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

RANDALL LEESTMA, a single person, Appellant, v. WILLIAM G. ROBERTS and WANDA L. ROBERTS, husband and wife, Respondents.	No. 30413-2-III UNPUBLISHED OPINION

Korsmo, C.J. — Randall Leestma brought a breach of contract claim concerning property he purchased in Pend Oreille County. The trial court dismissed the matter as untimely. We agree that the case was not brought within the applicable statute of limitations and affirm.

FACTS

Respondents William and Wanda Roberts purchased property in Pend Oreille County in 1993. In 1995 they put the property on the market and in January 1996 filed a short plat application that would have divided the parcel into two lots. One of the lots

encompassed the house and was approximately two acres; the remaining parcel was identified as being approximately 28.23 acres. On February 1, 1996, the Robertses decided to take the property off the market. The short plat was never recorded.

In October 1998 the Robertses and Mr. Leestma reached an agreement by which the respondents would keep the home and approximately two acres surrounding it while Mr. Leestma would purchase the remainder. The agreement indicated that a short plat was being developed to segregate the house and its land from the rest of the property.

The new short plat application was filed December 8, 1998. It identified Parcel A as consisting of approximately 2.65 acres and Parcel B as consisting of approximately 25.59 acres.[1] The short plat was recorded by the county auditor on March 16, 1999. The parties signed a real estate sales agreement receipt on April 2, 1999, that incorporated the 1999 short plat. The agreement indicated that Mr. Leestma was purchasing Parcel B from the Robertses. The quitclaim deed for the transaction was recorded May 14, 1999.

In December 2005 Mr. Leestma visited the county's public works department and obtained copies of all records concerning the property. Included in those records was the 1996 short plat application.

[1] The difference between the two maps is 1.99 acres. One explanation is that the earlier map's parcel size included neighboring land claimed to be adversely possessed by the Robertses. As this case was decided at summary judgment, the trial court was not empowered to make fact findings or otherwise resolve this question.

Represented by counsel, Mr. Leestma filed a complaint on April 19, 2007. It alleged six causes of action consisting of various allegations of fraud and misrepresentation. Sometime thereafter counsel withdrew. On June 22, 2010, Mr. Leestma acting pro se filed an amended complaint that added an additional cause of action and made additional factual allegations. He alleged that the Robertses had shown him the 1996 plat map and indicated orally that it was the short plat they would be filing. Relying on the statute of limitations, the Robertses moved for summary judgment and for dismissal for failure to state a claim for relief.

Mr. Leestma continued to represent himself. The trial court concluded that the statute of limitations began to run in 1999 and that the 2007 action was therefore untimely. The case was dismissed. Mr. Leestma, continuing to represent himself, then appealed to this court.

ANALYSIS

Mr. Leestma challenges the court's ruling on summary judgment. Both parties seek attorney fees for this appeal.

This court reviews a summary judgment de novo; our inquiry is the same as the trial court. *Lybbert v. Grant County*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000). The facts, and all reasonable inferences to be drawn from them, are viewed in the light most

favorable to the nonmoving party. *Id*. If there is no genuine issue of material fact, summary judgment will be granted if the moving party is entitled to judgment as a matter of law. *Id*.; *Trimble v. Wash. State Univ.*, 140 Wn.2d 88, 93, 993 P.2d 259 (2000).

A statute of limitations is designed to protect individuals and courts from stale claims. *Burns v. McClinton*, 135 Wn. App. 285, 293, 143 P.3d 630 (2006). The Washington legislature has adopted statutes of limitations for numerous causes of action. Generally, breach of contract claims are subject to a six-year statute of limitations. RCW 4.16.040(1). The statute of limitations for tort claims, including fraud, is three years. RCW 4.16.080.

The limitations period does not begin to run until the cause of action accrues. *1000 Virginia Ltd. P'ship v. Vertecs Corp.*, 158 Wn.2d 566, 575, 146 P.3d 423 (2006). Under Washington's discovery rule, a cause of action does not accrue until the plaintiff knows, or through the exercise of due diligence should know, the essential elements of the cause of action. *Green v. A.P.C.*, 136 Wn.2d 87, 95, 960 P.2d 912 (1998). However, the Washington Supreme Court "has consistently held that accrual of a contract action occurs on breach." *1000 Virginia Ltd. P'ship*, 158 Wn.2d at 576. The discovery rule has been adopted only in the limited context of "actions on construction contracts involving allegations of latent construction defects." *Id.* at 590.

A pro se party is held to the same standards as attorneys. *In re Marriage of Olson*, 69 Wn. App. 621, 626, 850 P.2d 527 (1993). This court "will not consider claims insufficiently argued by the parties." *State v. Elliott*, 114 Wn.2d 6, 15, 785 P.2d 440 (1990). The argument section of a brief should contain citations to legal authority and references to the record. RAP 10.3(6).

Mr. Leestma's brief is seriously defective for failing to cite authority in support of its arguments and for failing to comply with formatting requirements set forth in the Rules of Appellate Procedure. Respondents have requested sanctions in their brief. However, the only motion we can consider in a brief other than attorney fees requests is a dispositive motion that prevents a ruling on the merits. RAP 10.4(d). A sanction motion is not a dispositive motion. We decline to consider the request.

Fundamentally, however, Mr. Leestma argues the wrong point. His brief, like his argument to the trial court, focused on what he considers the Robertses' fraudulent actions. This approach is misplaced because this court, like the superior court, assumes for purpose of summary judgment that he did have sufficient evidence of fraud to justify a trial on the merits. His evidence is not the reason he lost the case. The reason the court dismissed this action is because it was untimely brought.

Mr. Leestma's fraud-based allegations are subject to the three year statute of

limitations found in RCW 4.16.080. His contract-based claims are subject to the six year limitation period found in RCW 4.16.040(1). Because the breach of contract and the fraud that allegedly induced him to sign the contract both occurred in 1999, the statutes of limitations began running at that time. This action was not filed until eight years later—well after the expiration of either statute of limitations.

While the discovery exception to the statute of limitations does not apply to this type of contract claim, it would not avail Mr. Leestma even if it had applied. Under his theory of the case, he was shown the wrong plat map prior to signing the contract. The contract he signed had a different plat with different sized acreages. At that point he was on notice of the discrepancy between the two descriptions. The trial court correctly concluded that the alleged breach of contract occurred in 1999. By the time this action was filed in 2007, it was too late. The action was precluded by the respective statutes of limitations.

The trial court correctly granted summary judgment.

The remaining issue is attorney fees. The Robertses request them on the basis that this action is frivolous. Mr. Leestma, by motion filed after the briefing but before argument, likewise requests attorney fees. As he did not prevail in this action, his request is denied.

RAP 18.1 and 18.9(a) provide that this court may award attorney fees on appeal where authorized by law, court rule, or where the appeal is frivolous. *Harrington v. Pailthorp*, 67 Wn. App. 901, 913, 841 P.2d 1258 (1992). An appeal is frivolous if it presents no debatable issues upon which reasonable minds could differ and it is so devoid of merit that no reasonable possibility of reversal exists. *Id.* Further, all doubts as to whether an appeal is frivolous are resolved in favor of the appellant. *Lutz Tile, Inc. v. Krech*, 136 Wn. App. 899, 906, 151 P.3d 219 (2007). "An appeal that is affirmed merely because the arguments are rejected is not frivolous." *Halvorsen v. Ferguson*, 46 Wn. App. 708, 723, 735 P.2d 675 (1986).

Whether Mr. Leestma's appeal was friviolous presents a close case. Mr. Leestma did not respond to the Robertses' request for attorney fees other than to request his own. More importantly, the brief and argument was not responsive to the reason the trial court dismissed this action. Was that because appellant did not perceive the issue or was it because he wanted to prolong this litigation despite the untimely filing? In light of the nonresponsive nature of the brief despite Mr. Leestma's apparent grasp of the other issues in the case, we believe it was probably the latter. However, rather than award actual fees, we award an attorney fee of $1,000 to be paid by Mr. Leestma to Mr. Herman on behalf of his clients.

Affirmed.

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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Korsmo, C.J.

WE CONCUR:

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Sweeney, J.

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Siddoway, J.