IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

AUDIT & ADJUSTMENT COMPANY, Respondent, v. DONALD EARL, Appellant.	No. 40416-8-II PART PUBLISHED OPINION

Armstrong, J. — In 2006, Donald Earl received emergency medical services from Jefferson Healthcare. Audit & Adjustment Company (Audit), a collection agency, filed a debt collection action against Earl in Jefferson County District Court to collect his unpaid hospital bills. Earl argued, as an affirmative defense, that he did not owe the debt because the hospital had wrongfully denied his application for charity care under chapter 70.170 RCW. The district court entered judgment in favor of Audit, ruling that the debt was enforceable because Earl was not eligible for charity care. We granted Earl's request for discretionary review. Earl argues that (1) the district court lacked subject matter jurisdiction over charity care eligibility; (2) Audit failed to prove it had standing under RCW 19.16.260 and .270 to maintain a collection suit against him; (3) the district court erred in admitting certain documents and testimony at trial; (4) the district court erred by concluding that the net proceeds from the sale of his property constituted income under RCW 70.170.060(5) and WAC 246-453-010(17); (5) his 2005 federal income tax return alone is sufficient to establish his eligibility for charity care under WAC 246-453-030; and (6) the superior court erred under ER 201 by taking judicial notice of adjudicative facts without providing him with notice and an opportunity to be heard. Finding no reversible error, we affirm.

FACTS

In 2006, Jefferson Healthcare charged Earl approximately $14,000 for emergency medical services, and Earl applied for charity care under chapter 70.170 RCW. RCW 70.170.060 prohibits any Washington hospital from denying a person emergency medical care based on inability to pay. The same statute directs each hospital to develop a charity care policy and a "sliding fee schedule" to "enable people below the federal poverty level access to appropriate hospital-based medical services." RCW 70.170.060(5). The Department of Health is responsible for establishing uniform definitions and procedures for charity care policies. RCW 70.170.060(3)-(4).

In support of his charity care application, Earl submitted the first page of his 2005 federal income tax return, which showed a negative adjusted gross income of $2,896. He also submitted a letter explaining that he owned two pieces of property in 2005, one on which he lived and one on which he was constructing a new residence. In September 2005, he sold the property where he lived and received approximately $70,000 in net proceeds "[a]fter deducting closing costs and serv[icing] the equity line of credit, net proceeds from the sale was approximately $70,000." Ex. 32, at 3. The hospital determined that the net proceeds constituted income, rendering him ineligible for charity care.

The hospital subsequently assigned Earl's account to Audit. In 2008, Audit filed this debt collection action against Earl in the Jefferson County District Court. At trial, Earl produced the hospital's sliding fee scale, which states, "If you are eligible for our sliding fee, charges for your services will be discounted." Clerk's Papers (CP) at 17. Earl asserted, as an affirmative defense

to the debt, that the sliding fee scale created an enforceable contract and that the hospital had wrongfully denied his application for charity care. The district court entered judgment in favor of Audit, ruling that the sliding fee scale did not create an enforceable contract and that it did not have subject matter jurisdiction to review the hospital's charity care determination.

Earl appealed and the superior court reversed, holding that the sliding fee scale had created an enforceable contract and that Earl's assertion that the hospital wrongfully denied his charity care application was an affirmative defense to the debt. The superior court remanded to the district court "for trial on the issue of whether Mr. Earl qualified for relief under the 'sliding fee scale.'" CP at 18.

On remand, Audit submitted the financial documents that Earl had provided to the hospital in support of his charity care application to show what information the hospital had relied on in determining his eligibility. The district court admitted the documents into evidence over Earl's objections that they were privileged and confidential. The district court ruled that the $70,000 Earl received from the sale of his property qualified as income under RCW 70.170.060(5) and WAC 246-453-010(17), and that Jefferson Healthcare properly denied Earl's charity care application based on this income.

Earl moved for reconsideration, arguing that the district court's determination of whether he qualified for charity care should have been based solely on his federal income tax return. After the district court denied his motion, Earl again appealed to the superior court, which affirmed the district court.

ANALYSIS

I. Charity Care Eligibility

Earl's main contention is that the district court incorrectly interpreted the statutes and administrative regulations governing charity care eligibility.[1] First, he argues that the sale of his property does not constitute income under RCW 70.170.060(5) and WAC 246-453-010.

Under RCW 70.170.060(5), "[a]ll persons with family income below one hundred percent of the federal poverty standard shall be deemed charity care patients for the full amount of hospital charges . . . ." WAC 246-453-010(17) defines "income" as "total cash receipts before taxes derived from wages and salaries, welfare payments, Social Security payments, strike benefits, unemployment or disability benefits, child support, alimony, and *net earnings from business and investment activities* paid to the individual." (Emphasis added.) Earl argues that the district court improperly concluded that the net proceeds from the sale of his property constituted "net earnings from . . . investment activities" under WAC 246-453-010(17). He does not dispute that the sale of one property to finance construction on the other constitutes an "investment activity," but he argues that the district court improperly interpreted "net proceeds" as synonymous with "net earnings." Br. of Appellant at 18-20.

We review de novo a trial court's interpretation of a statute as a question of law. *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005); *State v. Watson*, 146 Wn.2d 947, 954, 51

[1] Earl also argues that the district and superior courts' misinterpretation of the charity care statutes and regulations violated his right to equal protection of the laws. To establish an equal protection violation, a party must first show that a law or statute treats similarly situated classes of people differently. *Fell v. Spokane Transit Auth.*, 128 Wn.2d 618, 635, 911 P.2d 1319 (1996). Earl does not argue that the charity care statutes treat similarly situated people differently and therefore fails to raise a valid equal protection claim.

P.3d 66 (2002). When interpreting a statute, we first look for the statute's "plain meaning," which we discern from the ordinary meaning of the language at issue, the context of the statute as a whole, and related statutory provisions. *Jacobs*, 154 Wn.2d at 600. Definitions included in the statute are controlling. *Watson*, 146 Wn.2d at 954. If a term is undefined, we will use a standard dictionary definition to find the term's plain and ordinary meaning. *Watson*, 146 Wn.2d at 954.

The provision "net earnings from . . . investment activities" is not defined by statute or administrative regulation. WAC 246-453-010(17). The ordinary meaning of "earnings" is "the balance of revenue for a specific period that remains after deducting related costs and expenses incurred—compare profit." Webster's Third New Int'l Dictionary, at 714 (2002). "Net earnings" is equivalent to "net income" and means "the balance of gross income remaining after deducting related costs and expenses [usually] for a given period and losses allocable to the period." Webster's, *supra*, at 1520; *see also* Black's Law Dictionary, at 832, 1139 (9th ed. 2009). In contrast, "proceeds" means "[t]he value of land, goods, or investments when converted into money; the amount of money received from a sale." Black's, *supra*, at 1325. "Net proceeds" means "[t]he amount received in a transaction minus the costs of the transaction (such as expenses and commissions)." Black's, *supra*, at 1325.[2]

Thus, net proceeds are the total revenue realized from a transaction, such as a sale, while net earnings are the profit from a sale and therefore require deduction of, at least, the original

[2] *Webster's Third New International Dictionary* defines "proceeds" similarly, but less straightforwardly, as "what is produced by or derived from something (as a sale, investment, levy, business) by way of total revenue: the total amount brought in." Webster's, *supra*, at 1807. It does not define the term "net proceeds."

purchase price. For example, we would calculate Earl's net proceeds from the sale by taking the sale price and deducting any fees paid to facilitate the transaction. We would calculate Earl's net earnings by deducting the original purchase price, the cost of other improvements, and the costs of sale from the net sale price. Earl is correct that "net proceeds" is not synonymous with "net earnings." And, because Earl self-reported that the $70,000 he received from the sale of his property was net proceeds, without supplying any additional information from which the hospital or district court could verify whether all or any portion of the $70,000 constituted net earnings, it is unclear whether this money qualifies as income under WAC 246-453-010(17).

Earl next argues that his 2005 federal income tax return alone is sufficient evidence to establish his eligibility for charity care under WAC 246-453-030. That regulation provides:

> Any *one* of the following documents *shall be considered sufficient evidence upon which to base the final determination of charity care sponsorship status*, when the income information is annualized as may be appropriate:
> (a) A 'W-2' withholding statement;
> (b) Pay stubs;
> (c) *An income tax return from the most recently filed calendar year*;
> (d) Forms approving or denying eligibility for medicaid and/or state-funded medical assistance;
> (e) Forms approving or denying unemployment compensation; or
> (f) Written statements from employers or welfare agencies.

WAC 246-453-030(2)(a)-(f) (emphasis added).

While a hospital may rely solely on an income tax return to make a charity care determination under WAC 246-453-030(2)(c), Earl did not submit a complete income tax return. An income tax return is the complete 1040 form plus all applicable attachments. The return is not valid unless it is signed, and the signature appears on the second page of the 1040 form.[3] Earl

[3] *See* Department of the Treasury Internal Revenue Services, *1040 Instructions*, at 72 (2010), http://www.irs.gov/pub/irs-pdf/i1040.pdf.

submitted only the first page of his 1040 form. And, the fact that the first page of Earl's tax return does not show a gain from the sale of his property does not mean he realized no gain from the sale of his property. As Audit argues, a taxpayer may exclude certain types of income from the gross income reported. For example, under 26 U.S.C. § 121(a):

> Gross income shall not include gain from the sale or exchange of property if, during the 5-year period ending on the date of the sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence for periods aggregating 2 years or more.

Earl argues, however, that the district court clearly erred by finding the $70,000 was net earnings and that this alone requires that we remand for a new trial. We disagree. The district court did initially find the $70,000 to be net earnings. But in ruling on Earl's motion to reconsider, the court noted that Earl had supplied only the first page of his income tax return. It then explained that this single page would not disclose some of the sources of income defined in WAC 246-453-010(17). Thus, the district court relied in part on Earl's failure to supply all the information pertaining to his actual income. Moreover, we can affirm a trial court's decision on any ground. *Nast v. Michels*, 107 Wn.2d 300, 308, 730 P.2d 54 (1986) (citing *Reed v. Streib*, 65 Wn.2d 700, 709, 399 P.2d 338 (1965)). Earl had the burden of proving his affirmative defense that he qualified for charity care under chapter 70.170 RCW. *See Olpinski v. Clement*, 73 Wn.2d 944, 950, 442 P.2d 260 (1968); *Robertson v. Club Ephrata*, 48 Wn.2d 285, 290, 293 P.2d 752 (1956); *see also* WAC 246-453-020(5) ("The failure of a responsible party to reasonably complete appropriate application procedures shall be sufficient grounds for the hospital to initiate collection efforts directed at the patient."). Because he submitted only the unsigned first page of his tax return and selectively submitted information about his property sale, he failed to meet his

burden of proof.

A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder shall be filed for public record in accordance with RCW 2.06.040, it is so ordered.

II. Standard of Review

We review de novo a district court's decision de novo to determine whether the court has committed any errors of law. RALJ 9.1(a); *State v. Thomas*, 146 Wn. App. 568, 571, 191 P.3d 913 (2008). We review the district court's factual findings to determine whether substantial evidence supports them. RALJ 9.1(b). Earl has represented himself in the proceedings below and in this appeal. We hold pro se appellants to the same standard as attorneys. *Westberg v. All-Purpose Structures, Inc.*, 86 Wn. App. 405, 411, 936 P.2d 1175 (1997).

III. Jurisdiction

Earl contends that the district court lacked subject matter jurisdiction to determine whether he is eligible for charity care, arguing that the Department of Health has exclusive jurisdiction over such determinations under WAC 246-453-020. Audit responds that this argument is inconsistent with Earl's position at trial. Although Earl did not raise this issue at trial, the district court initially ruled that it did not have jurisdiction over charity care eligibility, and Earl argued in his superior court appeal that the district court's judgment was void because the court lacked subject matter jurisdiction. Moreover, a party can raise a trial court's lack of subject matter jurisdiction at any time. RAP 2.5(a)(1); *Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit Cnty.*, 135 Wn.2d 542, 556, 958 P.2d 962 (1998).

The Department of Health's rules implementing the charity care statutes, chapter 70.170 RCW, are codified under chapter 246-453 WAC. RCW 70.170.060(3)-(4); WAC 246-453-001. WAC 246-453-020(9) provides the procedure for appealing a hospital's charity care determination:

> All [applicants] denied charity care sponsorship . . . shall be provided with, and notified of, an appeals procedure that enables them to correct any deficiencies in documentation or request review of the denial and results in review of the determination by the hospital's chief financial officer or equivalent. . . .
> . . . .
> (c) In the event that the hospital's final decision upon appeal affirms the previous denial of charity care designation . . ., the [applicant] and the department of health shall be notified in writing of the decision and the basis for the decision, and the department of health shall be provided with copies of documentation upon which the decision was based.
> (d) The department [of health] will review the instances of denials of charity care. In the event of an inappropriate denial of charity care, the department may seek penalties as provided in RCW 70.170.070.

Thus, the Department of Health is required to review a hospital's final determination denying a patient's charity care application, but it is not required to hold a hearing on the matter or issue a formal ruling or notification. The Department may, but is not required to, seek penalties under RCW 70.170.070 if it determines that charity care was wrongfully denied.

Here, the hospital complied with the appeals procedure required under WAC 246-453-020(9). Earl appealed Jefferson Healthcare's initial denial of his charity care application and the hospital's chief financial officer affirmed the denial. At both district court trials, employees from Jefferson Healthcare testified that the hospital had reported its denial of Earl's charity care application to the Department of Health and that the Department had not disputed the hospital's decision.

Because the hospital complied with the appeals procedure required under WAC 246-453-020(9) and that regulation does not grant the Department of Health *exclusive* jurisdiction over charity care eligibility determinations or otherwise prevent a party from asserting that a hospital wrongfully denied a charity care application as an affirmative defense to a debt collection action, we reject Earl's argument that the district court lacked subject matter jurisdiction over the issue of his eligibility for charity care.

IV. Standing

Earl next argues for the first time on appeal that Audit failed to prove it is the assignee of Jefferson Healthcare's claims against him and failed to establish standing to maintain an action against him under the Collection Agency Act, chapter 19.16 RCW. Specifically, he argues that Audit failed to comply with RCW 19.16.260 and .270.

RCW 19.16.260 provides that no collection agency "may bring or maintain an action in any court of this state involving the collection of a claim of any third party without alleging and proving that he or it is duly licensed under this chapter and has satisfied the bonding requirements hereof, if applicable . . . ." RCW 19.16.270 provides that in a collection action, "the assignment of the claim to [the collection agency] by his or its customer shall be conclusively presumed valid, if the assignment is filed in court with the complaint, unless objection is made thereto by the debtor in a written answer or in writing five days or more prior to trial."

Here, Audit asserted in its complaint that it is a licensed collection agency and submitted its assignment from Jefferson Healthcare to the district court in the first trial. Earl never disputed the validity of Audit's licensing or assignment in his pleadings or at trial. He now argues that

Audit failed to comply with RCW 19.16.260 and .270 because it did not file a copy of the assignment with its complaint and never submitted proof of licensing or bonding.

Audit argues that we should decline to consider these arguments because Earl did not raise them below. We agree. "If the issue of standing is not raised to the trial court, it may not be considered on appeal." *State v. Cardenas*, 146 Wn.2d 400, 404-05, 47 P.3d 127, 57 P.3d 1156 (2002) (citing *Tyler Pipe Indus., Inc. v. Dep't of Revenue*, 105 Wn.2d 318, 327, 715 P.2d 123 (1986), *overruled on other grounds by Tyler Pipe Indus., Inc. v. Dep't of Revenue*, 453 U.S. 232, 107 S. Ct. 2810, 97 L. Ed. 2d 199 (1987)).

Earl notes that in *Trust Fund Services v. Aro Glass Company*, 89 Wn.2d 758, 761, 575 P.2d 716 (1978), our Supreme Court declined to decide "whether the possession of a license [under RCW 19.16.260] is necessary for the court's jurisdiction over the subject matter or whether it merely involves a party's capacity to sue [under CR 9(a)]." Br. of Appellant at 38-39. He asks us to consider the issue. Although subject matter jurisdiction may be raised for the first time on appeal, Earl does not present a clear or reasoned argument on this issue. He cites cases that do not apply to subject matter jurisdiction: *Treffry v. Taylor*, 67 Wn.2d 487, 488-89, 408 P.2d 269 (1965), which addresses the constitutionality of a statute requiring contractors to procure a registration certificate before engaging in business, and *Nicolaysen v. Burgess*, 10 Wn. App. 224, 225, 517 P.2d 222 (1973), and *King County v. Rea*, 21 Wn.2d 593, 594, 596-97, 152 P.2d 310 (1944), which both address a plaintiff's standing to maintain a suit. We "will not review issues for which inadequate argument has been briefed or only passing treatment has been made." *State v. Thomas*, 150 Wn.2d 821, 868-69, 83 P.3d 970 (2004), *abrogated in part on other*

grounds by Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004).

V. Evidentiary Errors

Earl next contends that the district court erred by admitting into evidence his letter to the hospital describing his financial circumstances. The letter states:

> Per our conversation at your office, it is my understanding that you need additional information to document the financing activities I have been using to cover living expenses for the past 12 months. As these financing activities involve numerous transactions, involving a variety of secured and unsecured credit accounts, it is VERY important to me that documentation be held in the strictest confidence, and that under no circumstances is the information to be made available to anyone except on the most limited "need to know" basis necessary to facilitate the sliding fee application.

Ex. 32, at 3. Because the letter states that it is confidential, Earl argues that it is privileged and, therefore, was not subject to discovery by Audit or admissible at trial. He objected on this ground at trial and the district court ruled that he had waived confidentiality by placing his eligibility for charity care at issue.

We review a trial court's ruling admitting evidence for an abuse of discretion. *State v. George*, 150 Wn. App. 110, 117, 206 P.3d 697 (2009). A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds. *George*, 150 Wn. App. at 117.

A privilege may be based on a constitutional provision, a statute, or common law. *See Senear v. Daily Journal-Am.*, 97 Wn.2d 148, 151, 641 P.2d 1180 (1982). The mere fact that information was communicated in confidence does not create a privilege. *See Senear*, 97 Wn.2d at 153 ("Under the common law, a privilege is not created, either expressly or impliedly, simply because a conversation was made in confidence."); *State v. Johnson*, 9 Wn. App. 766, 773, 514

P.2d 1073 (1973) ("The mere fact that information was communicated in confidence or under pledge of secrecy does not raise a privilege."). Earl cites no constitutional provision, statute, or common law authority supporting his claim that his letter to the hospital is privileged, and the fact that it was communicated to the hospital in confidence is insufficient to create a privilege. *See Senear*, 97 Wn.2d at 153; *Johnson*, 9 Wn. App. at 773. Accordingly, the trial court did not abuse its discretion by admitting the letter into evidence. *See George*, 150 Wn. App. at 117.

Earl next argues that the district court erred by admitting testimony and evidence regarding the hospital's appellate review of his charity care eligibility, citing RCW 4.24.250. While Earl objected to the evidence, he did not object on this specific ground at trial. "A party may only assign error in the appellate court on the specific ground of the evidentiary objection made at trial." *State v. Guloy*, 104 Wn.2d 412, 422, 705 P.2d 1182 (1985) (citing *State v. Boast*, 87 Wn.2d 447, 553 P.2d 1322 (1976)). Accordingly, he is precluded from challenging testimony on this ground on appeal. Even if we chose to address the argument, RCW 4.24.250[4] applies to hospital committees that review the qualifications of health care providers or the quality of patient care; it does not apply to a hospital's review of charity care qualification appeals.

Finally, Earl asserts that the district court erred under RCW 70.02.060 by ruling that Audit, as the assignee of Jefferson Healthcare, had the right to obtain the hospital's records

[4] The statute provides that when a health care provider files charges against another member of the profession before a "regularly constituted review committee . . . whose duty it is to evaluate the competency and qualifications of members of the profession . . ." or before a "regularly constituted committee . . . whose duty it is to review and evaluate the quality of patient care," the "proceedings, reports, and written records of such committees . . . are not subject to review or disclosure, or subpoena or discovery proceedings in any civil action . . . ." RCW 4.24.250(1); *see also Adcox v. Children's Orthopedic Hosp. & Med. Ctr.*, 123 Wn.2d 15, 30, 864 P.2d 921 (1993).

without engaging in normal discovery procedures. He provides no argument to support this assignment of error and, accordingly, has waived it. *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004), *abrogated on other grounds by Crawford*, 541 U.S. 36.

Again, even if we did address his argument, RCW 70.02.060 does not apply. The statute sets forth the procedure for discovery requests of health care information and provides that "[w]ithout the written consent of the patient, the health care provider may not disclose the health care information sought . . . ." RCW 70.02.060(2). "Health care information" is defined as "any information, . . . that identifies or can readily be associated with the identity of a patient, *and* directly relates to the patient's health care . . . ." RCW 70.02.010(7) (emphasis added). Earl's financial information did not directly relate to his health care and, therefore, was not protected from disclosure under RCW 70.02.060.

VI. Judicial notice

Finally, Earl contends that the superior court erred under ER 201 by ruling that substantial evidence in the record supported the district court's judgment. He argues the superior court's ruling "was, by definition, judicial notice of [an] adjudicative fact," and he was entitled to notice and an opportunity to be heard under ER 201. Br. of Appellant at 33.

"Judicial notice" means "[a] court's acceptance, for purposes of convenience and without requiring a party's proof, of a well-known and indisputable fact." Black's Law Dictionary, at 923 (9th ed. 2009). ER 201 governs the scope and process for taking judicial notice of facts that are "(1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."

ER 201(b). "A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed." ER 201(e).

ER 201 does not apply here. When a party appeals a district court's decision, the superior court is required to "accept those factual determinations supported by substantial evidence in the record" and review the district court's decision to determine whether the court committed any errors of law. RALJ 9.1(a)-(b). Such review does not constitute judicial notice. The superior court does not accept facts without requiring proof; it reviews the record to determine whether the evidence admitted at trial supports the district court's factual determinations. RALJ 9.1(b).

Affirmed.

Armstrong, J.

We concur:

Quinn-Brintnall, J.

Worswick, A.C.J.