

68908-8

68908-8

No. 68908-8-1
COURT OF APPEALS,
DIVISION I,
OF THE STATE OF WASHINGTON

RACHAEL GAY ROSSER,

Appellant,

v.

VASHON MAURY ISLAND PARK DISTRICT,

Respondent.

RESPONDENT'S BRIEF

Jaime D. Allen, WSBA #35742
Attorneys for Respondent Vashon Maury
Island Park District
OGDEN MURPHY WALLACE, P.L.L.C.
1601 Fifth Avenue, Suite 2100
Seattle, Washington 98101-1686
Tel: 206.447.7000/Fax: 206.447.0215

2012 NOV -2 PM 2:00
OGDEN MURPHY WALLACE
P.L.L.C.

TABLE OF CONTENTS

	<i>Page</i>
A. INTRODUCTION	1
B. RESPONSE TO ASSIGNMENTS OF ERROR.....	2
C. COUNTER- STATEMENT OF THE CASE	5
D. SUMMARY OF ARGUMENT	11
1. Summary Judgment was Properly Granted in VPD's Favor.	11
2. The King County Superior Court had Jurisdiction to Hear this Dispute Regarding Real Property Located in King County.....	12
3. Issues raised by Ms. Rosser on appeal for the first time cannot be considered and are without merit.	13
E. ARGUMENT.....	13
1. The King County Superior Court Properly Granted VPD's Motion for Summary Judgment Quieting Title to Parcel A and Parcel B.	13
a. VPD is entitled to quiet title to Parcels A and B. ..	13
b. The written, recorded property records establish VPD's property rights as asserted herein.....	15
c. Ms. Rosser has 20 foot easement for ingress and egress on the southern border of Parcel A.	16
d. Ms. Rosser has no property interest on the Eastern portion of VPD's property. Moreover, her current wooden fence is encroaching onto VPD's property.	17
e. Ms. Rosser cannot have adverse possession or easement by prescription because the park property is held by a municipality.	18
2. The Trial Court Properly Granted Summary Judgment Granting a Permanent Injunction to Ensure Ms. Rosser does not Encroach on VPD's Property in the Future.....	18

a.	VPD has a clear legal right to recover.	20
b.	VPD has a Well-Founded Fear of Invasion of Its Right to Relief.....	21
c.	VPD Will Suffer Actual, Substantial and Irreparable Injury if Ms. Rosser Continues to Improperly Use the Easement and Trespass on VPD’s Property.....	22
d.	Equity Favors the Issuance of an Injunction.....	23
3.	The King County Superior Court had Jurisdiction to Adjudicate this Matter.	24
4.	Ms. Rosser’s Other Claims of Error are Raised for the First Time on Appeal and/or are Irrelevant to the Determination of Summary Judgment.....	25
a.	VPD complied with the King County Local Rules and Civil Rules in Filing and Serving its Pleadings.....	25
b.	VPD is a Municipal Corporation Constructing a Ball Field Consistent with its Lease.	28
c.	Ms. Rosser’s claims under the Washington Consumer Protection Act and 42 U.S.C. §1983 are Inappropriate; VPD did not violate Ms. Rosser’s Due Process rights.....	29
d.	Motion to Vacate and Proposed Order of Dismissal were Untimely Filed after the Notice of Appeal had been Entered.....	30
e.	VPD’s counsel has fully complied with all legal and ethical obligations.	31
F.	CONCLUSION.....	31
	APPENDIX.....	A-1

TABLE OF AUTHORITIES

	<i>Page</i>
Cases	
<i>A&W Farms v. Cook</i> , 168 Wn.App. 462, 277 P.3d 67 (2012).....	24
<i>City of Benton City v. Adrian</i> , 50 Wn. App. 330, 336, 748 P.2d 679 (1988).....	18
<i>Commercial Waterway Dist. No. 1 of King County v. Permanente Cement Co.</i> , 61 Wn. 2d 509, 512, 379 P.2d 178, (1963).....	18
<i>Cugini v. Apex Mercury Min. Co.</i> 24 Wn.2d 401, 165 P.2d 82 (1946)	25
<i>Dougherty v. Dep’t of Labor & Indus.</i> , 150 Wn.2d 310, 314, 76 P.3d 1183 (2003).....	12
<i>Kobza v. Tripp</i> , 105 Wn. App. 90, 95, 18 P.3d 621 (2001).....	13
<i>McLeod v Ellis</i> , 2 Wn. 117, 26 P.76 (1891).....	25
<i>Michak v. Transnation Title Ins. Co.</i> , 148 Wn.2d 788, 794-95, 64 P.3d 22 (2003).....	11
<i>Mielke v. Yellowstone Pipeline Co.</i> , 73 Wn. App. 621, 624, 870 P.2d 1005, (1994).....	17
<i>Rabon v. City of Seattle</i> , 135 Wn.2d 278, 284, 957 P.2d 621 (1998).....	20
<i>Sheikh v. Choe</i> , 156 Wn.2d 441, 447, 128 P.3d 574 (2006).....	11
<i>State ex. rel. Grove v. Card</i> , 35 Wn.2d 215, 211 P.2d 1005.....	25
<i>Tyler Pipe Industries, Inc. v. State, Dept. of Revenue</i> , 96 Wn.2d 785, 793, 638 P.2d 1213 (1982)	20
<i>Washington Federation of State Employees, Council 28, AFL-CIO v. State</i> , 99 Wn.2d 878, 888, 665 P.2d 1337 (1983).....	19, 21, 22
<i>Washington Sec. & Inv. Corp. v. Horse Heaven Heights, Inc.</i> , 132 Wn. App. 188, 195, 130 P.3d 880 (2006).....	14
<i>ZDI Gaming Inc. v. State ex. rel. Wash. State Gambling Comm’n</i> , 173 Wn.2d 608, 624, 268 P.3d 929 (2012).....	12
Statutes	
42 U.S.C. §1983.....	29
<i>Consumer Protection Act (RCW 19.86 et seq.)</i>	29
RCW 4.12.010.....	24
RCW 64.04.010.....	15
RCW 7.28.010.....	14
RCW 7.28.090.....	18
RCW 7.40.020.....	19

Constitutional Provision
Washington State Constitution Article 4, Section 6.....24

Rules
CR 56(c).....11
CR 65(b).....26
RAP 9.12.....13

A. INTRODUCTION

This is a simple case about establishing property rights, as recorded on written deeds, to two parcels located on Vashon Island, in King County, Washington. Respondent, Vashon Maury Island Park District (“VPD”) is the long-term lessee to two parcels of property, tax parcels number 2923039081 (“Parcel A”) and number 2023039020 (“Parcel B”), that were formerly the site of the Vashon Elementary School. (CP 7-11). Under the terms of its thirty year lease with the Vashon Island School District (“VISD”), VPD has constructed a ball playing field on the property for the public’s use. (*See id.*).

Appellant, Ms. Rosser, owns property abutting and adjacent to VPD’s leased Parcels A and B. Ms. Rosser’s property is located at 16032 Vashon Highway S.W., tax parcel number 292303909 (“Rosser Parcel”). (*See* CP 20). According to the written deeds and documents, Ms. Rosser has a 20 foot easement for ingress and egress to her property on the southern portion of VPD’s leased Parcel A. (*Id.*). Ms. Rosser has no property rights to Parcel B. VPD filed a complaint in the King County Superior Court to quiet title and for a permanent injunction against Ms. Rosser to establish the property rights of the parties. (CP 1-20).

Within that litigation, VPD filed a Motion for Summary Judgment to establish the property rights as to Parcel A and Parcel B. (CP 403-490). Judge Laura Gene Middaugh of the King County Superior Court granted VPD's Motion for Summary Judgment quieting title and for a permanent injunction. (CP 696-701). Ms. Rosser now appeals that decision, along with other issues that she has raised for the first time on appeal.

B. RESPONSE TO ASSIGNMENTS OF ERROR

The King County Superior Court correctly granted Summary Judgment in VPD's favor quieting title to Parcel A and Parcel B, and issuing a permanent injunction requiring Ms. Rosser to remove a wooden fence from the eastern portion of Parcel A and enjoining her from rebuilding the fence during the period of VPD's lease, along with enjoining her from (a) using the easement on the southern 20 feet of VPD's leased property on Parcel A in a manner inconsistent with its use of an easement as a private roadway, and (b) trespassing on the eastern portion of VPD's leased property on Parcel A and from using the property in a manner inconsistent with the public's use. (CP 696-701). Similarly, VPD is enjoined from using the easement on the southern border of Parcel A in a manner inconsistent with the use of the property over which Defendant has an easement for a private roadway. (CP 701).

VPD responds as follows to Ms. Rosser's assignments of error:

1. Judge Middaugh is a King County Superior Court judge capable of hearing civil and criminal matters. The suit at issue was filed as a civil matter and assigned to Judge Middaugh. (*See e.g.* CP 21-26). The King County Superior Court had jurisdiction over this matter because the Washington Constitution grants superior courts jurisdiction to hear property disputes. The proper venue is the superior court in the county for which the land is located, which in this case is King County. (*See* CP 2; *see also* CP 7, 20). Jurisdiction in the King County Superior Court was appropriate. Further, the TRO was granted by Superior Court Commissioner Hollis Holman. Commissioner Holman has the power to grant or deny such requests. The Criminal Rules for Courts of Limited Jurisdiction (CrRLJ) do not apply to civil actions filed in the King County Superior Court.

2. Judge Middaugh entered a minute order granting the summary judgment motion on March 30, 2012 (CP 696) and signed the Order on Summary Judgment on May 4, 2012. (CP 697-701). The Order contained findings of fact and conclusions of law. (*Id.*).

3. Ms. Rosser was served with the Complaint, Summons, Motion for Temporary Restraining Order and accompanying declarations,

on October 6, 2011, notifying her of the *ex parte* hearing on October 10, 2011. (CP 532-33). Ms. Rosser was, in fact, present at the October 10, 2011 hearing. (See CP 43). In light of the urgent nature of TRO motions in general, CR 65(b) and LCR 65(b) do not require a TRO be heard on 7 days notice. LR 65(b) specifies that a party seeking a TRO shall present the motion to the Ex Parte Department.

4. On November 1, 2011, Judge Middaugh granted VPD's Motion for Preliminary Injunction. (CP 397). On December 16, 2011, Judge Middaugh signed an Order Granting VPD's Motion for Preliminary Injunction and Denying Defendant's Motion for Continuance. (CP 493-96). Included in that Order are specific findings of fact. (CP 494-95). No issue was raised as to the Court's jurisdiction at the time. As described in paragraph 1 *supra*, the King County Superior Court properly held jurisdiction over this matter.

5. Ms. Rosser was served with the Summons and Complaint on October 6, 2011. (CP 532-33). Ms. Rosser never filed an Answer. An Amended Notice of Hearing, noting the Preliminary Injunction hearing for November 1, 2011, was served on Ms. Rosser on October 21, 2011. (CP 316-17, 319, 539). The Amended Notice was served 11 days before the Court hearing, therefore, complying with the notice requirements of

KCLR 7. Ms. Rosser was served with notice of the TRO, heard before an *ex parte* commissioner on October 6, 2011 ahead of the October 10, 2011 hearing. (CP 532-33).

6. VPD's counsel has complied with all professional and ethical obligations. Moreover, Ms. Rosser's unfounded allegations regarding sanctions against VPD's counsel were not raised until after she filed a notice of appeal. It is inappropriate to argue these for the first time on appeal. Regardless, the allegations are baseless. The King County Superior Court has jurisdiction to hear matters regarding property located in King County. VPD's counsel properly brought suit in the appropriate Court to adjudicate the dispute between VPD and Ms. Rosser. VPD's counsel did not violate CR 11 or any Rule of Professional Responsibility by lawfully filing the present lawsuit, and following the Washington State Civil Rules and Local Civil Rules for King County, and Rules of Professional Conduct during the course of the proceedings.

C. COUNTER- STATEMENT OF THE CASE

Property at Issue

On June 6, 2006, and by an addendum dated April 18, 2008, Vashon School District #402 ("VSD") leased to VPD real property located along Vashon Highway S.W. with tax parcel numbers 2923039081

("Parcel A") and 2023039020 ("Parcel B"), commonly known as the Vashon Elementary School site. (CP 1; CP 424 at ¶2.) VPD leased the property for a period of thirty (30) years for public recreational and educational activities. (*Id.*; CP 428-432) VSD has provided to VPD all the rights to enforce the property boundaries within the lease. (CP 428-432, 470). Pursuant to the terms of its lease, VPD has improved the land on its leased parcels to be used for the public's recreational use and enjoyment as a sports playing field. (CP 424 at ¶2, 470.)

Appellant, Ms. Rosser, owns property adjacent to and abutting VPD's leased parcels, Parcel A and Parcel B. Ms. Rosser's property is located at tax parcel 292303909 ("Rosser Parcel"). (CP 472). According to written deeds and documents, as well as the title survey conducted by VPD, Ms. Rosser has a 20 foot easement for ingress and egress to her property on the southern portion of VPD's leased Parcel A. (CP 436, 472, 477, 490). Ms. Rosser has no property rights to Parcel B. (CP 434-439).

VPD's Motion for Temporary Restraining Order

On October 6, 2011, VPD filed and served a Summons and Complaint to quiet title and for a permanent injunction against Ms. Rosser to establish the property rights of the parties. (CP1-20; 27-28). VPD also filed a Motion for Temporary Restraining Order along with supporting

declarations and exhibits. (CP 29-40; 424-466, 467-490). The Summons and Complaint, along with the TRO and its accompanying declarations and exhibits were served on Ms. Rosser on October 6, 2011. (CP 532-33).

On October 10, 2011, VPD presented its TRO motion in the *ex parte* department of the King County Superior Court. (See CP 41-43). After hearing from VPD's counsel and Ms. Rosser, King County Superior Court Commissioner Hollis Holman granted VPD's TRO as to the southern boundary of Parcel A. (*Id.*).

VPD's Motion for Preliminary Injunction.

As required by LCR 65(b), a Preliminary Injunction hearing was set within 14 days of the issuance of the TRO, for October 24, 2011. (CP 44-45). VPD filed its Motion for Preliminary Injunction and three declarations in support of its motion on October 14, 2011. (CP 47-77). The motion and accompanying papers were served at Ms. Rosser's residence on the same day. (CP 535). Ms. Rosser opposed the motion and provided declarations and exhibits. (CP 79- 315). Due to the Court's unavailability, the hearing was postponed until November 1, 2011, an amended note for motion and letter were served on Ms. Rosser noting the new hearing date and time. (CP 316-17; 319). Ms. Rosser filed additional opposition papers and a Motion to Quash on October 28, 2011. (CP 320-

394). VPD filed and served its reply brief on October 28, 2011. (CP 398; *see also* Dkt. 19- VPD's Reply in Further Support of Its Motion for Preliminary Injunction and Opposition to Defendant's Motion for Continuance).¹

On November 1, 2011, the King County Superior Court, Judge Laura Gene Middaugh, granted VPD's Motion for Preliminary Injunction. (CP 397). Judge Middaugh extended the TRO to remain in place pending the entry of an Order on the Preliminary Injunction. (CP 396).

VPD filed a Notice of Presentation of Order. (CP 399-400).² On December 16, 2011, the Court signed the Order Granting VPD's Motion for Preliminary Injunction and Denying Defendant's Motion for Continuance. (CP 493-96).

VPD's Motion for Summary Judgment.

VPD filed its Notice for Hearing for its Motion for Summary Judgment on November 28, 2011, noting the motion for hearing on January 13, 2012. (CP 401-02). On December 14, 2011, VPD filed its Motion for Summary Judgment. (CP 403-490). On January 12, 2012,

¹ Per RAP 9.6(a), VPD has filed a Supplemental Designation of Clerk's Papers with the King County Superior Court, and by copy to the Court of Appeals, on November 8, 2012. Documents listed in the Supplemental Designation will be cited by the document's full name and docket number.

² (*See also* Dkt. 26- Plaintiff's Notice of Presentation of Order Granting VPD's Preliminary Injunction and Denying to [sic] Defendant's Motion for Continuance).

Ms. Rosser filed a Motion to Dismiss, Motion to Quash and Expunge, Motion to Deny Preliminary Injunction and Support Defendant's Motion of Continuance, Motion to Reconsider, and Motion for Continuance. (CP 497-521).

Due to Ms. Rosser's Notice of Unavailability,³ the Court continued the Motion for Summary Judgment until March 30, 2012. (CP 522-23). The Court also ordered that, if Ms. Rosser wanted to have her Motion to Dismiss heard, she would need to file a Note for Motion no later than March 6, 2012 to set it for hearing on the same day as the summary judgment motion. (CP 523). Ms. Rosser never filed a Note for Motion.

On March 12, 2012, VPD filed its Opposition to Defendant's Motion to Dismiss and/or Motion to Quash and Motion for Re-Hearing. (CP 525-528). On March 27, 2012, VPD filed the Second Declaration of Jaime Allen. (CP 529-570). On March 29, 2012, Ms. Rosser submitted a Response. (CP 571-695). On March 30, 2012, VPD moved to strike Ms. Rosser's untimely response submitted on March 29, 2012.⁴

After oral argument, on March 30, 2012, the Court granted VPD's Motion to Strike Defendant's Response/Opposition due to its being untimely and granted Plaintiff's Motion for Quiet Title and Permanent

³ (Dkt. 37- Defendant's Notice of Unavailability of R. Gay Rosser).

⁴ (Dkt. 49- Plaintiff's Motion to Strike Defendant's Response and Declarations).

Injunction. (CP 696). On May 4, 2012, the Court signed the Order granting VPD's Motion for Summary Judgment. (CP 697-701).

The Court made findings of fact and ordered in relevant part that:

1. Title was quieted in favor of VPD extinguishing from Ms. Rosser all property interest, right or claim over VPD's leased Parcels A and B, except for the easement for private road over the southerly 20 feet of Parcel A, as granted on King County recorded instrument 787677. The property boundaries are those as described on the survey of Jerald D. O'Hare. (CP 700).

2. Ms. Rosser was required to remove the wooden fence from the eastern portion of VPD's leased Parcel A and is enjoined from rebuilding the fence during the pendency of VPD's lease. (CP 700-01).

3. Ms. Rosser cannot use the easement on Parcel A in a manner inconsistent with its use as an easement, including that she may not block access, nor may she trespass on the eastern portion of Parcel A or use Parcel A in a manner inconsistent with the public's use. (CP 701).

Ms. Rosser filed the Notice of Appeal on June 1, 2012.⁵ Subsequently, on June 20, 2012, she filed an Affidavit of Prejudice and a

⁵ (Dkt. 58- Defendant's Notice of Appeal to Court of Appeals Division I).

Motion to Vacate the Summary Judgment Order.⁶ The Court denied the motion to vacate on July 11, 2012.⁷

D. SUMMARY OF ARGUMENT

1. Summary Judgment was Properly Granted in VPD's Favor.

The King County Superior Court properly granted summary judgment to VPD quieting title and issuing a permanent injunction. (CP 696-701). Property rights are established by written deeds and records, and the written deeds and records regarding Parcel A, Parcel B, and the Rosser Parcel, clearly establish the property rights as established in the Order granting VPD's Motion for Summary Judgment. The standard of review for an order granting summary judgment is de novo, and the appellate court performs the same inquiry as the trial court. *Sheikh v. Choe*, 156 Wn.2d 441, 447, 128 P.3d 574 (2006). "A motion for summary judgment is properly granted where 'there is no genuine issue as to any material fact and...the moving party is entitled to a judgment as a matter of law'." *Michak v. Transnation Title Ins. Co.*, 148 Wn.2d 788, 794-95, 64 P.3d 22 (2003) *citing* CR 56(c). Ms. Rosser has raised no

⁶ (Dkt. 60- Defendant's Note for Motion Docket; Dkt. 61- Defendant's Affidavit of Prejudice Against Judge Laura Gene Middaugh; Dkt. 62- Defendant's Motion Vacate Plaintiff's Summary Judgment Order Entered May 4, 2012. No Personal Jurisdiction of Gay Rosser or Statutory Claim Subject Matter, etc.).

⁷ (Dkt. 63- Order Denying Motion to Vacate Order on Summary Judgment).

issues of material fact contradicting VPD's property rights to Parcel A and Parcel B as described in the Order Granting Summary Judgment. (CP 696-701).

2. The King County Superior Court had Jurisdiction to Hear this Dispute Regarding Real Property Located in King County.

The King County Superior Court had jurisdiction over this matter. "Whether a Court has subject matter jurisdiction is a question of law reviewed de novo." *ZDI Gaming Inc. v. State ex. rel. Wash. State Gambling Comm'n*, 173 Wn.2d 608, 624, 268 P.3d 929 (2012) *citing Dougherty v. Dep't of Labor & Indus.*, 150 Wn.2d 310, 314, 76 P.3d 1183 (2003). Subject matter jurisdiction refers to the power of the Court to hear the case. *Id.* at 624. The Washington State Constitution provides that issues regarding real property are properly adjudicated in the superior court and the Revised Code of Washington specifies that such actions are to be brought in the county where the property is located. There is no dispute that the property at issue is located in King County. Thus, the King County Superior Court properly held jurisdiction to resolve this matter.

3. Issues raised by Ms. Rosser on appeal for the first time cannot be considered and are without merit.

Ms. Rosser raises a number of other issues for the first time on appeal. “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.” RAP 9.12. Moreover, the various issues raised do not raise any issues of material fact such that they would change VPD’s right to summary judgment.

E. ARGUMENT

1. The King County Superior Court Properly Granted VPD’s Motion for Summary Judgment Quieting Title to Parcel A and Parcel B.

The granting of VPD’s motion for summary judgment was proper. Ms. Rosser made no allegations in her appellate brief that would change the fact that the written documents clearly establish the parties’ rights to Parcel A and Parcel B.

- a. VPD is entitled to quiet title to Parcels A and B.

An action to quiet title is equitable and designed to resolve competing property interest claims. *Kobza v. Tripp*, 105 Wn. App. 90, 95, 18 P.3d 621 (2001). A quiet title action allows a person in peaceable possession or claiming the right to possession of real property to compel others who assert a hostile right or claim to come forward and assert their

right or claim and submit it to judicial determination. *Id.* Even if the claim asserted is absolutely invalid, the parties are still entitled to a decree saying so. *Id.*

Statutorily, quiet title actions are governed by RCW 7.28.010, which provides that a person seeking to quiet title must establish a valid subsisting interest in the property and a right to possession thereof. *Washington Sec. & Inv. Corp. v. Horse Heaven Heights, Inc.*, 132 Wn. App. 188, 195, 130 P.3d 880 (2006). The party with superior title must prevail. *See Id.*

Here, the undisputed facts establish that VPD has a valid subsisting interest in Parcel A and Parcel B, and a right to possession thereof. VPD's thirty year lease from VSD for the park property constitutes its subsisting interest and right to possession of the property at issue; the recorded documents, including the declaration of Jerold D. O'Hare regarding his surveying of the land and his attached survey, discussed in more detail below, provide the specific property rights held by VPD. (*See* 424 at ¶2; 428-32, 472, 477).

Conversely, Ms. Rosser did not produce any claims to the contrary of the property records with any title. She has never produced any instrument demonstrating that her rights and interest in the park property

exceeds those demonstrated by VPD through Pacific Northwest Title Company's title report and recorded documents. (See CP 434-39). As a result, VPD is entitled to judgment quieting title in its favor establishing the integrity of its property boundaries and expressly limiting Ms. Rosser's rights and interest therein to the easement as shown on recorded grant of easement recording number 787677. (See CP 477; see also CP 472).

b. The written, recorded property records establish VPD's property rights as asserted herein

The parties' property rights and interests are determined by the recorded instruments. VPD seeks to quiet title to its property rights based on instruments recorded on VPD and Ms. Rosser's properties.

All of the parties' relevant interest and rights on the subject properties must be reflected on recorded instruments because, since the mid 1800s, Washington law requires conveyance of any interest in or any encumbrance upon real property to be in writing and recorded by deed. See RCW 64.04.010. RCW 64.04.010 provides that "[e]very conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by deed[.]" The written deeds and documents establish the property rights exactly as VPD is asserting them. As a result, there is simply no genuine issue as to any

material fact to adjudicate the parties' property interests and rights in the present case beyond what is contained in the recorded property documents. Thus, a decision as a matter of law on summary judgment is appropriate.

c. Ms. Rosser has 20 foot easement for ingress and egress on the southern border of Parcel A.

The Rosser Parcel is adjacent to and abutting VPD's leased Parcels A and B. (at ¶3.) The Rosser Parcel enjoys an easement of twenty (20) feet for ingress and egress along the southern boundary of VPD's leased property located on Parcel A. (CP 425 at ¶3, 470, 472).

The title report from Pacific Northwest Title Company on Parcel A shows that there is a grant of an easement to Ms. Rosser's predecessors in interest recorded as recording number 78677 on January 19, 1912 for a private road over the southerly 20 feet of Parcel A. (CP 434-439). As evidenced by the title report, the southerly 20 feet easement is the only property right and interest held by Ms. Rosser on either Parcel A or Parcel B. (CP 436). There was no recording of a conveyance in fee simple of the southerly 20 feet. (*See id.*). And there was no recording of a grant of easement or conveyance in fee simple of any property on the easterly portion of or anywhere else on the park property. (*See id.*).

In addition, the deed under which Ms. Rosser took possession of her property also confirms the findings in the title report. (CP 472). The deed conveys along her property, an easement over the south 20 feet of Parcel A. (*Id.*). Ms. Rosser has produced no recorded instrument contradicting the findings in VPD's title report.

- d. Ms. Rosser has no property interest on the Eastern portion of VPD's property. Moreover, her current wooden fence is encroaching onto VPD's property.

Ms. Rosser also has claimed an easement on the eastern part of VPD's Parcel A. (CP 425-26 at ¶¶7, 9.) She has erected a wooden fence on the eastern portion of the park property. (*Id.*). There are no documents supporting a right to this property. It is a trespass to intrude onto another's property – this includes the misuse, overburdening or deviation from an existing easement. *Mielke v. Yellowstone Pipeline Co.*, 73 Wn. App. 621, 624, 870 P.2d 1005, (1994). The undisputed facts show, the survey conducted by Jerold O'Hare confirms that Ms. Rosser has a fence encroaching onto VPD's leased property along the eastern boundary of Parcel A. (CP 486 at ¶5.) The fence itself is built on VPD's leased property. (CP 482-83 ¶5.) Because Ms. Rosser cannot establish any right to maintain the wooden fence at its current location, she must remove it from VPD's property.

- e. Ms. Rosser cannot have adverse possession or easement by prescription because the park property is held by a municipality.

Ms. Rosser cannot claim, and has not claimed, the right to any property on Parcel A or Parcel B by easement by prescription, or adverse possession. It is black letter law that property held by a municipality for a public purpose in its governmental capacity is subject to neither adverse possession nor easement by prescription. *See Commercial Waterway Dist. No. 1 of King County v. Permanente Cement Co.*, 61 Wn. 2d 509, 512, 379 P.2d 178, (1963); *City of Benton City v. Adrian*, 50 Wn. App. 330, 336, 748 P.2d 679 (1988). Both VPD and VSD, as long term tenant and underlying fee simple owner respectively, are municipalities. They hold the park property for a public purpose in their governmental capacities, and therefore, Ms. Rosser cannot have a claim for either adverse possession or easement by prescription in this case. *Id.*; *see also* RCW 7.28.090.

2. The Trial Court Properly Granted Summary Judgment Granting a Permanent Injunction to Ensure Ms. Rosser does not Encroach on VPD's Property in the Future.

The King County Superior Court properly held that VPD should be entitled to a “permanent”⁸ easement enjoining Ms. Rosser from:

⁸ The Order granting summary judgment specified that “[p]ermanent means permanent during the pendency of Plaintiff’s lease.” (CP 701).

(a) using her easement on the southern portion of VPD's leased property in a manner inconsistent with the use of an easement, including but not limited to blocking access along that easement (CP 700-701); and,

(b) trespassing onto the eastern portion of VPD's leased property and from using this space in a manner inconsistent with its public use. VPD was granted both a Temporary Restraining Order and a Preliminary Injunction to protect its property interests in this matter. (*Id.*).

Pursuant to RCW 7.40.020 permanent injunctive relief is appropriate when the "plaintiff is entitled to the relief demanded ... where such relief, or any part thereof, consists in restraining proceedings upon any final order or judgment, an injunction may be granted to restrain such act[.]" *See* RCW 7.40.020.

Just as VPD had to establish in seeking its Temporary Restraining Order and Preliminary Injunction, in seeking permanent injunctive relief VPD had to show: (1) that it has a clear legal or equitable right, (2) that it has a well-grounded fear of immediate invasion of that right, and (3) that the acts complained of are either resulting in or will result in actual and substantial injury. *Washington Federation of State Employees, Council 28, AFL-CIO v. State*, 99 Wn.2d 878, 888, 665 P.2d 1337 (1983). These factors are examined in light of equity, balancing the relative interests of

the parties. *Rabon v. City of Seattle*, 135 Wn.2d 278, 284, 957 P.2d 621 (1998).

a. VPD has a clear legal right to recover.

When determining whether the moving party has a clear legal right to recover, Courts examine if the moving party is likely to ultimately prevail on the merits. *Tyler Pipe Industries, Inc. v. State, Dept. of Revenue*, 96 Wn.2d 785, 793, 638 P.2d 1213 (1982). Both Commissioner Holman and Judge Middaugh, in issuing the TRO and Preliminary Injunction, respectively, found that VPD had a likelihood of success on the merits of its legal claims. VPD has demonstrated above that it is entitled to summary judgment quieting title in its favor and limiting Ms. Rosser's property rights. The uncontroverted evidence shows that Ms. Rosser's property rights are limited to the ownership of her own plat (the Rosser Parcel) and the use of an easement for ingress and egress across the southern boundary of VPD's leased Parcel A. (CP 436, 472, 477). The evidence is as follows:

- The deed dated July 14, 1999, conveying the property to Ms. Rosser from her parents, Leon and Margaret Rosser, lists her rights in Parcel A (the relevant parcel) as including "an easement over the south 20 feet of the west 5 acres of

the north 10 acres of the northwest quarter of the northwest quarter.” (CP 472)

- The deed dated January 19, 1918 granting property to the school district reserves “a right away of 20 ft. on the S In...for use as a privat [sic] roadway.” (CP 477).
- The survey completed by Jerold D. O’Hare clearly establishes the property rights and lines consistent with VPD’s request to quiet title and enjoins Defendant. (CP 485-90).

VPD has shown that Ms. Rosser does not own, nor has a right to use in a way different than the public’s use, any of the other property surrounding the Rosser Parcel, and therefore, it is entitled to not only have its title quieted by judicial determination, but also to have permanent injunctive relief entered to protect VPD from potential future encroachments on its property.

b. VPD has a Well-Founded Fear of Invasion of Its Right to Relief.

To obtain injunctive relief, VPD must establish a well-founded fear of invasion of a clear legal or equitable right. *Washington Federation of State Employees*, 99 Wn.2d at 888. As Commissioner Holman and Judge Middaugh previously found, the following actions committed by

Ms. Rosser have led VPD to fear that Ms. Rosser will continue to interfere with its property rights:

(1) parking her cars on the southern boundary easement so that they blocked the road which would make it impossible for construction vehicles to get through; (CP 425 at ¶6).

(2) removing a portion of the fence on the eastern boundary of VPD's leased property (CP 425-26 at ¶7); (CP 483 at ¶6); and,

(3) driving her cars onto VPD's leased property when the property is being used for ballgames and children are present, thereby endangering the safety of park users. (CP 425-26 at ¶7).

If Ms. Rosser were to continue these actions, or acts in a similar manner in the future, VPD would have a well-grounded fear of invasion into its property rights and an interference with its plans to finish construction on this public park space for the public's good and benefit. (CP 426 at ¶8).

- c. VPD Will Suffer Actual, Substantial and Irreparable Injury if Ms. Rosser Continues to Improperly Use the Easement and Trespass on VPD's Property.

Finally, the moving party must establish actual and substantial injury if the identified actions occur. *Washington Federation of State Employees*, 99 Wn.2d at 888. Here, VPD will suffer an actual and substantial injury if Ms. Rosser interferes with its property rights. Already, on September 6, 2011, Ms. Rosser parked her cars on the

easement along the southern boundary of the park property which would have caused construction vehicles to have to wait to get on the property to place cement blocks for field lights. (CP 425 at ¶6). If the construction vehicles are unable to get on to the property, VPD will be harmed financially by having to pay for the vehicles while they wait and faces potential delays of their construction project. Moreover, VPD cannot allow a car to be driven onto the ball field when games are being played, especially by children. (CP 426 at ¶7). If Ms. Rosser is allowed to violate VPD's property rights, VPD faces the possibility of being continually harmed each time Ms. Rosser decides to unlawfully go onto and/or use VPD's leased property.

d. Equity Favors the Issuance of an Injunction.

As demonstrated, if Ms. Rosser continues to intrude onto VPD's leased property and improperly utilize her easement along VPD's southern border, VPD may be financially harmed by delays in construction. Ultimately though, far more than the harm suffered by VPD, it is the harm suffered by the public in the potential delay of their recreation space and play field. VPD's improvements to the subject property are for the public to use and enjoy. If those improvements are delayed, so will the public's use be delayed. Moreover, the public's safety while using the ball field is paramount and VPD cannot allow vehicles to be driven on to the field,

especially while a game is being played. As such, the balance of equities favors the issuance of a temporary restraining order.

The public interest favors the granting of the preliminary injunction to prevent Ms. Rosser from entering onto the VPD's leased land in a manner inconsistent with its public use or her easement across the southern portion.

3. The King County Superior Court had Jurisdiction to Adjudicate this Matter.

Ms. Rosser also claims that the Court did not have jurisdiction over her. (App. Br. at 12-13). It is undisputed that the property and parcels at issue – Parcel A, Parcel B, and the Rosser Parcel – are each located in King County. (*See e.g.*, CP 428, 434-39, 472).

The King County Superior Court had jurisdiction over this action, since the property at issue is located in King County. The Washington State Constitution Article 4, Section 6 provides that “[t]he superior court shall have original jurisdiction in all cases at law which involve the title or possession of real property.” Specifically, King County was the appropriate venue since, actions for “the determination of all questions affecting the title, or for any injuries to real property” shall be brought in the county in which the subject of the action is situated. RCW 4.12.010; *see also A&W Farms v. Cook*, 168 Wn.App. 462, 277 P.3d 67 (2012) (statute governing venue for disputes involving real property applies to the commencement of quiet title actions); *State ex. rel. Grove v. Card*, 35

Wn.2d 215, 211 P.2d 1005 (action to recover possession of real property must be commenced in the county in which property is situated); *Cugini v. Apex Mercury Min. Co.* 24 Wn.2d 401, 165 P.2d 82 (1946) (action involving title to real property must be dismissed for lack of jurisdiction if not commenced in the county in which the real property is situated); *McLeod v Ellis*, 2 Wn. 117, 26 P.76 (1891) (it is mandatory that an action for injury to real property be commenced in the county in which the property is located).

Additionally, Ms. Rosser is incorrect that the claim was filed in the King County District Criminal Court. (App. Br. at 11). Instead, as plainly evident on the Complaint, Summons, and Case Schedule, the matter was pending as a civil matter in the King County Superior Court. (See CP 1, 21, 27). The Criminal Rules for Courts with Limited Jurisdiction (CrRLJ) are not applicable to proceedings in the King County Superior Court. Rather those proceedings, and this case, follow the Washington State Civil Rules (CR) and the King County Local Civil Rules (KCLR).

4. Ms. Rosser's Other Claims of Error are Raised for the First Time on Appeal and/or are Irrelevant to the Determination of Summary Judgment.
 - a. VPD complied with the King County Local Rules and Civil Rules in Filing and Serving its Pleadings.

Ms. Rosser complains that there were "irregularities in the complaint." However, VPD acted fully and completely within all Civil and Local Rules in filing and serving its Complaint. She states that she

was served with a complaint on October 9, 2011; however, in fact, that service occurred on October 6, 2011. (CP 532-33). She was served with a Complaint, Summons, Motion for Temporary Restraining Order and accompanying declarations with exhibits. (*Id.*). Ms. Rosser admits that she appeared at the TRO hearing. (App. Br. at 10; *see also* CP 44). Ms. Rosser also claims that a summons was not filed with the Court. (*Id.* At 10-11). Yet, the record makes clear that the Summons was filed on October 6, 2011. (CP 27-28). Further, VPD appeared at the October 10, 2011 hearing through its counsel to present its TRO. (*See e.g.*, CP 41-43).

VPD followed appropriate legal procedure in making its motion for a Temporary Restraining Order. VPD was not required to give notice prior to seeking the TRO. *See* CR 65(b). Civil Rule 65(b) allows for a Temporary Restraining Order to be issued without notice when (1) there is immediate and irreparable injury, loss, or damage that will result to the applicant before the adverse party can be heard in opposition; and (2) the applicant's attorney certifies the efforts that have been made to give notice. In this matter, VPD did notify Ms. Rosser that it intended to seek a TRO in the *ex parte* department of the King County Superior Court. (CP 535-36). VPD notified Ms. Rosser of the date and time that it would be present in the *ex parte* department to present the TRO. (*See id.*). In fact, Ms. Rosser was present for the hearing before Commissioner Hollis on October 10, 2012. (CP 44; *see also* App. Br. at 10; CP 41-43).

VPD sought a TRO pursuant to RCW 7.40.020, which provides that, when it appears by the complaint that a plaintiff is entitled to relief consisting in “restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce great injury to the plaintiff; or when during the litigation, it appears that the defendant is doing, or threatened, or is about to do...or is suffering some act to be done in violation of the plaintiff’s rights respecting the subject of the action tending to render the judgment ineffectual; or where such relief...an injunction may be granted to restrain such act or proceeding until the further order of the Court.” RCW 7.40.020.

In accordance with Civil Rule 65(b) the motion for preliminary injunction was set within 14 days after the October 10, 2011 issuance of the TRO, for October 24, 2012. (CP 45). The Court required the motion to be moved due to scheduling and the preliminary injunction date was moved to November 1, 2012. (CP 316-17; 539-41). On November 1, 2012, having heard evidence from both the parties for over one hour, King County Superior Court Judge Laura Gene Middaugh granted VPD’s Motion for Preliminary Injunction. (CP 397;). The preliminary injunction prevented Ms. Rosser from (a) using her easement on the southern 20 feet of Parcel A in a manner inconsistent with its use as a private roadway, including but not limited to blocking access along that easement; and, (b) trespassing onto the eastern portion of Parcel A and using it in a manner inconsistent with the public’s use, including but not limited to

being restrained from driving onto the property, unless the VPD allows the general public to drive on that portion of the property. (CP 495-96 at ¶1). VPD was similarly restrained from using the easement on the southern portion of Parcel A in a manner inconsistent with the use of its property over which Ms. Rosser has an easement, including that it may not block ingress and egress to the Rosser Parcel. (CP 496 at ¶2).

b. VPD is a Municipal Corporation Constructing a Ball Field Consistent with its Lease.

Ms. Rosser claims for the first time in her Appellant's Brief that VPD is not a municipal corporation because it has no vested right and no municipal stamp. (App. Br at 12). She also claims that VPD is using the property in a way not consistent with its lease. (*Id.*). Ms. Rosser also claims that VPD has not received a LUPA order to construct the ball field. (*Id.*).

These claims were not raised below and cannot be considered now. Regardless, the claims have no bearing on VPD's quiet title action and permanent injunction. Simply, they do not change the fact that the written, recorded documents make the property rights of VPD and Ms. Rosser clear.

- c. Ms. Rosser's claims under the Washington Consumer Protection Act and 42 U.S.C. §1983 are Inappropriate; VPD did not violate Ms. Rosser's Due Process rights.

Ms. Rosser claims that VPD did not comply with due process. (App. Br. at 13). Ms. Rosser asks that the "Order to Show Cause" and "Order for Summary Judgment" be reversed for violations of due process. (App. Br. at 15). Yet, no violations of Ms. Rosser's due process have occurred.

VPD complied with all rules regarding process and notice in this matter. Ms. Rosser also claims damages as a result of 42 U.S.C. §1983 and the Consumer Protection Act (RCW 19.86 *et seq.*). Aside from the fact these claims are meritless; neither of them was raised in the superior court and cannot now be raised or argued. Moreover, they would not change the fact that Court's order granting summary judgment reflects the written, recorded documents.

Ms. Rosser also claims that she has made motions to dismiss that were not considered. The record does not support this. *First*, on October 28, 2011, Ms. Rosser made a "Motion to Quash & Expunge Preliminary Injunction & TRO" and a "Motion for/to Reconsider Actions of November 1, 2011 Court Case." (CP 491). The Court denied these motions. At the same time Ms. Rosser also brought a "Motion for NonSuit and Order of Dismissal," which the Court also denied because it was not properly before the Court. (CP 492). *Second*, on January 4, 2012,

Ms. Rosser filed a Motion to Dismiss. (CP 497-521). The Court ordered on January 6, 2012 that, if Ms. Rosser wished for her motion to dismiss to be heard on the same day as the summary judgment hearing, she would need to file a Note for Motion no later than March 6, 2012 at 4:00 p.m. (CP 523). Ms. Rosser never filed such notice. Finally, she last moved to dismiss the case after the summary judgment ruling had been entered and she had filed her notice of appeal.⁹ The Court, with jurisdiction residing in the appellate court and without a case to dismiss since it had already granted summary judgment in favor of VPD, properly did not grant Ms. Rosser's motion.¹⁰

d. Motion to Vacate and Proposed Order of Dismissal were Untimely Filed after the Notice of Appeal had been Entered.

A Motion to Vacate the Order and Proposed Order of Dismissal were filed after the notice of appeal was filed. At the time the notice of appeal is filed, the King County Superior Court no longer retained jurisdiction and could not make any rulings. Moreover, Ms. Rosser's motion to vacate was untimely and the motion to dismiss was moot, as summary judgment had already been granted in VPD's favor. The motion to vacate and the motion to dismiss were noted without oral argument and

⁹ (Dkt. 60- Defendant's Note for Motion Docket; Dkt. 61- Defendant's Affidavit of Prejudice Against Judge Laura Gene Middaugh; Dkt. 62- Defendant's Motion Vacate Plaintiff's Summary Judgment Order Entered May 4, 2012. No Personal Jurisdiction of Gay Rosser or Statutory Claim Subject Matter, etc.).

¹⁰ (Dkt. 68- Order Denying Motion to Vacate Order on Summary Judgment).

decided appropriately on July 11, 2012.¹¹ VPD did not respond, as the superior court did not retain jurisdiction after Ms. Rosser filed her notice of appeal. The Court appropriately denied Ms. Rosser's untimely request to reconsider/vacate the order on summary judgment and denied Ms. Rosser's motion to dismiss.¹²

e. VPD's counsel has fully complied with all legal and ethical obligations.

Ms. Rosser seeks sanctions against VPD's counsel, Ms. Allen, for refusing to comply with the civil rules and filing an action for an "immoral purpose" in a "Court without jurisdiction over the subject matter or the parties." (App. Br. at 16). Ms. Rosser's sanctions motion is not brought appropriately on appeal, nor has she shown any basis for the award of sanctions or submitted any basis for calculation of her damages. Ms. Rosser cannot make specious allegations against counsel, asking for serious sanctions, with no basis.

F. CONCLUSION

This matter is decided by looking at the recorded instruments which indisputably show that, as to Parcel A and Parcel B, Ms. Rosser's only property right is in a 20 foot easement on the southern portion of Parcel A for the ingress and egress to her property. The undisputed facts

¹¹ (*Id.*).

¹² (*Id.*).

establish that the superior court correctly granted summary judgment to VPD and that VPD is entitled to: (1) have title quieted with respect to Parcel A, establishing that Ms. Rosser has a 20 foot wide easement for ingress and egress to her property along the southern border of Parcel A; (2) have title quieted to Parcel B establishing that Ms. Rosser has no rights other than the rights to the property afforded to the public's use; and, (3) a permanent injunction, lasting for the remainder of its lease with the VISD, preventing Ms. Rosser from blocking the easement on Parcel A, requiring her to remove her wood fence encroaching on the western portion of Parcel A, and preventing her from using Parcel A or Parcel B in a manner different than the general public's use.

Further, the King County Superior Court had jurisdiction to hear a dispute regarding real property located within King County. Ms. Rosser's other claims made in her Appellate Brief are not proper for appeal, and regardless are wholly without merit.

The superior court's granting of summary judgment in VPD's favor should be affirmed.

RESPECTFULLY SUBMITTED this 8th day of November, 2012.

Respectfully submitted,

OGDEN MURPHY WALLACE, P.L.L.C.

By 
Jaime D. Allen, WSBA #35742
Attorney for Respondent
Vashon Maury Island Park District

DECLARATION OF SERVICE

I hereby declare that I sent a copy of the document on which this declaration appears via fax/mail/messenger/email service to Kosser

I declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Executed at Seattle, WA on Nov. 8/12

Signed by: 