

74566-2

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COURT OF APPEALS,  
DIVISION I OF THE STATE OF WASHINGTON

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Appellate Case No. 74566-2-I

INGLEWOOD HOLDINGS, LLC, et. al.,

Appellants

v.

JONES ENGINEERS, INC., P.S., a Washington professional service  
corporation

Respondent

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RESPONDENT'S BRIEF

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COURT OF APPEALS DIV I  
STATE OF WASHINGTON~~

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## **I. RESPONSE TO ASSIGNMENTS OF ERROR**

### **A. Response to Assignments of Error**

Inglewood Holdings et. al. (collectively “Inglewood”) assigned error generally to dismissal of its case on summary judgment which was based upon five different holdings:

- 1) Inglewood’s claims were moot when the 2013 Judgment has been amended;
- 2) The legal descriptions of the properties described in the recorded document were correct and the recordation of the 2013 judgment does not constitute a cloud on title;
- 3) There was no evidence to support a claim for slander of title;
- 4) Jones Engineers Inc. (“JEI”) owed no duty to Inglewood that could be breached and/or resulted injury to Inglewood.
- 5) There was no evidence that Inglewood suffered damages.

In addition, Inglewood assigns error to the denial of the CR5 56(f) motion.

The trial court’s ruling was well reasoned and carefully considered. Inglewood failed to provide evidence of claims that it brought after Jones Engineers had filed for summary judgment. There was no error.

**B. Issues Pertaining To Assignments of Error**

Inglewood fails even on appeal to show any reason why the trial court's decision is in error. The case was moot, there was no evidence of the necessary elements of quiet title, slander of title, and negligence. Most importantly there was no harm or remedy in damages that Inglewood brought to the court in a timely manner. The case was properly dismissed on summary judgment.

**II. STATEMENT OF THE CASE**

The judgment at issue in this action is based upon a prior dispute between the parties to a December 27, 2005 consulting and engineering contract, JEI brought an action in the Whatcom County Superior Court under Case No. 08-2-01924-8 against Derek R. Stebner and Jane Doe Stebner, their marital community, Stebner Entities, Canyon Holdings, Inc., Plantation Builders, LLC and John and Jane Does 1-5, and Doe Entities 1-20. (CP76-87). The matter was tried on August 14-15, 2012, and Judgment ("the 2013 Judgment") was entered in favor of JEI against Derek R. Stebner, **Stebner Entities**, Canyon Holdings, Inc., and Plantation Builders, LLC (collectively "Judgment Debtors") on April 2, 2013. (CP 88-90) (*Emphasis Added*)

"Stebner Entities" was the moniker used by Derek Stebner when he signed the December 27, 2005 contract because he chose not to list all

of his many entities. As Derek Stebner has testified about the moniker

“Stebner Entities”:

“...what am I going to do, write Derek Stebner and list all 14 companies? No one is going to do that. That’s Stebner and all of my entities.” (CP 91-97: 17:15-17.)

- Stebner “didn’t earmark money. [He] just [knew he] always had money coming in, [he had] money going out.” (CP 91-97: 24:25-25:6.)
- Stebner Entities is “any Stebner entity that is doing business with Jones, because various Stebner Entities have done business with Jones during that time and in the past...Big Sky...Canyon Holdings...Derek Stebner personally...And if there is any others, you can look through your billing records...Any entity Jones ever did business with.” (CP 91-97:31:14-32:1).

On April 30, 2013, the Judgment Debtors appealed the judgment to the Court of Appeals, Division 1, case number 70269-6-I. (CP 98-116) The Judgment Debtors did not seek a stay of enforcement of the judgment during the course of the appeal. (CP 72-75) Thus, throughout the appeal, “Stebner Entities” was one of the named Judgment Debtors.

On May 16, 2013, the 2013 Judgment was recorded in the records of the Whatcom County Auditor under Auditor’s File No. 2130502345. (CP 76-87) On the recording date, Stebner Entities was a named Judgment Debtor. (CP 72-75)

On July 28, 2014, the Court of Appeals issued an unpublished decision in which the court affirmed the judgment but remanded the matter to the superior court specifically to delete the reference to “Stebner Entities” from the judgment. (CP 117-126) The appellate court determined that the reference in the 2013 Judgment to “Stebner Entities” was an inadvertent error. (CP 125) No burden was placed specifically on either party to correct the “error.” Therefore, either party could seek amendment of the judgment. The Judgment Debtors did not do so. (CP 125)

Instead, seven (7) of Derek Stebner’s entities chose to file an action for quiet title, slander of title and negligence on April 10, 2015. (CP 76-87) On or about August 10, 2015, JEI sought presentation of an amendment to the 2013 Judgment to remove the moniker Stebner Entities as a judgment debtor. (CP 72-75) The Amended Judgment removing Stebner Entities as a Judgment Debtor was entered on September 4, 2015. (CP 127-130) At no time did the Judgment Debtors seek amendment of the 2013 Judgment.

### **III. ARGUMENT**

#### **A. Standard of review.**

Review of summary judgment is de novo. *Ellis v. City of Seattle*, 142 Wn.2d 450, 458, 13 P.3d 1065 (2000), citing *Benjamin v. Washington State Bar Ass’n*, 138 Wn.2d 506, 515, 980 P.2d 742 (1999) Summary

judgment is proper if the evidence viewed in a light most favorable to the nonmoving party shows there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Mohr v. Grant*, 153 Wn.2d 812, 821, 108 P.3d 768 (2005), *citing* CR 56(c). Construing the evidence in the light most favorable to the nonmoving party, the court asks whether a reasonable jury could find in favor of that party. *Mohr*, 153 Wn.2d at 821, *citing* *Herron v. KING Broad. Co.*, 112 Wn.2d 762, 767-68, 776 P.2d 98 (1989).

“When a party moving for summary judgment meets its initial burden of showing that there is no dispute as to any issue of material fact, the burden shifts to the nonmoving party. If the nonmoving party then fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial, then the trial court should grant the motion. In such a situation, there can be no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” *Thomas v. Bremer*, 88 Wn. App. 728, 735, 946 P.2d 800 (1997) (citations omitted).

**B. The original judgment was amended and Inglewood's claims are moot.**

Inglewood's claims are moot. A case is moot if a court can no longer provide effective relief. *Orwick v. City of Seattle*, 103 Wn.2d 249, 253, 692 P.2d 793 (1984), citing *State v. Turner*, 98 Wn.2d 731, 733, 658 P.2d 658 (1983), also citing *In re Cross*, 99 Wn.2d 373, 377 662 P.2d 828 (1983). A court will generally not review a case that has become moot. *Orwick*, 103 Wn.2d 249. This principle is designed to avoid the danger of an erroneous decision caused by the failure of parties, who no longer have an existing interest in the outcome of a case, to zealously advocate their position. *Id.*

Here, the judgment allegedly clouding title to Inglewood's property was amended to remove "Stebner Entities." (CP 127-130) Therefore, any claims that Inglewood may have had for quiet title, for slander of title, or for negligence based upon the recording of the judgment prior to its amendment are moot.

**C. The legal descriptions are not "incorrect, improper or overreaching" and the recordation of the judgment did not constitute a cloud on title.**

**i. The legal descriptions of the properties described in the recorded judgment were not incorrect, improper or overreaching.**

Inglewood generally alleges, as a statement of fact, that a cloud over title was cast on its based upon the inclusion of "incorrect, improper

and overreaching legal descriptions.” (CP 76-87) There is no evidence supporting this allegation, and as a result, the Inglewood’s claim must fail. Each of the legal descriptions set forth in the recorded document are correct when compared to the Inglewood’s records and the public record. (CP 72-75) There are no incorrect legal descriptions. There are no improper legal descriptions and there are no legal descriptions that exceed or overreach the boundaries of the legal description that Inglewood has provided the court. The legal descriptions are the same. (CP 72-75) Inglewood’s claims to quiet title to any of the properties were properly dismissed by the court to the extent Inglewood relies upon their incorrect statement of fact that the “Defendants included any incorrect, improper or overreaching legal descriptions.”

**ii. The listing of the various Stebner Entities, including Inglewood, on the coversheet to the recorded instrument did not create a cloud on title.**

In deposition testimony, Derek Stebner, a Judgment Debtor to the 2013 Judgment and the former owner of all or the majority of interest in all of the entities in this action, himself noted, “As you know ... recordation sometimes create – you know, if you pull something up on the recorder, it’s not like it’s up to date, right...” (CP 141-143:22:17-19.) Mr. Stebner makes a critical point in this testimony: when a judgment is

recorded against a property, a number of steps are usually taken to confirm whether the record is accurate and whether a cloud upon title exists.

An action to quiet title is equitable and designed to resolve competing claims of ownership. In Washington, such actions are governed by RCW 7.28.010, which provides:

Any person having a valid subsisting interest in real property, and a right to the possession thereof, may recover the same by action in the superior court of the proper county, to be brought against the tenant in possession; if there is no such tenant, then against the person claiming the title or some interest therein, and may have judgment in such action quieting or removing a cloud from plaintiff's title[.]

An action to quiet title allows a person in peaceable possession or claiming the right to possession of real property to compel others who assert a hostile right or claim to come forward and assert their right or claim and submit it to judicial determination. Even if the claim asserted (here the absence of an easement) is absolutely invalid, the parties are still entitled to a decree saying so. *Kobza v. Tripp*, 106 Wn. App. 90, 95, 18 P.3d 621 (2001), citing *McGuinness v. Hargiss*, 56 Wn. 162, 164, 105 P. 233 (1909), overruled on other grounds by *Rorvig v. Douglas*, 123 Wn.2d 854, 873 P.2d 492 (1994).

Because a quiet title action is a claim for equitable relief, damages are ordinarily not allowed. *Kobza v. Tripp*, 106 Wn. App at 95, *citing* 17 WA Prac. Real Estate: Property Law § 10.11, at 630 (1995); *also citing Haueter v. Rancich*, 39 Wn. App. 328, 331, 693 P.2d 168 (1984) (quiet title is an action in equity) (other citations omitted).

As a judgment creditor, in order to put all persons on notice of the contents of the judgment, JEI was authorized under Chapter 65.04 RCW to record the judgment in the records of the auditor's office. The purpose of recording judgments that affect real property is set forth in RCW 65.04.070, which states:

The auditor must file and record with the records of deeds, grants, and transfers certified copies of final judgments or decrees partitioning or affecting the title or possession of real property, any part of which is situated in the county of which he or she is recorder. Every such certified copy or partition, from the time of filing the same with the auditor of record, **imparts notice** to all persons of the contents thereof, and subsequent purchasers, mortgagees, and lien holders purchase and take with like notice and effect as if such copy or decree was duly recorded deed, grant, or transfer.

*(Emphasis added.)*

In recording the judgment, JEI had to meet the requirements of RCW 65.04.045 for the first page of the instrument. If the instrument does not meet these requirements, as the first page of the judgment did not,

under RCW 65.04.047, a recording party is required to prepare a coversheet to the document being recorded. RCW 65.04.047 provides, “The coversheet information shall be used to generate the auditor’s grantor/grantee index, however, **the names and legal description in the instrument itself will determine the legal chain of title.**” RCW 65.04.047(1) (*emphasis added*).

In this case, the 2013 Judgment included, *inter alia*, “Stebner Entities” as the Judgment Debtors. Prior to and after entry of the judgment, Derek Stebner had the opportunity to provide the names of the entities he considered part of “Stebner Entities, but Derek Stebner would not and did not identify those entities he considered to be part of “Stebner Entities.” (CP 91-97:17:15-17, 31:14-32:1). Thus, when JEI prepared the required coversheet to the instrument it was recording, JEI included the names of the various entities owned by Stebner that could comprise “Stebner Entities.”

For example, as argued *infra*, notwithstanding the existence of the recorded judgment, Inglewood, Woodlake, and SRE have all transferred properties and are no longer parties in interest to those properties. (CP 159-169; 174-185; 186-194) The recording of the judgment did not actually or proximately cloud Inglewood’s title on their properties. The instrument itself, the judgment, determines the legal chain of title. RCW

65.04.047(1). JEI's inclusion of the various "Stebner Entities" within the coversheet did not cause damages to the Inglewood.

**D. There is no evidence that supports Inglewood's claim of slander of title.**

Three things are necessary to maintain an action for slander of property or of title:

- (1) The words must be false.
- (2) They must be maliciously published.
- (3) They must result in a pecuniary loss or injury to the plaintiff.

*Lee v. Maggard*, 197 Wn. 380, 382, 85 P.2d 654 (1938). The words must be spoken pending some treaty or public auction for the sale or purchase of the property, or the action will not lie, and it must be such a slander as goes to defeat the plaintiff's title. And unless the plaintiff shows falsehood and malice in the defendant, and an injury to himself, he establishes no case to go to the jury. *Id.*

In their Complaint, Inglewood's claim for slander of title is based upon an alleged improper recordation of the judgment against properties allegedly owned by Inglewood; a refusal to release the properties from encumbrance; and an inclusion of improper, incorrect and overreaching legal descriptions. As argued, *infra*, the recorded instrument, the judgment, included only the name "Stebner Entities" as a judgment debtor, as ordered by this Court at the time. The information contained in the coversheet to the recorded instrument, which spanned numerous pages due to the number of properties, was properly included to give notice of

“Stebner Entities” obligation. And, after the Court of Appeals entered its order removing Stebner Entities as a judgment debtor, Stebner could have sought to have an amended judgment entered. JEI since obtained an amended judgment that removes “Stebner Entities.”

Inglewood cannot meet the elements to maintain a claim for slander of title, and their claims and the court’s dismissal on summary judgment as a matter of law was proper.

**E. There is no evidence that JEI owed any duty to Inglewood that could be breached and/or resulted in any injury to Inglewood, and Inglewood’s claim of negligence must be dismissed.**

To prove a claim for negligence, Inglewood must establish (1) the existence of a duty, (2) a breach of that duty, (3) a resulting injury, and (4) that the breach was the proximate cause of the injury. *Steinbock v. Ferry County Public Utility Dist. No. 1*, 165 Wn. App. 479, 489-90, 269 P.3d 275 (2011), *citing Reynolds v. Hicks*, 134 Wn.2d 491, 495, 951 P.2d 761 (1998).

The sole duty upon which Inglewood bases any claim for negligence is an apparent duty “not to encumber Plaintiffs’ real properties without just cause and excuse.” (CP 76-87) At the time the judgment was recorded, JEI owed no duty to not include any of Mr. Stebner’s entities which was “Stebner Entities” as a judgment debtor, and the judgment was properly and accurately recorded in the records of the auditor. Having failed to identify the entities that made up “Stebner Entities”, and in

directing JEI<sup>1</sup> to determine who those entities were based upon its own records, JEI properly included the identities of the various entities, including Inglewood's, and properties on the coversheet for the purpose of providing notice; JEI owed no duty. In addition, as argued *infra*, the instrument recorded, the judgment properly included "Stebner Entities" as a judgment debtor, and the instrument was properly recorded in the auditor's records. The judgment has since been amended to remove Stebner Entities as a judgment debtor, and is a matter of public record.

**F. There is no evidence that Inglewood has suffered damages, and therefore Inglewood's claims were properly dismissed.**

The question of damages is usually discretionary and therefore reserved for the trier of fact, so long as it falls within the range of relevant evidence. *Rorvig v. Douglas*, 123 Wn.2d 854, 861, 873 P.2d 492 (1994); *Shields v. Garrison*, 91 Wn. App. 381, 386, 957 P.2d 805 (1998).

Here, Inglewood has not lost properties or suffered any damages as the result of the recordation of the judgment in the records of the auditor. Inglewood's claims fail because there is no question of fact that the entity suffered any damages. "Inglewood Holdings LLC Series 16" is listed on the Whatcom County assessor's office on-line records as the named owner of a residential property at 117 S. 32<sup>nd</sup> Street, Bellingham, one of the

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<sup>1</sup>Darcy Jones and Jones Law Office, PLLC were not parties to the 2008 lawsuit or

properties at issue in this action. (CP 131-140) Derek Stebner testified that the property was in foreclosure and whether the property had any equity in it was “a matter of opinion”; Stebner did not know whether there was any equity value in the property. (CP 141-143: 15:2-16:22, 24:8-18.) The facts do not support any claim by Inglewood that it suffered any damages.

Woodlake’s claims must fail because there is no question of fact that the entity suffered any damages. Woodlake claims to have lost a third-party offer to purchase lots it claims to own. (CP 141-143: 20:9-21:19.) The lots were foreclosed by Wally Wright when notes came due, but there was not enough equity in the properties to pay to Woodlake; “it was just a matter of paying off the other people.” (CP 141-143: 20:9-21:19.) Again, the facts do not support any claim by Woodlake that it suffered any damages.

Finally, Golden Sun does not plead any damages except those based on a claim of negligence. However, Golden Sun cannot prove that any duty was owed, or that any breach of a claimed duty actually or proximately caused it any damage. Therefore, the Court properly dismissed all of Golden Sun’s claims.

**G. Denial of CR56(f) motion was proper because Inglewood had more than ample opportunity to complete discovery and determine damages.**

CR 56(f) states:

When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that for

reasons stated, the party cannot present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

Inglewood failed to make any case under CR 56(f). JEI provided evidence that Inglewood had the ability to obtain the evidence it needed on summary judgment. (CP 408-473) The denial of the CR 56(f) motion was proper.

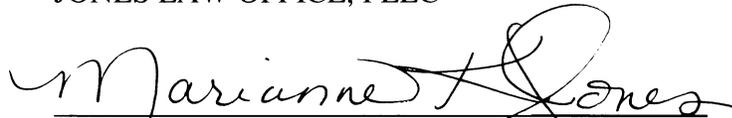
#### IV. CONCLUSION

Inglewoods' claims are moot because the 2013 Judgment has been amended. The legal descriptions of the properties described in the recorded document were not incorrect, improper or overreaching, and the recordation of the judgment does not constitute a cloud on title. There is no evidence to support Inglewood's claim for slander of title. There was no duty owed by JEI to Inglewood that could be breached and/or resulted injury to Inglewood. And, Inglewood has suffered no damages.

Based upon the foregoing, Inglewood's claims were properly dismissed in their entirety.

DATED this 29<sup>th</sup> day of June, 2016.

JONES LAW OFFICE, PLLC

A handwritten signature in black ink that reads "Marianne K. Jones". The signature is written in a cursive style with a large, looping initial "M".

MARIANNE K. JONES, WSBA #21034  
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**FILED**  
**COURT OF APPEALS**  
**DIVISION ONE**  
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Respondent

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PROOF OF SERVICE OF RESPONDENT'S BRIEF

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I hereby certify that I served copies of the foregoing Respondent's Response  
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By placing the same in the mail with first class postage affixed on June 29, 2016.

  
MARIANNE K. JONES