

FILED
COURT OF APPEALS
DIVISION II
2016 JUN -2 AM 11:32
STATE OF WASHINGTON
BY JW
DEPUTY

COA No. 48501-0-II
Trial No. 10-2-00115-0

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

WESLEY R. HANNIGAN, Respondent,
v.
VIT NOVAK & ZDENKA NOVAK, Appellants

APPELLANTS' REPLY BRIEF

Vit Novak
Pro Se

Appellant

1041 Wildlife Drive
Washougal WA 98671,
503 469-6176

pm 5/31/16

TABLE OF CONTENTS

I. Reply Statement of the Facts.....	3
II. Reply Argument	5
III Conclusion	11

TABLE OF AUTHORITIES

Table of Cases

State of Washington vs. Wesley R Hannigan (CR0018303)	4, 6, 8
State v. Hunt, 880 P.2d 96 (Wash. Ct. App. 1994)	10
53 Wash. 646, 102 P. 756 SEYMOUR V. DUFUR (S. Ct. 1909)...	11

Constitutional Provisions

Statutes

RCW 9A.72.020.	5
RCW 2.48.180	10

Regulations and Rules

Court Rules

GR-24.	10
CR-11.	10

Reply Statement of the Facts

Fact: Survey Stakes were never pulled or obliterated by Appellant

In his **response brief**, respondent's Attorney intentionally makes false statements to this Appellate Court that appellants pulled land survey stakes on their property. Respondent's land surveyor Gregory Brown testified at trial that no stakes were pulled [RP114-118]. In that same trial testimony Mr. Brown stated Respondent Mr. Hannigan was with him during the verification. Respondent Mr. Hannigan paid Mr. Brown's firm \$4,005.50 for this service. The Survey invoice date for the "*site visit to verify property corners had not been removed*" was August 16th 2010. [CP 508]

The Trial Court also found that the Appellants were away [RP 207] during the whole time the survey pins were placed and later verified [CP 288-311].

Despite knowing that land survey pins were not pulled, Respondent and his attorney Mr. Foley filed their lawsuit on Sept 10th 2010. In Respondent Claim averment 2.5 [CP 001-009] Mr. Hannigan claims *"plaintiff noticed some of the pins were pulled or obliterated."*

Despite trial testimony to the contrary, Respondent's Attorney Mr. Foley knowingly continues to make this false claim to this appellate court in his response brief.

Fact: Appellants did not restrict Respondent's driveway access

Respondent was cited for disorderly conduct in *State of Washington vs. Wesley R. Hannigan (CR0018303)*. On Sept 9th 2010 Respondent and his attorney Mr. Foley signed a stipulation and stay. In it Respondent stipulates to:
"5. The defendant hereby stipulates to the admissibility of the facts contained in the police reports upon which the charge in this matter is based." [CP023-059].

In those police reports, Police Officer Rasmussen stated: " /

told Hannigan I had no trouble at all driving through with my police patrol vehicle” [CP023-059].

The next day after signing the stipulation and stay in his criminal case, Respondent files his lawsuit. Right away Respondent perjures himself in claim averment 2.7: *“The grading done on the easement by defendant made it impossible for plaintiff to access his property with his motor home” [CP 001-009]*

Reply Argument

Respondent committed perjury

Under RCW 9A.72.020(1): *“A person is guilty of perjury in the first degree if in any official proceeding he or she makes a materially false statement which he or she knows to be false under an oath required or authorized by law.”*

Respondent knew that Appellants did not pull or obliterate land survey pins before he filed his lawsuit. He hired a land surveyor Gregory Brown and paid him 4,005.50 for the service and was invoiced on August 16th 2010 [CP 508]. Respondent filed his lawsuit on August 10th 2010. At trial Mr. Gregory Brown testified that no land survey pins were pulled or obliterated and that

Respondent was with him when he went to verify [RP114-118].

Respondent with the full knowledge [RP114-118] that the appellants did not pull survey pins made material false statement numerous times under oath. He made this material false statement in his "*Complaint To Quiet Title And For Ejectment*" [CP 001-009], his "*affidavit of Wesley R Hannigan*" [CP 012-015], the *Plaintiff's Response to Defendant's Interrogatories and Requests for Production*" [CP288-311], and his *Reply Brief* to this Court.

In addition Respondent and his attorney signed the Stipulation and Stay in *State of Washington vs. Wesley R. Hannigan* [CP023-059]. Respondent stipulated to the fact that he trespassed, assaulted his victims the Appellants, and that the driveway as not blocked per Officer Rasmussen [CP366-398].

Respondent's statements were avered in the original Claim [CP001-009] therefore it is material. A person is guilty of perjury in the first degree if in any official proceeding he or she makes a materially false statement. Mr. Hannigan is guilty of perjury under the law. The argument is Respondent's claims are materially false

therefore he should lose his case.

The Trial Court Abused its Discretion

The Appellants made this perjury argument to the Judge in *"Defendants' Response to Plaintiffs Proposed findings of fact and conclusions of law."* [CP366-398]. The Trial Court erred in denying it. The trial court abused its discretion. Respondent perjured himself in the *"Plaintiff's Response to Defendant's Interrogatories and Requests for Production"* [CP288-311]. The perjury was discovered after the trial and the appellants brought it up in their *"Defendants' Response to Plaintiffs Proposed findings of fact and conclusions of law"* [CP366-398]. The argument is that the Appellants were severely injured by this perjury and had Respondent told the truth he would have lost his case at trial.

The Trial Court Lost its Jurisdiction to Enter Judgment

- 1.) The Appellants argued in their CR-11 [127-132] motion that they were not served Mr. Hannigan's Declaration of Status Report.
- 2.) The Trial Court exceeded the time and did not have jurisdiction to enter the Judgment and Order on December 3rd 2015 [CP399-

400].

3.) The Trial Court exceeded the time and did not have jurisdiction to enter Amended Judgment and Order on January 14th 2016. [CP 540-541]

Obstruction

On at least two occasions filed documents that were critical to the Appellants' defense were hidden.

The first was *State of Washington vs. Wesley R. Hannigan (CR0018303) stay and stipulation* was filed on Sept 9th 2010. The Appellants could never find any online record of this case, it resurfaced only years later (2013) when statuses of limitation expired. Brad Andersen, the former attorney for the Appellants included only the police reports, but not the stipulation in the "*Declaration of Vit Novak in Support of Defendants Response to Plaintiff's Motion for Restraining Order*" [CP 023-059]. Mr. Andersen went to the District Court and the Prosecutor's office and they had nothing even though the stipulation was stamped filed on Sept 9 2010.

The second set of filed motions hidden from the Appellants was *Motion for Order to Show Cause: Contempt Citation [CP 549]*. In the Appellants brief on page 50 we have the superior Court clerk email where she states nothing was filed past line 83 when that was false.

Attorney Thomas Foley Perjury

Respondent Attorney Thomas Foley committed perjury in an attempt to frame Appellants for Contempt of Court [513-537]. In his *"Motion/Declaration for an Order to Show Cause Re: Contempt"* Mr. Foley writes: *"Finding contempt for failure to comply with an order given by the court on August 26th 2015, in Skamania County, WA"*

There was no ORDER on August 26th 2015 [CP 548]. The Judgment and Order was entered on Dec 3rd 2015 [CP 549].

Attorney Thomas Foley's Non Lawyer Assistant Practicing law

In his Response Brief, Mr. Foley argues that GR-17 allows his non-lawyer assistant to send faxes. However, our argument is

that the "Declaration of Wesley R Hannigan Regarding Status Report" is a declaration. It is not and is not now signed by an attorney of record and Ms. Mattsen prepared and faxed it. In the Appellants motion for CR-11 sanctions [127-132] we specifically noted that an attorney did not sign it as required by CR-11. Mr. Foley declined to sign it. *GR-24, RCW 2.48.180* and *State v. Hunt, 880 P.2d 96 (Wash. Ct. App. 1994)* governs the practice of law.

The trial Court erred in not striking the case and sanctioning Respondent and his attorney. After all his non-lawyer assistant did not even serve the declaration to opposing party.

Respondent does not have a 20-foot Easement

The Respondent never presented his own deed that shows he or his lot 8 have a 20-foot easement. The Appellants deed describes 20 ft. easement without mentioning a grantee. The Respondent does not have his own deed to such easement. The Respondent is a stranger to the Appellants. The Respondent does not claim a prescriptive easement in his original Claim. The Appellants objected to bringing their deed under ER904 as evidence using ER106 asking Respondent to produce his deed. Respondent did

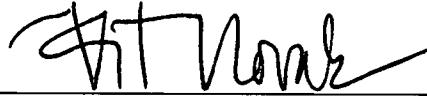
not comply. Neither the Respondent nor his property is the grantee. Under the stranger-to-the-deed rule, a deed with a reservation or exception by the grantor in favor of a third party, a so-called stranger to the deed, does not create a valid interest in favor of that third party. Respondent did not make a claim for the prescriptive easement. In their brief, Appellants argue *53 Wash. 646, 102 P. 756 SEYMOUR V. DUFUR (S. Ct. 1909)* requiring Respondent to have his own deed. Finally the trial Court erred by admitting Appellants deed as evidence.

Reply Conclusion

Respondent and his attorney Thomas Foley are fundamentally dishonest. Their lack of service, lateness, perjury and misconduct their case should be thrown out. Respondent Mr. Hannigan does not have a 20-foot easement. Respondent should lose his 30 and 60-foot easements through the Appellants property due to his criminal activity against the Appellants. Respondent did stipulate to the crimes in order to get a stay of prosecution. And under stipulation and stay Respondent committed perjury.

May 31 2016

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Vit Novak", written over a horizontal line.

Signature

Vit Novak

Pro Se Appellant

FILED
COURT OF APPEALS
DIVISION II

2016 JUN -2 AM 11:33

STATE OF WASHINGTON

BY _____
DEPUTY

AFFIDAVIT OF SERVICE BY MAIL

COURT OF APPEALS, DIVISION II

Wesley R Hannigan, Respondent

Vit and Zdenka Novak, Appellants

COA No. 48501-0-II, Trial No. 10-2-00115-0

I, Jack Cooper, the undersigned mailer, being of sound mind and under no duress, do hereby certify, attest and affirm that the following facts are true and correct:

That on this 31st date of May 2016, on behalf of Vit Novak the undersigned personally mailed the following document via United States Postal Service:

APPELLANTS REPLY BRIEF

One complete document as described above, properly enveloped and addressed one to each addressee at addresses as follows:

Thomas J. Foley, Esq
P.O.BOX 609
Vancouver, Washington 98666

AND

Wesley R. Hannigan
1401 I St
Washougal WA 98671

2. That I am at least 18 years of age. AND;
3. That I am not related to the recipients by way of blood, adoption, marriage, but serve as a "disinterested third party" AND;
4. That I am in no way connected to or involved in or with, the person and or matter at issue in this action.

I affix my signature to these affirmations this 31st date of May, 2016

