

THE SUPREME COURT OF THE STATE OF WASHINGTON

Edward M. Goodman and Bernice  
Goodman, husband and wife,  
Respondents.

v.

Michael J. Goodman and Mary  
Goodman, husband and wife,  
Petitioners.

v.

Chance Goodman, a single man,  
and Tyson Goodman,  
a single man,

Defendants.

PETITIONERS' REPLY TO  
RESPONDENTS'  
ANSWER TO PETITION

Received  
Washington State Supreme Court

APR 15 2014

RF  
Ronald R. Carpenter  
Clerk

**Respondents misrepresent the record.** To oppose the timely affidavit of prejudice filed on June 1, 2010, respondents omit “Agreed”<sup>1</sup> from the April 23, 2010 “Agreed Temporary Restraining Order and Order to Show Cause”. Attached **appendix A-1**.

Clerk's papers at 443–444.

The agreed order was just six days after all four co-defendants were served, and no record that it was entered in open court. The agreed order was not a discretionary ruling and the trial court erred to deny the affidavit of prejudice.

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<sup>1</sup>Page 4 of Respondents' Answer

It is well established that the trial court does not exercise discretion for purpose of an affidavit of prejudice when it enters an agreed order or stipulation involving certain pre-trial preliminary issues. See State ex rel. Floe v Studebaker, 17 Wn.2d 8, 16-17, 134 P.2d 718 (1943) (stipulated order consolidating two court actions did not invoke trial court's discretion). Our Supreme Court has observed that

many issues may be resolved between the parties and presented to the court in the form of an agreed order. These matters will generally resolve pretrial disputes regarding such issues as admissibility of evidence, discovery, identity of witnesses, and anticipated defenses. If the parties have resolved such issues among themselves and have not invoked the discretion of the court for such resolution, then the parties will not have been alerted to any possible disposition that a judge may have toward their case.

State v Parra, 122 Wn.2d 590, 600, 859 P.2d 1231 (1993). Generally, the trial court does not exercise discretion for the purpose of an affidavit of prejudice when entering agreed orders or stipulations on “matters relating merely to the conduct of a pending proceeding, or to the designation of issues involved, affecting only the rights or convenience of the parties, not involving any interference with the duties and functions of the court.” Id. at 603.

At the time the trial court denied the affidavit of prejudice on June 3, 2010<sup>2</sup>, the trial court had entered only an agreed order on April 23, 2010. The agreed order did not call upon the trial court to exercise discretion, and the trial court erred in denying the affidavit of prejudice.

### **Standard of Review**

The interpretation of a statute is a question of law, which is reviewed de novo by this court. Wash. Pub. Ports Ass'n v. Dep't of Revenue, 148 Wash.2d 637, 645, 62 P.3d 462 (2003). “If the statute's meaning is plain on its face, we must give effect to that plain meaning as an expression of legislative intent.” Id. An unambiguous statute should not be subjected to judicial construction. Fraternal Order of Eagles, Tenino Aerie v Grand Aerie of Fraternal Order of Eagles, 148 Wash.2d 224, 239, 59 P.3d 655 (2002).

### **Timely Affidavit of Prejudice**

The only relevant requirement should have been whether the judge had made a discretionary ruling. RCW 4.12.050. Judge Cook had not. The motion therefore was timely.

Timely exercised, the statutory right deprives that particular judge of jurisdiction. Marine Power & Equip. Co. v. Department of Transp., 102 Wn.2d 457, 463, 687 P.2d 202 (1984).

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<sup>2</sup>Clerk's papers at 530

Petitioners timely complied with the terms of RCW 4.12.050 and the trial court was required by RCW 4.12.040 to grant their motion. In as much as they timely complied with the statute, the trial judge had no jurisdiction over their case. Petitioners, therefore, have never been tried by a court of competent jurisdiction and must be retried.

**Sanctions.** The April 23, 2010 Agreed Temporary Restraining Order and Order to Show Cause was not a discretionary ruling. The Respondents are misleading The Court by omitting “Agreed” in their answer, and this has delayed the litigation, pursuant RAP 18.9(a) Petitioners request terms or compensatory damages. The harm caused to Petitioners has denied their right to a fair trial, significant legal fees, and countless hours of appellate litigation against this omission.

**Conclusion**

Judge Cook erred to deny the affidavit of prejudice on the June 3, 2010 order based on the April 23, 2010 agreed order. Petitioner has a statutory right to one change of judge.

Dated this 14 day of April 2014

Michael Goodman  
Michael Goodman

APPENDIX

April 23, 2010 Agreed Temporary Restraining  
Order and Order to Show Cause.  
Clerks papers at 443-444.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SKAGIT

EDWARD M. GOODMAN and BERNICE S. )  
GOODMAN, husband and wife, )

Plaintiffs,

vs.

MICHAEL J. GOODMAN and MARY F. )  
GOODMAN, husband and wife, and )  
CHANCE GOODMAN, a single man, and )  
TYSON GOODMAN, a single man, )

Defendants.

NO: 10-2-00587-3

AGREED TEMPORARY RESTRAINING  
ORDERS AND ORDERS TO SHOW  
CAUSE

[Clerk's Action Required]

Special Set  
preapproved by  
Court Admin. (MB)

THIS MATTER having come before the court upon Order to Show Cause why  
defendants Michael J. Goodman, Chance Goodman and Tyson Goodman, or their agents, should  
not be temporarily restrained during the pendency of this action, and the parties agreeing to  
continue the hearing on order to show cause and the temporary restraining orders, the court  
makes the following:

1. IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Defendant Michael J.  
Goodman, Chance Goodman and Tyson Goodman, or their agents, are restrained and

AGREED TEMPORARY RESTRAINING  
ORDERS AND ORDERS TO SHOW CAUSE

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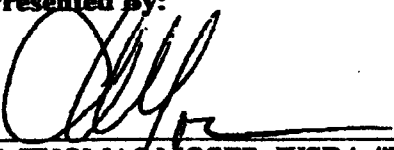
enjoined from trespassing, entering, harming or in any manner disturbing the drain field and associated structures that is connected to the home of Plaintiffs as described in the declaration of Edward M. Goodman. Plaintiffs shall not be required to post a bond as security.


2. IT IS FURTHER ORDERED that Defendants shall appear before this court on the 3 day of June, 2010 at 9:00 o'clock am/pm and show cause why they should not be restrained pending trial from entering, harming, destroying or trespassing on the easement for the plaintiffs' septic system described in the Declaration of Edward M. Goodman.

DATED this 23 day of April, 2010.

  
JUDGE/COMMISSIONER

Presented By:

  
C. THOMAS MOSER, WSBA #7287  
Attorney for Plaintiffs

  
Gerald Osborn, WSBA # 73712  
Attorney for Michael and Mary Goodman

AGREED TEMPORARY RESTRAINING  
ORDERS AND ORDERS TO SHOW CAUSE

