

72711-7

72711-7

No. 72711-7

COURT OF APPEALS DIVISION ONE  
OF THE STATE OF WASHINGTON

---

Edward Goodman and Bernice Goodman, Respondents,

v.

Mary F. Goodman, Appellant.

---

BRIEF OF APPELLANT

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2015 JUL -2 AM 11:56

Mary F. Goodman  
13785 Goodman Lane  
Anacortes, WA 98221  
(360) 293-3298

ORIGINAL

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**I. Motion in Brief.**

**1. IDENTITY OF MOVING PARTY**

Appellant Mary Goodman asks for the relief designated in Part 2.

**2. STATEMENT OF RELIEF SOUGHT**

Enter an order of dismissal for lack of jurisdiction.

**3. FACTS RELEVANT TO MOTION**

1. On March 26, 2010 plaintiffs filed this lawsuit in Skagit County Superior Court. CP 41-45.
2. On April 14, 2010 co-defendants Tyson Goodman and Chance Goodman were served. CP 28-29.
3. On April 16, 2010 co-defendants Mike Goodman and Mary Goodman were served. CP 175-176.
4. On April 23, 2010 Judge Cook signed an agreed order out of court. CP 36-37.
5. On May 5, 2010 Notice of appearance for Defendants Tyson Goodman and Chance Goodman. CP 117.
6. On May 12, 2010 Defendants Michael and Mary Goodman substitution of counsel. CP 120.

7. On June 1, 2010 co-defendant Tyson Goodman filed an affidavit of prejudice and motion against Judge Cook. CP 23.

8. On June 3, 2010 the affidavit of prejudice was called to Judge Cook's attention, the record was misrepresented to defendants' attorneys and failed to disclose the agreed order.

June 3, 2010 hearing RP at page 1 – 3.

9. Co-defendant Tyson Goodman's attorney objected:

Attorney Ashbach: "We will note our objection for the record."

June 3, 2010 hearing, RP at page 3.

10. On June 3, 2010 Co-defendants attorney of record wrote an objection to the denial of the affidavit of prejudice. ***"Tyson Goodman objects to this case being heard by Judge Cook, his affidavit of prejudice was filed in a timely fashion". L.Ashbach #2777 6-3-10. CP 65-67.***

11. On June 3, 2010 the order denying the affidavit of prejudice, does not disclose the agreed order on April 23, 2010. CP 68.

**The below Matrix depicts the docket: NO discretionary rulings or orders prior to the affidavit of prejudice.**

<b>Docket date</b>	<b>Docket Description</b>
04/19/10	Sheriff's return of service, Michael J. Goodman, served on April 16, 2010
04/20/10	Sheriff's return of service, Mary Goodman, served on April 16, 2010
04/23/10	Affidavit of Service, Tyson Goodman and Chance Goodman, served on April 14, 2010
04/23/10	Agreed Temporary Restraining Order And Order to Show Cause.
06/01/10	Affidavit of prejudice and motion, filed by co-defendant Tyson Goodman.
06/03/10	Affidavit of prejudice and motion called to the trial court's attention.

#### 4. GROUNDS FOR RELIEF AND ARGUMENT

RAP 17.4(d) authorizes a motion in brief to preclude hearing an appeal on the merits.

Co-defendant Tyson Goodman filed an affidavit of prejudice and motion June 1, 2010 that properly imputed co-defendants Michael Goodman, Mary Goodman, and Chance Goodman. Lamon v Butler, 112 Wash. 2D 193, 770 P.2d 1027 (1989).

Under RCW 4.12.040 and .050, a party in a superior court proceeding is entitled to one change of judge upon the timely filing of an affidavit of prejudice. See In re Marriage of Tye, 121 Wn. App. 817, 820, 90 P.3d 1145 (2004); Harbors Enters., Inc. v. Gudjonsson, 116 Wn.2d 283, 285, 803 P.3d 798 (1991). An affidavit of prejudice is timely if filed and called to the court's attention "before the judge presiding has made any order or ruling involving discretion." RCW 4.12.050.

Judge Cook had not made any discretionary rulings prior to the affidavit on June 1, 2010.

Agreed orders are not discretionary.

It is well established that the trial court does not exercise discretion for purposes of an affidavit of prejudice when it enters

an agreed order or stipulation involving certain pre-trial preliminary issues. See State ex rel. Floe v. Studebaker, 17 Wn.2d 8, 16-17, 134 P.2d 718 (1943).

RCW 4.12.050. Under that statute, a judge against whom a valid affidavit of prejudice has been filed loses jurisdiction over the case. Harbor Enters., Inc v Gudjonsson, 116 Wn.2d 283, 285, 803 P.2d 798 (1991); State v Cockrell, 102 Wn.2d 561, 565, 689 P.2d 32 (1984). And when a judge acts without jurisdiction, his or her decisions are void. State ex rel. Turner v Briggs, 94 Wn. App 299, 302-03, 971 P.2d 581 (1999).

Jurisdiction cannot be waived.

"A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court", OLD WAYNE MUT. L. ASSOC. v. McDONOUGH, 204 U. S. 8, 27 S. Ct. 236 (1907).

## Washington State Constitutional Rights

Mary Goodman's Washington State Constitutional Rights are violated as provided in Article 1 **SECTION 2 SUPREME LAW OF THE LAND**. The Constitution of the United States is the supreme law of the land. **SECTION 3 PERSONAL RIGHTS**. No person shall be deprived of life, liberty, or property, without due process of law.

## U.S. CONSTITUTIONAL RIGHTS

Mary's U.S. Constitutional rights provided in the fourteenth amendment section one, to a fair trial is violated. When Judge Cook denied the affidavit, it was a violation of the Due Process Clause of the U.S. Constitution.<sup>1</sup> All of Judge Cook's orders and judgments violate the Due Process Clause of the U.S. Constitution.

---

<sup>1</sup>The language of the Due Process Clauses of the federal and Washington state constitutions are substantially the same. Compare CONST. amend. XIV, § 1 ("... nor shall any State deprive any person of life, liberty, or property, without due process of law"), with WASH. CONST. art. I, § 3 ("No person shall be deprived of life, liberty, or property, without due process of law").

Should a judge not disqualify himself, then the judge is in violation of the Due Process Clause of the U.S. Constitution. United States v. Sciuto, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause.)

"A court lacking jurisdiction of any matter may do nothing other than enter an order of dismissal." Deschenes v. King Cy., 83 Wn.2d 714, 716, 521 P.2d 1181 (1974) overruled on other grounds by Clark Cnty. Pub. Utility Dist No. 1 v Wilkinson, 139 Wn.2d 840, fn. 8, 991 P.2d 1161 (2000).

Appellant Mary Goodman filed a timely affidavit of prejudice against Judge Susan K. Cook. Mary's U.S. Constitutional rights have been violated, and lack of jurisdiction cannot be waived. This Honorable Court should grant this motion in brief and enter an order of dismissal.

Respectfully submitted this 1st day of July 2015.

Mary F. Goodman  
Mary F. Goodman  
13785 Goodman Lane  
Anacortes, WA 98221  
(360)293-3298

## **II. Introduction**

Appellant Mary Goodman (hereafter Mary) is a lifelong resident of Anacortes, Washington. Mary used to live in the same neighborhood as Judge Susan Cook and even worked at the local Island Hospital before Judge Cook's legal career (Mary was an EMT and Susan Cook was a nurse).

Mary firmly believed that she would not receive a fair and impartial proceedings and trial with Judge Susan K. Cook, and promptly filed a timely affidavit of prejudice against Judge Cook.

When the affidavit of prejudice was called to the attention of Judge Cook, the record was misrepresented to Mary's attorney of record. Regardless of the misrepresentation, defendants objected to Judge Cook hearing this case.

The underlying case is a property dispute between the parties. Mary has lost every motion heard by Judge Cook. The quiet title claim and declaratory judgment claims against Mary went to trial.

Judge Cook granted three easements on Mary's property, an extraordinary discretion of equities not found anywhere in Washington State. Including a road easement across Mary's

entire shoreline and beach.

Mary's property is destroyed.

The subject property has lost 93% of the land value - \$480,000 – and does not leave sufficient remainder land. The sacred property rights to exclude, privacy, and reasonable enjoyment are violated.

The property title is no longer marketable.

Mary did not get a fair trial.

Mary appealed.

Our Supreme Court ruled that Mary had to assign error to the affidavit of prejudice in her brief to the Court of Appeals.

Mary was denied leave to amend her brief to include review of the affidavit of prejudice.

This case is a gross violation of Mary's Constitutional Rights.

The Respondents subsequently entered another judgment that Mary now appeals.

### **III. Assignment of Errors.**

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

#### ***Issues pertaining to assignment of error.***

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

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

### **IV. Statement of the Case.**

#### **Record prior to affidavit of prejudice and motion.**

1. On March 26, 2010 plaintiffs filed this lawsuit in Skagit County Superior Court. CP 41-45.
2. On April 14, 2010 co-defendants Tyson Goodman and Chance Goodman were served. CP 28-29.
3. On April 16, 2010 co-defendants Mike Goodman and Mary Goodman were served. CP 175-176.
4. On April 23, 2010 Judge Cook signed an agreed order out of court, in a hallway. CP 36-37.
5. On May 5, 2010 Notice of appearance of counsel for Tyson Goodman and Chance Goodman. CP 117.

6. On May 12, 2010 Defendants Michael and Mary Goodman substitution of counsel. CP 120.

7. On June 1, 2010 co-defendant Tyson Goodman filed an affidavit of prejudice and motion against Judge Cook. CP 23.

**Misrepresentation.**

8. On June 3, 2010 the affidavit of prejudice was called to Judge Cook's attention.

June 3, 2010 hearing RP at page 1.

9. On June 3, 2010 misrepresentation of the record, and failure to disclose the agreed order on April 23, 2010.

Moser: "I think you've already made some discretionary rulings in this case already"

June 3, 2010 hearing RP at page 1.

Judge Cook: "And I have made a discretionary ruling subsequent to his service on the time when he was a party."

June 3, 2010 hearing RP at page 3.

10. On June 3, 2010 co-defendant Tyson Goodman's attorney objected during oral argument.

Attorney Ashbach: "We will note our objection for the record."

June 3, 2010 hearing, RP at page 3.

11. On June 3, 2010 Co-defendants attorney of record wrote an objection to the denial of the affidavit of prejudice.

***"Tyson Goodman objects to this case being heard by Judge Cook, his affidavit of prejudice was filed in a timely fashion". L.Ashbach #2777 6-3-10. CP 67.***

12. On June 3, 2010 the order denying the affidavit of prejudice, does not disclose the agreed order on April 23, 2010. CP 68.

### **Entry of Judgment**

13. On October 8, 2014, hearing on entry of judgment, Mary challenged Judge Cook's jurisdiction and requested her to provide her a discretionary ruling prior to the affidavit of prejudice. CP supplement designation.

Mary Goodman: "Yes. Could you answer what the discretionary ruling was?"

Judge Cook: "No, I can't because I haven't gone back to look at the file back in 2010."

October 8, 2014 hearing, RP at page 1.

14. On October 8, 2014, entry of judgment summary. CP 70-71.

### **Miscarriage of Justice**

On the October 8, 2014 hearing, Mary informed Judge Cook of the miscarriage of justice.

**Mary:** "The compelling circumstances are our property is destroyed. The value of our property is 93 percent of the value is lost. Our privacy is gone. Our privacy is completely gone. The fair market value is destroyed. We can't even do a site plan with all of the easements that go through our entire property. There are easements that go through our entire property. Our lakefront is gone. We are unable to build. As I said, we cannot even do a site plan. We cannot secure a loan to build because our property value has been so diminished. I already did that one.

Marketability is destroyed. There are compelling circumstances due to our enormous injuries that make this a situation where jurisdiction should be looked at because we filed one early on. And it is completely unfair, unjust, and there is a gross injustice. And there's no time limit to bringing up jurisdiction. There is no

time limit.” CP Trial decision supplemented.

October 8, 2014 hearing RP at page 2 and 3.

## **V. SUMMARY OF ARGUMENT**

Mary's affidavit of prejudice and motion is timely. Judge Cook erred to deny an affidavit of prejudice without a discretionary ruling or order prior to the affidavit. Mary's U.S. Constitutional rights are violated, and Judge Cook lacks jurisdiction to enter any order or judgment against defendants.

## **VI. ARGUMENT**

### ***Issues pertaining to assignment of error.***

**Issue 1. Did Judge Susan K. Cook make a discretionary ruling prior to the affidavit of prejudice and motion?**

No discretionary rulings were made prior to the affidavit of prejudice and motion,

Judge Cook had entered only an agreed temporary restraining order and order to show cause April 23, 2010. The agreed order fully resolved the issue among the parties and did not call upon the trial court to exercise its discretion. CP 36-37.

The order denying the affidavit of prejudice was based on April

23, 2010, which only an agreed order was entered. CP 68.

On April 23, 2010, Judge Cook only stated "We're setting this over to 2:30 this afternoon. You guys are going to sort this out. And when you come back you're going to have something organized to present to me instead of all this emotion."

April 23, 2010 hearing RP at page 9.

The parties returned earlier and the agreed order was signed out of court in the hallway and filed at 1:09 pm on April 23, 2010. CP 36-37.

AGREED ORDERS are not discretionary.

It is well established that the trial court does not exercise discretion for purposes of an affidavit of prejudice when it enters an agreed order or stipulation involving certain pre-trial preliminary issues. See State ex rel. Floe v. Studebaker, 17 Wn.2d 8, 16-17, 134 P.2d 718 (1943) (stipulated order consolidating two court actions did not invoke trial court's discretion). Our Supreme Court has observed that

many issues may be resolved between the parties and presented to the court in the form of an agreed order. These matters will generally resolve pretrial disputes regarding such issues as admissibility of evidence, discovery, identity of witnesses, and anticipated

defenses. If the parties have resolved such issues among themselves and have not invoked the discretion of the court for such resolution, then the parties will not have been alerted to any possible disposition that a judge may have toward their case.

State v. Parra, 122 Wn.2d 590, 600, 859 P.2d 1231 (1993).

Generally, the trial court does not exercise discretion for purposes of an affidavit of prejudice when entering agreed orders or stipulations on “matters relating merely to the conduct of a pending proceeding, or to the designation of the issues involved, affecting only the rights or convenience of the parties, not involving any interference with the duties and functions of the court.” *Id.* At 603.

**Mary met the statutory requirements for an affidavit of prejudice.**

Co-defendant Tyson Goodman filed an affidavit of prejudice and motion June 1, 2010 that properly imputed co-defendants Michael Goodman, Mary Goodman, and Chance Goodman.

Lamon v Butler, 112 Wash. 2D 193, 770 P.2d 1027 (1989).

Under RCW 4.12.040 and .050, a party in a superior court proceeding is entitled to one change of judge upon the timely filing of an affidavit of prejudice. See In re Marriage of Tye, 121 Wn.

App. 817, 820, 90 P.3d 1145 (2004); Harbors Enters., Inc. v. Gudjonsson, 116 Wn.2d 283, 285, 803 P.3d 798 (1991). An affidavit of prejudice is timely if filed and called to the court's attention "before the judge presiding has made any order or ruling involving discretion." RCW 4.12.050.

**Judge Cook lacked jurisdiction to enter a judgment against Mary.**

RCW 4.12.050. Under that statute, a judge against whom a valid affidavit of prejudice has been filed loses jurisdiction over the case. Harbor Enters., Inc v Gudjonsson, 116 Wn.2d 283, 285, 803 P.2d 798 (1991); State v Cockrell, 102 Wn.2d 561, 565, 689 P.2d 32 (1984). And when a judge acts without jurisdiction, his or her decisions are void. State ex rel. Turner v Briggs, 94 Wn. App 299, 302-03, 971 P.2d 581 (1999).

**Jurisdiction cannot be waived.**

"A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court", OLD WAYNE MUT. L. ASSOC. v. McDONOUGH, 204 U. S. 8, 27 S. Ct. 236 (1907).

“A court lacking jurisdiction of any matter may do nothing other than enter an order of dismissal.” Deschenes v. King Cy., 83 Wn.2d 714, 716, 521 P.2d 1181 (1974) overruled on other grounds by Clark Cnty. Pub. Utility Dist No. 1 v Wilkinson, 139 Wn.2d 840, fn. 8, 991 P.2d 1161 (2000).

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

Here, Mary timely filed an affidavit of prejudice and motion, and called it to the attention of Judge Cook. Judge Cook failed to disclose the agreed order and misrepresented the record, thus violating Mary's Constitutional rights.

On October 8, 2014 hearing for entry of judgment, Mary challenged jurisdiction and Judge Cook refused to provide a discretionary ruling prior to the affidavit of prejudice.

**Washington State Constitutional Rights**

Mary Goodman's Washington State Constitutional Rights are violated as provided in Article 1 **SECTION 2 SUPREME LAW OF THE LAND**. The Constitution of the United States is the supreme law of the land. **SECTION 3 PERSONAL RIGHTS**. No person shall be

deprived of life, liberty, or property, without due process of law.

### U.S. CONSTITUTIONAL RIGHTS

Mary's U.S. Constitutional rights provided in the fourteenth amendment section one, to a fair trial is violated. When Judge Cook denied the affidavit, it was a violation of the Due Process Clause of the U.S. Constitution.<sup>1</sup> All of Judge Cook's orders and judgments violate the Due Process Clause of the U.S. Constitution.

Should a judge not disqualify himself, then the judge is in violation of the Due Process Clause of the U.S. Constitution.

*United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause.)

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<sup>1</sup>The language of the Due Process Clauses of the federal and Washington state constitutions are substantially the same. Compare CONST. amend. XIV, § 1 (" . . . nor shall any State deprive any person of life, liberty, or property, without due process of law"), with WASH. CONST. art. I, § 3 ("No person shall be deprived of life, liberty, or property, without due process of law").

When a court disregards a person's due process rights, the resulting judgment is void. In re Marriage of Ebbighausen, 42 Wash.App. 99, 102, 708 P.2d 1220 (1985). Here, Judge Cook misrepresented the record and refused to look at the case file, disregarding Mary's due process rights, thus the October 8, 2014 judgment is void.

"The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases." Tatham v. Rogers, 170 Wn. App. 76, 90, 283 P.3d 583 (Ct. App. Div. 3 2012) quoting Marshall v. Jerrico, Inc., 446 U.S. 238, 242 (1980).

#### **VII. Conclusion.**

Judge Cook erred to deny the affidavit of prejudice, as there are no discretionary rulings prior to the affidavit. The judgments and orders are null and void against Mary as they lack jurisdiction. Mary's U.S. Constitutional Rights have been violated and jurisdiction cannot be waived.

WHEREFORE appellant Mary Goodman respectfully requests that this Honorable Court honor the timely affidavit of prejudice and motion for one change of judge.

Respectfully submitted this 1st day of July 2015.

mary f goodman  
Mary F. Goodman  
13785 Goodman Lane  
Anacortes, WA 98221  
(360)293-3298

VII. Appendix.

<b>June 1, 2010 affidavit of prejudice and motion</b>	<b>A-1</b>
<b>June 3, 2010 objection</b>	<b>A-2</b>
<b>June 3, 2010 order denying affidavit of prejudice</b>	<b>A-3</b>
<b>April 23, 2010 agreed order</b>	<b>A-4, A-5</b>
<b>June 25, 2013 Supreme Court Ruling</b>	<b>A -6 -A-8</b>



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Approved As To Form:

*[Signature]*  
T.R.G. Wolff, WSBA # 4146  
Attorney for Michael and Mary Goodman

Lowell Ashbach, WSBA # 2777  
Attorney for Chance and Tyson Goodman

Tyson Goodman objects to this case being heard by Judge Cook, as his affidavit of prejudice was filed in a timely fashion

*[Signature]* 2777  
6-3-10



A-2

FILED  
IN THE SUPERIOR COURT CLERK  
OF THE STATE OF WASHINGTON WA  
FOR SKAGIT COUNTY  
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Edward Goodman  
Bernice Goodman  
vs.

Michael Goodman  
Mary Goodman  
Chane Goodman Tyson Goodman

NO. 10-2-587-3

( ) Clerk's Action Required

ORDER ON:

Civil      |     Criminal  
 Domestic    |     Other

THIS MATTER having come on regularly and the Court having heard the motion(s) re  
affidavit of prejudice filed by Tyson Goodman

THIS COURT FINDS that discretionary ruling previously  
made by Judge Cook on 4/23/10 after  
all four defendants were served

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that affidavit of  
prejudice is not timely and is therefore  
denied.

DATED: 6/3/10

Susan K Cook  
JUDGE/Commissioner

Presented by:

Approved:

Attorney for

Attorney for

cc:

A-3

2010 APR 23 PM 1:09

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SKAGIT

EDWARD M. GOODMAN and BERNICE S. )  
GOODMAN, husband and wife, )

Plaintiffs,

vs.

MICHAEL J. GOODMAN and MARY F. )  
GOODMAN, husband and wife, and )  
CHANCE GOODMAN, a single man, and )  
TYSON GOODMAN, a single man, )

Defendants.

NO: 10-2-00587-3

AGREED TEMPORARY RESTRAINING  
ORDERS AND ORDERS TO SHOW  
CAUSE

[Clerk's Action Required]

Special Set  
preapproved by  
Court Admin. (MB)

THIS MATTER having come before the court upon Order to Show Cause why  
defendants Michael J. Goodman, Chance Goodman and Tyson Goodman, or their agents, should  
not be temporarily restrained during the pendency of this action, and the parties agreeing to  
continue the hearing on order to show cause and the temporary restraining orders, the court  
makes the following:

1. IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Defendant Michael J.  
Goodman, Chance Goodman and Tyson Goodman, or their agents, are restrained and

AGREED TEMPORARY RESTRAINING  
ORDERS AND ORDERS TO SHOW CAUSE



A-4

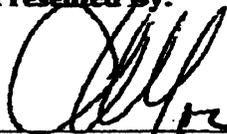
1 enjoined from trespassing, entering, harming or in any manner disturbing the drain field and  
2 associated structures that is connected to the home of Plaintiffs as described in the  
3 declaration of Edward M. Goodman. Plaintiffs shall not be required to post a bond as  
4 security.

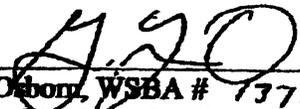
5 2. IT IS FURTHER ORDERED that Defendants shall appear before this court on the  
6 3 day of June, 2010 at 9:00 o'clock am/pm and show cause why they should  
7 not be restrained pending trial from entering, harming, destroying or trespassing on the  
8 easement for the plaintiffs' septic system described in the Declaration of Edward M.  
9 Goodman.

10 DATED this 23 day of April, 2010.

11  
12   
13 JUDGE/COMMISSIONER

14 Presented By:

15   
16 C. THOMAS MOSER, WSBA #7287  
17 Attorney for Plaintiffs

18   
19 Gerald Osborn, WSBA # 13712  
20 Attorney for Michael and Mary Goodman

21  
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23  
24  
25 AGREED TEMPORARY RESTRAINING  
ORDERS AND ORDERS TO SHOW CAUSE

- 2

 **MOSER**  
LAW OFFICE  
C. Thomas Moser, WSBA # 7287  
401 South Street, Everett, WA, 98201  
YAKIMA-CO-970 206-225-3488

A-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

APPENDIX A

EDWARD M. GOODMAN and  
BERNICE S. GOODMAN, husband and  
wife,

Respondents,

v.

MICHAEL J. GOODMAN and MARY F.  
GOODMAN, husband and wife,

Petitioners,

and

CHANCE GOODMAN, a single man;  
and TYSON GOODMAN, a single man,

Defendants.

NO. 88811-6

RULING DENYING REVIEW

FILED  
SUPERIOR COURT  
2013 JUN 25 A 11:42  
BY RONALD R. CARPENTER  
CLERK

Michael Goodman seeks review of an order denying his motion to reverse a June 2010 trial court order.

This matter involves a dispute between brothers Edward and Michael Goodman over property located at Lake Campbell in Skagit County. Defendants Michael and Mary Goodman (Michael)<sup>1</sup> appealed Judge Susan Cook's January 2012 decision granting plaintiffs Edward and Bernice Goodman (Edward) the right to use a non-exclusive easement and shared driveway and the right to use a septic system area and permanently enjoining the defendants from hindering or blocking the plaintiffs' use of the easements. The appeal has been briefed and apparently awaits decision. Meanwhile, Michael has inundated the Court of Appeals with motions, including a

<sup>1</sup> First names will be used only for the sake of clarity.

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February 4, 2013, "Motion to Reverse Trial Court Order Denying Affidavit of Prejudice." That motion challenged Judge Cook's June 3, 2010, order denying Tyson Goodman's affidavit of prejudice. (Michael's sons Chance and Tyson Goodman were named defendants at the time, but it appears that the claims against them were bifurcated and later dismissed.) Judge Cook denied the affidavit on grounds that she had earlier entered a discretionary ruling in the case, making Tyson's motion untimely. The Court of Appeals denied the motion to reverse by order dated April 23, 2013. Michael now seeks this court's review of that decision.

Michael argues that Judge Cook should have granted the affidavit of prejudice because she had only previously entered an agreed temporary restraining order involving no exercise of discretion. But it appears that prior to entry of the agreed order Judge Cook had issued a continuance order on April 9 keeping an earlier temporary restraining order in place and another temporary restraining order on April 13.<sup>2</sup> Michael suggests (without citation to the record) that those rulings came before the defendants had appeared in the case. But it is difficult to tell from the record when Tyson Goodman was served. More importantly, Michael does not explain why his motion challenging the denial of the affidavit of prejudice should be considered timely, since Judge Cook entered her order of denial on June 3, 2010. Review of a trial court decision not subject to appeal must be initiated by notice filed within 30 days. RAP 5.2(b). Perhaps it could be argued that the motion should be considered part of the ongoing appeal from the trial court's January 2012 decision. Michael likely could have assigned error to the June 3, 2010, order in his brief on

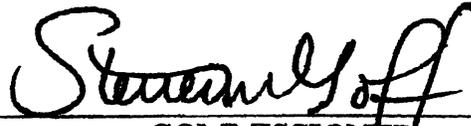
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<sup>2</sup> Edward argues that Michael should not be permitted to challenge the June 3, 2010, order because only Tyson Goodman filed an affidavit of prejudice. But this court has held that the plaintiffs or defendants in a lawsuit may file only one such affidavit as a class. *LaMon v. Butler*, 112 Wn.2d 193, 201-204, 770 P.2d 1027, cert. denied, 493 U.S. 814 (1989). And in consolidated juvenile adjudicatory proceeding, the Court of Appeals held that an affidavit of prejudice filed by one juvenile respondent may properly be imputed to his or her corespondents. *State v. Detrick*, 90 Wn. App. 939, 954 P.2d 949 (1998).

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appeal. *See* RAP 2.4(b) (appellate court will review trial court order not designated in notice of appeal if the order prejudicially affects the decision designated in notice). But 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. RAP 10.3(a)(4), 12.1(a). A party simply cannot, as part of an ongoing appeal, file separate motions disputing trial court rulings not challenged by assignment of error on appeal.

The Court of Appeals did not err or depart from accepted practice by denying the motion to reverse. RAP 13.5(b) (considerations governing acceptance of review). Accordingly, the motion for discretionary review is denied.<sup>3</sup>

  
COMMISSIONER

June 25, 2013

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<sup>3</sup> Edward seeks reasonable attorney fees for Michael's "continuing series of appeals." But he fails to support this request with argument or citation to relevant authority. Accordingly, the request is denied.

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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 1<sup>st</sup> day of July, 2015, the Brief of Appellant Mary F. Goodman, and copies of the report of proceedings, Dated: April 23, 2010, June 3, 2010, and October 8, 2014, were served in the following manner:

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