

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: Tuesday, April 30, 2019
Location: Spokane, 500 North Cedar

9:00 a.m.

- No.: 35838-1-III (Anchor Case)**
Consolidated: 35840-2-III
Case Name: RST Partnership v. Chelan County and NSJB Enterprise, Inc., et al
County: Chelan
Case Summary: Chelan County issued RST Partnership a Notice and Order to Abate Zoning and Building Code Violations regarding the production and/or processing of cannabis by NSJB Enterprise, Inc., a tenant of RST. NSJB and RST (Petitioners) jointly appealed to the Chelan County hearing examiner, who entered a written decision upholding the violations. Under the Land Use Petition Act (LUPA), chapter 36.70C RCW, aggrieved parties have 21 days from the date of issuance to appeal the hearing examiner's decision. The decision is deemed issued three days after it is mailed by the local jurisdiction. The hearing examiner's decision was not sent to the parties by certified mail or first class mail as required under county code. Instead, the County's attorney emailed the decision to the parties on June 6, 2017, and the Community Development Department again emailed it to them on June 13. On June 26, Petitioners each filed land use petitions with the superior court but did not include each other's names and addresses as "other parties" to the action. Pursuant to their agreement, Petitioners emailed their petitions to each other, but neither served its petition on the other personally or by first class mail. On June 30, Petitioners filed amended petitions

that included the proper name and address information. The County moved to dismiss the appeals based on Petitioners' failure to comply with LUPA requirements to serve each other either personally or by first class mail within 21 days of issuance of the hearing examiner's decision. The court granted the County's motion and dismissed the petitions. Petitioners NSJB and RST appeal.

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2) **No.: 35719-8-III**

Case Name: State of Washington v. Derek Wayne Schilling

County: Spokane

Case Summary: A Spokane Valley police officer in a fully equipped patrol car with lights and sirens activated engaged in pursuit of a Mercury Cougar automobile at speeds of 80 to 100 m.p.h. in a posted 35 m.p.h. zone. The officer cut off the pursuit for safety reasons but soon heard over the radio that the Cougar had crashed nearby. Officers arrived at the scene to find the Cougar unoccupied. A K-9 unit was called in and tracked Derek Schilling who was hiding nearby. Schilling was identified as the driver of the Cougar and charged with attempting to elude a police vehicle. At trial, the officer testified Schilling was driving "recklessly." The K-9 officer testified about the dog's olfactory ability to find and locate "fear scent." The jury convicted Schilling as charged. He appeals.

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3) **No.: 35794-5-III (Anchor Case)**

Consolidated: 35796-1-III, 36148-9-III

Case Name: In re the Termination of: N.N.S.

County: Chelan

Case Summary: V.N.-T. and D.P. are the parents of N.N.S., who was adjudged dependent at age 3. Throughout a nearly four-year dependency period, both parents engaged in a number of remedial services, either while they were incarcerated or under supervision. In 2016, the Department of Social and Health Services petitioned to terminate both parents' rights to N.N.S. The petition alleged the parents' criminality and incarceration, substance abuse, mental health issues, negligent parenting behaviors, and a pattern of domestic violence as reasons for their inability to care for the child. N.N.S. had nine different unsuccessful custody placements and was in foster care at the time of the termination trial in December 2017. Based on the trial testimony, the court determined that the required elements for termination of parental rights under RCW 13.34.180(1)(a)-(f) were established by clear, cogent and convincing evidence, and that

termination of parental rights was in the child's best interests. Both parents appeal the court's order terminating their parental rights.

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10:30 a.m.

4) No.: 36030-0-III

Case Name: Jane Doe #1, et al v. WA State Community College District 17, et al

County: Spokane

Case Summary: Cowles Publishing Company (the *Spokesman Review* newspaper) made a public records request to Spokane Falls Community College (SFCC) following the resignation of the college's president surrounding allegations of sexual misconduct with fellow employees. Before disclosure of the records, ten employees (Jane Doe #s 1-10) who provided statements to SFCC moved the trial court for a permanent injunction to enjoin disclosure of their names and personal identifiers pursuant to the private personal information exception in the Public Records Act, RCW 42.45.230(3). The court granted the injunction based on findings that the information was personal information in files maintained for employees and disclosure would violate their right to privacy; and, disclosure was clearly not in the public interest and would cause substantial and irreparable harm. Cowles Publishing Company appeals.

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5) No.: 36002-4-III

Case Name: Michael and Myrna Darland v. Snoqualmie Pass Utility District

County: Kittitas

Case Summary: Landowners Michael and Myrna Darland filed suit against a water-sewer district, Snoqualmie Pass Utility District, claiming the District breached a contract to provide water and sewer services to their property under two utility local improvement districts created in the 1980s. The Darland's complaint also included the following claims for relief: declaratory judgment, breach of implied covenant of good faith and fair dealing, unjust enrichment, negligence, estoppel, and inverse condemnation. The court denied Darland's motion for partial summary judgment seeking an order compelling the District to use its statutory power of eminent domain to condemn the

utility easements necessary to deliver water-sewer service to the boundaries of Darland's property. The court granted the District's partial motion for summary judgment to dismiss Darland's claims as barred by applicable statutes of limitation. The Darlands appeal.

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