

WASHINGTON STATE COURT OF APPEALS DIVISION THREE

CASE SUMMARIES FOR ORAL ARGUMENT

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.

Date of Hearing: Wednesday, October 24, 2018

Location: Spokane, 500 North Cedar

Panel: Robert Lawrence-Berrey, George Fearing, Rebecca Pennell

9:00 a.m.

1) **No.: 354237**

Case Name: Radu Bahnean, et al v. HSBC Bank USA, N.A.

County: Kittitas

Case Summary: In 2006, the Bahneans executed a promissory note in exchange for a loan of \$490,000 from Green-Point Mortgage Funding, Inc., to repay costs associated with building a property in Snoqualmie Pass. Under the note, secured by a Deed of Trust encumbering the real property, the Bahneans agreed to pay monthly installments for 30 years, beginning on December 1, 2006.

The Bahneans defaulted on the loan in July 2008, and failed to make any additional payments thereafter. On March 9, 2015, the Bahneans filed a quiet title action against HSBC, the note holder. On May 19, 2015, HSBC filed an answer and counterclaim to initiate foreclosure proceedings. The Bahneans claimed the statute of limitations had run, prohibiting HSBC from collecting the entire debt owed.

The trial court granted HSBC's summary judgment motion, and permitted collection of debts from February 15, 2009, onwards. The Bahneans appeal, contending the trial court erred by applying RCW 62A.3-118(a), which only applies to negotiable notes, rather than RCW 4.16.040, which governs contracts regarding land.

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2) No.: 347117

Case Name: State of Washington v. Erica Magallon Alvarez

County: Benton

Case Summary: Erica Alvarez was stopped by the Washington State Patrol for drifting over the fog line and onto the rumble strips on Interstate 82, in violation of RCW 46.61.670. Law enforcement subsequently arrested Ms. Alvarez for driving under the influence (DUI). The district court granted Ms. Alvarez's motion to suppress all evidence obtained from the stop, holding that the warrantless stop was unlawful. The State appealed to the superior court, which affirmed, holding that there is no violation of RCW 46.61.670 where a vehicle crosses the fog line. The State sought review by this Court, contending the lower courts erred as a matter of law in finding there was no violation of RCW 46.61.670. This Court granted discretionary review.

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3) No.: 281795

Consolidated: 296318, 297012, 352056, 354130

Case Name: In re the Marriage of: Catherine Lynn Baxter & Michael Aaron Baxter

County: Spokane

Case Summary: Michael Baxter and Catherine Baxter (k.n.a. Catherine Cook) separated following ten years of marriage. The parties entered an agreed decree of dissolution in August 2006, but since then the parties have continued to litigate two outstanding issues: community credit card debt associated with a property in Alaska and the residential placement of the parties' son. The dissolution decree provided that Ms. Cook and Mr. Baxter would each be liable for one-half of the community credit card debt associated with the Alaska property but did not identify the specific amount of debt. Mr. Baxter continued to pay down the debt, but throughout litigation Ms. Cook has disputed whether she is bound by the agreement since the decree was missing the specific numerical amount of debt owed. Following various motions, including Mr. Baxter's motion to compel compliance with the property settlement agreement, the trial court

found that that the agreement was binding and ordered that Ms. Cook was liable for one-half of the credit card debt, interest and fees accumulated over time, and Mr. Baxter's attorney fees.

Following the settlement of the debt issue, Ms. Cook moved to Wyoming due to a change in employment and filed a petition requesting that the parties' son be moved to Wyoming with her. At that time, the parties had a joint parenting plan. Following trial, the court found that it would be in the child's best interests to remain in Spokane with Mr. Baxter.

Ms. Cook appeals, contending (1) the trial court erred when it enforced the property settlement agreement and when it entered judgment in favor of Mr. Baxter for an amount that was not supported by substantial evidence or within the scope of evidence, and (2) the trial court abused its discretion by using the factors set forth in RCW 26.09.250 in determining placement of their child because the relocation statute did not apply where the parties had a joint parenting plan.

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10:30 AM

4) No.: 353044

Case Name: State of Washington v. David Joseph Brown

County: Benton

Case Summary: On the evening of March 22, 2015, David Brown was stopped for alleged traffic violations and subsequently arrested for driving under the influence (DUI). The district court granted Mr. Brown's motion to suppress evidence obtained as a result of the stop, holding that law enforcement lacked probable cause to stop Mr. Brown where he had not violated any traffic laws. Specifically, the District Court held that Mr. Brown's wide right turn onto Clearwater Avenue was legal because he kept his vehicle within the lane as reasonably practicable, and that RCW 46.61.305(2) did not require Mr. Brown to reactive his turn signal where the signal cycled-off as he entered a dedicated left turn lane. The State appealed to the superior court, which reversed on the grounds that Mr. Brown violated RCW 46.61.305(2). Mr. Brown sought review of the superior court's ruling, and this Court granted discretionary review.

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11:30 AM

5) **No.: 354822**

Case Name: Mariya Tarasyuk v. Mutual of Enumclaw Insurance Company

County: Benton

Case Summary: On January 11, 2011, Anna Mosesova of the Harvey-Monteith Insurance Agency assisted Mariya Tarasyuk in applying for homeowners' insurance coverage. The entire conversation regarding the application took place in Russian, as Ms. Tarasyuk's English is limited. During the application process, Ms. Tarasyuk indicated that she did not conduct any business on the subject premises. That same day, Ms. Tarasyuk purchased a homeowners' policy from Mutual of Enumclaw Insurance Company (Enumclaw). The policy included a small amount for structures on the property other than the home, and included a clause expressly excepting other structures "use in whole or in part for 'business.'" The policy defined "business" as including "trade, profession, or occupation."

Enumclaw's agents visited the property and observed a large shed with a number of tools in its vicinity, and were told by someone on the property that the shed was used to repair vehicles or boats belonging to friends and family members. When asked if she operated a car repair business at the property, Ms. Tarasyuk told Ms. Mosesova that she repaired cars for friends, it was more of a hobby than a business, and that nothing was repaired in the shed.

After obtaining more information about the size of the shed, Enumclaw's underwriter advised Ms. Mosesova that an additional \$60,000 in coverage was needed to insure the 1,200 square foot shed. Enumclaw amended the policy to add this additional coverage for "other structures," and Ms. Tarasyuk's premiums increased to account for the additional coverage. The shed subsequently burned down in August 2011 due to an electrical fire, and the shed was deemed a total loss. Enumclaw investigated and discovered that Ms. Tarasyuk had a business license for the car repair operation and used the shed to store tools and repair manuals for the business. Accordingly, Enumclaw denied coverage.

Ms. Tarasyuk filed an action against Enumclaw alleging breach of contract, violation of Washington's Consumer Protection Act (CPA), violation of the Insurance Fair Conduct Act, breach of the duty of good faith, and estoppel. Both parties moved for summary judgment, and the trial court granted Enumclaw's motion for summary judgment and dismissed all claims. On appeal, this Court reversed after finding that genuine issues of material fact existed as to all claims.

Following a bench trial, the court found that: (1) Ms. Tarasyuk operated a business on her premises, (2) the homeowners' policy clearly excluded coverage from separate

structures that were used in part for business purposes, (3) the business exclusion applied, and (4) Enumclaw did not act in bad faith, violate the CPA, or violate the Insurance Fair Conduct Act.

Ms. Tarasyuk appeals, contending: (1) the court unreasonably concluded she used the shed for business purposes, (2) the court unreasonably concluded that Enumclaw did not act in bad faith, (3) the trial court erred by ruling in favor of Enumclaw based on Ms. Tarasyuk's misrepresentations, and (4) the trial court failed to follow this Court's prior decision and failed to follow the law established in this Court's prior opinion.

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PANEL CHANGE

Panel: Robert Lawrence-Berrey, Kevin Korsmo, Rebecca Pennell

11:30 AM

6) No.: 353087

Case Name: Estate of Stephen A. Jacobs, Jr. et ux v. Randall C. Roberts, Sr. et al

County: Benton

Case Summary: In 1963, Stephen Jacobs purchased a twenty-acre parcel of land in Benton County that he subdivided into four separate parcels in 1976. Parcels 1 and 4 each abut a public roadway, Game Farm Road, which runs along the northern border of Parcels 1 and 4. Parcels 2 and 3 are generally landlocked excepting a 20-foot-wide "panhandle" for both Parcels 2 and 3 that runs north to south between Parcels 1 and 4. This strip of land was intended to provide vehicle access to the southern ends of Parcels 2 and 3 and access from Game Farm Road.

Mr. Jacobs eventually sold Parcels 2 and 3, which both changed ownership several times. Over the years, Mr. Jacobs and his family frequently crossed over the panhandles of Parcels 2 and 3 to access their residences located on Parcels 1 and 4. This activity dated back to approximately 1984.

In 1985, Mr. Jacobs rented the house on Parcel 1 to his step-son, Douglas McCance. The relationship between Mr. McCance and his neighbors on Parcels 2 and 3 deteriorated over time. Interactions between Mr. McCance and the Roberts, who lived on Parcel 2, were particularly strained. Mr. McCance was also involved in at least one incident with the owners of Parcel 3, the Rodríguezes.

In response to these tensions, the Roberts and Rodríguezes commissioned a survey of their roads in August 2012, and based on the survey, erected barbwire fences marking their roads. The Rodríguezes' fence stopped approximately 200 feet from Game Farm Road. The Roberts' fence stopped approximately 20 feet from the centerline of Game Farm Road, leaving walking space between the road and the end of the fence.

In July 2013, the Jacobs file suit against the Roberts and Rodríguezes, asking the court to find that the Jacobs had easements across both roadways. The Jacobs¹ claimed the fences interfered with their ability to access the residence on Parcel 4 from Parcel 1 (and vice versa), and inhibited farming activities on those two parcels.

Following a three-day trial in March 2017, the trial court ruled that: (1) the Jacobs adversely possessed the disputed strip of land, (2) the Jacobs held a prescriptive easement as well as an easement by implied necessity, (3) the fences served no useful purpose and impaired the Jacobs' use of the property, and (4) ordered the Roberts and Rodríguezes to remove or move the fencing consistent with the court's ruling.

The Roberts and the Rodríguezes appeal, challenging a number of the trial court's factual findings and legal conclusions.

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¹ Mr. Jacobs died during the pendency of the litigation, and when he passed away in December 2013, the Estate became a party in interest.