IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 28334-8-III**
	)	
Respondent,	)	
	)	
v.	)	
	)	
JAMES R. LEE, SR.,	)	
	)	
Respondent,	)	
	)	
MITZI L.H. LEE,	)	
	)	
Respondent Intervenor,	)	**Division Three**
	)	
LANA T. FRAZIER-TURNER and JOHN DOE TURNER; wife and husband; JAMES R. LEE, JR. and JANE DOE LEE, husband and wife,	)	
	)	
Appellants,	)	
	)	
EARL S. LEE and JANE DOE LEE, husband and wife, and YAKIMA COUNTY,	)	
	)	
Defendants.	)	**UNPUBLISHED OPINION**

Korsmo, J. — In this condemnation action, James R. Lee Jr. and Lana Frazier-

Turner challenge the trial court's determination that a quitclaim deed executed by their mother transferring property to them was void. They also challenge their dismissal from the case, and allege that the trial court erred in awarding an equitable lien in the quitclaimed property to their parents' marital community. Their parents seek attorney fees for responding to frivolous litigation. We affirm and award the requested attorney fees.

FACTS

James and Mitzi Lee were married in 1949. As a wedding gift, Ms. Lee's aunt gave them a house located at 1412 East Yakima Avenue (1412) in Yakima. After her aunt's death, Ms. Lee inherited the adjoining house located at 1414 East Yakima Avenue (1414) as her separate property. The Lees moved into the house on 1414 and raised their 13 children there. Over the years, the house sustained fire damage three times, and each time Mr. Lee rebuilt the 1414 house using materials from the 1412 house. Mr. Lee also expanded the 1414 residence during the 1960s. Mr. Lee estimates that the marital community invested over $100,000 worth of labor and materials into improving the 1414 property.

Since 1994, Ms. Lee and Mr. Lee have been living separate and apart with no intention to reconcile. Mr. Lee remained in the 1414 house, while Ms. Lee lives with

Lana Frazier-Turner, one of the couple's daughters. After Ms. Lee moved out, Mr. Lee made approximately $6,700 worth of improvements to the 1414 house.

In June 2008, while still living with Ms. Frazier-Turner, Ms. Lee executed a quitclaim deed to the 1414 property, transferring all interests in the property to one of the couple's sons, James R. Lee Jr., and Ms. Frazier-Turner (Appellants).

In October 2008, the State filed a condemnation petition asserting the necessity to condemn and acquire a portion of the 1412 and 1414 properties for highway construction. The petition identified Mr. Lee and Appellants as the titled owners of 1412 and 1414. On January 8, 2009, an Order Adjudicating Public Use and Necessity was entered.

In April 2009, Mr. Lee filed a motion for partial summary judgment to establish the community's equitable lien in the 1414 property. He filed a declaration in support of the motion. Mr. Lee and Appellants then stipulated to a Judgment and Decree of Appropriation which sold the condemned portion of the properties to the State for $170,000. Ms. Lee was not a party to the agreement. The State paid the funds into the court's registry for disbursement. The trial court then granted Mr. Lee's motion for partial summary judgment, giving the Lee marital community an equitable lien in 1414. The order left open the issues of the amount of the lien and the amount of the condemnation award owed Mr. Lee.

A bench trial was held in June 2009 to resolve the remaining disbursement issues. The trial court ruled that Ms. Lee did not intend to transfer her interest to Appellants, invalidated the quitclaim deed, and dismissed Appellants from the case. The court also awarded Mr. Lee a $6,700 lien against 1414 for investments made after the couple separated. The court awarded Ms. Lee $6,700 as separate property from the land taken from 1414. The court awarded the marital community a lien of $153,300 on 1414, and awarded $3,300 to the community for the partial taking of 1412. The court ordered the entire amount of Mr. Lee's separate equitable lien and one-half of the community lien disbursed to him. The remaining money was disbursed to King County as part of a guardianship action involving Ms. Lee.

Appellants, acting *pro se*, timely appealed the trial court's decision. Ms. Lee, through her guardian, was permitted to intervene in the appeal. After her appearance, this court directed the parties to address the validity of the settlement in light of the ruling on the quitclaim deed.

ANALYSIS

As we understand it, this appeal raises three substantive issues: (1) whether the trial court erred in finding that the quitclaim deed was invalid, (2) whether the trial court erred in dismissing Appellants from the condemnation proceedings, and (3) whether the

court erred in awarding Mr. and Ms. Lee's marital community an equitable lien in the 1414 property. We address each issue in turn.

Validity of Deed

Appellants first challenge the trial court's finding that Ms. Lee did not intend to transfer property rights to them and its conclusion that the quitclaim deed was invalid.

Findings of fact are reviewed for substantial evidence. *State v. Wright*, 155 Wn. App. 537, 230 P.3d 1063, *review granted*, 169 Wn.2d 1026 (2010). Substantial evidence exists where the record is sufficient to persuade a fair-minded person that the fact is true. *Sunnyside Valley Irr. Dist. v. Dickie*, 149 Wn.2d 873, 879, 73 P.3d 369 (2003). Where substantial evidence exists, an appellate court will not disturb a trial court's finding even if it would have resolved the factual dispute differently. *Quinn v. Cherry Lane Auto Plaza, Inc.*, 153 Wn. App. 710, 717, 225 P.3d 266 (2009), *review denied*, 168 Wn.2d 1041 (2010). Unchallenged factual findings are verities on appeal. *In re Interest of Mahaney*, 146 Wn.2d 878, 895, 51 P.3d 776 (2002). Conclusions of law are reviewed *de novo*, and will be upheld if supported by the findings. *In re Disciplinary Proceeding Against Behrman*, 165 Wn.2d 414, 421-422, 197 P.3d 1177 (2008).

In order to review a trial court's findings and conclusions, the record before us must be sufficiently complete so as to permit review of all evidence relevant to the issues presented. *In re Detention of Morgan*, 161 Wn. App. 66, 84, 253 P.3d 394 (2011). *Pro se* appellants are held to the same standards as attorneys, and this court will generally not

consider assertions not supported by an adequate record. *Westberg v. All-Purpose Structures, Inc.*, 86 Wn. App. 405, 411, 936 P.2d 1175 (1997); RAP 10.3. Failure to either submit a complete record or give pertinent argument as to why findings are unsubstantiated renders those findings verities on appeal. *Inland Foundry Co., Inc. v. Dep't of Labor & Indus.*, 106 Wn. App. 333, 340, 24 P.3d 424 (2001).

Here, Appellants have failed to supply a sufficient record to permit consideration of their claims. Moreover, they fail to provide any pertinent legal analysis in support of their argument. Thus, we will not entertain their argument and will instead consider the challenged finding a verity for purposes of this appeal.[1] *State v. Mannhalt*, 33 Wn. App. 696, 704, 658 P.2d 15, *review denied*, 100 Wn.2d 1024 (1983); *Inland Foundry Co.*, 106 Wn. App. at 340; RAP 9.2(b).

An effective transfer of real property requires a present intent to transfer the property and delivery of the deed. *Clearwater v. Skyline Constr. Co.*, 67 Wn. App. 305, 318-319, 835 P.2d 257 (1992), *review denied*, 121 Wn.2d 1005 (1993); *Estate of O'Brien v. Robinson*, 109 Wn.2d 913, 918, 749 P.2d 154 (1988). The trial court did not err in concluding that the quitclaim deed was invalid since this conclusion invariably flows

[1] In any event, we note that the limited record before us appears to support the challenged finding, since Ms. Lee stated in a sworn statement that she intended to quitclaim the land to her children in order for them to protect her interests and to ensure her wishes were carried out should she suddenly pass away. Clerk's Papers at 49.

from its finding that Ms. Lee did not intend to immediately transfer her interests in 1414 to Appellants.[2]

Dismissal from Proceedings

Next, Appellants challenge their dismissal from the proceedings below. They argue that their dismissal created an impermissible taking under the Fifth Amendment.

Condemnation is an action *in rem*, involving the property itself. *Port of Grays Harbor v. Bankr. Estate of Roderick Timber Co.*, 73 Wn. App. 334, 338, 869 P.2d 417 (1994). Only parties with either a legal or equitable interest in the property may share in a condemnation award. *Id.* Where a party lacks such an interest, dismissal is appropriate. *Id.* Since we affirm the trial court's conclusion that the quitclaim deed was invalid, we likewise affirm the trial court's dismissal of Appellants because they had no legitimate interest in 1414. *Id.*

Finally, Appellants contend that the trial court erred in granting partial summary judgment because 1414 is Ms. Lee's separate property and Mr. Lee is not entitled to any portion of it. Here too, they fail to offer pertinent argument or citation to the record.

[2] Despite the trial court's finding that Appellants had no interest in 1414, there is no issue as to the validity of the agreement entered into by Appellants and Mr. Lee with the State as Ms. Lee has waived any potential notice issues, and the trial court has the equitable power to apportion the condemnation proceeds and substitute parties or transfer interests as necessary. *See* CR 25(c); *State v. Spencer*, 90 Wn.2d 415, 418, 583 P.2d 1201 (1978); *Stella Sales, Inc. v. Johnson*, 97 Wn. App. 11, 14, 18, 985 P.2d 391, *review denied*, 139 Wn.2d 1012 (1999).

Nonetheless, in light of our holding above, it is readily apparent that Appellants lack standing to raise this issue since litigants generally may not assert the rights of another. *See Hallman v. Sturm Ruger & Co., Inc.*, 31 Wn. App. 50, 52 n.1, 639 P.2d 805 (1982). Since Appellants lack standing to raise this issue, we will not consider it.

Attorney Fees

Mr. Lee and Ms. Lee each request attorney fees pursuant to RAP 18.9 for defending against a frivolous appeal. An appeal is frivolous if, considering the entire record, no debatable issue is presented upon which reasonable minds might differ and it is so devoid of merit that there is no reasonable possibility of reversal. *Goad v. Hambridge*, 85 Wn. App. 98, 105, 931 P.2d 200, *review denied*, 132 Wn.2d 1010 (1997). An appeal that is affirmed merely because the appellant's arguments are rejected is not frivolous. *Tiffany Family Trust Corp. v. City of Kent*, 155 Wn.2d 225, 241, 119 P.3d 325 (2005).

However, this is not a case where affirmation results from a mere rejection of argument. On the contrary, Appellants failed to provide proper legal argument in support of their contentions as required by RAP 10.3. Moreover, they failed to provide sufficient record to permit meaningful review as required by RAP 9.2(b). Given the lack of relevant argument and the limited record before us, no reasonable mind could differ as to the result; accordingly, there was no reasonable possibility of reversal. *See In re*

Settlement/Guardianship of AGM, 154 Wn. App. 58, 86, 223 P.3d 1276 (2010). This appeal is frivolous, and the requests for attorney fees are granted.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Korsmo, J.

WE CONCUR:

_____
Kulik, C.J.

_____
Siddoway, J.