425, *review denied*, 169 Wn.2d 1009 (2010). Substantial evidence supports the trial court's finding that the Tonns and the Egglestons did not enter into a partnership or joint venture.

#### Intent to Make a Gift

Last, the Tonns contend that substantial evidence does not support the trial court's finding that their down payment and contributions to the Ridgefield Property were gifts to the Egglestons. Specifically, the Tonns contend that substantial evidence does not support the donative intent element required for a completed gift. We disagree.

The elements of a completed gift are (1) a donor's intent to presently give, (2) subject matter capable of passing by delivery, (3) an actual delivery, and (4) a donee's acceptance. *Sinclair v. Fleischman*, 54 Wn. App. 204, 207, 773 P.2d 101 (citing *Henderson v. Tagg*, 68 Wn.2d 188, 192, 412 P.2d 112 (1966)), *review denied*, 113 Wn.2d 1032 (1989). An unexplained transfer of money from a parent to a child raises the presumption that the parent intended a gift; the parent may rebut the presumption by proof that is certain, definite, reliable and convincing, and leaves no reasonable doubt as to the intention of the parties. *Wakefield v. Wakefield*, 59 Wn.2d 550, 551, 368 P.2d 909 (1962). The existence or absence of a donor's intent to give is an evidentiary issue that is resolved by the fact finder. *Buckerfield's Ltd. v. B.C. Goose & Duck Farm Ltd.*, 9 Wn. App. 220, 224, 511 P.2d 1360 (1973). We will not disturb a finding of donative intent if substantial evidence supports it. *Buckerfield's*, 9 Wn. App. at 224.

The Tonns assert that the record contains no evidence indicating their down payment to

purchase the Ridgefield Property or contributions toward the property's improvements were gifts. But as parents of the donee, it is presumed that they intended their contributions to the Egglestons to be gifts. *Wakefield*, 59 Wn.2d at 551. In support of their contention that substantial evidence does not support a finding of donative intent, the Tonns cite portions of Lawrence's testimony regarding his expenses in improving the property and its resulting benefit to the Egglestons. They, thus, appear to argue that they have overcome the presumption of donative intent. But Lawrence's testimony regarding his various expenses and its resulting benefit to the Egglestons are consistent with the making of a gift and does not support the Tonns' contention that they did not intend to gift their contributions. The Tonns have not overcome the presumption that they intended their contributions to be gifts. 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.

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QUINN-BRINTNALL, J.

We concur:

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ARMSTRONG, P.J.

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HUNT, J.