

63614-0

63674-0

No. 63674-0

**COURT OF APPEALS
OF THE STATE OF WASHINGTON, DIVISION ONE**

MARYLIN TAYLOR, *Appellant*

v.

EVANGELINE ZANDT, *Respondent*

RECEIVED
JUN 15 2010

REPLY BRIEF

RECEIVED
COURT OF APPEALS
DIVISION ONE

JUN 14 2010

Evangeline Zandt
5963 Rainier Ave. S.
Seattle, Wash., 98118

TABLE OF CONTENTS

	Page
<u>ASSIGNMENT OF ERROR AND ISSUES PRESENTED FOR REVIEW</u>	1
<u>A. ASSIGNMENTS OF ERROR</u>	1
<u>B. COUNTERSTATEMENT OF ISSUES PERTAINING TO ASSIGNMENTS OF ERROR</u>	1
<u>STATEMENT OF THE CASE</u>	1
<u>ARGUMENT</u>	3
<u>1. THE COURT ISSUED SUFFICIENT FINDINGS TO JUSTIFY THE ISSUANCE OF A WRIT OF RESTITUTION.</u>	3
<u>2. THE TENANT HAD NO BASIS TO CONTEST OWNERSHIP OF THE BUILDING THROUGH AN UNLAWFUL DETAINER ACTION.</u>	5
<u>3. THE TENANT HAS WAIVED THE ISSUE OF THE THREE DAY EVICTION SIGNED BY DIRK MAYBERRY</u>	7
<u>CONCLUSION</u>	8

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

<u>Foisy v. Wyman</u> , 83 Wn.2d 22 at 33	07, 08
<u>Groff v. Dep't of Labor & Indus.</u> , 65 Wn.2d 35, 40, 395 P.2d 633 (1964)	03
<u>In re Dependency of C.B.</u> , 61 Wn. App. 280, 287, 810 P.2d 518 (1991)	04
<u>In the Detention of Labelle</u> , 107 Wn.2d 196, 218, 728 P.2d 138 (1986)	04
<u>In re Disciplinary Proceeding of Kennedy</u> , 80 Wn.2d 222, 236, 492 P.2d 1364 (1972)	03
<u>MacRae v. Way</u> , 64 Wn.2d 544, 392 P.2d 827 (1964)	06
<u>Proctor v. Forsythe</u> , 4 Wn.App. 238, 480 P.2d 511 (1971)	06
<u>Provident Mutual Life Ins. Co. v. Thrower</u> , 155 Wash., 613, 617, 285 P.654 (1930),	07
<u>State v. Agee</u> , 89 Wn.2d 416, 421, 573 P.2d 355 (1977)	04
<u>State v. Wood</u> , 89 Wn.2d 97, 99, 569 P.2d 1148 (1977)	03
<u>Talps v. Arreola</u> , 83 Wn.2d 655, 657, 521 P.2d 206 (1974)	03
<u>Truly v. Heuft</u> , 138 Wn.App. 913, 921, 158 P.2d 1276 (2007)	07

STATUTES

RCW 59.12 06

RCW 59.12.030 (3) 06

RCW 59.18 06

RCW 59.18.030 (2) 06

OTHER AUTHORITIES

see Peck, **Landlord and Tenant Notices**, 08
31 Wn.L.Rev. 51, 61 (1956)

**ASSIGNMENT OF ERROR AND ISSUES PRESENTED FOR
REVIEW**

A. ASSIGNMENTS OF ERROR

The appellant has presented three assignments of error. This brief will analyze those three assignments of error.

**B. COUNTERSTATEMENT OF ISSUES PERTAINING TO
ASSIGNMENTS OF ERROR**

1. Can Evangeline Zandt bring an eviction action in a representative capacity?
2. Was the three day notice valid when signed by an agent in a representative capacity?
3. Has the appellant presented a record that supports a finding that the courts order of April 16, 2009 was invalid?
4. Did the appellant waive right to possession by voluntarily vacating the premises before the eviction was ordered?
5. Can the court hear issues of title in an unlawful detainer action?

STATEMENT OF THE CASE

1. A summons and complaint was filed in this case on January 16, 2009, whereby Evangeline Zandt, as a representative of the landlord,

sought to evict the appellant in this case from a leased room located at 5963 Rainier Ave. S., Seattle, WA., 98118. (CP 1-5).

2. The tenant raised various defenses in her answer including the fact that Evangeline Zandt was not the landlord. This was filed on February 27, 2009. (CP 23-25).

3. On March 9, 2009, a hearing was held on the issues of this case. At the end of the hearing, the court issued an order continuing the hearing until April 16, 2009. The court also issued an order stating a writ of restitution would issue unless the tenant vacated by then. (CP 95). This order was stipulated to by the defendant. (Tr. 3, L. 25, to p. 4, l. 6).

4. On April 15, 2009, the tenant sent the court a declaration stating she had vacated the building. (CP 106).

5. On April 16, 2009, the court continued the hearing until April 21. The tenant did not attend the hearing. (CP 103).

6. On April 21, 2009, the court stated that the March 9, 2009 order was reached by agreement of the parties. (Tr. 3, l. 25, to p. 4 l.6).

7. At the hearing, attorney for the plaintiff stated that his client had seen some evidence the tenant had still been in the building. (Tr. 4, p. 21 to p.6, l. 19). Ms. Zandt was in the courtroom. (Tr. p. 2, l. 13).

8. At that date, the court issued an order granting a writ of restitution based upon a finding that tenant had failed to vacate the premises. (CP 104).

ARGUMENT

1. THE COURT ISSUED SUFFICIENT FINDINGS TO JUSTIFY THE ISSUANCE OF A WRIT OF RESTITUTION.

The appellant-tenant's first issue raised does not appear to make sense because she complains about the court denying a writ of restitution. The most logical explanation is that she made a misprint and for the purpose of this analysis, we will assume that this is the case and she meant granting a writ of restitution. If this is wrong, the respondent-landlord objects to consideration of this issue because the issue was not adequately briefed.¹

In general, a trial court must make findings of fact and conclusions of law sufficient to suggest the factual basis for its ultimate conclusion.

Groff v. Dep't of Labor & Indus., 65 Wn.2d 35, 40, 395 P.2d 633

(1964). The degree of particularity required in these findings 'depends on

¹ See **State v. Wood**, 89 Wn.2d 97, 99, 569 P.2d 1148 (1977); **Talps v. Arreola**, 83 Wn.2d 655, 657, 521 P.2d 206 (1974). see also **In re Disciplinary Proceeding of Kennedy**, 80 Wn.2d 222, 236, 492 P.2d 1364 (1972). ("Points not argued and discussed in the opening brief are deemed abandoned and are not open to consideration on their

the circumstances of the particular case, the basic requirement being that the findings must be sufficiently specific to permit meaningful review.' **In re Dependency of C.B.**, 61 Wn. App. 280, 287, 810 P.2d 518 (1991) (citing **In the Detention of Labelle**, 107 Wn.2d 196, 218, 728 P.2d 138 (1986)). The purpose of the requirement of findings and conclusions is to insure the trial judge 'has dealt fully and properly with all the issues in the case before he decides it and so that the parties involved and this court on appeal may be fully informed as to the bases of his decision when it is made.' **Labelle**, 107 Wn.2d at 218-19 (quoting **State v. Agee**, 89 Wn.2d 416, 421, 573 P.2d 355 (1977)).

In this case, the only order the tenant has raised is the order issued on April 22, 2009. The record shows that she agreed to the order on March 9, 2009 and she made an attempt to comply with it by notifying the court. The record also shows that she did not attend either the hearing on April 16, 2009 nor the hearing on April 22, 2009.

As to whether she had vacated the building, the court had only an unsworn letter from the defendant stating she had moved. The court

merits").

balanced this with the representation of his client, who was in the court ready to testify, that the building had not been vacated.

The court made a finding that the building had not been vacated. Based upon the order of March 9, 2009, it was incumbent upon the defendant do demonstrate with admissible evidence that she had moved. Since she had failed to do so, the court made sufficient findings to allow meaningful review and the writ should therefore be upheld on this issue.

2. THE TENANT HAD NO BASIS TO CONTEST OWNERSHIP OF THE BUILDING THROUGH AN UNLAWFUL DETAINER ACTION.

In her second issue, the appellant tenant claims that “the attorney for Dirk Mayberry” had no authority to evict her. Dirk Mayberry was not a party to this action, Evangeline Zandt was. Assuming she meant the attorney for Evangeline Zandt², this issue was waived when she agreed to the order on March 9, 2009 and then failed to present any evidence at either hearing that neither Evangeline Zandt nor Dirk Mayberry could act on behalf of the landlord.

The evidence shows that both Mr. and Mrs. Zandt executed the lease agreement (CP 100-101) and that Ms. Zandt is the named lessor and in possession of the property. Accordingly, Ms. Zandt is the person

² As before, the appellant objects to the sloppy briefing of the tenant and argues that she by failing to adequately brief the issues she has waived them.

“entitled to the rent” within the meaning of RCW 59.12.030(3). Ms. Zandt is also authorized to bring the proceeding under provisions of RCW 59.18.030 (2) which define “landlord” as including “any person designated as representative” of the landlord.” These statutory provisions are consistent with Washington case law that an action in an unlawful detainer is based upon the landlord-tenant relation and the landlord’s right to possession of the property, see, e.g., MacRae v. Way, 64 Wn.2d 544, 392 P.2d 827 (1964) (action by lessee against subtenant) as opposed to its status as title holder. The court’s jurisdiction under RCW 59.12 and RCW 59.18 is limited to determination of the right to possession and issues incident to the right of possession, and the court cannot hear or determine issues of title, Proctor v. Forsythe, 4 Wn.App. 238, 480 P.2d 511 (1971).

If the tenant-appellant wanted to contest any of these issues, it was incumbent upon her to present admissible evidence at a hearing, and then print a transcript to show to the appellate court how there was no basis for the court’s findings. According to the only evidence before this court, she did neither and agreed with the findings on March 9, 2009.

3. THE TENANT HAS WAIVED THE ISSUE OF THE THREE DAY EVICTION SIGNED BY DIRK MAYBERRY

The tenant has produced no evidence that Dirk Mayberry was not authorized as an agent to sign the eviction notice³. As before, if she wanted to contest this issue it was incumbent upon her to produce admissible evidence at a contested hearing and then present that issue to this court. Instead, the evidence before this court is that the March 9, 2009 order, which she stipulated to, and does not contest here, presumes that Mr. Mayberry had the authority to sign the eviction notice.

The Washington State Supreme Court has consistently held that the validity of form and content” notices under the unlawful detainer statutes are to be determined under a “substantial compliance” standard, **Provident Mutual Life Ins. Co. V. Thrower**, 155 Wash., 613, 617, 285 P.654 (1930), **Truly v. Heuft**, 138 Wn.App. 913, 921, 158 P.2d 1276 (2007). Applying this standard a notice to pay or vacate is enforceable if the amount of rent demanded represents the lessor’s good faith determination as to the amount of rent due, **Foisy v. Wyman**, 83 Wn.2d 22 at 33, see discussion in **Truly**, 138 Wn.App. at 921. In this case, the amount set

³ In her brief, she claims that Mr. Mayberry signed a 30 day notice, but the only evidence

forth as past due was accurate. However, were the court to determine a different amount were due, the defendant was obligated within the time period set forth in RCW 59.12.030(3) to tender the amount owed according to her own calculation, see Peck, **Landlord and Tenant Notices**, 31 Wn.L.Rev. 51, 61 (1956), cited in **Foisy**, 83 Wn.2d 33.

CONCLUSION

For the reasons given in this brief, the order issuing the writ of restitution should be sustained.

Dated this 14th day of June, 2010


Evangeline Zandt
pro se

I hereby certify that on June 14, 2010, I caused to be served a copy of this document by first class mail, postage prepaid

Marilyn Taylor
General Delivery
Seattle, WA.


Evangeline Zandt

before the court is that a three day notice was involved(CR 9, 44)