SUPREME COURT NO. 98133-7

COURT OF APPEALS NO. 36244-2-III
Kittitas Superior Court No. 16-2-00254-7

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

GRANT COUNTY, ET. AL.

Respondents,

v.

JOHN LOUIS CORRIGAN, SR.

Petitioner.

ON APPEAL FROM THE COURT OF APPEALS OF THE
STATE OF WASHINGTON – DIVISION THREE

The Honorable Lawrence-Berrey, Chief Judge

PETITION FOR REVIEW

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APPENDIX

A. IDENTITY OF PETITIONER

Petitioner John L. Corrigan asks this Court to review the decisions of the court of appeals referred to in section B.

B. COURT OF APPEALS DECISION

Petitioner seeks review of the court of appeals decision (COA) in Corrigan v. Grant County, et. al, COA No. 36244-2-III, filed November 26, 2019, and subsequent COA Order Denying Motion for Reconsideration filed December 31, 2019 attached as appendix (A-1 to A-9 & A-10) to this petition.

C. ISSUES PRESENTED

I. The Court Should Accept Review Because The Decision Of The Court Of Appeals Is In Conflict With Decisions Of The United States Supreme Court, The Washington State Supreme Court And The Three Divisions Of The Court Of Appeals. RAP 13.4(b)(1), (2).

II. The Court Should Accept Review Because The Court Of Appeals Did Not Have Authority To *Sua Sponte* Convert A CR Rule 12(b)(6) Motion To A CR 56 Motion. RAP 13.4(b)(4).

III. The Court Should Accept Review Because The Court Of Appeal's Denial Of The Petitioner's Motion For Reconsideration Violated Due Process Of Law When The COA Converted -*Sua Sponte* -A CR 12(b)(6) Motion To A CR 56 Motion Without Notice, Opportunity To Respond, Or Discovery And Thus Involves Significant Questions Of Law Under The 5th And 14th Amendments To The Constitution Of The United States And The Washington State Constitution, Article I § 4. RAP 2.5(a)(3).

D. STATEMENT OF THE CASE

In April 2011 Corrigan was eventually stopped for speeding by an unmarked and then a marked Washington State Patrol vehicle. He was custodially arrested, spent the night in jail, went through a civil trial (speeding - dismissed), and a criminal trial (failing to stop – convicted, overturned, retried, and convicted again).

Relating to the above incident, Corrigan filed a 42 U.S.C. § 1983 civil rights lawsuit in Kittitas County Superior Court against various Grant County Defendants and the WSP Officer in the unmarked police vehicle. The case was removed to federal court and then dismissed with leave to file an amended complaint. Corrigan amended his complaint - now only asserting state law claims, requested remand, and the case was returned to Kittitas County Superior Court.

On April 23, 2018, Defendants moved to dismiss Corrigan's amended complaint pursuant to CR 12(b)(6). The trial court agreed with the defendants' arguments and granted their motions for dismissal pursuant to CR 12(b)(6). Corrigan timely appealed to Washington State Court of Appeals (COA), Division III. The COA *sua sponte* converted the CR 12(b)(6) motion to a CR 56 motion and granted the CR 56 motion to dismiss. Corrigan requested the COA reconsider because he was not given notice, an opportunity to respond to the summary judgment motion, or discovery - among other legal arguments. The COA denied reconsideration on December 31, 2019 without explanation.

Now comes this timely Petition for Review.

E. ARGUMENT

Introduction.

Grant County Defendants moved for a Motion for Stay of Discovery pending a motion under CR 12(b)(6). Then moved for a summary judgment motion. Judge Federspiel gave Defendants an option – a CR 12(b)(6) motion with a stay of discovery – or a CR 56 motion with no stay of discovery. Defendants opted for a CR 12(b)(6) motion with a stay of discovery. Judge Bartheld eventually ruled to grant Defendants' motions to dismiss under CR12(b)(6) stating among other things:

> The issue that comes before this Court is whether or not the plaintiff has stated claims upon which relief can be granted as a matter of law. **I do note that there was a motion to stay discovery pending the motion to dismiss.** Judge Federspiel, by order dated April 2, 2018, indicated that discovery would be stayed so long as the Court was able to rule on the CR 12 motion without resorting to a CR (unintelligible), and when additional facts remain to be supplemented, the Court can convert a CR 12 motion to a CR 56 summary judgment if necessary. **The Court finds in this case that there has not been a supplementation of facts in this case, that this matter was actually properly brought before this Court on a CR 12 motion.** [Emphasis added]

Verbatim Report of Proceedings from an Audio File, June 18, 2018, pp. 14-15.

Corrigan appealed this decision to the appellate court.

Without notification, an opportunity to be heard or discovery, the COA *sua sponte* converted the CR 12(b)(6) motion to a CR 56 motion, claiming that matters outside the pleadings were presented – and then promptly granted Defendants summary judgment motion.

Issues relating to the argument:

1. **Conversion Language Is The Same For Both Washington State Rules (CR 12(b)(6)) And Federal Rules Of Procedure (FRCP 12(d).**

Before Federal Civil Rules were changed from *shall* to *must*, CR 12 wording was ***exactly*** the same. See In Re Black & Geddes, Inc., 58 R.R. 547, 550 (S.D.N.Y. 1983). Therefore, authorities used are both state and federal, interchangeably.

WA Civil Rules for Superior Court Rule 12. Defenses and Objections; (c) Motion for Judgment on the Pleadings.	Federal Rules of Appellate Procedure Rule 12(d) Result of Presenting Matters Outside the Pleadings.
. . . If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in rule 56, and **all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56.** [Emphasis added]	If, on a motion under Rule 12(b)(6) or 12(c) matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. **All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.** [Emphasis added]

2. **CR 12(b)(6) Motion vs. CR 56 Motion - Similar But Different.**

   Both motions to dismiss and motions for judgment on the pleadings are pleadings-based attacks. Rule 12(d) respects this essential attribute by requiring that such motions be re-cast into summary judgment requests when materials outside the pleadings are examined, **thereby ensuring that the distinct policies of pleadings challenges (i.e., testing the pleaded allegations) and factual challenges (i.e., testing the existence of supporting evidence) are honored.** [Citations omitted] [Emphasis added]

Federal Civil Rules Handbook, © 2019 by Thomson Reuters/West, Rule 12(d) – Presenting Matters Outside the Pleadings pp. 480-481.

3. **Conversion And Due Process.**

   "**We have held that it is reversible error** for a district court to convert a motion under Rule 12(b)(6), into a motion for summary judgment **unless the court provides notice** of its intention to convert the motion and allows **an opportunity to submit materials** admissible in a summary judge proceeding or allows a hearing." [Emphasis added]

Bruni v. City of Pittsburgh, 824 F.3d 353, 360-61 (3d Cir. 2016).

Stating it differently:

> The procedures set forth above assure that the parties will not be unfairly surprised, and that genuine issues of material fact will be brought to the trial court's attention. **In short, they guard against entry of a summary judgment without due process.** Compliance with the applicable time periods is thus not an end in itself, and a reviewing court must examine whether the party against whom summary judgment was granted did, indeed**, have a reasonable opportunity to present its views and all materials pertinent to the dispositive issue.** *See, e.g.,* 6 Moore's Federal Practice ¶ 56.02[3] at 56-33 n. 20 (citing cases). [Emphasis added]

In Re Black & Geddes, Inc., 58 R.R. 547, 550 (S.D.N.Y. 1983).

Further, as the U.S. Supreme Court stated - that because summary judgment can be supported or defeated by citing a developed record, courts must give the parties "adequate time for discovery." Guidotti v. Legal Helpers Debt Resolution, L.L.C., 866 F. Supp. 2d 315 (D.N.J. 2011), citing Celotex Corp v. Catrett, 477 U.S. 317, 322 (1986).

Finally,

> Both the Washington and U.S. Constitutions provide that no person shall be deprived of "life, liberty, or property, without due process of law. State deprivation of any of these protected interests is unconstitutional unless accompanied by adequate procedural safeguards. Our Supreme Court has held that the state's due process protection is largely coextensive with that of the U.S. Constitution. [Citations omitted]

Berst v. Snohomish County, 114 Wash. App. 245 (COA Div. I, 2002)

I. The Court Should Accept Review Because The Decision Of The Court Of Appeals Is In Conflict With Decisions Of The United States Supreme Court, The Washington State Supreme Court And All Three Divisions Of The Washington Court Of Appeals. RAP 13.4(b)(1), (2).

Both the federal and the state courts assiduously protect the conversion requirements of notice, opportunity to be heard, and the need for discovery before due process is afford a non-moving litigant faced with a converted summary judgement determination. Consider the following compilation of Washington State Supreme Court, the three Washington Courts of Appeal, the U.S. Supreme Court, Utah Supreme Court, and federal circuit and district courts:

Summary judgment is affirmed if **"the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,** show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." [Emphasis added] Worthington v. Westnet, 182 Wash. 2d 500 (WA Sup. Ct. 2015) See also Vallandigham v. Clover Park School District No. 400, 154 Wn. 2d 16 (WA Sup. Ct. En Banc, 2005).

Rather, CR 12(b) indicates that if a CR 12(b)(6) motion is treated as a motion for summary judgment, **"all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56."** [Emphasis added]
Foisy v. Conroy, 101 Wn. App. 36 (COA I, 2000)

Summary judgment is appropriate **only if the pleadings, affidavits, depositions, and admissions on file demonstrate** the absence of any genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. CR 56(c). [Emphasis added] Kelley v. Pierce County, 179 Wash. App. 566 (COA II, 2014)

Thus, we agree with appellants and conclude that under Folsom, an appellate court cannot fully engage in the same inquiry as the trial court, or construe all evidence and reasonable inferences in the light most favorable to the nonmoving party, **unless the appellate court evaluates anew all evidence available to the trial court for potential consideration on summary judgment**. [Emphasis added] Keck v. Collins, 181 Wash. App. 67 (COA III, 2014)

Ruling that summary judgment **was not properly granted because of premature discovery inadequacies** citing numerous Utah discovery cases. [Emphasis added] Drysdale v. Ford Motor Company, 947 P.2d 678 (Utah Sup. Ct. 1997)

If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. **All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.** [Emphasis added] Bartlett v. Dept. Of the Treasury IRS, 749 F.3d 1 (1st Cir. 2014)

. . . However, a court may not convert the motion to dismiss to one for summary judgment, unless the plaintiff first receives **"both notice that the motion is pending and an adequate opportunity to respond."** "Implicit in the 'opportunity to respond' is the requirement that sufficient time be afforded for discovery necessary to develop facts essential to justify a party's opposition to the motion." [Citations omitted] [Emphasis added] Williams v Grant County, No. 2:2015cv1760, U.S. District Court, District of OR, Pendleton Division.

There is strong support in a well-recognized text for requiring a formal, court-ordered conversion:

[T]hus, a notice of dismissal may be vacated only if filed after the time that the court has actually reviewed the motion to dismiss, determined whether to include or exclude the extraneous matters, notified the parties of the conversion to Rule 56, and **expressly**

afforded the parties a reasonable opportunity to present materials relevant to a motion for summary judgment. 8 James Wm. Moore et al., Moore's Federal Practice § 41.33[5][c] (3d ed.1997). [Emphasis added] Swedberg v. Marotzke, 339 F.3d 1139, FN #6 (9th Cir. 2003).

In the Court of Appeals [Div I], the parties disputed whether the court should review the trial court's order as a CR 12(b)(6) dismissal or a CR 56(c) summary judgment order. Trujillo, 181 Wn. App. at 490. **Noting that the trial court's order granted NWTS's motion to dismiss under CR 12(b)(6), the Court of Appeals concluded, "Because the supporting documents the trial court considered were alleged in the complaint and the 'basic operative facts are undisputed and the core issue is one of law,' we review the order under CR 12(b)(6), not as a summary judgment under CR 56(c)."** Id. at 492. Trujillo v. Northwest Trustee Services, Inc., No. 90509-6, Washington State Supreme Court, En Banc.

As addressed above, it is comprehensively understood that federal and state law require notice, discovery and an opportunity to respond to comport with basic requirements of due process when converting from a CR 12(b)(6) motion to a CR 56 summary judgment motion.

I. The Court Should Accept Review Because The Court Of Appeals Did Not Have Authority To Sua Sponte Convert A CR Rule 12(b)(6) Motion To A CR 56 Motion. RAP 13.4(b)(4).

At the discretion of the district court, a motion to dismiss may be converted to a motion for summary judgment if the court chooses to consider materials outside the pleadings in making its ruling. However, **if the district court chooses, as it did here, to ignore supplementary materials submitted with the motion papers and determine the motion under the Rule 12(b)(6) standard, no conversion occurs and the supplementary materials do not become part of the record for purposes of the Rule 12(b)(6) motion.** We review a motion to dismiss using the "same criteria that obtained in the court below." **As a result, we review only those documents actually considered by the district court in its Rule 12(b)(6) analysis** unless we are persuaded that the court below erred in declining to consider the proffered documents.

Trans Spec Truck Service, Inc., v. Caterpillar, Inc., 524 F.3d, 315 (1st Cir. 2008)

A Rule 12(b)(6) motion to dismiss supported by extraneous materials cannot be regarded as one for summary judgment **until the district court acts to convert the motion** by indicating, preferably by an explicit ruling, that it will not exclude those materials from its consideration. [Emphasis added]

Swedberg, at 1146.

The Rules of Appellate Procedure do not provide for the COA to *sua sponte* convert from a motion to dismiss to a motion for summary judgment. Only the trial court can convert such a motion under CR 12(b)(6).

Further, the trial court specifically noted that this was clearly a motion to dismiss and not a motion for summary judgment. See Introduction, supra. Also, the COA did not indicate which if any documents converted the CR 12(b)(6) motion to a CR 56 motion, or what makes the COA believe that the trial court actually considered summary judgment type documents. What the COA did was completely ignore their responsibility under RAP 9.13:

> On review of an order granting or denying a motion for summary judgment the appellate court will consider only evidence and issues called to the attention of the trial court. The order granting or denying the motion for summary judgment shall designate the documents and other evidence called to the attention of the trial court before the order on summary judgment was entered. Documents or other evidence called to the attention of the trial court but not designated in the order shall be made a part of the record by supplemental order of the trial court or by stipulation of counsel.

Looking at RAP 9.13 closer, it states:

1. *On review of an order granting or denying a motion for summary judgment the appellate court will consider only evidence and issues called to the attention of the trial court.*

This is simply not possible. The COA cannot review a summary judgment order because the trial court did not order summary judgment – only a CR 12(b)(6) motion was addressed. There was no evidence because there was no discovery. The issues called to the attention of the trial court only related to the CR 12(b)(6).

2. *The order granting or denying the motion for summary judgment shall designate the documents and other evidence called to the attention of the trial court before the order on summary judgment was entered.*

Again, this is simply not possible. The trial court cannot designate the documents and other evidence called to the attention of the trial court, because the trial court did not rule on a motion for summary judgment.

3. *Documents or other evidence called to the attention of the trial court but not designated in the order shall be made a part of the record by supplemental order of the trial court or by stipulation of counsel.*

No documents or other evidence was addressed in the order because there was no order addressing summary judgment.

RAP 9.13 was ignored by the COA because it could not be reconciled with the COA's *sua sponte* conversion.

Consider also that the COA cannot engage in a *de novo* review of a summary judgment motion when the trial court never made a summary judgment determination.

> When reviewing an order for summary judgment, we engage in the same inquiry as the trial court. [Citation omitted]

Kelley, at 572. The COA cannot engage in the same inquiry as the trial court because the trial court ruled on a CR 12(b)(6) motion and the COA ruled on a summary judgment motion. These are two different motions. See Introduction above.

The COA erred when it improperly converted to a summary judgment motion and then dismissed on summary judgment.

II. The Court Should Accept Review Because The Court Of Appeal's Denial Of The Petitioner's Motion For Reconsideration Violated Due Process Of Law When The COA Converted -*Sua Sponte* -A CR 12(B)(6) Motion To A CR 56 Motion Without Notice, Opportunity To Respond, Or Discovery And Thus Involves Significant Questions Of Law Under The 5th And 14th Amendments To The Constitution Of The United States And The Washington State Constitution, Article I § 4. RAP 2.5(a)(3).

The Introduction and Arguments for Issues Presented I, and II are hereby incorporated into this section.

It is clear that the numerous authorities addressing the CR 12(b)(6) shows that the COA erred when it *sua sponte* converted the trial court's CR 12(b)(6) motion to a CR 56 motion for summary judgment.

F. CONCLUSION

For the above reasons, Mr. Corrigan respectfully requests that this Court accept review of this matter and hold that the remedy prescribed by the Court of Appeals violates Mr. Corrigan's right to due process under the U.S. Constitution and the Washington State Constitution.

DATED THIS 29th day of January 2020.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 29th day of January, 2020, I caused a true and correct copy of the Petition for Review to be served electronically by Appellate Court's Portal for Respondents:

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FILED
NOVEMBER 26, 2019
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

JOHN L. CORRIGAN, Sr., Appellant, v. GRANT COUNTY, a municipal Corporation; D. ANGUS LEE; PATRICK SCHAFF; JANIS WHITENER-MOBERG; BRIAN D. BARLOW; JOHN A. ANTOSZ, and TIMOTHY KRON, Respondents.	)	No. 36244-2-III UNPUBLISHED OPINION

LAWRENCE-BERREY, C.J. — John Corrigan appeals the trial court's CR 12(b)(6) order dismissing his amended complaint. Because the trial court considered matters outside the pleadings, we review the trial court's order as if it were a CR 56 order granting summary judgment. Applying that standard, we affirm.

FACTS

In April 2011, John Corrigan sped by Trooper Timothy Kron on Interstate 90. Trooper Kron activated his emergency lights and followed Corrigan for eight miles until another trooper joined. At that point, Corrigan pulled over. Corrigan was cited for

speeding and failing to stop for a police officer. The speeding ticket was dismissed, but Corrigan was convicted for failing to stop. The conviction was later overturned by the superior court and dismissed without prejudice.

On March 25, 2013, Corrigan brought a 42 U.S.C. § 1983 suit in federal court against Trooper Kron, Grant County, and others, alleging violations of Corrigan's civil rights, malicious prosecution, and negligence stemming from his earlier arrest and prosecution.

On July 3, 2013, Grant County refiled charges against Corrigan for failing to stop. Corrigan was reconvicted of that charge.

On December 10, 2013, the federal court granted the defendants' motion for summary judgment dismissing all of Corrigan's claims. Corrigan appealed to the Ninth Circuit, but the Ninth Circuit denied it, finding the appeal "so insubstantial as to not warrant further review." Clerk's Papers (CP) at 174.

On September 15, 2016, Corrigan brought suit in Kittitas County Superior Court against Grant County, various Grant County employees, and Trooper Kron. In that suit, he asserted a 42 U.S.C. § 1983 claim, and claims for abuse of process, malicious prosecution, and negligence. The case was removed to federal court.

Trooper Kron brought a FED. R. CIV. P. 56 motion for summary judgment dismissal. The federal court granted that motion, and Trooper Kron was no longer a party to that action.

Grant County and its employees brought a FED. R. CIV. P. 12(b)(6) motion to dismiss. The federal court dismissed Corrigan's suit against Grant County and its employees. Somewhat contradictorily, it also afforded Corrigan leave to amend his complaint.

Corrigan filed an amended complaint, which asserted only State law claims. Although Trooper Kron was no longer a party to that action, Corrigan informally e-mailed Trooper Kron the amended complaint instead of formally serving him. Corrigan's amended complaint alleged: (1) negligence by Grant County and the prosecutor's office, (2) abuse of process against Grant County for the recharge and retrial after Corrigan's conviction was overturned and after he filed a § 1983 action, (3) a fair trial violation against Grant County and Judge Whitener-Moberg, and, (4) malicious prosecution against Grant County and Trooper Kron. Corrigan moved to remand the case, and the federal court remanded it back to Kittitas County Superior Court.

On April 23, 2018, Grant County moved to dismiss Corrigan's amended complaint pursuant to CR 12(b)(6). Among many other arguments, Grant County argued that Corrigan's claims were outside the three-year statute of limitations.

Trooper Kron also filed a motion to dismiss pursuant to CR 12(b)(6). Among many other arguments, Trooper Kron argued insufficient service of process under CR 12(b)(5).

The trial court agreed with the defendants' many arguments and granted their motions for dismissal. Corrigan timely appealed to this court.

ANALYSIS

A. ADEQUATE RECORD

Corrigan contends statements from various parties, including the trial court, are missing from the verbatim report of proceedings. He argues this error requires reversal. We disagree.

As explained below, we review the trial court's rulings de novo. This means we review the same documents that the trial court considered. The trial court's questions and the parties' answers during argument of their motions are irrelevant to our review. Because we review only the written record, we are satisfied the record is sufficient for our review.

B. STANDARD OF REVIEW

CR 12(c) provides in relevant part:

> If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in rule 56 . . . .

Because the trial court considered matters outside Corrigan's amended complaint, we review the trial court's order under CR 56.

On review of a summary judgment order, we engage in the same inquiry as the trial court. *Wash. State Major League Baseball Stadium Pub. Facilities Dist. v. Huber, Hunt & Nichols-Kiewit Constr. Co.*, 165 Wn.2d 679, 685, 202 P.3d 924 (2009). All facts and reasonable inferences are considered in a light most favorable to the nonmoving party. *Berger v. Sonneland*, 144 Wn.2d 91, 102-03, 26 P.3d 257 (2001). Summary judgment is appropriate only when there are no disputed issues of material fact and the prevailing party is entitled to judgment as a matter of law. CR 56(c).

C. GRANT COUNTY'S MOTION TO DISMISS

Corrigan contends the trial court erred by granting Grant County's motion to dismiss on his claims of malicious prosecution, abuse of process, negligence, and his causes of action against the various judges. We disagree.

1. Malicious prosecution

A plaintiff asserting malicious prosecution must establish various elements, including that the proceedings terminated on the merits in favor of the plaintiff. *Hanson v. City of Snohomish*, 121 Wn.2d 552, 558, 852 P.2d 295 (1993). Here, Corrigan was reconvicted of failure to stop. He cannot establish that the proceedings terminated on the merits in his favor. The trial court did not err in dismissing this claim.

2. Abuse of process and negligence: Statute of limitations

A plaintiff asserting abuse of process or negligence must bring suit within three years of when the cause of action accrued. *See* RCW 4.16.080(2); *see also Nave v. City of Seattle*, 68 Wn.2d 721, 724, 415 P.2d 93 (1966) (abuse of process); *Washington v. Boeing Co.*, 105 Wn. App. 1, 17, 19 P.3d 1041 (2000) (negligence). Generally, a cause of action accrues when the party has the right to apply to a court for relief. *Deegan v. Windermere Real Estate Center-Isle, Inc.*, 197 Wn. App. 875, 892, 391 P.3d 582 (2017). A party has the right to apply to a court for relief when the party can establish each element of the action. *Shepard v. Holmes*, 185 Wn. App. 730, 739, 345 P.3d 786 (2014).

Here, Corrigan's claims for abuse of process and negligence centered around Grant County's and its employees' decision to refile criminal charges against him. If refiling the charges was wrongful, this is when Corrigan had a right to apply for judicial

relief. The criminal charges were refiled on July 3, 2013. Corrigan's September 15, 2016 original complaint was, therefore, outside the three-year limitation period. Even if his amended complaint related back to the filing of his original complaint, it too was late.

Corrigan argues that his September 2016 complaint was timely because he was *convicted* in November 2013. But being convicted of a crime is not an element of abuse of process or negligence, and is thus irrelevant to when he had a right to apply for judicial relief. We conclude that his conviction date is not when his abuse of process and negligence claims began to accrue.

3. Judicial immunity

"Under common law, judges are absolutely immune from suits in tort that arise from acts performed within their judicial capacity." *Lallas v. Skagit County*, 167 Wn.2d 861, 864, 225 P.3d 910 (2009). "[J]udicial immunity applies to judges only when they are acting in a judicial capacity and with color of jurisdiction." *Id.* at 865.

Here, Corrigan's claims against the various judges all occurred while they were acting within their judicial capacity. Therefore, judicial immunity extends to their actions, and Corrigan's claims fail.

D. TROOPER KRON'S MOTION TO DISMISS

Corrigan contends the trial court erred by finding Trooper Kron was not properly served and, thus, was not a party to the action. We disagree.

Whether service was proper is a question of law that this court reviews de novo. *Goettemoeller v. Twist*, 161 Wn. App. 103, 107, 253 P.3d 405 (2011). Under FED. R. CIV. P. 4(e)(1)-(2), service must occur: (1) on the individual personally, (2) on the individual's dwelling or usual place of abode with someone of suitable age who resides there, (3) on the individual's agent authorized by law to receive process, or (4) any method allowed by state law in the state where the district court is located or where service is made. Under Washington law, service must occur through: (1) personal service, (2) on the individual's usual place of abode with a person of suitable age who resides there, (3) on the individual's usual place of abode with a person of suitable age who resides there, a proprietor, or an agent, and then mailing a copy by first class mail to the person at their usual mailing address, (4) by publication when the defendant cannot be found, or (5) by certified mail when the court determines it is just as likely to give actual notice. *See* CR 4(d); RCW 4.28.080(16), (17); RCW 4.28.100.

Here, Corrigan does not assert that he served Trooper Kron in compliance with any of the aforementioned ways. He merely asserts that electronic service of his amended

complaint on Trooper Kron was sufficient. We disagree. Electronic service is not permitted under federal or state law. The trial court properly dismissed Corrigan's claims against Trooper Kron for insufficient service of process.[1]

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Lawrence-Berrey, C.J.

WE CONCUR:

Siddoway, J.

Pennell, J.

[1] Because of our disposition of these arguments, we need not address the various other bases for which we might affirm the trial court's dismissal of Grant County, its employees, and Trooper Kron.

FILED
DECEMBER 31, 2019
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

JOHN L. CORRIGAN, Sr.,	)	**No. 36244-2-III**
	)	
Appellant,	)	
	)	
v.	)	**ORDER DENYING MOTION FOR RECONSIDERATION**
	)	
GRANT COUNTY, a municipal corporation; D. ANGUS LEE; PATRICK SCHAFF; JANIS WHITENER-MOBERG; BRIAN D. BARLOW; JOHN A. ANTOSZ, and TIMOTHY KRON,	)	
	)	
Respondents.	)	

The court has considered appellant's motion for reconsideration and is of the opinion the motion should be denied. Therefore,

IT IS ORDERED the motion for reconsideration of this court's decision of November 26, 2019, is denied.

PANEL: Judges Lawrence-Berrey, Siddoway, and Pennell

FOR THE COURT:

Lawrence-Berrey, C.J.
ROBERT LAWRENCE-BERREY
CHIEF JUDGE

JOHN CORRIGAN - FILING PRO SE

January 29, 2020 - 11:36 AM

Transmittal Information

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Appellate Court Case Number:	36244-2
Appellate Court Case Title:	John L. Corrigan, Sr. v. Grant County, et al
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