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IN THE COURT OF APPEALS, DIVISION I,  
OF THE STATE OF WASHINGTON

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GRAZYNA PROUTY,

*Appellant/Plaintiff,*

*v.*

TAHOMA SCHOOL DISTRICT,

*Respondent/Defendant.*

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BRIEF OF RESPONDENT  
TAHOMA SCHOOL DISTRICT

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## I. INTRODUCTION

Appellant Grazyna Prouty (“Prouty”) initiated this consolidated matter by filing two separate notices of appeal of an administrative action and various subsequent documents with the Superior Court. All of her filings fail to articulate any valid statutory authority under which to bring an action on administrative review. The Superior Court was justified in dismissing the consolidated actions pursuant to CR 12(b)(6).

Prouty now appeals, seeking review by this Court and again attempting to raise several unrelated and incoherent issues regarding the District’s deployment of educational resources. The appeal is without merit and the Superior Court’s dismissal should be affirmed.

## II. STATEMENT OF THE CASE<sup>1</sup>

The District employed Prouty as a certificated teacher for English Language Learner (“ELL”) students in the 2009-10 school year. Pursuant to RCW 28A.405.210, the District decided not to renew Prouty’s teaching contract for the 2010-2011 school year.

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<sup>1</sup> In light of Prouty’s inclusion of extraneous materials, facts, and arguments in the Brief of Appellant, the District includes a restatement of the case for clarity and the convenience of the Court. Additionally, despite a voluminous designation of clerk’s papers and exhibits, it appears Prouty failed to designate the Superior Court’s order granting the District’s motion to dismiss (which Prouty now appeals) as well as the briefing underlying the order. The District submits a supplemental designation of clerk’s papers with this filing, pursuant to RAP 9.6(a), and will reference the supplemental designated papers in this brief.

On April 2, 2010, Prouty filed a notice of appeal with the Superior Court, seeking review of the District's nonrenewal of her contract. Less than a month later, on April 26, 2010, Prouty filed a second notice of appeal with the Superior Court, seeking the same relief. After consolidating the cases, the Superior Court granted the District's motion for summary judgment and dismissed Prouty's claims with prejudice.<sup>2</sup>

While the District's motion for summary judgment was pending in the consolidated actions, Ms. Prouty filed a third notice of appeal on August 30, 2010, initiating Cause No. 10-2-30916-1 KNT. *See* CP at 1160-61 (Prouty's Notice of Appeal). In her third notice of appeal, Ms. Prouty requested the following relief:

The appellant, Grazyna Prouty, the named (plaintiff) above seeks review by the Superior Court of Washington County of King in stopping the prejudice against me in Tahoma School District due to Teaching and Learning Dpt. (Director: Nancy Skirritt), actions with the involvement of other departments, HR.

*Id.* (sic). Ms. Prouty claimed the following errors:

Prejudice connected to the above and linked to misappropriation, withholding and use of various resources, including human; groupthink and multi-level influence to limit services – prejudicial against me as ELL teacher and students; implemented proliferation and employing bullies

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<sup>2</sup> Prouty appealed the trial court's granting of the District's summary judgment motion and dismissal of the consolidated action. *See* Court of Appeals, Case No. 66204-0.

to foster Teaching and Learning agenda through prejudicial class visits, documentation, communication (TSD files, incl. ELL documents must be accessed as T&L effect is long-term.

*Id.* (sic).

On September 30, 2010, Ms. Prouty filed a fourth notice of appeal with the Superior Court, initiating Cause No. 10-2-34635-0 KNT. *See* CP at 1167-1222 (Exh. F to Declaration of Grant Wiens in Support of District's Motion to Consolidate). In this fourth notice of appeal, Ms. Prouty requested the following relief:

The appellant, Grazyna Prouty, the named petitioner (plaintiff) above seeks review by the Superior Court of the discriminatory practices in Tahoma School District as it injurs G. Prouty, all related stakeholders who work to advance the field of education, results in the end of employment.

*Id.* (sic) (strike outs omitted). Ms. Prouty claimed the following errors:

Retaliatory methods where the protection of the school district is abused, operations of deceit practiced, how, when, and where this protection is lifted in relation to agencies that do not intervene and correct surveys and the culture of connection; the place of low-performing students, data collection, input and consequences (of discriminatory behaviors) in educational setting(s).

*Id.* (sic).

On November 15, 2010, the Superior Court granted the District's motion to consolidate the third and fourth notices of appeal into the above-captioned matter. On December 6, 2010, the District filed a motion to

dismiss pursuant to CR 12(b)(6) for failure to state a claim upon which relief can be granted. See CP at 1223-87 (District's Motion to Dismiss Pursuant to CR 12(b)(6)).

In lieu of filing a response to the District's motion to dismiss, Prouty filed a motion to strike pursuant to CR 12(f), arguing that the District's 12(b)(6) motion was somehow immaterial, impertinent, and scandalous. See CP at 1288-1304 (Prouty's Motion to Strike). The Superior Court denied Prouty's motion to strike on January 7, 2011. See CP at 1305-06 (Order Denying Motion to Strike).

Oral argument on the District's motion to dismiss was heard on January 28, 2011. See VR, generally. On January 31, 2011, the Superior Court entered a final written order granting the District's motion and dismissing the consolidated action with prejudice. See CP at 1307-08 (Order Granting Motion to Dismiss)

Prouty filed two appeals, challenging the Superior Court's dismissal of her action. This Court consolidated the two appeals under the above-captioned case number.

### III. ARGUMENT

#### A. Standard of Review

On appeal, a trial court's ruling to dismiss a claim under CR 12(b)(6) is reviewed de novo. *San Juan County v. No New Gas Tax*, 160 Wn.2d 141, 164, 157 P.3d 831 (2007). Dismissal is warranted only if the Court concludes, beyond a reasonable doubt, the plaintiff cannot prove any set of facts consistent with the complaint that would justify recovery. *Tenore v. AT & T Wireless Servs.*, 136 Wn.2d 322, 329-30, 962 P.2d 104 (1998). A trial court should grant a CR 12(b)(6) motion "only in the unusual case in which the plaintiff's allegations show on the face of the complaint an insuperable bar to relief." *San Juan County*, 160 Wn.2d at 164.

#### B. Assignments of Error No. 1, 2, 3: Superior Court Properly Granted the District's Motion to Dismiss Pursuant to CR 12(b)(6)

Prouty's Assignments of Error Nos. 1, 2, and 3 each relate to the legal justification for the Superior Court's granting of the District's motion to dismiss pursuant to CR 12(b)(6). Although it is difficult to determine the precise allegations asserted and relief requested in the notices of appeal, it appears Prouty sought the Superior Court's review of the District's deployment of educational resources, classroom observations, and data collection. Additionally, Prouty claimed that the District failed to consider her suggestions on how to improve the District's English Language Learner

curriculum and overall classroom setting. Prouty's appellant brief before this Court asserts similar arguments as to those that were alleged before the Superior Court, claiming a "mobbing, bullying" by the District on educational resource issues. *See, e.g.*, Prouty's Brief at 18-19. None of the allegations articulated in the notices of appeal, even if assumed to be true, state a valid cause of action on an administrative review.

Procedurally, Prouty initiated the consolidated actions by filing two notices of appeal with the Superior Court. A notice of appeal places the Superior Court in an appellate position to review a decision made by an administrative body. *See, e.g.*, RCW 34.05.514. With respect to school districts, for instance, a teacher may file a notice of appeal with a superior court to seek review of a district's decision to adversely change or nonrenew an employment contract. *See* RCW 28A.405.320. The first two notices of appeal filed by Ms. Prouty in April 2010 addressed her arguments as to the application of that provision (with the Court deciding against Prouty).<sup>3</sup>

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<sup>3</sup> Judge Benton raised the issue of res judicata / collateral estoppel during oral argument on the District's motion to dismiss. *See* VR at 23-24. To the extent Prouty has a valid cause of action related to her nonrenewal under RCW 28A.405.320, she is obligated to pursue all such causes under her first two notices of appeal. Indeed, she has vigorously pursued those causes, with an appeal currently pending before this Court on those issues. *See* Court of Appeals, Case No. 66204-0. Because she initially brought that matter, she cannot re-litigate causes of action related to that non-renewal in another litigation. *See, e.g.*, Prouty's Brief at 42-48 (issue of nonrenewal raised in Prouty's appellant brief before this Court).

An individual aggrieved by a decision of a school official or board may file a notice of appeal with the superior court to seek review of the decision under RCW 28A.645.010.<sup>4</sup> Any such notice of appeal must be filed within thirty days of the rendition of the decision. *Id.* Prouty does not identify the date of any specific acts she challenges in the third and fourth notices of appeal and the dates for the voluminous exhibits filed in this matter range well outside the 30-day window for filing a notice of appeal pursuant to RCW 28A.645.010. Assuming such alleged acts occurred while she was employed by the District, her challenges are untimely. Prouty has not worked for the District since March 2010, when the District decided not to renew Prouty's contract and placed her on administrative leave. Accordingly, even assuming RCW 28A.645.010 could be applied to Prouty's allegations, she filed the notices of appeal outside of the thirty-day deadline.

Aside from the procedural errors under RCW 28A.645.010, there is no other substantive legal authority permitting Prouty to challenge in Superior Court the alleged actions of the District as an administrative appeal. In her notices of appeal, Prouty challenges decisions made by the

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<sup>4</sup> Appeals of discharge or adverse action against the contract of a certificated employee are excluded from this provision. RCW 28A.645.010.

District with respect to educational policy and resource allocation. Prouty reiterates those concerns throughout her appellant brief before this Court. Although she may disagree with the District's decisions and may feel as if the District did not heed her recommendations for improvement, there is no state law that allows Prouty to recover any relief in an administrative review context.<sup>5</sup>

Ultimately, Ms. Prouty failed to articulate any claim upon which relief can be granted by the Court. Absent legal authority, she improperly filed notices of appeal to seek an impermissible review of the District's educational decisions. The Superior Court was correct to dismiss the consolidated actions pursuant to CR 12(b)(6).

**C. Assignment of Error Nos. 4, 5, 6, 7, 8: Issues Were Not Before the Superior Court and Cannot Be Raised on Appeal**

It is difficult to determine the precise errors being alleged by Prouty in Assignment of Errors Nos. 4, 5, 6, 7, and 8. It appears Prouty is, in part,

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<sup>5</sup> Cf. *Porter, et. al. v. Seattle Sch. Dist.*, \_\_\_ Wn. App. \_\_\_, Case No. 65036-0-1 (issued March 28, 2011). In that case, this Court reviewed a notice of appeal (filed timely pursuant to RCW 28A.645.010) that challenged the school district's adoption of a particular math curriculum. This Court noted that the challenger bore a "heavy burden" to meet the "arbitrary and capricious" standard on review, requiring the challenger to prove that the district undertook a "willful and unreasoning action, action without consideration and in disregard of the facts and circumstances of the case. Action is not arbitrary or capricious when exercised honestly and upon due consideration where there is room for two opinions, however much it may be believed that an erroneous conclusion was reached." *Id.* Even if Prouty had timely filed her notices of appeal, she would not be able to meet such a burden of proof based on the evidence presented.

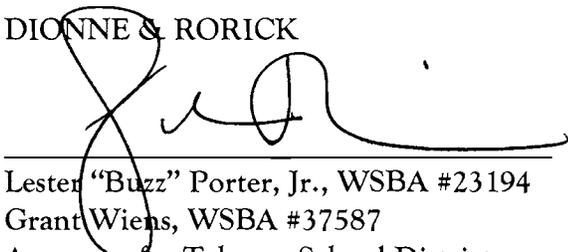
attempting to seek the Court's review of the Superior Court's failure to require the District to submit certain evidence in the consolidated actions. Additionally, Prouty raised concerns about the Superior Court's consolidation of the two notices of appeal and record-keeping practices. None of the articulated errors were addressed or decided upon by the Superior Court in the Order granting the District's motion to dismiss. It is improper for Prouty to seek review of decisions outside the scope of her appeal of the Superior Court's Order.

#### IV. CONCLUSION

Prouty's Notices of Appeal and various subsequent filings fail to articulate any valid statutory authority under which to bring this action. Accordingly, there is no available remedy to Prouty for the alleged actions of the District and it was proper for the Superior Court to dismiss with prejudice. For all of the foregoing reasons, this Court should affirm the decision of the Superior Court and affirm the dismissal of the consolidated action with prejudice.

RESPECTFULLY SUBMITTED this 3rd day of October, 2011.

DIONNE & RORICK



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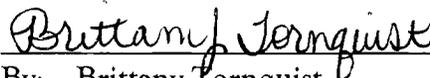
CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that I sent *via legal messenger*, the Brief of Respondent Tahoma School District and Supplemental Designation of Clerk's Papers to the following:

Grazyna Prouty  
12609 SE 212<sup>th</sup> Place  
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Court of Appeals Division I  
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Seattle, Washington 98101

Dated this 3<sup>rd</sup> day of October, 2011.

  
By: Brittany Tornquist