

# WASHINGTON STATE COURT OF APPEALS DIVISION THREE

## CASE SUMMARIES FOR ORAL ARGUMENT

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The following summaries are drawn from briefs and lower court judgments. The summaries have not been reviewed for accuracy by the judges and are intended to provide a general idea of facts and issues presented in the cases. The summaries should not be considered official court documents. Facts and issues presented in these summaries should be checked for accuracy against records and briefs, available from the Court, which provide more specific information.

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**Date of Hearing: Thursday, May 3, 2012**  
**Location: Spokane, 500 North Cedar**

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**9:00 a.m.**

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**1) No.: 30248-2-III**

**Case Name: Matthew M. Marry v. Daniel Eling, et ux**

**County: Spokane**

**Case Summary:** In February 2008, Daniel Eling drove through a red light and crashed into a vehicle in which Matthew Marry was a passenger. Marry filed a personal injury suit against Eling in January 2011 and hired a registered process server to serve Eling. After an extensive search, the server was unable to find and serve Eling. Eling's mother in Minnesota insisted her son was living and teaching in China, but Marry's attorney did not believe her. The superior court granted Marry's motion to serve by publication in Spokane County and Duluth, Minnesota. Although the statute of limitations for service expired on April 28, 2011, service by publication began in early April, 2011 and ran for six consecutive weeks. In July 2011, Eling's attorney moved to dismiss for lack of personal jurisdiction. The court granted Eling's motion and dismissed. Marry appeals.

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2) **No.: 30008-1-III**

**Case Name: In re the Estate of Harvey Jones & Mildred Jones**

**County: Yakima**

**Case Summary:** Harvey and Mildred Jones had four children: Will, Dennis, Teresa, and Mary Ann. Harvey and Mildred had reciprocal wills that provided for equal shares to the children upon the surviving spouse's death. After Harvey's death, Will and Dennis had Mildred sign documents that gifted \$1 million in farm property to the sons. After Mildred's death, Teresa and Mary Ann filed a petition under the Trust and Estate Dispute Resolution Act (TEDRA), chapter 11.96A RCW, seeking rescission of the agreements entered into by Mildred, Will, and Dennis. The superior court granted Will's motion for summary dismissal of the TEDRA claim. Teresa and Mary Ann appeal. Will, as personal representative of the estate, cross-appeals the trial court's refusal to award attorney fees.

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**11:00 a.m.**

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3) **No.: 29763-2-III**

**Case Name: Yakima County v. Eastern Washington Growth Management Hearings Board, et al**

**County: Yakima**

**Case Summary:** The Eastern Washington Growth Management Hearings Board ruled that Yakima County Ordinance No. 13-2007 violated the Growth Management Act, chapter 36.70A RCW, by (1) adopting stream and wetland buffer widths that were not supported by the best available science, and (2) failing to designate Type 5 ephemeral streams as aquatic critical areas. Futurewise and the Confederated Tribes and Bands of the Yakama Nation challenge a decision by the Yakima County Superior Court that reversed these provisions of the Growth Board's final decision and order. Yakima County cross-appeals.

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4) **No.: 29703-9-III**  
**Case Name: Laurie Ferguson v. City of Dayton, et al**  
**County: Columbia**

**Case Summary:** A petition for review of a land use decision must be filed within 21 days of the decision under the Land Use Petition Act (LUPA), chapter 36.70C RCW. In August 2009, the City of Dayton granted Laurie Ferguson’s neighbor a building permit for a shop near Ferguson’s property line. Ferguson became concerned that the shop height would exceed the maximum allowed building height and she asserted at a city council meeting in September 2009 that the City was misinterpreting the city code. The City declined to take action and Ferguson filed a LUPA petition in October 2009. After a public hearing, the city planning commission adopted findings of fact and conclusions of law in July 2010 affirming the City’s interpretation of the maximum building height. Ferguson filed an amended LUPA petition in August 2010, within 21 days of the planning commission’s July decision. The superior court dismissed her petition as untimely because it was filed more than 21 days after the original August 2009 issuance of the building permit. Ferguson appeals.

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5) **No.: 30098-6-III**  
**Case Name: Rodolfo Anaya-Gomez v. Mark F. Sauerwein, MD, et al**  
**County: Yakima**

**Case Summary:** Christina Anaya had a blood test when she went to a hospital for treatment of a urinary tract infection. Dr. Mark Sauerwein at her regular medical clinic failed to inform Ms. Anaya that the blood test results showed she had a fungal infection, because he thought the results were inaccurate. Ms. Anaya later died of fungal sepsis. Her husband, Rodolfo Anaya, sued Dr. Sauerwein for professional negligence and failure to secure informed consent. The superior court dismissed Anaya’s informed consent claim and a jury found that Dr. Sauerwein was not negligent. Anaya appeals the dismissal of his failure to secure informed consent claim.

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