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COURT OF APPEALS
STATE OF WASHINGTON
JUL 12 2013 10:43 AM

CASE # 67141-3-I

COURT OF APPEALS, DIVISION 1 OF THE STATE OF WASHINGTON

JOHN and SHARLA ANN SPOELSTRA

Plaintiffs/ Respondents

v.

DANIEL GAHN AND JANE DOE GAHN,
husband and wife, and the
marital community composed thereof,

Defendant/Appellant

APPELLANT'S REPLY BRIEF

ORIGINAL

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B. REPLY ON STATEMENT OF THE CASE

The Spoelstras' disagreement with the statement of the case as stated in Gahn's Opening Brief concerning Spoelstras' attorney, Jane Kohler, is misplaced. The only reference to her in Gahn's statement of the case was concerning the service of an Answer and Counterclaim to the Spoelstras' Complaint in October, 2004. Spoelstras' response is convoluted. It mixes an event that took place in 2004 with the summary judgment event that took place in 2007 before Judge Allendoefer, making claims that Judge Allendoefer's judgment on the Motion for Summary Judgment was overturned. These convoluted facts by the Spoelstras are unsupported by the record in violation of RAP 10.3(a)(5) and 10.4. Judge Allendoefer's ruling on summary judgment was never overturned.

Spoelstras' challenge appellant's statement of the case on page 4 as follows:

“we do not believe that Judge Allendoefer ruled that Spoelstra had voluntarily deeded the property to Gahn.”

However, the Spoelstras failed to set forth their belief from the trial court record. The Spoelstras ignore the fact that Judge Allendoefer's statement is a direct quote out of Judge Allendoefer's ruling which Gahn supported by reference to the record on page 5 of the statement of the case (CP Vol I, page 19, lines 17-22).

Spoelstras' challenge appellant's statement of the case on pages 6-7 as follows:

“that he only worked under the supervision of Randall St. Mary is

false.”

This statement is totally false and misplaced and not supported by the record. First of all, nothing on page 6 mentions any work done under Randall St. Mary. Page 6 is dealing with the trial court’s treatment of jury instructions. And page 7 the Spoelstras have intentionally mis-stated what was said. Gahn specifically referenced the work that was performed for the Spoelstras was concerning the Snohomish County’s Motion for Summary Judgment and that all that work was performed under Randall St. Mary. Spoelstras’ reference that Gahn worked on a number of cases with no lawyer supervision which included Rocconova case, Coffman case, and Olympic Pipeline. The Spoelstras’ allegation that Gahn worked without attorney supervision on Rocconova case, Coffman case, and Olympic Pipeline is not supported by reference to the record. The cases mentioned by the Spoelstras, Rocconova case, Coffman case, and Olympic Pipeline, took place after the signing of the Quitclaim Deed and is irrelevant. Judge Wilson’s Order on the Verdict (CP Vol I, page 4), that the question of the practice of law to the jury was from 2002 until the signing of the Quitclaim Deed. The only evidence presented at trial concerning Gahn’s practice of law from 2002 to the signing of the Quitclaim Deed was the work performed by Gahn for the Spoelstras was under the supervision of Randall St. Mary in a Response to Snohomish County’s Motion for Summary Judgment which was set forth in Appellant’s Brief, issue 4 and supported by the trial court record. Spoelstras’ remarks that are not supported by the record should not be considered on appeal.

Again, Spoelstras' misplaced belief that Gahn is making argument in the statement of the case on page 8, is without merit. Gahn's statement of the case is not arguing the issues. He is simply stating that on March 7, 2011 he filed a motion for new trial or reconsideration and setting forth the issues and supporting evidence that was filed with the trial court. Gahn properly supported these facts from the record. Again, Gahn would ask this Court to disallow/strike any statements by the Spoelstras in their Response Brief that are not supported by the record.

**C. REPLY TO SPOELSTRAS' RESPONSE ON THE ISSUES
RAISED IN APPELLANT'S OPENING BRIEF**

Issue No. 1. Was the trial court's determination of facts erroneous and unsupported by substantial evidence, and should not be binding or treated as verities on appeal? (Assignment of Error Nos. 8 and 9)

It was Gahn's contention that the trial court's findings of facts (CP Vol I, page 67-69) are not supported by substantial evidence from the trial court record. In order to prevail against Gahn's argument the Spoelstras' Response Brief needed to bring forth substantial evidence from the trial court record that would support the trial court's findings of facts. Gahn contends that the Spoelstras' Response Brief sets forth no substantial evidence from the trial court record that would support the trial court's findings of facts.

On finding number 1 Mr. Gahn advised Mr. Spoelstra that in order for Mr. Gahn to continue working on his legal matters Mr. Spoelstra would have secure payment of his fees, in the approximate amount of \$40,000.

Spoelstras' contention that the property was held as a security should be disregarded because it is unsupported by the trial court record. Response Brief sets forth no substantial evidence from the trial court record that would

support the trial court's findings no. 1.

On finding number 2 that in order to secure said fees, Mr. Gahn would accept a Quit Claim Deed on a piece of property selected by Mr. Spoelstra and that the property selected should be one involved in the Kaufman litigation.

Spoelstras' contention that the property was held as a security and that the value far exceeded any monies owed to Gahn should be disregarded because it is unsupported by the trial court record. Response Brief sets forth no substantial evidence from the trial court record that would support the trial court's findings no.2 .

On finding number 3 that Mr. Gahn represented to Mr. Spoelstra that the Quit Claim Deed would serve two purposes: One, it would secure his fees and two, it would allow Mr. Gahn to intervene in the Kaufman litigation as a party in interest and allow him to argue in court. Both Mr. Gahn and Mr. Spoelstra testified to this dual purpose.

This issue of the trial court's finding is undisputed by the Spoelstras.

On finding number 4 in fact, Mr. Gahn did intervene and did appear in court as a party in interest in the Kaufman litigation pursuant to the rights conferred on him by the Quit Claim Deed.

This issue of the trial court's finding is undisputed by the Spoelstras.

On finding number 6 the fees to be secured for work done on behalf of Mr. Spoelstra from 2002 to 2004 totaled approximately \$40,000. However, there has never been a written accounting of the fees incurred that has been produced to Mr. Spoelstra.

Spoelstras' contention that Gahn refused to provide an accounting of his fees for eight years of litigation and that he accepted only cash payments and that Gahn's stated charges included work done on issues other than the

work done under Randall St. Mary is unsupported by the trial court record and should be disregarded. Response Brief sets forth no substantial evidence from the trial court record that would support the trial court's findings no. 6.

On finding number 8 Mr. Gahn testified that he would return the property to Mr. Spoelstra upon payment of his fees and that he held the Quit Claim for security purposes.”

Spoelstras' argument is misplaced and convoluted. The question raised in this finding is simple. Is there anything in the record that would support the court's finding that Gahn testified that he would return the property to the Spoelstras upon payment of his fees and that he held the Quit Claim for security purposes? Spoelstras failed to provide from the trial court record any such testimony from Gahn to support the court's finding number 8. Response Brief sets forth no substantial evidence from the trial court record that would support the trial court's findings no. 8.

Issue No. 2. Did the trial court fail to set forth in its findings of facts and conclusions of law what state statute, court rules or duties that the defendants were in violation of or failed to perform that was the unauthorized practice of law that injured the plaintiffs? (Assignment of Error Nos. 3 and 6)

Spoelstras' argument is again off point. The Spoelstras needed to address the trial court's findings of facts and conclusions of law, whether it did or did not fail to set forth what statute, court rules or duties that was owed by Gahn that was the unauthorized practice of law. Spoelstras raise unsupported facts concerning Gahn's work under Randall St. Mary and other cases involving Rocconova, Coffman, and Olympic Pipeline and should be disregarded. The trial court disregarded any alleged legal activity performed

by Gahn that was done after the signing of the Quitclaim Deed which is evidenced within the Order on the Verdict (CP Vol I, page 67, lines 3-4) which states as follows:

. . . namely, whether or not the Defendant engaged in the practice of law in his dealings with the Plaintiff from 2002 until the signing of the Quit Claim Deed (Exhibit 1): . . .

The Rocconova, Coffman, and Olympic Pipeline cases occurred after the signing of the Quitclaim Deed and were irrelevant. The only testimony and evidence provided by both parties from 2002 until the signing of the Quitclaim Deed was work performed under the supervision of Randall St. Mary. This history was not incorporated into the trial court's findings of facts and conclusions.

Issue No. 3. Was there irregularity in the proceedings of the trial court to the prejudice of the defendants when the trial court signed the Order on the Verdict knowing that the defendants did not receive a copy of the proposed order as mandated by CR 54(f)(2) Notice of Presentation. No order or judgment shall be signed or entered until opposing counsel have been given 5 days' notice of presentation and served with a copy of the proposed order or judgment, and SCLCR52(a)? (Assignment of Error Nos. 3 and 7)

The Spoelstras' response fails to argue the issue. The Spoelstras failed to set forth facts showing that there was no irregularity in the proceedings and that the trial court did follow the rules concerning the Notice of Presentation pursuant to CR 54 and SCLCR52(a).

Issue No. 4. Was the practice of law performed by Mr. Gahn while assisting Attorney Randall St. Mary in responding to Snohomish County's Motion for Summary Judgment in Spoelstra v. Drainage District 6, et al. No. 00-2-0780-8 permitted within the defenses set forth in RCW 2.48.180(7) and the exceptions and exclusions of the Washington Court Rules GR 24(b)(11), (c) and RPC 5.3? (Assignment of Error Nos. 1, 3 and 6)

Again, the Spoelstras ignore the question. The question wasn't whether Gahn only worked under Randall St. Mary. The question asked in this issue was, was the work performed under the supervision of Randall St. Mary by Gahn authorized by court rules and the law? The Spoelstras are non responsive on this issue. Spoelstras fail to set forth any facts supported by the trial court record or any legal authority for their belief that the court acted correctly.

Issue No. 5. Was the trial court prohibited pursuant to RCW 64.04.010 to add to, subtract from, vary, or contradict the written language in the Quit Claim Deed in order to give legal effect to an alleged oral agreement put forth by John Spoelstra that the property was given as a security? (Assignment of Error No. 4)

The Spoelstras' response fails to address the question raised in Issue No. 5. They set forth no legal authority that would allow the trial court to exempt the alleged oral agreement that the property was given as a security from the provisions of the statute of frauds, RCW 64.04.010, to vary or contradict the written language in the Quit Claim Deed. The Spoelstras agree that the only evidence provided by them at trial that the property was given as a security was their oral testimony which amounted to parol evidence against the plain written language in the Quit Claim Deed (Defendant's Exhibit 1) and the written language of their declaration (Defendant's Exhibit 3).

The Spoelstras agree that they orally testified at trial that the property was given by them as a security but they also testified, in March 2004, by way of declaration (See Defendant's Exhibit No. 3), both John and Sharla

Spoelstra testified under oath that:

I, John Spoelstra, and I, Sharla Ann Spoelstra, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct to the best of my knowledge and belief:

That on or about March 17, 2004 declarants did transfer to Dan Gahn for consideration given all interest in the following real property described as Parcel M

The conflicting testimonies of the Spoelstras are classified as perjury

pursuant to:

RCW 9A.72.050. Perjury and false swearing - Inconsistent statements - Degree of crime.

(1) Where, in the course of one or more official proceedings, a person makes inconsistent material statements under oath, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and known by the defendant to be false. In such case it shall not be necessary for the prosecution to prove which material statement was false but only that one or the other was false and known by the defendant to be false.

(2) The highest offense of which a person may be convicted in such an instance as set forth in subsection (1) of this section shall be determined by hypothetically assuming each statement to be false. If perjury of different degrees would be established by the making of the two statements, the person may only be convicted of the lesser degree. If perjury or false swearing would be established by the making of the two statements, the person may only be convicted of false swearing. For purposes of this section, no corroboration shall be required of either inconsistent statement.

One of the Spoelstras' statements is false. The earlier statement made in March of 2004 that the property was given for consideration is inconsistent with the material statements made under oath at trial that the property was given as a security. The inconsistent statements made by the Spoelstras was the reason why Judge Allendoefer denied Spoelstras' right to equitable relief. Judge Allendoefer found because of the inconsistent statements they had unclean hands which states as follows:

Mr. Spoelstra said at least once in writing that he had voluntarily deeded the property to Mr. Gahn, and Olympic Pipeline was entitled to rely upon that. Mr. Spoelstra is now trying to take back his declarations and take back his deed. He must suffer the unclean hands consequence (See excerpt of Allendoefer's ruling, CP Vol I, page 19, lines 17-22)

Gahn would ask this Court to disregard the Spoelstras' oral testimony that the property was given as a security and that the Spoelstras will not be allowed to take back the testimony set forth in their declaration (Defendant's Exhibit 3) or to take back the language set forth in their deed (Defendant's Exhibit 1).

Issue No. 6. Was the trial court precluded from the use of parol evidence to add to, subtract from, modify, or contradict the terms of the fully integrated written Quitclaim Deed (Ex 1)? (Assignment of Error No. 5)

It appears from the Spoelstras' response brief that they agree that the trial court used parol evidence to determine that the Quitclaim Deed was given as a security and not for consideration given modifying the terms and construction of the Quitclaim Deed. The Spoelstras set forth no legal authority for their belief that the trial court had the right to use parol evidence to modify the terms and construction of the language written within the Quitclaim Deed. Further, the Spoelstras fail to set forth facts from the record demonstrating the existence of an oral agreement made between Gahn and the Spoelstras that the property was to be given as a security to exempt it from the statute of frauds, RCW 64.04.010.

Issue No. 7. Was Dan Gahn denied his Constitutional right to a jury trial on plaintiffs' issue of the unauthorized practice of law pursuant to the State of Washington Constitution, Article I, Section 21? (Assignment of Error No. 2)

Spoelstras' response brief fails to address this issue. Gahn agrees that there was a trial held at public expense and that the jury did reach a verdict that Gahn engaged in the practice of law in his dealings with the plaintiff from 2002 until the signing of the Quit Claim Deed. This is not the argument raised by Gahn in this issue. Gahn's contention in this issue is that he never received a jury trial on the plaintiffs' allegations set forth in their Amended Complaint (CP Vol II, page 206, lines 11-19). Gahn admitted to the jury that he performed tasks that amounts to the practice of law. The jury's verdict is not in question. The question is why the trial court denied Gahn his constitutional right to have the jury determine Spoelstras' allegation that Gahn engaged in the unauthorized practice of law in his dealings with the Spoelstras from 2002 until the signing of the Quitclaim Deed. The Spoelstras' response sets forth no legal authorities defending the trial court's actions in denying Gahn's constitution right to a jury trial on the Spoelstras' alleged allegations of Gahn's participation in the unauthorized practice of law.

Issue No. 8. Was Gahn entitled to have the trial court instruct the jury on his theory of the case that a person with legal skills, but who is not an attorney, and who works under the supervision of a lawyer performing various tasks relating to the practice of law, is not practicing law? (Assignment of Error No. 12)

The Spoelstras' response does not address the issue of why the trial court refused to give Gahn's jury instructions. Spoelstras' factual contentions are not supported by the record and the Spoelstras cite not legal authorities supporting the lower court's decision not to give jury instructions that would

support the theory of Gahn's defense against plaintiffs' allegations set forth in their Amended Complaint, i.e. the unauthorized practice of law.

E. CONCLUSION

Gahn would respectfully request this Court to disregard unsupported facts that fail to cite from the clerk's papers or the verbatim report of the proceedings as set forth in the Spoelstras' Response Brief.

The Spoelstras, in their Response Brief, addressing Gahn's issue raised within his Brief on Appeal make the following statement on all issues:

"Spoelstra's **believe** the Court acted correctly and no errors occurred."

The Spoelstras belief is not based upon factual evidence cited from the trial court record or any legal authority that the court acted correctly. The Spoelstras are asking this Court to just accept their belief system and believe whatever the Spoelstras believe is true.

Gahn would ask this Court to strike the Spoelstras' Response Brief for failure to comply with the rules of appellate procedure.

Dated 8/4/12

Respectfully submitted,



Dan Gahn
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COURT OF APPEALS DIVISION 1
STATE OF WASHINGTON
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IN THE COURT OF APPEALS OF
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JOHN AND SHARLA SPOELSTRA,
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DANIEL GAHN AND JANE DOE GAHN,
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Appellants.

NO. 67141-3-I

DECLARATION OF MAILING

The undersigned declares under the penalty of perjury under the laws of the State of Washington that: on the below date the declarant deposited in the United States Mail First Class a properly stamped and addressed envelope containing a copy of the following documents to Plaintiffs designated for service of process:

- 1. Copy of Defendant Gahn's Reply Brief.
- 2. Declaration of Mailing.

Said envelope was directed to: Respondents Spoelstras, 5732 60th St.,
Snohomish, WA 98290

Executed on 8/6/12


SIGNATURE OF DECLARANT