

70205-0

70205-0

NO. 70205-0-1  
COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

~~FILED~~  
JUN 29 11 22 AM '04

---

RUSSELL JAMES JENSEN, JR., a/k/a JAMIE JENSEN

Appellant,

v.

REGINALD WREN and BRENDA WREN, husband and wife,

Respondent.

---

APPEAL FROM THE SUPERIOR COURT  
FOR SNOHOMISH COUNTY  
THE HONORABLE ELLEN J. FAIR

---

BRIEF OF RESPONDENTS

---

HUTCHISON & FOSTER  
By: William B. Foster  
WSBA #8270  
P.O. Box 69  
Lynnwood, Washington 98046  
(425) 776-2147  
Attorney for Appellant

TABLE OF CONTENTS

INTRODUCTION ..... 1

ISSUES ON APPEAL ..... 3

STATEMENT OF THE CASE ..... 3

ARGUMENT ..... 8

    Standard of Review and Appellant's Burdens on Appeal. . . 8

    The Court Correctly Imposed Sanctions upon Jensen. . . . 9

    Jensen's Scheduling of the Summary Judgment Motion  
    Was Baseless. .... 10

    Jensen Was Adequately Warned as to the Consequences  
    of His Actions. .... 13

    Jensen Misinterprets the Court Rule. .... 14

    The Instant Appeal Is Frivolous and the Wrens Are Entitled  
    to an Award of Reasonable Attorney's Fees. .... 18

    Jensen Fails to Challenge Any of the Factual Findings  
    Made by the Court. .... 19

    Jensen Fails to Explain Why the Decision of the Trial Court  
    Is in Error. .... 22

    Jensen's Arguments Regarding the Merits of His Client's  
    Case and Discovery Are Simply Red Herrings. .... 22

    Jensen has experience with CR 11 sanctions. .... 23

CONCLUSION ..... 24

## TABLE OF AUTHORITIES

### CASES

Biggs v. Vail, 124 Wn.2d 193, 197, 876 P.2d 448 (1994) . . . .	8, 17
Bryant v. Joseph Tree, Inc., 119 Wn.2d 210, 219, 829 P.2d 1099 (1992) . . . . .	8, 10, 11
Business Guides, Inc. v. Chromatic Communications Enters., Inc., U.S., 112 L. Ed. 2d 1140, 1160, 111 S. Ct. 922 (1991) . . . . .	10
Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 395, 110 L. Ed. 2d 359, 110 S. Ct. 2447 (1990) . . . . .	9, 17
Davis v. Dep't of Labor & Indus., 94 Wn.2d 119, 123, 615 P.2d 1279 (1980) . . . . .	19
Fay v. N.W. Airlines, Inc., 115 Wn.2d 194, 200-01, 796 P.2d 412 (1990) . . . . .	18
Hicks v. Edwards, 75 Wn. App. 156, 163, 876 P.2d 953 (1994)	10
Holbrook v. Weyerhaeuser Co., 118 Wash. 2d 306, 315, 822 P.2d 271 (1992) . . . . .	9
MacDonald v. Korum Ford, 80 Wn. App. 877, 883, 912 P.2d 1052 (1996) . . . . .	10
Manteufel v. Safeco Ins. Co. of Am., 117 Wn. App. 168, 178, 68 P.3d 1093 , review denied, 150 Wn.2d 1021 (2003) . . . . .	18
Miller v. Fenton, 474 U.S. 104, 114, 88 L. Ed. 2d 405, 106 S. Ct. 445 (1985) . . . . .	9
Reid v. Dalton, 124 Wn. App. 113, 128, 100 P.3d 349 (2004) . .	18
State v. Dixon, 159 Wn.2d 65, 76, 147 P.3d 991 (2006) . . . . .	9

State v. Rohrich, 149 Wn.2d 647, 654, 71 P.3d 638 (2003) . . . . .	9
Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 338-39, 858 P.2d 1054 (1993) . . . . .	8
Watson v. Maier, 64 Wash. App. 889, 896, 827 P.2d 311, review denied, 120 Wash. 2d 1015, 844 P.2d 436 (1992) . . . . .	9
West v. Wash. Ass'n of County Officials, 162 Wn. App. 120, 135, 252 P.3d 406 (2011) . . . . .	10

**RULES**

CR 11 . . . . .	5, 6, 8-10, 13
CR 56 (c) . . . . .	4, 11, 12, 14

**OTHER AUTHORITIES**

3A L. Orland, Wash. Prac., Rules Practice § 5141 (3d ed. Supp. 1991) . . . . .	11
Commentary, Rule 11 Revisited, 101 Harv. L. Rev. 1013, 1014 (1988) . . . . .	11
Fed. R. Civ. P. 11 advisory committee note, 97 F.R.D. . . . .	11, 13

## ***INTRODUCTION***

Appellant Jamie Jensen appeals the imposition of CR 11 sanctions against him for failing to strike an improperly noted motion for summary judgment.

The Respondents, Wren, commenced an action in the Snohomish County Superior Court against Jensen's clients for quiet title to their property, and for damages stemming from Jensen's clients intentional trespass upon the Wren property. (CP 249 - 252). Trial was scheduled to commence on February 12, 2013. (CP 228 - 230). On January 11, 2013, Wrens' counsel was informed by counsel for the third party defendants, Rollins, that he had received from Jensen a motion for summary judgment. (Appendix 1). The motion documents included a calendar note scheduling the motion hearing for a date that was three (3) days after the trial was scheduled to commence. (CP 189 - 193).

Although Wrens' counsel had not received any motion documents from Jensen, he sent Jensen an email advising Jensen that the motion for summary judgment was not in compliance with the rules of court that require that a motion for summary judgment be scheduled to be heard not less than fourteen (14) days prior to the

trial date. (Appendix 2) Wrens' counsel demanded that Jensen strike the improperly noted motion, and advised Jensen that if he refused to strike the motion, Wrens would move to strike the motion, and move for CR 11 sanctions against both Jensen and his clients. (Appendix 2). Jensen refused to strike the motion for summary judgment.

As promised, the Wrens brought their own motion to strike the summary judgment motion, and also for the imposition of CR 11 sanctions against both Jensen and his clients. (CP 176 - 188) Instead of striking the motion for summary judgment, Jensen made a motion to continue the trial date. (CP 168 - 172) The motion to continue the trial date was denied. (CP 133 - 134)

A different Judge then considered the Wrens motion to impose sanctions, and at this hearing sanctions were ordered against Jensen. (CP 15 - 18) It is from this order that Jensen brings the instant appeal.

### ***ISSUES ON APPEAL***

1. Did the trial court abuse its discretion in awarding sanctions against the Jensen after finding that he improperly noted a motion for summary judgment, and failed to strike the motion after being advised that the motion was untimely?
2. Should the Wrens' be awarded their attorney's fees and expenses on appeal?

### **STATEMENT OF THE CASE**

Jensen was the attorney for the Defendants, Tammi Blakey and Flying T Ranch, Inc. Jensen brought this appeal from an Order entered on February 13, 2013, by the Honorable Ellen J. Fair, Judge of the Snohomish County Superior Court. (CP 15 - 18) This Order imposed sanctions pursuant to CR 11 against Jensen in the amount of \$3,246.75. (CP 15 - 18)

This action was commenced by the Wrens wherein they sought an order quieting title as against their neighbor, Blakey. (CP 249 - 252) The Complaint also sought damages for an intentional trespass upon their property by Blakey. A bench trial was scheduled to commence on February 12, 2013. (CP 186 - 187)

In a conversation with counsel for the third party defendants on January 11, 2013, Mr. Steven Peiffle, Wrens' counsel was informed that Peiffle had received a motion for summary judgment from Jensen. Peiffle then forwarded to Wrens' counsel copies fo the moving papers. (Appendix 1)

Upon receipt of the summary judgment pleadings, Wrens' counsel sent an email to Jensen at 2:30 p.m. on January 11, 2013,

advising Jensen that the motion for summary judgment was untimely for multiple reasons. First of all, the hearing on the summary judgment motion was scheduled to be heard on February 15, 2013, three (3) days after the trial was scheduled to commence. Furthermore, Wrens' counsel advised Jensen that the summary judgment motion was untimely inasmuch as CR 56 (c) requires that summary judgment motions must be heard at least fourteen (14) days before the trial date. Finally, Wrens' counsel demanded that Jensen strike the summary judgment motion, and warned Jensen of the consequences of failing to strike the summary judgment motion.

“Accordingly, please confirm in writing that your Motion for Summary Judgment will be stricken. In the event that you fail to do so by the end of business on Monday, January 14, 2013, I will make a motion to strike the summary judgment motion, and if I am required to do so, I will request that the Court impose CR 11 sanctions against you and your client for bringing a motion which is clearly contrary to at least two court rules.” (Appendix 2)

Jensen failed to strike the summary judgment motion. Accordingly, and as promised, on January 17, 2013, Wrens' counsel moved to strike the summary judgment motion, and further requested the imposition of CR 11 sanctions against Jensen and Blakey. (CP 176 - 188) The Wrens' motion was scheduled for hearing on January

25, 2013. (CP 173 - 175)

In response to the Wrens' motion, Jensen filed a motion to continue the trial date. (CP 168 - 172) The motion to continue the trial date was denied by The Honorable Michael T. Downes, Judge, on January 25, 2013. (CP 133 - 134) Immediately after Judge Downes denied the continuance, Wrens' motion to strike the improperly noted summary judgment motion and for the imposition of sanctions was heard by The Honorable Ellen J. Fair, Judge. Judge Fair granted the Wrens' motion to strike the improperly noted summary judgment motion, and imposed CR 11 sanctions against Jensen. (CP 15 - 18)

The sanctions were based upon the following factual findings made by Judge Fair:

- “1. That on the 27th day of October, 2012, the Trial Court Administrator for the above-entitled Court set the trial date in this matter for the 12th day of February, 2012.
2. That the Notice of Case Setting was issued to all counsel in this matter, including Defendants' counsel, Jamie Jensen.
3. That Defendants' counsel issued a Notice of Withdrawal as attorney for the Defendants on the 6th day of November, 2012, after he had received the Notice of Case Setting. At the time Jensen issued his Notice of Withdrawal he was aware of the trial date set by the Court.
4. That on the 14th day of January, 2013, Jensen filed on

behalf of the Defendants a Motion for Summary Judgment. That the said Motion was filed 29 days prior to the scheduled trial date. That the said Motion was scheduled to be heard three days after the scheduled trial date.

5. That the said Motion was filed contrary to the provisions of CR 56 (c) which requires that motions for summary judgment be heard not less than fourteen (14) days before the scheduled trial date.

6. That on the 11th day of January, 2013, Plaintiffs' counsel advised that the Motion for Summary Judgment was filed contrary to the requirements of CR 56 (c), and requested that the said motion be stricken. Plaintiffs' counsel further advised Jensen that if the said motion was not stricken, a motion to strike the summary judgment motion would be filed, and the Plaintiffs would seek the imposition of CR 11 sanctions for the expenses incurred in making a motion to strike the improperly noted hearing.

7. Jensen failed to strike the Motion for Summary Judgment, and did not obtain leave of court to schedule a motion for summary judgment less than fourteen (14) days before the scheduled trial date.

8. Defendants' counsel, Jamie Jensen, at the time of filing the Motion for Summary Judgment, knew or should have known the requirements of CR 56 (c), and specifically that a motion for summary judgment may not be scheduled within fourteen (14) days of the scheduled trial date without leave of court.

9. The failure of Defendants' counsel to adhere to the provisions of CR 56 (c) resulted in a waste of time, resources and expense to the Plaintiffs, requiring them to incur attorneys' fees and costs related to the filing of their Motion to Strike the summary judgment motion." (CP 15 - 18)

Based upon the foregoing Findings of Fact, Judge Fair also

made and entered the following Conclusions of Law:

- “1. The Defendants' Motion for Summary Judgment was not filed in compliance with the provisions of CR 56 (c). That there was no basis in fact or law for the Defendants', or their counsel, to comply with the provisions of CR 56 (c).
2. The failure of the Defendants and their counsel to comply with the provisions of CR 56 (c) warrant CR 11 sanctions against the Defendants counsel, Jamie Jensen;
3. CR 11 sanctions shall be assessed against the Defendants counsel, Jamie Jensen, in an amount to be determined upon further hearing for their failure to comply with the court rules
4. Judgment shall be entered in favor of the Plaintiffs and against the Defendants counsel, Jamie Jensen, which reflects the sanctions to be imposed pursuant to CR 11 for their failure to comply with the court rules.” (CP 15 - 18)

From these Findings of Fact and Conclusions of Law, the Court imposed sanctions against Jensen in the amount of \$3,246.75, which the Court found to be the actual attorney's fees incurred by Wrens counsel in moving to strike the improperly noted summary judgment motion. (CP 15 - 18) It is from this Order that Jensen appeals.

#### ***ARGUMENT***

**1. *Standard of Review and Appellant's Burdens on Appeal.***

The standard of review for an award of CR 11 sanctions is

abuse of discretion.<sup>1</sup> In deciding whether the trial court abused its discretion, it must kept in mind that the purpose behind CR 11 is to deter baseless filings and to curb abuses of the judicial system".<sup>2</sup>

The abuse of discretion standard recognizes that deference is owed to the judicial actor who is better positioned than another to decide the issue in question.<sup>3</sup> The sanction rules are designed to confer wide latitude and discretion upon the trial judge to determine what sanctions are proper in a given case and to reduce the reluctance of courts to impose sanctions.<sup>4</sup>

A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds or for untenable reasons.<sup>5</sup> A trial court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law. A decision is based

---

<sup>1</sup> **Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp.**, 122 Wn.2d 299, 338-39, 858 P.2d 1054 (1993); **Biggs v. Vail**, 124 Wn.2d 193, 197, 876 P.2d 448 (1994).

<sup>2</sup> **Bryant v. Joseph Tree, Inc.**, 119 Wn.2d 210, 219, 829 P.2d 1099 (1992).

<sup>3</sup> **Cooter & Gell v. Hartmarx Corp.**, 496 U.S. 384, 403, 110 L. Ed. 2d 359, 110 S. Ct. 2447 (1990) (quoting **Miller v. Fenton**, 474 U.S. 104, 114, 88 L. Ed. 2d 405, 106 S. Ct. 445 (1985))

<sup>4</sup> *Id.*

<sup>5</sup> **Holbrook v. Weyerhaeuser Co.**, 118 Wash. 2d 306, 315, 822 P.2d 271 (1992); **Watson v. Maier**, 64 Wash. App. 889, 896, 827 P.2d 311, review denied, 120 Wash. 2d 1015, 844 P.2d 436 (1992); **State v. Dixon**, 159 Wn.2d 65, 76, 147 P.3d 991 (2006).

on untenable grounds, or made for untenable reasons, or if it rests on facts unsupported in the record or if it was reached by applying the wrong legal standard.<sup>6</sup>

**2. The Court Correctly Imposed Sanctions upon Jensen.**

CR 11 authorizes the trial court to impose appropriate sanctions for baseless filings and for filings made for an improper purpose.<sup>7</sup> A filing is baseless when it is: (a) not well grounded in fact, or (b) not warranted by (i) existing law or (ii) a good faith argument for the alteration of existing law.<sup>8</sup> To impose sanctions for a baseless filing, the trial court must find not only that the claim was without a factual or legal basis, but also that the attorney who signed the filing did not conduct a reasonable inquiry into the factual and legal basis of the claim.<sup>9</sup>

**3. Jensen's Scheduling of the Summary Judgment Motion Was Baseless.**

CR 11 authorizes the imposition of sanctions against an attorney and/or the client for filing a pleading, motion, or legal

---

<sup>6</sup> *Id.* (quoting **State v. Rohrich**, 149 Wn.2d 647, 654, 71 P.3d 638 (2003))

<sup>7</sup> **MacDonald v. Korum Ford**, 80 Wn. App. 877, 883, 912 P.2d 1052 (1996).

<sup>8</sup> **Hicks v. Edwards**, 75 Wn. App. 156, 163, 876 P.2d 953 (1994).

<sup>9</sup> **West v. Wash. Ass'n of County Officials**, 162 Wn. App. 120, 135, 252 P.3d 406 (2011).

memorandum which is not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.<sup>10</sup>

The purpose behind CR 11 is to deter baseless filings and to curb abuses of the judicial system.<sup>11</sup> Both the federal rule and CR 11 were designed to reduce delaying tactics, procedural harassment, and mounting legal costs.<sup>12</sup> CR 11 requires attorneys to stop, think and investigate more carefully before serving and filing papers.<sup>13</sup> The CR 11 requires lawyers to carefully undertake a prefiling investigation of the facts and inquiry into the law.<sup>14</sup>

If a party violates CR 11 the court may impose an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee.<sup>15</sup> A baseless filing is one not supported by

---

<sup>10</sup> **Bryant** at 219-220.

<sup>11</sup> See **Business Guides, Inc. v. Chromatic Communications Enters., Inc.**, U.S., 112 L. Ed. 2d 1140, 1160, 111 S. Ct. 922 (1991).

<sup>12</sup> 3A L. Orland, Wash. Prac., Rules Practice § 5141 (3d ed. Supp. 1991).

<sup>13</sup> See Fed. R. Civ. P. 11 advisory committee note, 97 F.R.D. 165, 192 (1983).

<sup>14</sup> **Commentary**, Rule 11 Revisited, 101 Harv. L. Rev. 1013, 1014 (1988).

<sup>15</sup> CR 11(a).

the facts or existing law.<sup>16</sup>

In the instant case Jensen's filing of a summary judgment motion that was scheduled to be heard three days after the trial was to scheduled to commence was baseless in that it was not supported by existing law. CR 56 (c) provides:

"(c) Motion and proceedings. The motion and any supporting affidavits, memoranda of law, or other documentation shall be filed and served not later than 28 calendar days before the hearing. . . . Summary judgment motions shall be heard more than 14 calendar days before the date set for trial unless leave of court is granted to allow otherwise."<sup>17</sup>

By virtue of this rule the last date that a hearing on a summary judgment motion could have been scheduled was January 29, 2013. However, a motion for summary judgment requires a minimum of 28 days notice.<sup>18</sup> Therefore, the last date that a motion for summary judgment could have been filed and served would have been January 1, 2013. Jensen's filing was not even close to being compliant with the rule.

---

<sup>16</sup> **Bryant**, 119 Wn.2d at 217.

<sup>17</sup> CR 56 (c); inapplicable portions of rule intentionally omitted; emphasis added.

<sup>18</sup> CR 56 (c)

Under the clear and unambiguous language of the court rule, Jensen's untimely motion is not supported by either existing law, nor any extension of existing law. The filing of a motion for summary judgment within 14 days of the trial date is baseless as there is simply no manner in which to interpret 14 days to mean anything other than 14 days.

**4. *Jensen Was Adequately Warned as to the Consequences of His Actions.***

Sanctions under CR 11 should be reserved for egregious conduct and not be viewed as simply another weapon in a litigator's arsenal. In furtherance of this principal counsel should be expected to give informal notice to the other party, whether in person or by a telephone call or letter, of a potential violation before proceeding to prepare and serve a CR 11 motion.<sup>19</sup> Such informal notice is not a substitute for a CR 11 motion, but evidence of such informal notice, or lack thereof, should be considered by a trial court in fashioning an appropriate sanction. Jensen was more than adequately advised that his motion for summary judgment was non-compliant with the rules of

---

<sup>19</sup> Fed. R. Civ. P. 11 advisory committee note, 28 U.S.C.A. 186 (West Supp. 1994).

court, and the consequences that would result if he failed to strike the offending motion. Even before Wrens' counsel received the motion documents from Jensen, he advised Jensen that the motion was untimely, and demanded that it be stricken. Furthermore, Wrens' counsel also advised Jensen that his failure to strike the motion would result in a motion to strike the summary judgment, as well as a motion for the imposition of sanctions pursuant to CR 11. In response to this warning Jensen did nothing to bring his motion in a manner consistent with the rules of court.

**5. *Jensen Misinterprets the Court Rule.***

Jensen appears to argue that under CR 56 (c) he is not required to bring a motion for summary judgment more than 14 days in advance of the trial date, and relies upon the language "unless leave of court is granted to allow otherwise".<sup>20</sup> The flaw in this argument, however, is that Jensen never sought or received leave of court to bring a motion for summary judgment within 14 days of the scheduled trial date.

Instead, Jensen, five days after the Wrens' motion to strike the

---

<sup>20</sup> CR 56 (c)

summary judgment and impose sanctions was filed, filed his own motion to continue the trial date. This motion was denied.

Jensen appears to argue that the motion for summary judgment and the motion to continue the trial date were made at the same time.<sup>21</sup> In fact, Jensen states that since the motion for summary judgment could not be made given the proximity of the trial date, his client could either (1) make a request to shorten time (within which to make a summary judgment motion; or (2) request a continuance of the trial date.<sup>22</sup> The inference from Jensen's statements in his opening brief is that all his actions were taken at the same time. This is directly contrary to the record. In fact, the time line is as follows:

DATE	EVENT
1/11/2013	Wrens' counsel learns of Jensen's summary judgment motion
1/11/2013 2:30 p.m.	Wrens' counsel informs Jensen that motion for summary judgment is untimely; demands that motion be stricken; advises that Wrens will move to strike motion and impose sanctions if summary judgment motion is not stricken
1/11/2013 4:30 p.m.	Wrens' counsel receives email copies of summary judgment motion

---

<sup>21</sup> Brief of Appellant at 6; Brief of Appellant at 13.

<sup>22</sup> Brief of Appellant at 9.

1/17/2013	Wrens file motion to strike summary judgment motion and imposition of sanctions
1/22/2013	Jensen files motion to continue trial date
1/25/2013	Motion to Continue Trial denied; Motion to strike summary judgment and impose sanctions granted

Jensen appears to believe that a continuance of the trial date would have remedied his defective motion. In email correspondence dated January 17, 2013, Jensen stated:

“Attached hereto is a copy of the motion that I will bring before the motion to strike my summary judgment motion. The result of this motion will make the motion to strike moot. Either my motion will be approved and I (sic) will not be untimely or it will be disapproved and I will dismiss my summary judgment motion.”<sup>23</sup>

Apparently Jensen believed that if the trial continuance was granted his motion would go forward on its scheduled date, and since it would no longer be within 14 days of the trial date it would comply with the court rules. Unfortunately, this argument both misinterprets the court rule and displays a misunderstanding of a baseless filing.

There is simply no question that Jensen never sought leave of

---

<sup>23</sup> Email attached as Appendix 3 hereto.

court to deviate from the clear mandates of CR 56 (c)<sup>24</sup>. Any reasonable interpretation of the court rule would require that leave of court would be required before a motion is made in contravention of the court rules, or at a very minimum, contemporaneously. However, in this case leave of court was never requested.

Furthermore, it was after the Wrens filed the motion to strike the summary judgment motion that Jensen finally stated that he would strike the motion for summary judgment if the motion to continue the trial date was denied. Jensen's failure to obtain (or even ask for) leave of court left the Wrens' in a predicament. But the fact remains is that the CR 11 violation occurred at the very moment when Jensen filed his untimely motion. The violation of Rule 11 is complete upon the filing of the offending paper.<sup>25</sup> The later amendment or withdrawal of the offending paper does not expunge the violation, although such corrective action should be used to mitigate the amount of sanction imposed.<sup>26</sup>

---

<sup>24</sup> See unchallenged Findings of Fact

<sup>25</sup> **Biggs v. Vail**, 124 Wn.2d 193, 200, 876 P.2d 448 (1994)

<sup>26</sup> **Cooter & Gell v. Hartmarx Corp.**, 496 U.S. 384, 395, 110 L. Ed. 2d 359, 110 S. Ct. 2447 (1990)

Had Jensen stricken the motion for summary judgment upon demand, the issue would have gone away. Instead, however, he chose to leave his motion pending in hopes that the trial date would be continued, in which case he could have gone forward with his motion. The Wrens' had no reasonable alternative other than to do exactly what they promised they would do: bring a motion to strike the summary judgment motion. Therefore, Jensen's failure to adhere to the rules of court resulted in the Wrens' incurring over \$3,000.00 in attorney's fees to strike the improperly noted summary judgment motion.

**6. *The Instant Appeal Is Frivolous and the Wrens Are Entitled to an Award of Reasonable Attorney's Fees.***

An appeal is frivolous if, considering the entire record, the court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ and that it is so devoid of merit that there is no possibility of reversal.<sup>27</sup> In *Reid*, the court held that the claims were frivolous because the plaintiff lacked standing to bring the claims, and even if the standing existed, the claims were time barred.

---

<sup>27</sup> *Reid v. Dalton*, 124 Wn. App. 113, 128, 100 P.3d 349 (2004)

A similar result was reached in **Manteufel v. Safeco Ins. Co. of Am.**<sup>28</sup> where the court held the claims frivolous where the claimant relied upon case law that did not support the claims and had been overruled. A corollary view is seen in the case of **Fay v. N.W. Airlines, Inc.**<sup>29</sup>, where the court held the claims not to be frivolous as the claims presented debatable issues pertaining to the interpretation of a statute.

Here, the sanctions were issued based upon Jensen's failure to comply with a court rule. There can be no serious debate regarding the interpretation of the rule in question. Motions for summary judgment cannot be scheduled for hearing within fourteen (14) days of the trial date unless leave of court is granted. Jensen noted a summary judgment hearing that clearly did not comply with this rule without obtaining leave of court.<sup>30</sup> In fact, Jensen never even asked the trial court for leave to have the motion within 14 days of the scheduled trial date.

---

<sup>28</sup> **Manteufel v. Safeco Ins. Co. of Am.**, 117 Wn. App. 168, 178, 68 P.3d 1093 , review denied, 150 Wn.2d 1021 (2003)

<sup>29</sup> **Fay v. N.W. Airlines, Inc.**, 115 Wn.2d 194, 200-01, 796 P.2d 412 (1990)

<sup>30</sup> In fact, the motion was scheduled for hearing after the trial was scheduled to commence.

**6.1 Jensen Fails to Challenge Any of the Factual Findings Made by the Court.**

It is well settled that unchallenged factual findings are verities on appeal.<sup>31</sup> In the instant case, the Judge that ordered the sanctions made nine (9) separate findings of fact that supported the sanctions ordered. Included among those findings are the following:

- That at the time Jensen withdrew from the representation of the Defendant, he was aware of the trial date set by the Court.
- That Jensen filed a motion for summary judgment that was scheduled for hearing three days after the trial date was scheduled.
- That the motion was filed contrary to the provisions of CR 56 (c).
- That Wrens' counsel advised Jensen on January 11, 2013, that the motion did not comply with the court rule, and that unless stricken, CR 11 sanctions would be sought.
- That Jensen did not strike the motion, nor did he obtain leave of court to schedule the motion less than 14 days prior to the scheduled trial date.
- Jensen knew, or should have known, that a motion for summary judgment cannot be scheduled within 14 days of the scheduled trial date.
- That Jensen's failure to adhere to the provisions of CR 56 (c) resulted in a waste of time, resources and expense to the

---

<sup>31</sup> **Davis v. Dep't of Labor & Indus.**, 94 Wn.2d 119, 123, 615 P.2d 1279 (1980)

Plaintiffs, requiring them to incur attorney's fees and costs related to the filing of their motion to strike the summary judgment motion.

Because Jensen has not challenged any of these findings, they are accepted as verities here. Under these findings, the court properly ordered sanctions against Jensen.

It is further telling that although the Wrens requested the imposition of sanctions against both Jensen and his client, the court ordered sanctions against Jensen only. This is a clear indication that the court considered the fault to fall at Jensen's feet, and not his client. The overriding purpose of the Court Rules is to "secure the just, speedy, and inexpensive determination of every action".<sup>32</sup> In this case, as found by the trial court, Jensen's failure to follow the court rules led to the opposite result. Not only did Jensen's failure result in the Wrens incurring needless costs and expenses, it was a complete waste of judicial resources. This appeal is a similar waste of the Wrens' resources, and the time of this Court.

---

<sup>32</sup> CR 1

**6.2 *Jensen Fails to Explain Why the Decision of the Trial Court Is in Error.***

Jensen appears to argue that there was nothing “inherently wrong” with either the motion for summary judgment, or the motion to continue the trial date. The Wrens agree with this contention. However, this contention misses the point.

First of all, the sanctions were not based upon Jensen’s motion to continue the trial date. This is simply not an issue here.

The sanctions were based upon Jensen’s filing a motion for summary judgment contrary to the clear and unambiguous language of CR 56 (c). Jensen fails to explain why this court rule does not apply to his motion, primarily because he is unable to mount such an argument. Furthermore, he cannot argue to this court that he sought leave of court to make the motion as he has not challenged that specific factual finding made by the trial court.

**6.3 *Jensen’s Arguments Regarding the Merits of His Client’s Case and Discovery Are Simply Red Herrings.***

Jensen also argues that the court should have heard the summary judgment motion because it was a “well grounded in fact

and law".<sup>33</sup> He makes the same argument regarding his request for a continuance.<sup>34</sup> Again, Jensen misses the point. Sanctions were not ordered in this case because he made either of these motions; sanctions were ordered because he made the motion for summary judgment in a manner that did not comply with the rules.

Furthermore, although it is unimportant for the disposition of this appeal, it should be noted that neither of these motions were well grounded in fact or law. The court denied the request for a continuance of the trial date. At trial, not only did Jensen's client lose, she lost badly.<sup>35</sup> Given the difficult burden of obtaining a favorable result on a summary judgment motion it is impossible to imagine that Jensen's client would have prevailed on such a motion when her claims were soundly rejected at trial.

#### **6.4 Jensen has experience with CR 11 sanctions.**

As stated above, Wrens' counsel advised Jensen that the offending motion was untimely, and of the consequences of his failure to strike the motion. Advising opposing counsel that a claim for

---

<sup>33</sup> Brief of Appellant at 14.

<sup>34</sup> *Id.*

<sup>35</sup> See Findings of Fact, Conclusions of Law and Judgment, Appendix 4

sanctions will be made is advised by the commentators to CR 11, which is precisely what happened here.

This also occurred in a case decided by this Court in January, 2012.<sup>36</sup> The facts presented in that case are scarily similar to those presented here. In that case, the court sanctioned Jensen after he brought a claim that was not well founded in either fact or law. Like this case, Jensen refused to abandon his claims even after opposing counsel advised him that CR 11 sanctions would be sought if he failed to do so. And like this case, Jensen unsuccessfully appealed the imposition of sanctions. It is submitted that Jensen has more experience with CR 11 sanctions than do most practitioners, and therefore should be aware that his appeal is devoid of merit.

### **CONCLUSION**

This appeal is a waste of the Court's time, and the resources of the Wrens. Jensen has failed to challenge the factual findings of the court that imposed the sanctions; has failed to even address why the decision of the trial court was an abuse of discretion; and has

---

<sup>36</sup> **Chase v. Anderson et al., Respondents, Jamie Jensen, Appellant**; No. 65604-0-I, Court of Appeals of Washington, Division One, 2012 Wash. App. (Unpublished Opinion).

failed to explain why the trial court erred in ordering sanctions for his failure to comply with the clear and unambiguous provisions of CR 56 (c). The decision imposing sanctions should be affirmed.

Moreover, this appeal is so devoid of merit that it is frivolous. The Wrens' are entitled to an award of reasonable attorney's fees and expenses as a result of being required to respond to this appeal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'William B. Foster', is written over a horizontal line.

William B. Foster WSBA #8270  
of Hutchison & Foster  
Attorneys for Respondent

## APPENDIX 1

## **FW: Pleadings for Wren vs. Blakey**

**From :** Steve Peiffle <steve@snolaw.com>  
**Subject :** FW: Pleadings for Wren vs. Blakey  
**To :** Bill Foster <bfosteresq@comcast.net>

Fri, Jan 11, 2013 02:00 PM

 1 attachment

Steve Peiffle  
Bailey, Duskin & Peiffle, P.S.  
P.O. Box 188  
Arlington, WA 98223  
[steve@snolaw.com](mailto:steve@snolaw.com)  
[www.snolaw.com](http://www.snolaw.com)  
360-435-2168  
fax 360-435-6060

NOTICE: This communication may contain privileged or other confidential information. If you are not the intended recipient, or believe that you have received this communication in error, please do not print, copy, retransmit, disseminate, or otherwise use the information. Also, please indicate to the sender that you have received this email in error, and delete the copy you received. Thank you.

**From:** Jamie Jensen [<mailto:mukilteolawoffice@gmail.com>]  
**Sent:** Friday, January 11, 2013 1:25 PM  
**To:** Steve Peiffle  
**Subject:** Pleadings for Wren vs. Blakey

**Mukilteo Law Office**  
**4605 116th Street SW**  
**Suite 101**  
**Mukilteo, Washington 98275**  
**425-212-2100**  
**[mukilteolawoffice@gmail.com](mailto:mukilteolawoffice@gmail.com)**

January 11, 2013

Steve Peiffle  
Bailey Duskin & Peiffle, P.S.  
P.O. Box 100  
Arlington, WA 98223

RE: Wren vs. Blakey

Dear Mr. Peiffle:

I have attached the pleadings on the above entitled case for your information.

Sincerely,

Carolyn Kunard  
Assistant to Jamie Jensen



**ALL PLEADINGS FOR MOTION FOR SUM. JUDG..pdf**  
6 MB

## APPENDIX 2

**Re: Wren v. Rollins****From :** Jamie Jensen <mukilteolawoffice@gmail.com>

Fri, Jan 11, 2013 04:30 PM

**Subject :** Re: Wren v. Rollins 1 attachment**To :** Bill Foster <bfosteresq@comcast.net>

Mr. Foster:

My records do not show a trial date. I had not heard of a trial date from my client. I will check with her. I see from the docket that the matter is set. We have not received any answers to our discovery so that will have to come first. I am sending you draft documents for your review. These would be the service documents except for this new issue of a trial date, which I will have to review. The notice of return of counsel is effective today.

Jamie Jensen

On Fri, Jan 11, 2013 at 2:30 PM, Bill Foster <[bfosteresq@comcast.net](mailto:bfosteresq@comcast.net)> wrote:

Jamie:

I was told by Steve Peiffle that he had received a Motion for Summary Judgment noted by you, which had a scheduled hearing date of February 15, 2013. Attached hereto is a copy of the Notice of Trial Setting. As you can see therefrom, the trial in this matter is scheduled to commence on February 12, 2013.

Notwithstanding the fact that you have scheduled your Motion for Summary Judgment after the trial is scheduled to start, your Motion is also contrary to the provisions of CR 56 (c) which requires that summary judgment motions shall be heard at least 14 days prior to the trial date.

Accordingly, please confirm in writing that your Motion for Summary Judgment will be stricken. In the event that you fail to do so by the end of business on Monday, January 14, 2013, I will make a motion to strike the summary judgment motion, and if I am required to do so, I will request that the Court impose CR 11 sanctions against you and your client for bringing a motion which is clearly contrary to at least two court rules.

Bill Foster  
Hutchison & Foster  
4300 - 198th Street S.W.  
P.O. Box 69  
Lynnwood, Washington 98046-0069  
Telephone: (425) 776-2147  
Facsimile: (425) 776-2140  
Cell: (425) 210-6900

CAUTION! This email is covered by the Electronic Communications Privacy Act, 18 USC 2510-2521 and is legally privileged. The information contained in this electronic message is intended only for the use of the recipient named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or use of the contents of this transmission is prohibited. If you have received this electronic message transmission in error, please notify the law firm of HUTCHISON & FOSTER at (425)776-2147 or by reply e-mail and delete the original message. Thank you.

--

Sincerely,

Jamie Jensen  
RJJ/CK

## APPENDIX 3

## Motion to Continue Trial

**From :** Jamie Jensen <mukilteolawoffice@gmail.com>  
**Subject :** Motion to Continue Trial  
**To :** Bill Foster <bfosteresq@comcast.net>, Steve Peiffle <steve@snolaw.com>

Thu, Jan 17, 2013 04:42 PM

 1 attachment

**Mukilteo Law Office**  
**4605 116th Street SW**  
**Suite 101**  
**Mukilteo, Washington 98275**  
**425-212-2100**  
**mukilteolawoffice@gmail.com**

January 17, 2013

Bill Foster  
Steve Peiffle

Attached hereto is a copy of the motion that I will bring before the motion to strike my summary judgment motion. The result of this motion will make the motion to strike moot. Either my motion will be approved and I will not be untimely or it will be disapproved and I will dismiss my summary judgment motion.

Steve, what is your level of involvement in this case? Do we need to keep serving you after your portion of the case was bifurcated? If so, then what is the value of bifurcation?

--

Sincerely,

Jamie Jensen  
RJJ/CK

 **Scan-MotToContTrial.pdf**  
4 MB

## APPENDIX 4

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FILED**

JUN 03 2013

SONYA KRASKI  
COUNTY CLERK  
SNOHOMISH CO. WASH.

Judge: The Honorable George F. Appel  
Date of Hearing: June 3, 2013  
Time of Hearing: 9:00 a.m

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**

**IN AND FOR THE COUNTY OF SNOHOMISH**

REGINALD K. WREN and BRENDA M.  
WREN, husband and wife,

Plaintiffs,

vs.

TAMMY S. BLAKEY, an unmarried  
person, and FLYING T RANCH, INC., a  
Washington corporation,

Defendants.

**NO. 10-2-03262-1**

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

REGINALD K. WREN and BRENDA M.  
WREN, husband and wife,

Defendants as to  
Counterclaim and  
Third Party Plaintiffs,

and

ROBERT J. ROLLINS and WINNIE J.  
ROLLINS, husband and wife,

Third Party Defendants.

**THIS MATTER** having come on regularly for trial before the Honorable George  
F. Appel, Judge of the above-entitled Court on the 12th day of February, 2013; the

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

1 Plaintiffs appearing by and through their attorney, William B. Foster of Hutchison &  
2 Foster; the Defendants appearing by and through their attorney, Russell James  
3 Jensen; the Court having heard and considered the testimony of the witnesses, having  
4 considered the exhibits, and heard the argument of counsel; and considering itself fully  
5 advised in the premises; the Court now makes and enters the following:

6 **FINDINGS OF FACT**

7 1. That the Plaintiffs are the owners in fee simple of the real property  
8 described as follows, to wit:

9 PARCEL A:

10 All that portion of the Southeast quarter of the Northeast  
11 quarter of Section 20, Township 32 North, Range 6 East,  
12 W.M., lying Northwesterly of the Northern Pacific Railway  
right of way;

13 EXCEPT that portion described as follows:

14 Beginning at the Northwest corner of said subdivision;  
15 THENCE South 87°54'26" East along the North line of said  
subdivision a distance of 524.00 feet;

16 THENCE South 0°27'11" East parallel with the West line of  
said subdivision a distance of 239.79 feet;

17 THENCE in a Westerly direction in a straight line to a point  
on the West line of said subdivision a distance of 407.32  
18 feet South of the Northwest corner thereof;

19 THENCE North 0°27'11" West along said West line 407.32  
feet to the point of beginning; and EXCEPT that portion  
described as follows:

20 Beginning at the Northwest corner of said subdivision;  
21 THENCE South 87°54'26" East along the North line of said  
subdivision a distance of 524.00 feet to the true point of  
22 beginning;

23 THENCE continuing South 87°54'26" East a distance of  
759.83 feet to the West boundary of the Burlington  
24 Northern Railroad;

25 THENCE South 56°30'00" West along said West boundary  
a distance of 74.30 feet to a point at the intersection of an  
old fence line projected to said West railroad boundary;

26 THENCE North 89°26'44" West to a point South 0°27'11"  
27 East of the true point of beginning;

28 THENCE North 0°27'11" West a distance of 57.9 feet to  
the true point of beginning;

1 EXCEPT county road on the West side.

2 PARCEL B:

3 That portion of the Southeast quarter of the Northeast  
4 quarter of Section 20, Township 32 North, Range 6 East,  
5 W.M., lying Southerly of the right of way of the Northern  
Pacific Railway Company; excepting roads.

6 PARCEL C:

7 That portion of the Northeast quarter of the Southeast  
8 quarter of Section 20, Township 32 North, Range 6 East,  
9 W.M., in Snohomish County, Washington, lying  
10 Northwesterly of Highway 1-E, as granted to State Of  
11 Washington under Auditor's File Number 1594576; and  
EXCEPT road along the West line; also EXCEPT the  
following described tract:

12 Beginning at a point on the South line of the Northeast  
13 quarter of the Southeast quarter of Section 20, Township  
14 32 North, Range 6 East W.M. where it intersects with the  
15 Northwest right of way boundary of State Highway No. 530;  
THENCE Northeasterly along said right of way line 288  
feet to true point of beginning;

16 THENCE Northwesterly at right angles to said right of way  
for 175 feet;

17 THENCE Northeasterly and parallel with said road right of  
way 300 feet;

18 THENCE Northwesterly at right angles to said right of way  
for 75 feet;

19 THENCE Northeasterly to a point on the East line of said  
20 Section 20 which is 80 feet due North from the intersection  
21 of the Northwesterly right of way line of said secondary  
State Highway 1-E and the East line of said section;

22 THENCE South 80 feet to the Northwesterly right of way  
line of said secondary State Highway 1-E;

23 THENCE Southwesterly along said right of way to true  
24 point of beginning.

25 (Also known as Parcel 2 of Snohomish County Short Plat  
26 #SP87 (4-74) recorded under Auditor's File Number  
27 2340489).

1                    PARCEL D:

2                    That portion of the West half of the West half of the  
3                    Northwest quarter of the Southwest quarter of Section 21,  
4                    Township 32 North, Range 6 East, W.M., in Snohomish  
5                    County, Washington, lying Northwesterly of Highway 1-E  
6                    as granted to State of Washington under Auditor's File  
7                    Number 1594576.

8                    PARCEL E:

9                    That portion of the Southeast quarter of the Southeast  
10                    quarter of Section 20, Township 32 North, Range 6 East,  
11                    W.M., lying West of secondary State Highway 1-E, as  
12                    conveyed to the State Of Washington by deed recorded  
13                    under Auditor's File Number 1611613.

14                    PARCEL F:

15                    That portion of the Southwest quarter of the Southeast  
16                    quarter of Section 20, Township 32 North, Range 6 East,  
17                    W.M., lying East of County Road Survey 1513.

18                    Situate in the County of Snohomish, State of Washington.

19                    2.        That the Plaintiffs acquired the real property above-described by  
20                    Statutory Warranty Deed executed by Robert J. Rollins and Winnie J. Rollins, husband  
21                    and wife (hereinafter collectively referred to as "Rollins"). The said Deed was dated the  
22                    5th day of May, 2004, which Deed was recorded on the 14th day of May, 2004, under  
23                    Snohomish County Auditor's File No. 200405140722. That at all times prior to the  
24                    execution of the said Deed by Rollins, Rollins were the owners of the real property  
25                    described in the said Deed, and were in actual possession of the real property  
26                    described in the said Deed.

27                    3.        That the Rollins acquired the real property above-described by Statutory  
28                    Warranty Deed executed by Charles M. Kroeze and Glenice R. Kroeze, husband and  
29                    wife (hereinafter collectively referred to as "Kroeze"). The said Deed was dated the  
30                    14th day of December, 1983, which Deed was recorded on the 16th day of December,  
31                    1983, under Snohomish County Auditor's File No. 8312160295. That at all times prior

1 to the execution of the said Deed by Kroeze, Kroeze was the owner of the real  
2 property described in the said Deed, and was in actual possession of the real property  
3 described in the said Deed.

4 4. That the Kroeze acquired a portion of the real property above-described  
5 by Real Estate Contract dated March 31, 1964, executed by Milka Klein (hereinafter  
6 collectively referred to as "Milka"). Upon fulfillment of the terms and conditions of the  
7 said Real Estate Contract the property was conveyed to Kroeze by Statutory Warranty  
8 Deed dated the 21st day of September, 1976, which Deed was recorded on the 22nd  
9 day of September, 1976, under Snohomish County Auditor's File No. 7609220085.  
10 That at all times prior to the execution of the said Real Estate Contract by Milka, Milka  
11 was the owner of the real property described in the said Real Estate Contract, and was  
12 in actual possession of the real property described in the said Real Estate Contract.

13 5. That the Kroeze acquired a portion of the real property above-described  
14 by Real Estate Contract dated October 1, 1964, executed by Elmer R. Klein and Betty  
15 J. Klein, husband and wife (hereinafter collectively referred to as "Klein"). Upon  
16 fulfillment of the terms and conditions of the said Real Estate Contract the property  
17 was conveyed to Kroeze by Statutory Warranty Deed dated the 6th day of November,  
18 1968, which Deed was recorded on the 7th day of September, 1976, under Snohomish  
19 County Auditor's File No. 7909070096. That at all times prior to the execution of the  
20 said Real Estate Contract by Klein, Klein was the owner of the real property described  
21 in the said Real Estate Contract, and were in actual possession of the real property  
22 described in the said Real Estate Contract.

23 6. That the Defendants, TAMMY S. BLAKEY, an unmarried person, and  
24 FLYING T RANCH, INC., a Washington corporation, or either of them, are the owners  
25 of the real property described as follows, to wit:

26 Parcel A:

27 The SW ¼ NW ¼ of Section 21, Township 32 North Range  
28 6 East of the Willamette Meridian; EXCEPT the Burlington

1 Northern right of way; AND EXCEPT the State Highway  
2 right of way and all of Government Lot 3, Section 21,  
3 Township 32 North, Range 6 East of the Willamette  
4 Meridian lying South of the Burlington Northern right of way;  
5 and that portion of the E ½ W ½ NW ¼ SW ¼ and the E ½  
6 NW ¼ SW ¼, all in Section 21, Township 32 North, Range  
7 6 East of the Willamette Meridian lying north of the State  
8 Highway right of way.

9 Parcel B:

10 That portion of the NE ¼ of Section 21, Township 32 North,  
11 Range 6 East of the Willamette Meridian lying southeasterly  
12 of State Highway 530; EXCEPT that portion of the N ½ of  
13 said NE ¼ lying North of a line drawn parallel to and distant  
14 1,200 feet south of the North line of said N ¼ NE ¼ of  
15 Section 21; AND EXCEPT that portion of the SW ¼ NE ¼  
16 lying West of Creek.

17 Parcel C:

18 That part of the SW ¼ SE ¼ of Section 12, Township 32  
19 North, Range 6 East of the Willamette Meridian lying and  
20 being South of the Arlington and Darrington Branch of the  
21 Burlington Northern Inc. right of way; EXCEPT secondary  
22 State Highway 1-E; ALSO, all of Government Lot 1 of  
23 Section 13, Township 32 North, Range 6 East of the  
24 Willamette Meridian. ALSO all of Government Lot 5 of  
25 Section 13, Township 32 North, Range 6 East of the  
26 Willamette Meridian; EXCEPT the following triangular piece  
27 or parcel of land, to-wit: beginning at a point on the North  
28 bank of the Stillaguamish River 828 feet South of the center  
of the NE ¼ of said Section 13; thence North 828 feet to the  
center of said NE ¼ of said Section 13; thence South 14°30'  
West 690 feet to the North bank of the Stillaguamish River;  
thence Southeasterly along the river to the point of  
beginning.

Parcel D:

Beginning at the Northwest corner of the NE ¼ SW ¼ of  
Section 12, Township 32 North, Range 6 East of the  
Willamette Meridian; thence West 297 feet; thence South  
660 feet; thence West 33 feet; thence South to the South  
line of the Burlington Northern Inc. right of way, the true  
point of beginning; thence South to the North bank of the

1 Stillaguamish River; thence Easterly along said bank to the  
2 West boundary of Government Lot 1; thence North to the  
3 South line of the Burlington Northern, Inc. right of way;  
4 thence Westerly along the Southerly line of said right of way  
5 to the true point of beginning.

6 Parcel E:

7 Government Lot 1, in Section 12, Township 32 North,  
8 Range 6 East of the Willamette Meridian; EXCEPT that  
9 portion lying North of the Burlington Northern Inc. right of  
10 way; and EXCEPT Burlington Northern Inc.

11 All situate in the County of Snohomish, State of  
12 Washington.

13 7. That the said Defendants acquired the afore-mentioned real property by  
14 Sheriff's Deed recorded on the 24th day of October, 1991, which Deed was recorded  
15 in the office of the Snohomish County Auditor on the 24th day of October, 1991, under  
16 Snohomish County Auditor's File No. 9110240227.

17 8. The Plaintiffs' and Defendants' property share a common boundary line.  
18 ~~Both the Plaintiffs' and Defendants' properties have historically been used as farms,~~  
19 either for the purpose of raising livestock or crops.

20 9. During the ownership of the Plaintiffs' property by both Kroeze and  
21 Rollins, the property was used as a dairy farm, or for the purpose of raising dairy cattle  
22 and operating a dairy farm. In connection with the use of the property as a dairy farm,  
23 both Kroeze and Rollins raised some crops on the property, which crops were  
24 primarily used for the feeding of the livestock raised on the property.

25 10. The owner of the Defendants' property prior to the Defendants was  
26 Edwin Tannis. Tannis used the property for agricultural purposes. From the late 1980's  
27 up until the property was subjected to a judgment execution and subsequently  
28 acquired by the Defendants at a Sheriff's Sale, Tannis leased the property now owned  
by the Defendants to Rollins. During the period of the time that the Tannis property  
leased by Rollins it was farmed by Rollins. The farming operation was for the purpose  
of raising corn or green chop, which was used to feed the Rollins' dairy herd.

1           11.    Following the Defendants' acquisition of the property in 1991, and  
2 continuing through 1998, Rollins leased the property from the Defendants. During this  
3 period of time Rollins continued to farm the property to raise feed for their dairy herd.

4           12.    The Plaintiffs' and Defendants' properties were historically separated by  
5 a barbed wire fence, strung along cedar fence posts, installed in the 1930s. Years of  
6 neglect caused the fence line to be overgrown with blackberries and scrub trees until  
7 the fence actually disappeared in a huge bramble berm or hedgerow that was  
8 approximately twelve (12) feet high and as much as seventy (70) feet in width. The  
9 fence posts upon which the original barbed wire fence was installed were still visible in  
10 places in aerial photographs taken in 1983, but were otherwise were completely  
11 obscured by the brush along the fence line.

12           13.    During the ownership of either property by Kroeze, Rollins or Tannis,  
13 each owner or lessee farmed each parcel up to the edge of the hedgerow, the actual  
14 area of cultivation of either parcel depended upon the width of the hedgerow at the  
15 time.

16           14.    In 1990 the Defendant used a backhoe to crush the blackberries that had  
17 grown upon along the fence line, and made some repairs to the fence in its historic  
18 location. Afterwards, the blackberries and brush grew back. This action was the only  
19 incursion into the area near the historical fence by anyone in the last fifty years. Except  
20 for this sole incident in 1990 the area on each side of the fence line was left to the  
21 blackberries. After the 1990 fence repair, grazing, haying and crop raising on each  
22 side of the fence line took place at a considerable distance from the fence line as  
23 dictated by the width of the hedgerow at any given time, which width fluctuated.

24           15.    In September of 2009, the Defendants' employee, Andrew Floe, was  
25 hired to install a new fence. Initially, Mr. Floe sought out the Plaintiffs and inquired as  
26 to the location of the boundary line between the two properties. Mr. Wren showed Mr.  
27 Floe the location of the boundary line using both a survey of the property, and a visual  
28 inspection from the railroad grade that abutted both properties north of the hedgerow.

1           16.    A couple of weeks later Mr. Floe returned to the property and, using  
2 machinery, destroyed the hedgerow and began placing a fence on what Mr. Wren  
3 considered his property. Mr. Wren ordered Mr. Floe to stop the work, and the  
4 Defendants ordered Mr. Floe to continue the work. In the course of this confrontation  
5 between the parties, the Defendants, through Ms. Blakey, said that she owned the  
6 property where Mr. Floe was installing the fence by adverse possession. The  
7 Defendants did not cease the work of installing the fence. The fence, which consisted  
8 of barbed wire and metal posts, was completed in the fall of 2009.

9           17.    After the Defendants had completed the installation of the fence in 2009  
10 the Plaintiffs engaged the services of a surveyor who prepared a drawing showing the  
11 location of the boundary line between the two properties, and the fence that was  
12 installed in 2009 (Exhibit 6 admitted). The exhibit clearly shows that the fence installed  
13 in 2009 was located west of the boundary line between the two properties, ranging  
14 from 0.00 feet west of the boundary line at the southerly end to 49.35 feet west of the  
15 boundary line at the northerly end. The fence as installed in 2009 by the Defendants  
16 makes a wide swing to the west commencing at approximately the northerly one-half  
17 of the boundary line to its northern end.

18           18.    The aerial photography evidence, and the interpretation thereof from the  
19 aerial photogrammatrist, demonstrates that the historical fence line and boundary line  
20 were the same location as indicated by the fence posts that are visible in the 1983  
21 aerial photographs. The location of the historic fence line is ascertained from the  
22 stereoptic aerial photographs from 1983 and the unmistakable fence posts shown in  
23 that aerial photograph.

24           19.    According to the testimony of other witnesses who lived on, or farmed,  
25 property on either side of the historical fence shows that the 2009 fence is  
26 considerably west of what they considered to be the historic boundary, and also  
27 considerably west of the location of the historic fence line. Also, according to these  
28 same witnesses the historic fence line was a straight line north and south, as

THE NORTHERN BOUNDARY OF THE PROPERTY,

1 compared to the fence installed in 2009 by the Defendants which veered significantly  
2 to the west. Trees that were located west of the historic fence were now east of the  
3 fence installed by the Defendants in 2009. The historic fence that was located between  
4 the properties of the parties was a straight line located on the actual boundary line  
5 between the properties.

6 20. The historical fence <sup>CONSISTING OF APPROXIMATELY 692 FEET FROM THE POPE CORNER TO</sup> was located on the boundary between the two  
7 properties. The fence installed by the Defendants in 2009 was not located on the  
8 boundary between the two properties, but instead was west of the location of both the  
9 boundary line and the historic fence.

10 21. That the Defendants have failed to establish that they possessed any of  
11 the Plaintiffs' property west of either the boundary between the parties property, or  
12 west of the historic fence line. The only evidence presented on the Defendants' claim  
13 of possession was the 1990 incursion, fence destruction and replacement/repair, after  
14 which the area returned to the overgrown state that existed prior to this incursion. The  
15 Defendants' activities during the 1990 incursion and thereafter do not constitute  
16 possession of the property that is actual, open and notorious, hostile and uninterrupted  
17 for a ten (10) year period of time prior to the commencement of this action.

18 22. The hedgerow that existed on the boundary between the two properties  
19 was destroyed by the Defendants in 2009, and was a feature on the Plaintiffs' property  
20 that was useful to the Plaintiffs as it contained livestock on the Plaintiffs' property as  
21 easily as a fence according to the uncontroverted evidence. Unlike a fence, the  
22 hedgerow did not require maintenance, but instead was self-maintaining. Its thorns  
23 discouraged animals from going near it so it was not subject to damage from the  
24 livestock it contained. The destruction of this feature on the Plaintiffs' property  
25 constitutes injury to the Plaintiffs' property.

26 23. At the time of the installation of the fence by the Defendants in 2009, and  
27 the confrontation that ensued, the Defendants' statement that she owned the property  
28 by adverse possession is an acknowledgement that she did not have rightful

9  
M  
A

1 possession of the property. The Defendants knew at this time that they were entering  
2 upon property that was owned by the Plaintiffs, and therefore the Defendants actions  
3 in entering upon the property of the Plaintiffs was intentional.

4 24. The Defendants incursion upon the Plaintiffs' property in 2009 occurred  
5 in the face of opposition from the Plaintiffs and met with confrontation and taunting  
6 from the Defendants.

7 25. The removal of the hedgerow and the installation of a fence in 2009  
8 constitute a trespass upon the land of the Plaintiffs.

9 26. The trespass upon the Plaintiffs' property by the Defendants was  
10 unreasonable and intentional, and therefore was wrongful.

11 27. The Plaintiffs are entitled to the reasonable replacement of the natural  
12 barrier that existed between the properties wrongfully removed by the Plaintiffs, and it  
13 is not practical to replace the hedgerow that took years to grow. The Plaintiffs are  
14 entitled to the replacement of the barrier that existed between the two properties. The  
15 construction of a wooden fence is a reasonable replacement of the natural barrier  
16 removed by the Defendants.

17 28. The replacement of the barrier with a barbed wire fence is not  
18 appropriate since the Plaintiffs keep horses on their property. Barbed wire fencing is  
19 not appropriate for horses as they are apt to be injured by barbed wire. A wooden  
20 fence is the appropriate barrier to replace the hedgerow. The wooden fence that would  
21 adequately make the Plaintiffs as whole as possible without conferring a windfall upon  
22 them would be the installation of a wood fence constructed of five or six inch posts at a  
23 cost of \$9,182.25 plus Washington State Sales Tax in the amount of \$707.05, for a  
24 total cost of \$9,889.57.

25 29. As a result of the Defendants' removal of the hedgerow and the  
26 installation of the barbed wire fence that could endanger the Plaintiffs' horses, the  
27 Plaintiffs were unable to pasture their horses for two years. As a result the Plaintiffs  
28 were required to purchase hay to feed their horses at a cost of \$4,284.00.

30. The Plaintiffs have incurred the following reasonable costs, including but not limited to investigative costs and reasonable attorneys' fees and other litigation related costs in the following amounts:

ITEM	VENDOR	DESCRIPTION	AMOUNT
Investigative Costs & Litigation-Related Costs	Terry Curtis	Aerial Photograph Analysis	\$5,710.17
Investigative Costs & Litigation-Related Costs	William Lloyd	Survey and Analysis	\$800.00
Litigation-Related Costs	H & F	Photocopies & Postage	\$1,103.84
Litigation-Related Costs	Drew Nielsen	Photocopies & Postage	\$86.22
Litigation-Related Costs	Court Reporter	Deposition of Kroeze	\$205.00
Litigation-Related Costs	Messenger	Service of Process	\$141.50
Litigation-Related Costs	Messenger	Document Delivery	\$28.00
Litigation-Related Costs	Superior Court	Filing Fees	\$260.00
Attorney's Fees	Drew Nielsen	Attorney's Fees	\$19,824.15
Attorney's Fees	H & F <sup>1</sup>	Attorney's Fees	\$39,255.75
Attorney's Fees (est)	H & F	Attorney's Fees	\$1,625.00
Paralegal	H & F		\$820.00
<b>TOTAL</b>			<b>\$69,859.63</b>

**HAVING MADE AND ENTERED** the foregoing Findings of Fact, the Court now makes and enters the following:

**CONCLUSIONS OF LAW**

1. The Court has jurisdiction over the parties and the subject matter of this action.
2. The Plaintiffs are the owners of the real property described in paragraph 1 of the foregoing Findings of Fact.
3. The Defendants have failed to establish any claim to any of the real property of the Plaintiffs by adverse possession.

<sup>1</sup> This amount reflects a reduction in the amount of \$3,246.75, which represents the amount of sanctions ordered by Judge Fair against Defendants' counsel pursuant to CR 11, and which amount is also included in the attorney's fees contained in Exhibit 1.

1 4. That the Defendants have failed to establish any right, title or interest in  
2 any portion of the Plaintiffs' property, and any claim thereto by the Defendants' shall be  
3 dismissed with prejudice.

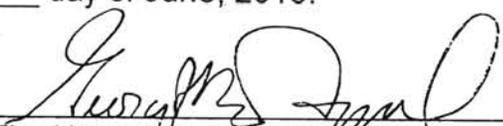
4 5. That the Defendants have intentionally trespassed upon the property of  
5 the Plaintiffs in contravention of the provisions of RCW 4.24.630. That the trespass by  
6 the Defendants was intentional and wrongful as defined in the said statute.

7 6. That the Plaintiffs have been damaged as the direct and proximate result  
8 of the Defendants' trespass, the reasonable measure of the Plaintiffs' damage is the  
9 sum of \$14,173.57.

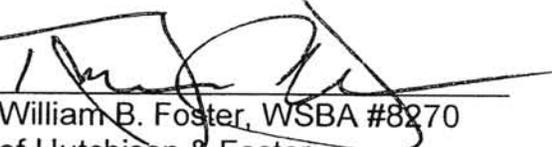
10 7. That by virtue of the provisions of RCW 4.24.630 the Plaintiffs are  
11 entitled to treble the damages, for a total of \$42,520.71.

12 8. That the Plaintiffs are further entitled to an award of the Plaintiffs'  
13 reasonable costs, including but not limited to investigative costs and reasonable  
14 attorneys' fees and other litigation-related costs, all to be determined by the Court.

15 **DONE IN OPEN COURT** this 3<sup>rd</sup> day of June, 2013.

16   
17 \_\_\_\_\_  
18 The Honorable George F. Appel, Judge

19 Presented by:

20   
21 \_\_\_\_\_  
22 William B. Foster, WSBA #8270  
23 of Hutchison & Foster  
24 Attorneys for Plaintiffs

25 Approved for Entry, <sup>as to form / copy received</sup> Notice of  
26 ~~Presentation Waived:~~

27 \_\_\_\_\_  
28 Russell James Jensen, WSBA #40475  
of Mukilteo Law Offices  
Attorneys for Defendants, Blakey and Flying T Ranch

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



---

J. D. Bristol, WSBA #29820  
of Gourley | Bristol | Hembree  
Attorneys for Defendants, Blakey and Flying T Ranch

---

Steven J. Peiffle, WSBA #14704  
of Bailey, Duskin & Peiffle  
Attorneys for Defendants, Rollins

FILED

Judge: The Honorable George F. Appel  
Date of Hearing: June 3, 2013  
Time of Hearing: 9:00 a.m

2013 JUN -3 AM 10: 54

CERTIFIED  
COPY

SONYA KRASKI  
COUNTY CLERK  
SNOHOMISH CO. WASH

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SNOHOMISH

REGINALD K. WREN and BRENDA M.  
WREN, husband and wife,

Plaintiffs,

vs.

TAMMY S. BLAKEY, an unmarried  
person, and FLYING T RANCH, INC., a  
Washington corporation,

Defendants.

NO. 10-2-03262-1

ORDER QUIETING TITLE AND  
JUDGMENT

REGINALD K. WREN and BRENDA M.  
WREN, husband and wife,

Defendants as to  
Counterclaim and  
Third Party Plaintiffs,

and

ROBERT J. ROLLINS and WINNIE J.  
ROLLINS, husband and wife,

Third Party Defendants.

JUDGMENT SUMMARY

1.	Judgment Creditor:	Reginald K. Wren and Brenda M. Wren
2.	Judgment Debtor(s):	TAMMY S. BLAKEY, an unmarried person; and FLYING T RANCH, INC., a

ORDER QUIETING TITLE  
AND JUDGMENT

HUTCHISON & FOSTER  
Attorneys at Law  
4300 - 198<sup>th</sup> Street SW  
P.O. Box 69  
Lynnwood, WA 98046-0069  
Telephone: (425) 776-2147  
Facsimile: (425) 776-2140

		Washington corporation
1	3.	Principal Judgment Amount: \$42,520.71
2	4.	Interest to Date of Judgment: \$0.00
3	5.	Attorneys Fees: \$65,497.13
4	6.	Costs: n/c.
5	7.	Other Recovery Amounts: None
6	8.	Principal Judgment Amount Shall Bear Interest at 12% per annum.
7	9.	Attorneys Fees, Costs, and Other Recovery Amounts Shall Bear Interest at 12% per annum.
8	10.	Attorney for Judgment Creditor: William B. Foster
9	11.	Attorney for Judgment Debtor: Russell James Jensen

\* \* \* ORDER AND JUDGMENT \* \* \*

**THIS MATTER** having come on regularly for trial before the Honorable George Appel, Judge of the above-entitled Court on the 12th day of February, 2013; the Plaintiffs appearing by and through their attorney, William B. Foster of Hutchison & Foster; the Defendants appearing by and through their attorney, Russell James Jensen; the Court having made and entered its Findings of Fact and Conclusions of Law, **IT IS NOW, THEREFORE**

**ORDERED, ADJUDGED AND DECREED** that all right, title and interest of the Plaintiffs in the following described real property, to wit:

PARCEL A:

ALL THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 20, TOWNSHIP 32 NORTH, RANGE 6 EAST, W.M., LYING NORTHWESTERLY OF THE NORTHERN PACIFIC RAILWAY RIGHT OF WAY;  
EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:  
BEGINNING AT THE NORTHWEST CORNER OF SAID SUBDIVISION;  
THENCE SOUTH 87°54'26" EAST ALONG THE NORTH LINE OF SAID SUBDIVISION A DISTANCE OF 524.00 FEET;

1           THENCE SOUTH 0°27'11" EAST PARALLEL WITH THE  
2           WEST LINE OF SAID SUBDIVISION A DISTANCE OF  
3           239.79 FEET;  
4           THENCE IN A WESTERLY DIRECTION IN A STRAIGHT  
5           LINE TO A POINT ON THE WEST LINE OF SAID  
6           SUBDIVISION A DISTANCE OF 407.32 FEET SOUTH OF  
7           THE NORTHWEST CORNER THEREOF;  
8           THENCE NORTH 0°27'11" WEST ALONG SAID WEST  
9           LINE 407.32 FEET TO THE POINT OF BEGINNING; AND  
10          EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:  
11          BEGINNING AT THE NORTHWEST CORNER OF SAID  
12          SUBDIVISION;  
13          THENCE SOUTH 87°54'26" EAST ALONG THE NORTH  
14          LINE OF SAID SUBDIVISION A DISTANCE OF 524.00  
15          FEET TO THE TRUE POINT OF BEGINNING;  
16          THENCE CONTINUING SOUTH 87°54'26" EAST A  
17          DISTANCE OF 759.83 FEET TO THE WEST BOUNDARY  
18          OF THE BURLINGTON NORTHERN RAILROAD;  
19          THENCE SOUTH 56°30'00" WEST ALONG SAID WEST  
20          BOUNDARY A DISTANCE OF 74.30 FEET TO A POINT  
21          AT THE INTERSECTION OF AN OLD FENCE LINE  
22          PROJECTED TO SAID WEST RAILROAD BOUNDARY;  
23          THENCE NORTH 89°26'44" WEST TO A POINT SOUTH  
24          0°27'11" EAST OF THE TRUE POINT OF BEGINNING;  
25          THENCE NORTH 0°27'11" WEST A DISTANCE OF 57.9  
26          FEET TO THE TRUE POINT OF BEGINNING;  
27          EXCEPT COUNTY ROAD ON THE WEST SIDE.

18           PARCEL B:

19           THAT PORTION OF THE SOUTHEAST QUARTER OF  
20           THE NORTHEAST QUARTER OF SECTION 20,  
21           TOWNSHIP 32 NORTH, RANGE 6 EAST, W.M., LYING  
22           SOUTHERLY OF THE RIGHT OF WAY OF THE  
23           NORTHERN PACIFIC RAILWAY COMPANY; EXCEPTING  
24           ROADS.

23           PARCEL C:

24           THAT PORTION OF THE NORTHEAST QUARTER OF  
25           THE SOUTHEAST QUARTER OF SECTION 20,  
26           TOWNSHIP 32 NORTH, RANGE 6 EAST, W.M., IN  
27           SNOHOMISH COUNTY, WASHINGTON, LYING  
28           NORTHWESTERLY OF HIGHWAY 1-E, AS GRANTED TO  
          STATE OF WASHINGTON UNDER AUDITOR'S FILE  
          NUMBER 1594576; AND  
          EXCEPT ROAD ALONG THE WEST LINE; ALSO EXCEPT  
          THE FOLLOWING DESCRIBED TRACT:

1 BEGINNING AT A POINT ON THE SOUTH LINE OF THE  
2 NORTHEAST QUARTER OF THE SOUTHEAST  
3 QUARTER OF SECTION 20, TOWNSHIP 32 NORTH,  
4 RANGE 6 EAST W.M. WHERE IT INTERSECTS WITH  
5 THE NORTHWEST RIGHT OF WAY BOUNDARY OF  
6 STATE HIGHWAY NO. 530;  
7 THENCE NORTHEASTERLY ALONG SAID RIGHT OF  
8 WAY LINE 288 FEET TO TRUE POINT OF BEGINNING;  
9 THENCE NORTHWESTERLY AT RIGHT ANGLES TO  
10 SAID RIGHT OF WAY FOR 175 FEET; THENCE  
11 NORTHEASTERLY AND PARALLEL WITH SAID ROAD  
12 RIGHT OF WAY 300 FEET; THENCE NORTHWESTERLY  
13 AT RIGHT ANGLES TO SAID RIGHT OF WAY FOR 75  
14 FEET;  
15 THENCE NORTHEASTERLY TO A POINT ON THE EAST  
16 LINE OF SAID SECTION 20 WHICH IS 80 FEET DUE  
17 NORTH FROM THE INTERSECTION OF THE  
18 NORTHWESTERLY RIGHT OF WAY LINE OF SAID  
19 SECONDARY STATE HIGHWAY 1-E AND THE EAST  
20 LINE OF SAID SECTION;  
21 THENCE SOUTH 80 FEET TO THE NORTHWESTERLY  
22 RIGHT OF WAY LINE OF SAID SECONDARY STATE  
23 HIGHWAY 1-E;  
24 THENCE SOUTHWESTERLY ALONG SAID RIGHT OF  
25 WAY TO TRUE POINT OF BEGINNING.  
26 (ALSO KNOWN AS PARCEL 2 OF SNOHOMISH COUNTY  
27 SHORT PLAT #SP87 (4-74) RECORDED UNDER  
28 AUDITOR'S FILE NUMBER 2340489).

PARCEL D:

19 THAT PORTION OF THE WEST HALF OF THE WEST  
20 HALF OF THE NORTHWEST QUARTER OF THE  
21 SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP  
22 32 NORTH, RANGE 6 EAST, W.M., IN SNOHOMISH  
23 COUNTY, WASHINGTON, LYING NORTHWESTERLY OF  
24 HIGHWAY 1-E AS GRANTED TO STATE OF  
25 WASHINGTON UNDER AUDITOR'S FILE NUMBER  
26 1594576.

PARCEL E:

26 THAT PORTION OF THE SOUTHEAST QUARTER OF  
27 THE SOUTHEAST QUARTER OF SECTION 20,  
28 TOWNSHIP 32 NORTH, RANGE 6 EAST, W.M., LYING  
WEST OF SECONDARY STATE HIGHWAY 1-E, AS

1 CONVEYED TO THE STATE OF WASHINGTON BY  
2 DEED RECORDED UNDER AUDITOR'S  
3 FILE NUMBER 1611613.

4 PARCEL F:

5 THAT PORTION OF THE SOUTHWEST QUARTER OF  
6 THE SOUTHEAST QUARTER OF SECTION 20,  
7 TOWNSHIP 32 NORTH, RANGE 6 EAST, W.M., LYING  
8 EAST OF COUNTY ROAD SURVEY 1513.

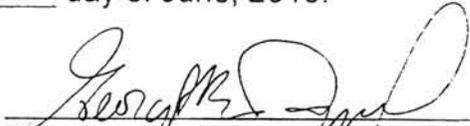
9 SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF  
10 WASHINGTON.

11 shall be, and the same is hereby, quieted in the Plaintiffs, **REGINALD K. WREN and**  
12 **BRENDA M. WREN**, husband and wife, free from any claim or interest of the  
13 Defendants, **TAMMY S. BLAKEY**, an unmarried person, and **FLYING T RANCH,**  
14 **INC.**, a Washington corporation, or any person, persons or entity claiming through any  
15 of the said Defendants; and it is further

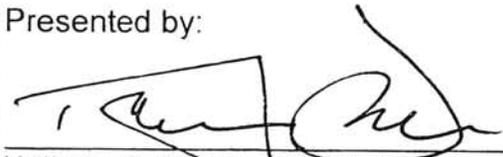
16 **ORDERED, ADJUDGED AND DECREED** that the Plaintiffs, **REGINALD K.**  
17 **WREN and BRENDA M. WREN**, husband and wife, shall have, and they hereby are  
18 awarded judgment against the Defendants, **TAMMY S. BLAKEY, an unmarried**  
19 **person, and FLYING T RANCH, INC., a Washington corporation**, jointly and  
20 severally, in the principal sum of \$42,520.71, together with the Plaintiffs' reasonable  
21 costs, including but not limited to investigative costs and reasonable attorneys' fees  
22 and other litigation-related costs in the amount of \$ 65,497.13, for a total  
23 judgment in the amount of \$ 108,017.84, which judgment shall bear interest  
24 at the rate of twelve percent (12%) per annum from the date hereof until paid; and it is  
25 further

26 **ORDERED, ADJUDGED AND DECREED** that all the claims of the Defendants,  
27 howsoever denominated shall be, and they are hereby, dismissed with prejudice.  
28

1                    **DONE IN OPEN COURT** this 3<sup>rd</sup> day of June, 2013.

2  
3                      
4                    \_\_\_\_\_  
5                    The Honorable George F. Appel, Judge

6 Presented by:

7 

8 William B. Foster, WSBA #8270  
9 of Hutchison & Foster  
10 Attorneys for Plaintiffs

11 Approved for Entry, <sup>As To Form</sup> ~~Notice of~~  
12 ~~Presentation Waived:~~

13 \_\_\_\_\_  
14 Russell James Jensen, WSBA #40475  
15 of Mukilteo Law Offices  
16 Attorneys for Defendants, Blakey and Flying T Ranch

17   
18 \_\_\_\_\_  
19 J. D. Bristol, WSBA #29820  
20 of Gourley | Bristol | Hembree  
21 Attorneys for Defendants, Blakey and Flying T Ranch

22 \_\_\_\_\_  
23 Steven J. Peiffle, WSBA #14704  
24 of Bailey, Duskin & Peiffle  
25 Attorneys for Defendants, Rollins

NO. 70205-0-1  
COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

2013 JUL 29 PM 2:24

---

RUSSELL JAMES JENSEN, JR., a/k/a JAMIE JENSEN

Appellant,

v.

REGINALD WREN and BRENDA WREN, husband and wife,

Respondent.

---

APPEAL FROM THE SUPERIOR COURT  
FOR SNOHOMISH COUNTY  
THE HONORABLE ELLEN J. FAIR

---

CERTIFICATE OF SERVICE

---

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date I caused a true and correct copy of the Respondents' Brief to be delivered to the counsel of record listed below in the manner described:

Russel James Jensen  
Mukilteo Law Office  
4605 - 116th Street S.W.  
Suite 101  
Mukilteo, Washington 98275

- Via first-class U.S. Mail
- Via Certified Mail
- Via Overnight Courier
- Via Legal Messenger
- Via Email

Steven J. Peiffle, WSBA #14704  
Bailey, Duskin & Peiffle  
P.O. Box 188  
Arlington, Washington 98223

- Via first-class U.S. Mail
- Via Certified Mail
- Via Overnight Courier
- Via Legal Messenger
- Via Email

DATED this 26<sup>th</sup> day of July, 2013, at Lynnwood, Washington.

  
Gale Wedekind