IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

JOHN J. SANNA, Appellant, v. BEN VEENHUIZEN (Owner), father, aka VEENHUIZEN LOGGING, VEENHUIZEN ENTERPRISES, Respondents, and CLAY VEENHUIZEN (Mechanic), son, Defendant.	)	No. 30145-1-III UNPUBLISHED OPINION

Siddoway, A.C.J. — John Sanna was denied an award of attorney fees and costs after prevailing on a claim under the Consumer Protection Act (CPA), chapter 19.86 RCW. While the trial court found that "virtually no time was spent at trial" on the CPA issue, some effort was necessarily expended, in light of the jury's verdict. And while the court noted that Mr. Sanna did not recover monetary damages, the jury awarded him the return of property, which satisfies the required CPA element of injury.

Because Mr. Sanna prevailed on his CPA claim, it was error to deny him any award at all. We remand to the trial court for a determination of his reasonable attorney fees and costs attributable to that claim. We award him fees and costs on appeal.

FACTS AND PROCEDURAL BACKGROUND

Ben Veenhuizen, doing business as Veenhuizen Enterprises, owned and operated an automotive repair shop. Beginning in the fall of 2007 and continuing through December 2008, John Sanna hired Veenhuizen[1] to perform repairs to his vehicles and generators, including a 1993 Chevrolet Blazer, a 1991 Ford Explorer Sport, and a 1977 3/4-ton Chevrolet pickup truck. Veenhuizen did not provide written invoices for the repairs performed.

By December 2008, the parties reached an impasse over completion of the work. Clay Veenhuizen, Ben Veenhuizen's son and an employee of the business, had taken apart the engine of the 1977 Chevrolet truck but said that additional money for parts was needed before the work could be completed. Mr. Sanna complained that the shop had failed to provide him with a diagnosis of the repairs required and had misused amounts he

[1] Ben Veenhuizen testified that he used different business cards over time, some identifying his business as "'Veenhuizen Enterprises'" and others as "'Veenhuizen Logging.'" Report of Proceedings (May 16, 2011) at 132. We refer to his sole proprietorship (which is vicariously liable for the actions of the shop's employees) and to him, collectively, as "Veenhuizen." As discussed hereafter, Clay Veenhuizen, Ben Veenhuizen's son and an employee of the shop, was dismissed as an individual defendant as a matter of law, before the trial court submitted the case to the jury.

had paid for parts, and he had decided to take the truck elsewhere for repair. Clay Veenhuizen refused to put the engine back together. He testified that Mr. Sanna was not willing to pay him for his work on the engine to date or the cost of putting it back together, stating, "I would have lost all the work I had already had . . . in it." Report of Proceedings (RP) (May 16, 2011) at 116.

Mr. Sanna repeatedly tried to contact Veenhuizen via e-mail and telephone to reclaim his property, but his messages were ignored. He unsuccessfully sought the intervention of the Attorney General's Office and later prepared his own demand letter to Veenhuizen.

In June 2009, Veenhuizen filed chattel liens against Mr. Sanna's 1991 Ford Explorer and his 1977 Chevrolet truck for amounts owed for labor and materials. Mr. Sanna responded by filing, pro se, a complaint for writ of replevin. After later obtaining counsel, Mr. Sanna filed an amended complaint, asserting additional claims for conversion/trespass to chattel; negligent repair/breach of implied warranty; negligent bailment; and violations of the automotive repair act (ARA), chapter 46.71 RCW, and the CPA.

The case was tried to a jury over two days in May 2011. Before submitting the case to the jury, the court partially granted Veenhuizen's motion to dismiss Mr. Sanna's claims as a matter of law. The claims that survived and were submitted to the jury were

Mr. Sanna's claims against Veenhuizen for replevin, conversion, for one of his three ARA violations asserted by the complaint, and for violation of the CPA. The ARA and CPA claims were based on Veenhuizen's alleged failure to provide a written estimate for repair of the 1977 Chevrolet truck.

The jury returned a special verdict finding that the defendants had violated the ARA and the CPA, had illegally imposed a lien on the Chevrolet truck and illegally foreclosed on it, and that the truck, "[i]ncluding snow plow attachment," should be returned to Mr. Sanna. Clerk's Papers (CP) at 91. It found that the defendants were not liable for conversion. In the section of the verdict form for awarding damages, the jury entered a zero in the spaces provided for "Value of the Property Taken," "Loss of Use Damages," "Loss of Income Damages," "Noneconomic Damages," and "Total Just Compensation."[2] *Id.*

Mr. Sanna thereafter moved for an award of attorney fees, costs, and treble damages based on the CPA violation, requesting a total of $43,069.00 in fees and $1,537.27 in costs. The trial court denied the motion and later entered findings and conclusions in support of its denial. With respect to Mr. Sanna's request for an award of

[2] In a blank provided for the "value of all the property converted," the jury wrote "$1500." CP at 91. We accept the trial court's reasonable conclusion that the figure was "just a gratuitous finding that they felt obligated to make, because they didn't find that there was any liability for conversion on the part of the defendant, they just offer a value of the personal property." RP (June 14, 2011) at 280.

fees and costs, the court found, in part:

> E. . . . The jury . . . found the Automotive Repair Act and Consumer Protection Act had been violated, and that the defendant, Ben Veenhuizen, had illegally imposed a lien on plaintiff's truck and had illegally foreclosed on that lien. But the jury also found the plaintiff had not suffered damages—no "value of property taken,["] no "loss of use damages," no "loss of income damages," no "non-economic damages," and zero "total just compensation" (document no. 177). The jury rejected plaintiff's claim he was harmed by Auto Repair Act and Consumer Protection Act violations; i.e., that he had suffered actual damages.
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> . . . .
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> H. The plaintiff did not recover any damages on his Automotive Repair Act or Consumer Protection Act claims. And, "virtually no time was spent at trial on these issues" (Automotive Repair Act and Consumer Protection Act), plaintiff's memorandum p. 3.

CP at 55-56. Its conclusions of law provided, in part:

> A. . . . The only successful claim by plaintiff was the one for replevin, and the remedy was return of the 1977 Chevrolet truck, valued at $1,500, with no award of $1,500. This was one of eight claims, and a simple claim, in comparison to the Auto Repair Act and Consumer Protection Act claims. Plaintiff's counsel had not provided a breakdown which would allow the Court to define the fees due for the replevin claim.
>
> B. The time devoted to the claims against employee Clay Veenhuizen, was completely unproductive time. The time devoted to all claims, except the replevin claim, was likewise completely unproductive.
>
> C. The plaintiff did not prevail on either the Auto Repair Act or Consumer Protection Act claims.

CP at 56 (footnote omitted).

Mr. Sanna timely appealed. His sole assignment of error on appeal is that the trial court erred in denying his motion for attorney fees and costs in light of the jury's finding that he prevailed on his CPA claim.

ANALYSIS

I

As a threshold matter, Veenhuizen argues that Mr. Sanna did not separately identify and assign error to findings of fact made by the trial court that are fatal to his arguments in this court. RAP 10.3(g) provides that "[a] separate assignment of error for each finding of fact a party contends was improperly made must be included with reference to the finding by number." Unchallenged findings of fact are verities on appeal. *State v. Rankin*, 151 Wn.2d 689, 709, 92 P.3d 202 (2004).

The trial court's finding E includes the statement that "[t]he jury rejected plaintiff's claim he was harmed by Auto Repair Act and Consumer Protection Act violations; i.e., that he had suffered actual damages," which Veenhuizen argues is therefore a verity on appeal. But the jury did find ARA and CPA violations—it was the court, construing the verdict as a whole, that concluded that, legally, the jury rejected the claims. Whatever its label, this statement in finding E is a conclusion of law, not a finding of fact. If a conclusion of law is labeled as a finding of fact, it will still be considered a conclusion of law, subject to de novo review. *Kane v. Klos*, 50 Wn.2d 778, 788, 314 P.2d 672 (1957).

Veenhuizen also argues that conclusions of law not assigned error become law of the case. *Millican of Wash., Inc., v. Wienker Carpet Serv., Inc.*, 44 Wn. App. 409, 413,

722 P.2d 861 (1986). But the rules do not require challenged conclusions of law to be called out by number, as is the case with findings. Mr. Sanna's assignment of error to denial of his motion for attorney fees—identifying the issue as being that "[a]ppellant was the prevailing party . . . under the [CPA] and [is] therefore entitled to an award of attorney's fees"—is a sufficient assignment of error to the conclusions of the trial court that are challenged on appeal. Br. of Appellant at 1.

We agree with Veenhuizen that Mr. Sanna did not sufficiently assign error, directly or indirectly, to the trial court's finding that "virtually no time was spent at trial" on the ARA or CPA issues. But this does not render his appeal moot, since his appeal does not address the amount of attorney fees.

In any event, we may overlook procedural infirmities where the nature of the appeal is clear, we are not greatly inconvenienced, and the respondent is not prejudiced. *State v. Olson*, 126 Wn.2d 315, 323, 893 P.2d 629 (1995); RAP 1.2(a) (the rules should be "liberally interpreted to promote justice and facilitate the decision of cases on the merits"). That is the case here.

II

Mr. Sanna assigns error to the court's order denying his motion for an award of attorney fees and costs, where the jury found in his favor on his CPA claim.

Generally, we review attorney fee awards for abuse of discretion. But discretion

can be abused if it is exercised on untenable grounds or for untenable reasons, including misunderstanding the meaning of a statute. *Guillen v. Contreras*, 169 Wn.2d 769, 774, 238 P.3d 1168 (2010). Here, the parties' dispute over Mr. Sanna's entitlement to attorney fees turns on the meaning of the civil liability provision of the CPA. The meaning of a statute is a question of law reviewed de novo. *Id.*

The CPA provides, in relevant part:

> Any person *who is injured in his or her business or property* by a violation of [the CPA] may bring a civil action in superior court to enjoin further violations, to recover the actual damages sustained by him or her, or both, together with the costs of the suit, including a reasonable attorney's fee.

RCW 19.86.090 (emphasis added). If a plaintiff succeeds in his or her claim, the court is required to award attorney fees. *Tradewell Stores, Inc. v. T.B.&M., Inc.*, 7 Wn. App. 424, 430, 432, 500 P.2d 1290 (1972). The attorney fee provision of the CPA is designed to provide sufficient financial rewards to victorious consumers to enable pursuit of their individual claims and reimburse their costs of enforcing the act on behalf of the general citizenry. *St. Paul Fire & Marine Ins. Co. v. Updegrave*, 33 Wn. App. 653, 658, 656 P.2d 1130 (1983).

Injury to a plaintiff in his or her business or property is a necessary element of a CPA claim. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 780, 719 P.2d 531 (1986). The "injury" element "need not be great, but it must be

established." *Id.* at 792.

Proof of injury in a plaintiff's business or property is not limited to proof of entitlement to money damages. The use of the term "'injured'" rather than suffering "'damages,'" "makes it clear that no monetary damages need be proven, and that nonquantifiable injuries . . . suffice for this element of the *Hangman Ridge* test." *Nordstrom, Inc. v. Tampourlos*, 107 Wn.2d 735, 740, 733 P.2d 208 (1987). Among injury that has been held to satisfy this element of a CPA claim is inconvenience and delay in obtaining property as advertised, due to the need for repairs, *Tallmadge v. Aurora Chrysler Plymouth, Inc.*, 25 Wn. App. 90, 93-94, 605 P.2d 1275 (1979); the inconvenience of having to defend against an insurance company's suit to recover unpaid premiums deceptively raised during a policy anniversary year, *St. Paul*, 33 Wn. App. at 660; loss of goodwill, *Nordstrom*, 107 Wn.2d at 740; loss of use of real property, *Mason v. Mortg. Am., Inc*., 114 Wn.2d 842, 854, 792 P.2d 142 (1990); loss of rightful possession of a plaintiff's funds for two weeks, *Sorrel v. Eagle Healthcare, Inc.*, 110 Wn. App. 290, 298-99, 38 P.3d 1024 (2002); damage to reputation, *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 318, 858 P.2d 1054 (1993); and time spent away from business, *Sign-O-Lite Signs, Inc. v. DeLaurenti Florists, Inc.*, 64 Wn. App. 553, 563-64, 825 P.2d 714 (1992).

Here, the jury returned a special verdict finding that Mr. Sanna proved his CPA

claim. In finding and concluding that he had not prevailed on the claim, it is apparent that the trial court assumed, in error, that the injury element of the CPA claim required that Mr. Sanna recover money damages. Veenhuizen never moved the court to rule, as a matter of law, that Mr. Sanna was not injured, and any such motion would have been unfounded. The evidence establishes injury: Mr. Sanna was deprived of possession of his truck and plow. He can point to substantial evidence that the deprivation of his property was a result, at least in part, of disagreements or misunderstandings arising out of the ARA violation found by the jury, which was, as the jury found, a violation of the CPA.

It is clear that the trial court viewed the almost $45,000 in fees and costs requested by Mr. Sanna as out of proportion with a reasonable fee for the CPA claim. "[T]he *amount* of attorney's fees and costs awarded the prevailing party is within the discretion of the trial court." *Eriks v. Denver*, 118 Wn.2d 451, 465, 824 P.2d 1207 (1992) (emphasis added). The court should only award fees for the reasonable amount of time expended for the actions that constituted a CPA violation. *Travis v. Wash. Horse Breeders Ass'n, Inc.*, 111 Wn.2d 396, 410, 759 P.2d 418 (1988). But some time was necessarily spent by Mr. Sanna on the CPA claim. After all, it was presented to the jury for decision and the jury found in his favor on the claim. Even the trial court found that "virtually" no time was spent on it at trial. It was an error of law, and therefore an abuse

of discretion, to deny the request for fees entirely.

III

Both sides request attorney fees on appeal. Veenhuizen argues that Mr. Sanna's appeal is frivolous, relying on his asserted failure to assign error to the trial court's findings of fact or conclusions of law. We have already decided that there was arguably no rule violation because the challenged finding of fact was, in substance, a conclusion of law. In any event, a minor violation of RAP 10.3(g) in an appellate brief that otherwise presents viable and clear arguments on appeal is not frivolous. *See Delany v. Canning*, 84 Wn. App. 498, 510, 929 P.2d 475 (1997) (identifying factors considered in determining whether an appeal is frivolous, including that it is frivolous if it is so totally devoid of merit that there was no reasonable possibility of reversal, and that all doubts should be resolved in favor of the appellant).

Mr. Sanna also requests attorney fees on appeal pursuant to RAP 18.1(b) and RCW 19.86.090. Mr. Sanna is entitled to attorney fees if applicable law grants the right to recover them. RAP 18.1. Attorney fees are available to prevailing parties under the CPA, including on appeal. RCW 19.86.090; *Mason*, 114 Wn.2d at 856. Mr. Sanna's request for attorney fees on appeal is granted, subject to compliance with RAP 18.1(d).

Reversed in part and remanded to the trial court for a determination of Mr. Sanna's reasonable attorney fees and costs attributable to his CPA claim.

A majority of the panel has determined that 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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Siddoway, A.C.J.

WE CONCUR:

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Sweeney, J.

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Kulik, J.