

# 309983

Court of Appeals Division 3  
of the State of Washington

**FILED**

AUG 15 2013

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

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Dan Gesbers, et ux  
v  
Donna Alma

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Brief of Appellant  
for Court of Appeals case # 309983  
of Okanogan County Superior Court case # 082001823  
with request for decision to be published

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## I. Introduction

This case began in 2003 for return of real property and the property changed ownership numerous times with each transfer being subject to the lawsuit and Lis Pendens all legally filed and served before the 1<sup>st</sup> transfer of the property ever occurred.

## II Assignment of error

- No. 1. Did Judge Culp err in allowing third parties to intervene in the lawsuit after a default order and default judgement had been granted in the case and over 60 days had run?
- No. 2. Did Judge Culp err in granting orders in favor of intervenors?
- No. 3. Did Judge Culp err on vacating Default Judgement signed on April 3, 2012 by Judge Culp, himself.
- No. 4. Did Judge Culp err in shortening time?
- No. 5. Did Judge Culp err in allowing intervenors to intervene almost 10 years after lawsuit and Lis Pendens were originally filed and served

## Issues Pertaining to assignment of error

- No. 1. The default order was over 60 days and the default judgement was made over 30 days and the time had run for making any modification or appeal to the order and judgement.
- No. 2. Same for # 2 again each was over 30 days and 60 days
- No. 3. Same for # 3 again each was over 30 days and 60 days

No. 4, Judge Culp erred in shortening time as it did not allow adequate time for all transcripts to be transcribed to be presented to the court for full advisement to the court,

### III Statement of the Case

The lawsuit and countersuits and his pendens and service by deputy sheriff and service by publication in the County Paper of record were all made prior to the sale of the real property to 3<sup>rd</sup> parties, 4<sup>th</sup> parties, 5<sup>th</sup> parties etc. They all had notice and all the papers were filed legally in the Okanogan County Superior Court clerk's office and the Okanogan County Auditor's Office.

9 years later when the defending attorney withdrew without ever actually having put in an actual answer, a default order and default judgement for the return of the real property was granted.

All this time the 3<sup>rd</sup> parties, 4<sup>th</sup> parties, 5<sup>th</sup> parties etc. had enough time to petition to become part of the lawsuit. They all chose to sit on the sidelines and to not get into the lawsuit until after the default order and default judgement had run for over 60 days.

The Third parties intervened using a case that had no relevance to this case and did not allow adequate time to show that the case they cited had no relevance. The case they cited clearly is shown to be irrelevant by the 2 transcripts of the hearings which were later transcribed that shows Judge Small clearly made a narrow ruling that set a payoff amount on a contract between my grandparents and myself.

The transcript clearly shows that Judge Small was quite clear in that the payoff did not in any way have any bearing on this case before the court today.

Nevertheless a 1989 contract could not have any bearing on a 2003 case that involved issues completely separate from the 1989 contract.

Issues involving money put into improvements of no money put into improvements has no issue with contract payments ~~whatsoever~~ what so ever.

#### IV Summary of Argument

They (intervenors) never had clear title and they had notice of never having clear title

Time had run and the third party, 4th party and fifth parties buyers etc. were all too late to intervene after sitting on sidelines for 9 years and only intervening after default order and default judgement had run for over 60 - 90 days plus.

#### V Argument

The intervenors were not timely and have no basis or right to bring in a case not relevant to this case to throw out the order of default and default judgement. The intervenors waited more than 9 years to join and over 60 days past the default order and default judgment. For a lawsuit going on for over 9 years that simple search of the court house records would clearly have given them notice of is not right for a court to take notice of them now. They do not claim to not have had notice from the courthouse records, they just claim they are unhappy to have bought property from a third party that a lawsuit was on with a lis pendens and they did

not like the outcome of the lawsuit in a default order and default judgement that they wanted reversed because of an unrelated case that set a payoff on a contract between my grandparents dated back in 1989 that has no relevance to this 2003 case of which Judge Small made clear in his ruling in the contract payoff case.

### VI. Conclusion

They never had clear title and they had notice that the property never had clear title.

There were lawsuits and countersuits that prevented clear title; all property filed in the Superior Court clerks office and Auditors office with his lenders

Judge Culp erred in allowing intervention and the default order and default judgement should be upheld with the property rightfully returned to me with 1% monthly (12% annual legal) interest on the property value for each month the property has been withheld from me payable by the attorney of record and the insurance group he represents.

And I request the decision on this case to be published.

For third party intervention it would have needed to have been made before the default order and default judgement had run as the case they brought for intervention is irrelevant as it has nothing to do with this case.

Certificate of Mailing  
Margaret Schluneger mailed by  
U.S. Express postage a copy of this  
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8/13/2013