

72711-7

72711-7

No. 72711-7

COURT OF APPEALS DIVISION ONE  
OF THE STATE OF WASHINGTON

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Edward Goodman and Bernice Goodman, Respondents,

v.

Mary F. Goodman, Appellant.

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REPLY BRIEF OF APPELLANT

Mary F. Goodman  
13785 Goodman Lane  
Anacortes, WA 98221

FILED  
COURT OF APPEALS DIVISION  
STATE OF WASHINGTON  
2015 AUG 31 PM 3:06

ORIGINAL

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I. Reply to Motion in Brief

The Respondents (Ed) fail to respond to Mary's Motion in Brief, because no discretionary rulings or orders were made by Judge Cook prior to the affidavit of prejudice.

Our Supreme Court makes it clear that this issue was not adjudicated in the Court of Appeals. In fact, it provides that Michael Goodman did not address the issue in his brief, so the court could not rule on it.

The Supreme Court ruling reviewing the motion to reverse stated "error must be assigned in the brief, and the appellate court may decide the case only on the basis of issues raised in the briefs." Mary's brief at A-8.

Subsequently, Michael was denied leave to amend his brief in the Court of Appeals to assign error to the denial of the affidavit of prejudice. Reply brief at A-9.

The denial of the affidavit of prejudice was not assigned as error. Reply brief at A-10.

Michael moved to dismiss the case for lack of jurisdiction in the Supreme Court. Reply brief at A-11.

On July 24, 2014, Supreme Court Deputy Clerk letter ruling

“seems to concern the trial court's denial of an affidavit of prejudice that he filed. If Mr. Goodman is seeking review of a decision of the trial court, the proper procedure is to file either a notice of appeal or notice for discretionary review in the trial court. See RAP 2.1, 2.2, 5.1, 5.2, and 5.3.” Reply brief at A-12.

#### INCOMPLETE RECORD

Prior to this appeal, Mary did not have a complete record of service of all four co-defendants, as Commissioner Goff stated “But it is difficult to tell from the record when Tyson Goodman was served.” Mary's brief at A-7.

Further, Mary did not have the verbatim record of proceedings of the April 23, 2010 hearing, which no ruling was made. This issue has not been adjudicated with a complete record.

#### II. Reply to Statement of the case.

Respondents (Ed) were Judge shopping and requested “before Judge Cook”, on the day they filed the lawsuit. CP 184.

The prejudice findings represent their “land grab” of Mary's lot 2.

Ed failed to disclose they have their own access easement and septic to their lot 3, on short plat 55-80, and there is no necessity

to use any of Mary's Lot 2.

Ed will not be able to “play the victim” again if Mary has a “fair trial”

III. Reply to assignment of error 1.

No. 1. Judge Susan K. Cook erred to deny the affidavit of prejudice.

**Issue No. 1. Did Judge Susan K. Cook make a discretionary ruling prior to the affidavit of prejudice and motion?**

Our Supreme Court ruled June 25, 2013 that Judge Cook “had only previously entered an agreed temporary restraining order involving no exercise of discretion.” See Mary's brief at A-7.

The April 23, 2010 hearing was only six days after all four co-defendants were served the lawsuit. The agreed order had nothing to do with the “merits” of the case.

An affidavit of prejudice is timely if the motion and affidavit are filed and called to the judge's attention before the judge has made any ruling “whatsoever in the case, either on the motion of the party making the affidavit, or on the motion of any other party to the action, and before the judge presiding has made any order or ruling involving discretion.” RCW 4.12.050.

Mary had no motion before the trial court April 23, 2010 as required pursuant RCW 4.12.050.

Judge Cook had not made any discretionary ruling on April 23, 2010, or any ruling whatsoever, which was a short hearing. April 23, 2010 hearing verbatim RP 1-10,

Judge Cook made no ruling whatsoever on anything Mary's counsel told Judge Cook April 23, 2010 hearing RP 1-10.

The April 23, 2010 hearing verbatim record of proceedings do not support that Judge Cook exercised discretion.

#### **COMPLETE RECORD OF SERVICE**

Co-defendants Chance Goodman and Tyson Goodman were served this lawsuit April 14, 2010 (CP 28-29) and co-defendants Michael Goodman was served April 16, 2010 (CP 63-64) and Mary Goodman was also served April 16, 2010 (CP 175-176).

Prior orders to show cause April 9, 2010 (CP 185-186) and April 13, 2010 (CP 72-73) are not discretionary and before all four co-defendants were served and had notice of this lawsuit.

After service of defendants was completed on April 16, 2010, Judge Cook did not make any rulings whatsoever when the

affidavit of prejudice and motion was filed June 1, 2010.

Ed has failed to provide a discretionary ruling on the record prior to the timely affidavit of prejudice.

**Issue No. 2. Were Mary's Constitutional rights violated by misrepresentation?**

Ed fails to respond how the case file record was misrepresented and the failure to disclose the agreed order to Mary's *substituted* counsel, on June 3, 2010, when the affidavit of prejudice was called to Judge Cook's attention.

On October 8, 2014, Mary challenged Judge Cook's jurisdiction, and her response to the entry of Judgment, stated the relevant authority, CP 190-191.

Judge Cook failed to check the record when the affidavit of prejudice was called to her attention on June 3, 2010 and once again failed to check the record when challenged on October 8, 2014, disregarding Mary's constitutional right to due process.

**NO TIME LIMIT ON VOID JUDGMENTS.**

A void judgment is always subject to collateral attack. *Bresolin v Morris*, 86 Wash. 2D 241, 245, 543 P.2d 325 (1975). A challenge to a void judgment can be brought at any time. *Matter of Marriage*

*of Leslie*, 112 Wash. 2D 612, 618-19, 772 P.2d 1013 (1989).

IV. Reply to motion to strike.

April 23, 2010 record of proceedings at 1-10 is the record that supports page 1, 10, 15, of Mary's brief.

There is no record the April 23, 2010 agreed order was signed in open court.

October 8, 2014 record of proceedings at 2 and 3, is the record that supports page 9 of Mary's brief. Mary's verbatim record of proceedings referenced the destruction of her property from the trial decision CP 192-211, that imposed (3) easements on a single narrow property.

There is no authority to strike page 8 of Mary's Introduction of brief, the background information before filing the timely affidavit of prejudice.

V. Reply to Motion to Strike record of proceedings.

RAP 9.2(a) is for "videotaped" proceedings and does not apply here. The October 8, 2014 hearing was recorded by Compact Disk audio (CD) filed with the court. The verbatim record of proceedings was completed with the CD under the penalty of perjury. Respondents fail to provide any authority to strike the

verbatim record of proceedings and failed to timely object pursuant RAP 9.5(c) within 10 days.

**VI. Reply to Motion for Attorney fees.**

Ed failed to respond to the motion in brief.

The response to the issue of whether Judge Cook made a discretionary ruling prior to the affidavit of prejudice was fully without any merit and failed to provide a discretionary ruling on the record.

Ed also failed to respond to the issue 2 "Were Mary's Constitutional rights violated by misrepresentation?"

Pursuant RAP 18.9 costs should be awarded to Mary as Ed's brief is devoid of any merit and did not present a debatable issue.

**VII. Conclusion**

The only relevant question is, did Judge Cook make a discretionary ruling prior to the affidavit of prejudice and motion?

No.

Ed's entire brief pages 1-14 and appendix A-K, does not identify a discretionary ruling made by Judge Cook prior to the affidavit of prejudice and motion on the record.

Ed wants to deny Mary's peremptory right to one change of Judge and Constitutional right to a "fair trial".

Mary's property value, marketability, and entire shoreline is destroyed. Including any future fair market value if Mary could properly develop her own property.

WHEREFORE Appellant requests this Honorable Court should find Mary filed a timely affidavit of prejudice and motion and the trial court denial is in error.

Dated this 31st day of August 2015.

*Mary F. Goodman*  
Mary F. Goodman  
13785 Goodman Lane  
Anacortes, WA 98221

**Declaration of Appellant Mary F. Goodman**

Michael and I were conveyed our property in 1980 with no easements. Now 30 years later, the trial Judge imposes three new easements. These new easements are thousands of square feet. In 2013, we had our property appraised and have lost 93% of our land value. The loss in land value is almost half a million dollars. These new easements have fragmented our property and does not leave sufficient remainder land. The entire shoreline has lost all privacy and use, and reasonable enjoyment. I declare the foregoing under the penalty of perjury signed in Anacortes, Washington, in the County of Skagit.

Dated this 31st day of August 2015.

mary f. goodman  
Mary F Goodman, Appellant  
13785 Goodman Lane  
Anacortes, WA 98221

## APPENDIX

<b>Notation ruling denying leave to amend brief</b>	<b>A-9</b>
<b>Assignment of errors (does not include denial of affidavit of prejudice)</b>	<b>A-10</b>
<b>Motion to dismiss</b>	<b>A-11</b>
<b>Supreme Court Deputy Clerk letter ruling</b>	<b>A-12 thru A-13</b>

*The Court of Appeals  
of the  
State of Washington*

RICHARD D. JOHNSON,  
Court Administrator/Clerk

DIVISION I  
One Union Square  
600 University Street  
Seattle, WA  
98101-4170  
(206) 464-7750  
TDD: (206) 587-5505

November 6, 2013

Michael J. Goodman  
13785 Goodman Lane  
Anacortes, WA. 98221

C. Thomas Moser  
Attorney at Law  
1204 Cleveland Avenue  
Mount Vernon, WA. 98273-3837  
tom@tomoser.com

Mary F. Goodman  
13785 Goodman Lane  
Anacortes, WA. 98221

CASE #: 68416-7-1

Edward M. Goodman & Bernice S. Goodman, Res. v. Michael J. Goodman & Mary F. Goodman, Apps.

Counsel:

The following notation ruling by Richard D. Johnson, Court Administrator/Clerk of the Court was entered on November 5, 2013, regarding appellant's motion for leave to amend brief:

At the direction of the panel, the motion is denied.

Sincerely,



Richard D. Johnson  
Court Administrator/Clerk

khn

A-9

## II. ASSIGNMENT OF ERRORS

1. The trial court erred in law concluding unity of title and subsequent separation over Goodman Lane, Lot 1 and Lot 3 of short plat 61-89 Ex 27. Conclusion of Law #6 and #1.
2. The trial court erred in law concluding the usage was apparent and omitting the continuous usage. Conclusion of Law #4.
3. The trial court erred in law concluding the usage was reasonably necessary. Conclusion of Law #5.
  - A. A higher degree of necessity is required for an implied reservation and the cardinal consideration is intent of the parties.
  - B. The trial court failed to compare the injury of the parties.
  - C. The trial court failed to apply the test of necessity.
  - D. Violates the Shoreline Management Act.
4. The 1979 road build date is false, the trial court abused its discretion in findings of fact #36. It errors in law and fact.

8-18-14: Placed in file without action.  
See last paragraph of Deputy Clerk's letter  
dated July 24, 2014.  
Supreme Court Clerk's Office

No. 90025-6

**THE SUPREME COURT OF THE STATE OF WASHINGTON**

EDWARD M. GOODMAN, et ux.,

Respondents,

v.

MICHAEL J. GOODMAN, et ux.,

Petitioners.

MOTION FOR DISMISSAL  
FOR LACK OF JURISDICTION

C/A No. 68416-7-1

Skagit County Superior Court No.  
10-2-00587-3

Received  
Washington State Supreme Court

**1. Identity of moving party.**

Petitioner, Michael J. Goodman.

**2. Statement of relief sought.**

Dismissal or order prior proceedings invalid or inoperable.

**3. Facts relevant to motion.**

A timely affidavit of prejudice and motion was filed (CP  
201).

**4. Grounds for relief and argument.**

Jurisdiction doesn't exist on the record.

Michael's rural property is destroyed, he doesn't have

AUG 18 2014  
E  
Ronald R. Carpenter  
Clerk

A-11

**THE SUPREME COURT**  
STATE OF WASHINGTON

RONALD R. CARPENTER  
SUPREME COURT CLERK

TEMPLE OF JUSTICE  
P.O. BOX 40929  
OLYMPIA, WA 98504-0929

SUSAN L. CARLSON  
DEPUTY CLERK / CHIEF STAFF ATTORNEY



(360) 357-2077  
e-mail: [supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)  
[www.courts.wa.gov](http://www.courts.wa.gov)

July 24, 2014

Michael J. Goodman  
Mary F. Goodman  
13785 Goodman Lane  
Anacortes, WA 98221

C. Thomas Moser (sent by e-mail only)  
Attorney at Law  
1204 Cleveland Avenue  
Mount Vernon, WA 98273-3837

Re: Supreme Court No. 90025-6 - Edward M. Goodman, et ux. v. Michael J. Goodman, et ux.  
Court of Appeals No. 68416-7-I

Counsel and Mr. and Mrs. Goodman:

Mr. Goodman's "MOTION TO MODIFY CLERKS RULING RE: LACK OF JURISDICTION" and "MOTION FOR IMMEDIATE RELIEF RE: LACK OF JURISDICTION" were received on July 23, 2014.

The motion to modify is set for consideration by a Department of the Court on the Court's September 2, 2014, Motion Calendar. The motion will be determined without oral argument. See RAP 17.5(b).

Any answer to the motion should be served and filed by not later than August 11, 2014. Any reply to any answer should be served and received by this Court for filing by not later than August 18, 2014."

Mr. Goodman's "MOTION FOR IMMEDIATE RELIEF RE: LACK OF JURISDICTION" seems to concern the trial court's denial of an affidavit of prejudice that he filed. If Mr. Goodman is seeking review of a decision of the trial court, the proper procedure is to file either a notice of appeal or notice for discretionary review in the trial court. See RAP 2.1, 2.2, 5.1, 5.2 and 5.3. This Supreme Court case, number 90025-6, is a petition for review of the decision of the Court of Appeals. The Supreme Court denied review on June 4, 2014. The only remaining issue to be decided by this Court is whether the Clerk's ruling on attorneys fees should

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Page 2  
90025-6  
July 24, 2014

be modified. Because review was denied, the Petitioner cannot seek other substantive relief in regards to the underlying superior court case. Therefore, no action will be taken on the motion for immediate relief.

Sincerely,



Susan L. Carlson  
Supreme Court Deputy Clerk

SLC:alb

A-13

No. 72711-7

COURT OF APPEALS DIVISION ONE  
OF THE STATE OF WASHINGTON

Edward Goodman and  
Bernice Goodman,  
Respondents,

v.

Mary F. Goodman,  
Appellant.

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on this 31<sup>st</sup> day of August 2015, the Reply Brief of Appellant Mary F. Goodman, were served in the following manner:

C. Thomas Moser  
Attorney at Law  
1204 Cleveland Avenue  
Mount Vernon WA 98273-3837

Certified US Mail  
 Personal Delivery  
 US Mail  
 Fed Ex

Attorney of record for Respondents Edward Goodman and  
Bernice Goodman.

  
\_\_\_\_\_  
Chance Goodman  
13781 Goodman Lane  
Anacortes, WA 98221

CERTIFICATE OF SERVICE – 1

Mary F. Goodman  
13785 Goodman Lane  
Anacortes, 98221