NO. 75635-4-I

SUPREME COURT OF THE STATE OF WASHINGTON

OLYMPIC PENINSULA NARCOTICS ENFORCEMENT TEAM;
CLALLAM COUNTY SHERIFF BILL BENEDICT;
CLALLAM COUNTY SHERIFF'S DEPARTMENT; AND
CLALLAM COUNTY

Appellants,

v.

REAL PROPERTY KNOWN AS
(1) JUNCTION CITY LOTS 1 - 12 INCLUSIVE, BLOCK 35;
(2) LOT 2 OF THE NELSON SHORT PLAT LOCATED IN
JEFFERSON COUNTY; AND
ALL APPURTANCES AND IMPROVEMENTS THEREON, OR
PROCEEDS THERE FROM

Respondents *in rem*,

STEVEN L. FAGER;
DBVWC, INC.; AND
LUCILLE M BROWN LIVING TRUST
Interested Parties.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Steven and Timothy Fager ("the Fagers") seek discretionary review of the Court of Appeals decision on the grounds that it: (1) is in conflict with a decision of this Court; (2) is in conflict with a published decision of the Court of Appeals; and (3) involves an issue of substantial public interest that should be determined by this Court. *See* Rules of Appellate Procedure (RAP) 13.4(b)(1), (2), and (4).

But it is disingenuous for the Fagers to read ambiguities into the Court of Appeals decision simply to suit their self-serving notions and ideas. Absent speculation, allegations, and conclusory statements, the Fagers have failed to justify why this Court should accept review. Therefore, for the reasons contained herein, this Court should deny review.

II. STATEMENT OF THE CASE

In September 2009, Olympic Peninsula Narcotics Enforcement Team ("OPNET") law enforcement officers obtained a search warrant to examine utility records and perform a thermal-image search of property located at 115 Freeman Lane in Port Townsend, Washington. (CP at 88). The utility records showed abnormal utility consumption and the thermal images revealed suspicious activity consistent with an indoor marijuana grow operation. (CP at 88). Thereafter, OPNET law enforcement officers obtained a search warrant for the property itself. (CP at 88). Upon executing the search warrant, OPNET law

enforcement officers discovered a large, sophisticated marijuana grow operation. (CP at 19, 88).

In October 2009, the State of Washington charged Steven and Timothy Fager each with one count of manufacturing marijuana and one count of possession with intent to deliver marijuana. (CP at 88). Simultaneously, Clallam County initiated a civil forfeiture action against the real property that facilitated the alleged criminal acts. (CP at 1-13). After performing a title search of the real property, Clallam County provided notice of the civil forfeiture action to all known individuals and entities that had an interest in the real property, which were limited to Steven Fager, the Discovery Bay Village Wellness Collective, Inc. ("DBVWC"), and the Lucille M. Brown Living Trust. (CP at 22). Only Steven Fager, through his attorney, filed a notice of appearance and a notice of claim of an ownership interest in the real property. (CP at 30-31).[1]

In December 2011, the Fagers filed: (1) a motion under Superior Court Criminal Rule ("CrR") 3.6 to suppress evidence seized as a result of the search warrants and (2) a motion to dismiss the criminal charges under CrR 8.3(b). (CP at 88). After a nine-day pretrial hearing, the trial court entered its findings of fact and conclusions of law. (CP at 214-28). The trial court concluded that there was "mismanagement" of discovery,

[1] Clallam County and Steven Fager agreed to continue the civil forfeiture pending resolution of the criminal charges. (CP at 34-36).

but that "this mismanagement does not rise to the level of requiring dismissal of charges." (CP at 227). Nevertheless, the trial court concluded that statements the OPNET law enforcement officers made about the smell of marijuana, in their affidavits in support of the issuance of the search warrants, shall be redacted. (CP at 227). After concluding that there was no probable cause to issue the search warrants, the trial court suppressed certain evidence from the search warrants and ultimately dismissed the criminal charges against the Fagers. (CP at 100-01, 227-28).[2]

In April 2015, Steven Fager filed a summary judgment motion, in which he sought to dismiss the civil forfeiture proceeding. (CP at 51-64). In response, Clallam County removed the *lis pendens* that encumbered the real property and filed a motion to voluntarily dismiss the civil forfeiture proceeding under Superior Court Civil Rule ("CR") 41(a)(1)(B). (CP at 107-56). The trial court granted Clallam County's motion. (CP at 535).

In response, Steven Fager and DBVWC, as the "owners" of the real property, filed a motion for attorney fees under RCW 69.50.505(6) in the amount of $290,883.06. (CP at 286-304). The motion stated, "Steven Fager brings this motion for attorney fees in his individual capacity as well as in his role as DWBV's representative." (CP at 287).

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[2] Clallam County appealed, but, in an unpublished opinion, the Court of Appeals affirmed the trial court's dismissal of the criminal charges against the Fagers. *See State v. Fager*, 185 Wn. App. 1050 (2015).

The motion also stated, "Tim Fager is a partial owner in the DBVWC." (CP at 287). The attorneys who represented the Fagers in their respective criminal cases submitted declarations in support of the motion for attorney fees. (CP at 159-61, 162-65, 166-71, 172-204, 205-85).

Clallam County opposed the motion for attorney fees, (CP at 305-458), asserting, among other things, that RCW 69.50.505(6) does not allow a claimant to recoup attorney fees that he incurred in defending a criminal prosecution. (CP at 317-26). Clallam County also asserted that neither DBVWC nor Timothy Fager were claimants entitled to an award of attorney fees in the civil forfeiture proceeding; the only claimant was Steven Fager. (CP at 523-24; Report of Proceedings ("RP") at 43, 67).

Nevertheless, the trial court entered its findings of fact and conclusions of law, (CP at 534-41), concluding that "[t]he attorney fees related to the suppression motion are all compensable under RCW 69.50.505(6)." (CP at 535). Finally, the trial court ordered Clallam County "to pay claimants reasonable attorney fees in the amount of $293,185.64" and "an additional $2,000.00 in attorney fees reasonably incurred by claimants in responding to [Clallam County's] objections." (CP at 540-41).

Clallam County appealed. (CP at 542-51). Among other things, Clallam County argued that substantial evidence did not support the trial court's finding of fact that Timothy Fager was a claimant in the civil forfeiture proceeding and entitled to attorney fees under

RCW 69.50.505(6). (Br. of Appellants at 3-4, 39-44; Reply Br. of Appellants at 16-23). Clallam County also argued that the trial court erred in awarding attorney fees, which the Fagers incurred in defending the criminal charges against them, under RCW 69.50.505(6). (Br of Appellants at 11-39; Reply Br. of Appellants at 1-15).[3]

The Court of Appeals agreed with Clallam County that "[s]ubstantial evidence does not support the finding that DBVWC filed a notice of claim or that either DBVWC or Timothy Fager is a claimant in the civil forfeiture proceeding." (Slip. Op. at 11). The Court of Appeals then held, "Because the record establishes Steven Fager filed a notice of claim only in his individual capacity as an owner of the property and neither DBVWC nor Timothy Fager filed a notice of claim, the court erred in awarding attorney fees to Timothy Fager under RCW 69.50.505(6). (Slip. Op. at 12). The Court of Appeals also agreed with Clallam County that "the trial court erred in awarding attorney fees based on factors unrelated to the civil forfeiture proceeding." (Slip Op. at 14).

The Fagers filed a motion for reconsideration with the Court of Appeals. (Motion to Clarify and/or Reconsider its Opinion at 1-4). Clallam County opposed the Fagers' motion for reconsideration, arguing

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[3] As Clallam County previously noted in its briefing, it does not dispute the reasonable attorney fees that Steven Fager incurred in the civil forfeiture proceeding, i.e., $20,571.92. (Br. of Appellants at 10, 12; Reply Br. of Appellants at 11).

that "it is disingenuous for the Fagers to read an ambiguity into [the Court of Appeals] opinion and to suggest that [the Court of Appeals] provided no guidance to the trial court." (Appellants' Answer to Motion to Clarify and/or Reconsider its Opinion at 2). The Court of Appeals denied the Fagers' motion for reconsideration.

Thereafter, the Fagers filed their Petition for Review.

III. ARGUMENT

A. THIS COURT SHOULD DECLINE TO REWRITE UNAMBIGUOUS STATUTORY LANGUAGE UNDER THE GUISE OF INTERPRETATION

In an attempt to "bootstrap" issues of substantial public interest in their Petition for Review, *see* RAP 13.4(b)(4), the Fagers deliberately circumvent the rules of statutory construction. They ignore the plain meaning of RCW 69.50.505(6), and they—not Clallam County—attempt to add language to this statute in the guise of interpretation. (Petition for Review at 12-15).

But the Court of Appeals was correct in refusing to rewrite unambiguous statutory language under the guise of interpretation. *See Cerrillo v. Esparza*, 158 Wn.2d 194, 201, 142 P.3d 155 (2006). The Court of Appeals was correct in refusing to add words where the legislature chose not to include them. *Rest. Dev., Inc. v. Cananwill*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003). And the Court of Appeals was correct in ruling that the trial court's decision—in which it adopted the Fagers' argument—was based "on an erroneous view of the law," *see Wash. State Physicians*

Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 339, 858 P.2d 1054 (1993). (Slip. Op. at 14).

Here, the Fagers' interpretation of RCW 69.50.505(6) cannot be harmonized with the plain language of the statute. On its face, RCW 69.50.505(6) precisely delineates the type of proceeding in which a claimant may be entitled to attorney fees with the following phrase—"[i]n any proceeding to forfeit property under this title." This phrase cannot be reasonably interpreted to mean anything but what it says. *State v. Keller*, 143 Wn.2d 267, 277, 19 P.3d 1030 (2001). "Plain words do not require construction." *Keller*, 143 Wn.2d at 276.

Thus, as the Court of Appeals correctly noted, "Steven Fager is entitled to an award of attorney fees reasonably incurred *in the civil forfeiture proceeding*." (Slip Op. at 14) (emphasis added). The unambiguous statutory language of RCW 69.50.505(6) does not create a separate entitlement for attorney fees that "served a dual or secondary purpose." (Petition for Review at 4). And the unambiguous statutory language of RCW 69.50.505(6) does not create a separate entitlement for attorney fees in any other proceeding—whether related or unrelated, civil or criminal.

Of course, the Fagers argue that this Court should ignore what the Legislature unambiguously said in RCW 69.50.505(6) and side with them because RCW 69.50.505(6) should be "read liberally," *Guillen v. Contreras*, 169 Wn.2d 769, 777, 238 P.3d 1168 (2010), and "forfeitures are not favored," *Snohomish Regional Drug Task Force v. Real Property*

Known as 20803 Poplar Way, 150 Wn. App. 387, 392, 208 P.3d 1189 (2009). (Petition for Review at 12-13). In other words, the Fagers argue that this Court should agree with them as a matter of public policy.

"But it is fundamental that, when the intent of the legislature is clear from a reading of a statute, there is no room for construction." *Elliott v. Dep't of Labor & Indus.*, 151 Wn. App. 442, 450, 213 P.3d 44 (2009) (quoting *Johnson v. Dep't of Labor & Indus.*, 33 Wn.2d 399, 402, 205 P.2d 896 (1949). "It is a well-settled rule that 'so long as the language used is unambiguous, a departure from its natural meaning is not justified by any consideration of its consequences, or of public policy." *DeLong v. Parmelee*, 157 Wn. App. 119, 146, 236 P.3d 936 (2010) (quoting *State v. Miller*, 72 Wn. 154, 158, 129 P. 100 (1913)).

Furthermore, and contrary to what the Fagers argue, (Petition for Review at 12-15), liberal construction of a statute does *not* mean that a court may read into the statute language that is not there. *See Klossner v. San Juan County*, 93 Wn.2d 42, 47, 605 P.2d 330 (1980) ("this court's several decisions that the wrongful death statute is to be liberally construed do not mean we may read into the statute matters which are not there"); *King County v. City of Seattle*, 70 Wn.2d 968, 991, 425 P.2d 887 (1967); *Lowry v. Dep't of Labor & Indus.*, 21 Wn.2d 538, 542, 151 P.2d 822 (1944) ("We are not unmindful of the rule that the workmen's compensation act shall be liberally construed in favor of its beneficiaries, but, where the language of the act is not ambiguous and exhibits a clear and reasonable meaning, there is no room for construction."); *Raum v.*

City of Bellevue, 171 Wn. App. 124, 155 n.28, 386 P.3d 695 (2012), *review denied*, 176 Wn.2d 1024 (2013); *Shum v. Dep't of Labor & Indus.*, 63 Wn. App. 405, 409, 819 P.2d 399 (1991); *see also State v. Reis*, 183 Wn.2d 197, 214, 351 P.3d 127 (2015) ("It is not this court's job to remove words from statutes or to create judicial fixes, even if we think the legislature would approve."); *State v. Moses*, 145 Wn.2d 370, 374, 37 P.3d 1216 (2002) ("Where the Legislature omits language from a statute, intentionally or inadvertently, this court will not read into the statute the language that it believes was omitted."); *State v. Martin*, 94 Wn.2d 1, 8, 614 P.2d 164 (1980) ("As attractive as the State's proposed solution may be, we do not have the power to read into a statute that which we may believe the legislature has omitted, be it an intentional or an inadvertent omission.").

The Fagers' tortured interpretation of RCW 69.50.505(6) cannot be harmonized with the plain language of the statute. On its face, RCW 69.50.505(6) precisely delineates the type of proceeding in which a claimant may be entitled to attorney fees with the following phrase—"[i]in any proceeding to forfeit property under this title." While the Fagers question the public policy of such a distinction, (Petition for Review at 14), this Court cannot, under the guise of construction, substitute its view, the trial court's view, or the Fagers' view for that of the Legislature. *Courtright v. Sahlberg Equip., Inc.*, 88 Wn.2d 541, 545, 563 P.2d 1257 (1977); *Allan v. Dep't of Labor & Indus.*, 66 Wn. App. 415, 421, 832 P.2d 489 (1992); *see also Kilian v. Atkinson*, 147 Wn.2d 16, 21, 50 P.3d 638

(2002) ("This court has repeatedly held that an unambiguous statute is not subject to judicial construction and has declined to add language to an unambiguous statute even if it believes the Legislature intended something else but did not adequately express it.") (footnotes and citations omitted).

After all, this Court is "not a super legislature." *Courtright*, 88 Wn.2d at 545. "This court should resist the temptation to rewrite an unambiguous statute to suit [its] notions of what is good public policy, recognizing the principle that 'the drafting of a statute is a legislative, not a judicial, function.'" *Sedlacek v. Hillis*, 145 Wn.2d 379, 390, 36 P.3d 1014 (2001) (quoting *State v. Jackson*, 137 Wn.2d 712, 725, 976 P.2d 1229 (1999) (quotations and citations omitted). Therefore, departure from the unambiguous statutory language of RCW 69.50.505(6) is improper. *See Jackson*, 137 Wn.2d at 725. And the Fagers' statutory interpretation of RCW 69.50.505(6) must fail.

B. THIS COURT HAS HELD THAT PROCEEDINGS TO FORFEIT PROPERTY ARE CIVIL, NOT CRIMINAL, IN NATURE

In an attempt to "bootstrap" issues of substantial public interest in their Petition for Review, *see* RAP 13.4(b)(1) and (b)(4), the Fagers baldly claim that the Court of Appeals, with its opinion, "only injected more uncertainty" as to when a claimant is entitled to reasonable attorney fees under RCW 69.50.505(6). (Petition for Review at 15). But other than the Fagers' self-serving obfuscation, there is no uncertainty.

The Fagers conveniently ignore opinions in which both the United States Supreme Court and this Court have held that proceedings to forfeit

property are not criminal in nature, but rather civil in nature. *See United States v. Ursery*, 518 U.S. 267, 116 S. Ct. 2135, 135 L. Ed. 2d 549 (1996); *State v. Catlett*, 133 Wn.2d 355, 945 P.2d 700 (1997). Specifically, this Court has stated that "the plain language of RCW 69.50.505 and its legislative history attest to its civil nature." *Catlett*, 133 Wn.2d at 366. "The Legislature also specifically noted the civil forfeiture statute is a civil process." *Catlett*, 133 Wn.2d at 366-67 (citing Final Legislative Report, 2SHB 1793 (1989) at 119 ("Seizure and forfeiture are civil processes and are independent of the outcome of any criminal charges that might be brought against the owner of the property.")).

Importantly, RCW 69.50.505(6) was not enacted until 2001, *see Guillen*, 169 Wn.2d at 775, or almost four years after this Court first held that proceedings to forfeit property are civil in nature. *Catlett*, 133 Wn.2d at 366. As this Court has stated, "[T]he Legislature is presumed to know the existing state of the case law in those areas in which it is legislating and a statute will not be construed in derogation of the common law unless the Legislature has clearly expressed its intention to vary it." *Price v. Kitsap Transit*, 125 Wn. 2d 456, 463-64, 886 P.2d 556 (1994). The language of RCW 69.50.505(6) contains no expression of intent to override this Court's holding in *Catlett* and to expand the applicability of RCW 69.50.505(6) to criminal proceedings.[4] And in the absence of such

[4] The Fagers utterly fail to address the legislative history of RCW 69.50.505(6) anywhere in their Petition for Review, despite their procrustean arguments trying to inject uncertainty and confusion into the statute.

an expression, the common law prevails. *King County v. Vinci Constr. Grand Project/Parsons RCI/Frontier-Kemper, JV*, 188 Wn.2d 618, 627-28, 398 P.3d 1093 (2017); *Sabey v. Howard Johnson & Co.*, 101 Wn. App. 575, 591, 5 P.3d 730 (2000).

Therefore, contrary to what the Fagers vociferously argue, (Petition for Review at 15-16), RCW 69.50.505 is a *civil* forfeiture statute. *Catlett*, 133 Wn.2d at 366; *see also State v. Moen*, 110 Wn. App. 125, 130-31, 38 P.3d 1049 (2002), *aff'd*, 150 Wn.2d 221, 76 P.3d 721 (2003); *State v. Lynch*, 84 Wn. App. 467, 477, 929 P.2d 460 (1996). A priori, "any proceeding to forfeit property," *see* RCW 69.50.505(6), is a civil proceeding, not a criminal proceeding. Thus, attorney fees under RCW 69.50.505(6) must be limited to those fees reasonably incurred by the claimant in any *civil* proceeding to forfeit property.

In its opinion, the Court of Appeals clearly stated, "Steven Fager is entitled to an award of attorney fees reasonably incurred *in the civil forfeiture proceeding.*" (Slip Op. at 14) (emphasis added). The Court of Appeals made clear that "the [trial] court erred in awarding attorney fees *based on factors unrelated to the civil forfeiture proceeding.*" (Slip Op. at 14) (emphasis added). Then, the Court of Appeals provided specific examples of factors unrelated to the civil forfeiture proceeding (and erroneously relied on by the trial court): (1) the duration of the case; (2) the fact intensive nature of the criminal suppression motions; and (3) the way in which the State approached the criminal proceeding. (Slip Op. at

15).[5] Therefore, it is disingenuous for the Fagers to read an ambiguity into the Court of Appeals opinion and to suggest that the Court of Appeals provided no guidance to "[a] future judge or attorney reading decision." (Petition for Review at 16).

While the Fagers argue that they will have only a "pyrrhic victory" without an award of certain attorney fees that they incurred in the criminal proceedings, (Petition for Review at 14), and that the Court of Appeals opinion will result in "judicial inefficiency," (Petition for Review at 15), these arguments are better directed to the Legislature. *See Sedlacek*, 145 Wn.2d at 390; *Jackson*, 137 Wn.2d at 725. The Fagers' arguments, even assuming *arguendo* that they are sound from a policy standpoint, do not reflect the current status of the law in Washington. Essentially, the Fagers invite this Court to engage in a type of judicial activism that this Court has rejected. *See Sedlacek*, 145 Wn.2d at 390.

But this Court should refuse the temptation to rewrite an unambiguous statute to suit the Fagers' notions of what is—or is not—good public policy. *See Sedlacek*, 145 Wn.2d at 390; *Jackson*, 137 Wn.2d at 725; *see also Roberts v. Dudley*, 140 Wn.2d 58, 79, 993 P.2d 901 (2000) (Talmadge, J., concurring) ("The specter of judicial activism is unloosed and roams free when a court declares, 'This is what the

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[5] Despite these examples, the Fagers feign uncertainty with the Court of Appeals opinion, claiming, "A future judge or attorney reading the decision would not necessarily know what type of fees are permitted for a claimant who has prevailed in a forfeiture proceeding." (Petition for Review at 16).

Legislature meant to do or should have done.'"). This Court is obliged to give the plain language of a statute its full effect, even when its results may seem unduly harsh. *Geschwind v. Flanagan*, 121 Wn.2d 833, 841, 854 P.2d 1061 (1993). And despite the Fagers' invitation to do otherwise, (Petition for Review at 15-17), this Court "must avoid stepping into the role of the Legislature by actively creating the public policy of Washington." *Sedlacek*, 145 Wn.2d at 390.[6]

C. TIMOTHY FAGER WAS NOT, IS NOT, AND CANNOT BE A CLAIMANT UNDER RCW 69.50.505

With a classic obfuscation argument, which fails to even address RAP 13.4(b)(1), (2), or (4), the Fagers attempt to divert this Court's attention from the undeniable fact that Timothy Fager *never* filed a notice of claim in the civil forfeiture proceedings, nor did he move to intervene in the civil forfeiture proceedings.[7] Because Timothy Fager never filed a notice of claim, he was not—is not, and cannot be—a "claimant" under RCW 69.50.505(5). And because he was not—is not, and cannot be—a

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[6] The Legislature, not this Court, is the fundamental source for the definition of this State's public policy. *Sedlacek*, 145 Wn.2d at 390.

[7] This Court generally does not consider such arguments that are unsupported by any reference to the record or citation of authority. RAP 10.3(a)(6); *see, e.g., Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 828 P.2d 549 (1992).

"claimant," Timothy Fager is not entitled to reasonable attorney fees under RCW 69.50.505(6).[8]

First, to the extent Timothy Fager questions Clallam County's timely objections, (Petition for Review at 18), Clallam County filed a written objection to the findings of fact and conclusions of law proposed by the Fagers. (CP at 523). Clallam County argued during a hearing before the trial court that "Tim Fager is not a party to this case." (Report of Proceedings (RP) at 43). Clallam County also informed the trial court, "There was an argument from the seizing agency that [Timothy Fager] is not a party to this case." (RP at 67). Thus, as the Court of Appeals correctly ruled, "The record shows Clallam County asserted Timothy Fager was not entitled to an award of attorney fees as a claimant in the civil forfeiture proceeding." (Slip Op. at 10).

Second, to the extent the Fagers fault Clallam County for not providing Timothy Fager with notice of the civil forfeiture, (Petition at 18), this argument is inapposite. Before commencing the civil forfeiture in this case, Clallam County conducted a title search, which identified Steven Fager, DBVWC, Inc., and the Lucille M. Brown Living Trust as having a known interest in the real property subject to civil forfeiture. (CP at 7-13). Importantly, the title search did *not* identify Timothy Fager as having a known interest in the real property. (CP at 7-13). Thus, under

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[8] In the absence of a contract, statute, or recognized ground of equity, a court has no power to award fees as part of the litigation. *Walter Implement, Inc. v. Focht*, 107 Wn.2d 553, 561, 730 P.2d 1340 (1987).

RCW 69.50.505(3), Clallam County was not required to notify Timothy Fager. And as the Court of Appeals corrected stated, "The undisputed record establishes Clallam County properly served Steven Fager, DBVWC, and the Trust with notice of the intent to seize [the real property]." (Slip Op. at 11).

Moreover, the facts are undisputed that Steven Fager was the only individual and/or entity to timely file a notice of claim. (CP at 31). The notice of appearance filed by Steven Fager's attorney was on behalf of him alone, not on behalf of any other individual or entity. (CP at 31). And neither Steven Fager nor his attorney informed Clallam County that Timothy Fager had any known right or interest in the real property. (CP at 31, 355-60).[9]

The Court of Appeals, having reviewed the trial court's findings of fact and conclusions of law, correctly ruled, "Substantial evidence does not support the finding that DBVWC filed a notice of claim or that either DBVWC or Timothy Fager is a claimant in the civil forfeiture proceeding." (Slip Op. at 11). Moreover, as the Court of Appeals correctly noted, "Because the record establishes Steven Fager filed a notice of claim only in his individual capacity as owner of the property and neither DBVWC nor Timothy Fager filed a notice of claim, the court

[9] RCW 69.50.505(6) places the burden of establishing a compensable interest on the person or entity claiming it, not on the seizing law enforcement agency. *See Key Bank of Puget Sound v. City of Everett*, 67 Wn. App. 914, 920, 841 P.2d 800 (1992), *review denied*, 121 Wn.2d 1025 (1993).

erred in awarding attorney fees to Timothy Fager under RCW 69.50.505(6)." (Slip Op. at 12).

IV. CONCLUSION

Contrary to the Fagers' arguments in their Petition for Review, the Court of Appeals opinion is neither vague nor uncertain. The Court of Appeals did not overlook or misapprehend any points of law or fact in holding that the trial court erred in awarding attorney fees to Timothy Fager under RCW 69.50.505(6). The Court of Appeals was correct in refusing to rewrite the unambiguous statutory language of RCW 69.50.505(6) under the guise of interpretation. *See Cerrillo v. Esparza*, 158 Wn.2d 194, 201, 142 P.3d 155 (2006). The Court of Appeals was correct in refusing to add words where the Legislature chose not to include them. *Rest. Dev., Inc. v. Cananwill*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003). And the Court of Appeals was correct in ruling that the trial court's decision—in which it adopted the Fagers' argument—was based "on an erroneous view of the law," *see Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993). (Slip. Op. at 14).

For the foregoing reasons, the Fagers have failed to justify and support their Petition for Review. *Contra* RAP 13.1(b)(1), (2), and (4). Therefore, Clallam County respectfully requests that this Court deny the Fagers' Petition for Review.

RESPECTFULLY SUBMITTED this 13 day of Nov ,.2017

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November 13, 2017 - 10:32 AM

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