

NO. 36487-5-II

IN THE COURT OF APPEALS OF
THE STATE OF WASHINGTON
DIVISION II

AMEDEO NAPPI,
APPELLANT

V.

CRISTY A. GUNDERSON and JOHN DOE GUNDERSON, husband and wife;
MICHAEL J. ROGERS and NANNETTE B. ROGERS, husband and wife;
EAGLE HOME MORTGAGE, INC; HERITAGE SAVINGS BANK; and
JAMES E. BRAZIL and JANE DOE BRAZIL, husband wife.

Respondents

APPEAL FROM DISMISSAL OF PETITION BY
THE TRIAL COURT ON MOTION FOR SUMMARY JUDGMENT
IN THE SUPERIOR COURT FOR THRUSTON COUNTY

THE HONORABLE CHRIS WICKHAM

APPELLANT'S REPLY BRIEF

Amedeo Nappi
Appellant, In Proper Person

Amedeo Nappi
POB 11761
Olympia, WA 98508
(360) 357-6869

FILED
COURT OF APPEALS
DIVISION II
08 FEB 25 PM 2:58
STATE OF WASHINGTON
BY CA
DELETED

TABLE OF CONTENTS

Issue: Appellant's ownership of property.....	1
Argument	4
Injunction against access on Rogerson's (Rogers) property.....	5
Issue: Who joined the respondents Brazil as a necessary party.....	6
Issue: Was appellant prohibited from crossing over the respondents Brazil's property.....	8
Issue: Did the respondents Brazil's property contain a site for an alternate route.....	14
Issue: Was appellant prohibited from crossing over the Respondents Rogers'-Gundersons' property.....	16
Issue: Was the appellant's Petition frivolous.....	19
Issue: Did CR 11 sanctions apply to the appellant or the respondents Gunderson.....	21
Issue: Was the award of attorney's fees justified.....	25
Issue: Respondents Brazil's attorney fees.....	30
Issue: Did the appellant present an issue of first impression to the trial court.....	30
Issue: Does the trial court's order findings support the CR 11 sanctions.....	31
Conclusion.....	33
THE COURT PLEASE TAKE NOTICE.....	1, 3, 4, 5, 6, 32

TABLE OF AUTHORITIES

WASHINGTON CASES

Wojcik v. Chrysler Corp.,
50 Wn.App 849, 953, 751 P.2d 854 (1988).....8

State v. Eggleston,
118 P.3d 959, 129 Wn.App. 413 (2005).....12

Graham Thrift Group v. Pierce County,
75 Wn.App. 263, 877 P.2d 228, 230 (1994).....15, 31

Brigs v. Vail,
119 Wn.2d 129, 137, 830 P.2d 350 (1992).....19, 20

Tiger Oil Corp. v. Dept. of Licensing,
88 Wn.App. 925, 946 P.2d 1235, 1241 (1997).....19, 20

Byerly v. Madsen,
41 Wn.App. 495, 704 P.2d 1236, 1238 (1985).....25

Skimming v. Boxer,
119 Wn.App. 748, 82 P.3d 707,711 (2004).....32

WASHINGTON STATUTES

RCW 6.23.020..... 2

RCW 8.24.015.....14, 15

RCW 4.84.185.....19

WASHINGTON SUPERIOR COURT CIVIL RULES

CR 8.....34

CR 11.....31, 32, 34

CR 37.....34

ISSUE: APPELLANT'S OWNERSHIP OF PROPERTY

Regarding the issue of whether the appellant was the owner of the landlocked property at the time of litigation of this case is now "moot". All the respondents' briefs have either accepted the appellant as the owner of the property the appellant petitioned the trial court for an easement of right of way of necessity for or have failed to address the issue in their briefs or failed to provide any case law to support their arguments on that issue. Therefore, any issue raised in any of the respondents' briefs should not be considered on the issue of whether appellant owner said property at the time appellant filed his Petition with the trial court. See **Gunderson's brief, herein GB, pages 1-2 and Disposition of real property in Nappi divorce proceedings, GB page 4; Rogers's brief, herein RB, pages 3-4; and Brazil's brief, herein BB, pages 1-10.**

THE COURT PLEASE TAKE NOTICE: Ms. Stickler, BB, page 3-4, makes the following fabricated statement regarding ownership of appellant's property:

"(appellant) wasn't as of November 3, 2006(the owner), and despite Nappi's promises to the court to 'prove' that he was the owner, he never did."

Ms. Stickler, respondents Brazil's attorney, has intentionally fabricated the facts to this court that the appellant failed to provide ownership documents of his property to the trial court and the respondents, for the property the appellant filed a Petition of easement of necessity of right of way

with the trial court. **The Transcript of November 3, 2007 hearing, herein R3**, records Ms. Stickler as being present in court when the appellant was asked by the trial court for proof of appellant's ownership of his property. See R3, page 2; 3, 6, and 21; and **Clerk's Papers, herein CP, 202-203**, appellant's Land Purchase Sale Agreement; **Appellant Opening Brief, herein AOB, pages 39-42.**

Ms. Stickler was present in court when the trial court informed appellant that Ms. Stickler filed materials saying that appellant was not the record owner of his property when appellant filed his case and when the trial court found the appellant's Land Purchase Sale Agreement, CP 202-203, in the trial court record. See R3, page 20 lines 1-4 and R3, page 21, lines 14-25 and page 22, lines 1-22.

The Land Purchase Sale Agreement names appellant's as the purchaser of the legally described property therein and provides sufficient proof that the appellant is the purchaser/owner of the property at issue and has a vested interest in said property. See CP 202-203.

RCW 6.23.020 provides further support that the appellant had a vested interest in the property legally described on the Land Purchase Sale Agreement at the time the appellant filed this case, the appellant had the **statutory right of redemption for one year** from the date of the sheriff's sale, which would present the appellant with a vested interest, an option, to

purchase the property any time within the one year statutory redemption period. See Appellant's brief, page 40.

Mr. Tiffany was explaining to the trial court that he had no argument with the appellant's ownership of property and made the following statements.

"We were in still in some kind of a redemption period. Again, I don't know exactly how it happened. If Mr. Nappi wants to get up here and say he is still the record title owner to this property, then so be it." Tiffany R6, pages 6-7, lines 24-25; 1-3.

Respondents Brazil has only addressed the issue of attorney fees awarded to respondents Brazil which will be address herein.

THE COURT PLEASE TAKE NOTICE: Many of the appellant's responses filed with the trial court contained language which requested the trial court to review the record before making decisions about attorney fees, CR 11 sanctions, and other related matters by this statement: "All documents contained in the Clerk's file under the above cause number are hereby incorporated into this document by this reference whether they are named or referred to directly or indirectly an any time in this document and I reserve the right to produce the same when needed." See CP 66; 83; 99; 158; 175; 215.

ARGUMENT

There is a desperate need to clarify several misleading and erroneous facts and statements made in the GB and BB.

The GB, page 1:

"...appellant, by filing the present matter, attempted for a third time to gain a legal right to access his parcels through existing driveways/roads."

THE COURT PLEASE TAKE NOTICE: There is no evidence in the trial court record that the appellant attempted a third time to gain access to his parcels over existing driveway/roads. See Declaration of Amedeo Nappi.

The BB, page 2:

“Brazil, not yet having been notified of his potential joinder to this action, was not represent to the court that this matter was res judicata as to his property by prior litigation.”

THE COURT PLEASE TAKE NOTICE: On or about December 2006 and April 2007, appellant notified the court, on the record at hearings, that he had talked to Mr. Brazil regarding the respondents Gunderson’s motion to join him as a necessary party. Further, after Mr. Brazil was joined, appellant informed Ms. Stickler, respondents Brazil’s attorney, that appellant had informed respondent Brazil of the respondents Gunderson’s motion to join respondent Brazil before the trial court signed the respondents Gunderson’s Motion to join Brazil as a necessary party and after the court signed the order to join the Brazils.

Appellant personally notified respondent Brazil’s attorney, Ms. Stickler, that appellant had talked with her clients, the Brazils, about the respondents Gunderson’s motion to join the Brazils as a necessary party prior to the trial court signing the order. See Declaration of Amedeo Nappi.

The GB, page 1.

“It is undisputed that whomever is the owner of the “NAPPI property”, is the owner of an easement, albeit undeveloped, that runs along the northern thirty feet of the parcels owned by Gunderson and Rogers.”

THE COURT PLEASE TAKE NOTICE: Appellant is not the owner of the easement, described as undeveloped, that runs along the northern thirty feet (30) of the parcels owned by respondents Gundersons and Rogers. This undeveloped easement is on the Gundersons’ and Rogers’ properties and they are the owners of the property where the undeveloped easement is located. If the appellant owned or had any interest in said undeveloped easement, mentioned

above, there would be no need for the appellant's Petition for an easement of Necessity of Right of Way. See Declaration of Amedeo Nappi.

THE COURT PLEASE TAKE NOTICE: This is the same undeveloped easement which the appellant has moved the trial court to consider to be used as an easement of necessity in appellant's Petition, for the appellant to access his landlocked property and which the respondents Gunderson, and the Gundersons' attorneys, Ms. Pearson and Mr. Tiffany, have filed documents regarding and stated on the record to the trial court on numerous occasions the appellant could use and has the right to use as an easement to access his landlocked property. See AOB, pages 9; 15; 18; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; CP 4; 7; 18, paragraph No. 8; 24, lines 3-4; 25, lines 2-3 and lines 7-9; 28; 30; 31; 73; etc.

INJUNCTION AGAINST ACCESS ON ROGERSON (ROGERS) PROPERTY

Respondents Gunderson find it necessary to discuss the results of the Special Verdict Form, by the jury in the Rogerson v. Nappi trial. Again, respondents Gunderson fail to provide all the pertinent facts in this matter. And misrepresent that the Rogersons' driveway was at issue in that case. See Respondents Gunderson's brief, page 3-4.

THE COURT PLEASE TAKE NOTICE: The jury in the Rogerson v. Nappi case awarded damages to the Rogersons in the amount of "\$1." See Declaration of Amedeo Nappi.

Again, respondents Gunderson misrepresent the facts of the case when stating the Rogerson v. Nappi case involved the "Rogerson's driveway".

"Question No. 1: Did defendants trespass upon or encroach on Plaintiffs' property (not including the road)?" See GB, at page 3; CP 30-31; CP 118; and Declaration of Amedeo Nappi.

THE COURT PLEASE TAKE NOTICE: It is clear from the question presented to the jury that the road was not involved in the trespass. Appellant made no claim to a prescriptive easement over the Rogerson's driveway, which was the only road going across the Rogerson's property at the time. See CP 30-31 and Declaration of A. Nappi.

ISSUE: WHO JOINED THE RESPONDENTS BRAZIL AS A NECESSARY PARTY

On November 3, 2006, the trial court had a copy of Ms. Stickler's materials before it. See CP 178-196. Ms. Stickler's document particularly made mentioned at length, six (6) times, that the respondents Gunderson moved the trial court to join her clients the Brazils as a necessary party. See CP 180, lines 24-25; 181, lines 13-14, 25-28; 182, lines 5-6; 183, lines 19-23; and 184, lines 3-6.

On November 3, 2007, the record quotes Ms. Stickler informed the trial court, on (4) four separate occasions that respondents Gunderson joined the respondents Brazil as a necessary party as follows:

"We (Brazils) were joined, as you know - - you are well aware of the facts - - in December or January 2005 at the request of the Gundersons' attorney at that time, who apparently argued that we were a necessary party,... R3, page 7, lines 8-12.

"...but the reason we have asked is that the record shows both the February 24, 2004 affidavit of Mrs. Gunderson and then one of the entries in the billing fees that the Gundersons have turned in show that in February or March 2004 both prior counsel for the Gundersons and Mrs. Gunderson were well aware of the outcome and the rulings in the Brazil v. Nappi or Nappi v. Brazil case, yet they (Gudersons) were the ones that moved that the Brazils be added." See R3, pages7- 8, lines 20-25 and lines 1-5.

“Maybe Ms. Gunderson having read the Court file didn’t understand perhaps the issue, the res judicata, but certainly Ms. Pearson understood that this issue was res judicata as to Mr. Brazil, and yet **they (Gundersons) moved to join Brazil anyway.**” See R3, page 8, lines 6-11.

“It is unknown whether he (Nappi) presented or kept evidence to the Court at the time that **the Gundersons moved to join the Brazils...**” See R3, page 9, lines 16-19.

On November 3, 2006, the trial court acknowledged that it had read the appellant’s materials filed in with the trial court and with the Thurston County Superior Court Clerk’s Office. See CP 158-159; 160-161; 165-166a; 167-174; 175-177; 197-203; and 204-214.

“I have read you materials.” See R3, page 23, lines 6-7.

The appellant notified the trial court on numerous occasions that the respondents Brazil were not a necessary party and that respondents had moved the trial court to join the Brazils. See CP 160; 166.

On November 3, 2006, the trial court made these statements, after hearing from Ms. Stickler that **respondents Gunderson joined the Brazils** as a necessary party, as follows:

“But along the way, as the case was being scheduled for trial, the defendant **Gundersons indicated** that one of the problems with setting it for trial was **the failure to join the Brazils**, who were adjacent property owner.” R3, page 25 lines 7-13.

This Court, in considering the motion to continue the trial, **considered implicitly a motion to join the Brazils**, as well, although **my recollection in that the Gundersons had not specifically made the motion**, but I was persuaded, in looking at the case and hearing that there had been the possibility of other litigation, that the only way

that this Court could grant complete relief to the parties was to join the Brazils.” R3, page 25, lines 14-21.

The trial court completely and totally ignored the filings in the record, (CP 71-76; 77-82; 97-98) and the four (4) verbal notices by Ms. Stickler, that **the respondents Gunderson had motioned the trial court to join the Brazils**, she provided to the trial court ten (10) minutes before the trial court made the above statements.

“An inference is a ‘process of reasoning by which a fact proposition sought to be established is deduced as a logical sequence from other facts, or a state of facts, already proven or admitted.’” Wojcik v. Chrysler Corp., 50 Wn.App 849. 953, 751 P.2d 854 (1988).

The trial court above abused its discretion by ignoring the established facts clearly stated on the record and/or any information presented to it, from the appellant and Ms. Stickler, that the **respondents Gunderson had joined the respondents Brazil** as a necessary party in this action.

A reasonable person after hearing the statements of Ms. Stickler and viewing the court record would come to but one conclusion, **that the respondents Gunderson motioned the court to join the Brazils as a necessary party.**

**ISSUE: WAS APPEALANT PROHIBITED FROM
CROSSING OVER THE RESPONDENTS
BRAZIL’S PROPERTY**

The trial court made the following statements:

“Let me make sure I understand. Your (Mr. Tiffany) position is that there has been litigation for the Brazil and Rogerson-now Rogers

parcels, and **he (Nappi) is barred by collateral estoppel** to assert an easement over those properties, and the only way he gets to Waddell Creek Road over your client's property is through one or the other of those..." See R6, page 4, lines 15-22.

"What was most persuasive in this court is the **prior litigation** involving the two parcels, which border Waddell Creek Road. And because those orders, Mr. Nappi is **conclusively barred** from proceeding either over Gunderson, Brazil or Rogerson-now-Rogers properties." See R6, page 24, lines 18-23; AOB, page 16.

"him (Nappi) being permanently restrained from access over the Brazils'...property".... See R3, page 27, lines 9-11;

"Once the full picture **became clear as to the prior litigation**, it also became clear that Mr. Nappi knew or should have known that there was no way that this Court could legally grant him a right-of-way by necessity over the Gunderson property, **because to do so would have required continuing on over either the Brazil** or the Rogers properties, and he was specifically restrained from that by prior litigation." See R3 page 26, lines 10-19.

"I see**the Brazils as innocent parties**" See R3, page 29, lines 12-13.

"Because the only way he could get over the Gunderson property was to go over the Rogers and **Brazil properties, there was litigation as to those parcels**, correct?" See R3, page 4-5, lines 23-25 and 1-2.

The trial court properly determined that the **Nappi v. Brazil Order and Judgment Quieting Title and Granting Easement, CP 135-137, conclusively barred** the appellant by **collateral estoppel from litigating the issues from that case**, and therefore, prohibited the appellant from petitioning the trial court **for a site on the respondents Brazil's property** for an easement of necessity. All the parties have agreed to the above determination by the trial court and no one has argued against that particular fact.

BB, at page 2, states the following:

“Brazil, not yet having been notified of his potential joinder to this action, was not present to represent to the court that this matter was res judicata as to his property by prior litigation.”

Respondents BB particularly points out to the court the issue of res judicata in relationship to the Nappi v. Brazil Order and Judgment Quieting Title and Granting Easement, CP 135-137, which would prevent the respondents Brazil from being joined as a necessary party by the respondents Gunderson, and particularly, paragraph No. 3, at CP 136, which states:

“3. Except as provided herein, plaintiff Nappi and his successors in interest have no right to easement on defendant Brazil’s property for any purpose.”

The BB and the AOB have fully informed the court that the respondents Gunderson and Ms. Pearson, admitted prior knowledge, CP 17, 78, 79, 80, and 226, of the Nappi v. Brazil Order and Judgment, CP 135-137, before moving the trial court to join the respondents Brazil as a necessary party.

Even after respondents Gunderson and Ms. Pearson admitted having prior knowledge of the Nappi v. Brazil Order and Judgment’s terms and conditions that no possible easement/site existed for the appellant to use on the Brazil property, both continued to claim there was a site in declarations, memorandums and answers to requests for discovery. Respondents Gunderson, with the knowledge of Ms. Pearson, provided the appellant with

alternate routes drawn on a copy of the land survey of the Nappi property and surrounding properties. Respondents Gunderson drew three alternate routes over the Brazil property in response to appellant's request for discovery. See CP 197-198.

Respondent Gunderson, with the knowledge of Ms. Pearson, moved the trial court to join the Brazils. See CP 71-76; CP 178-183; and BB pages 5-8.

On December 30, 2004, Ms. Pearson moved the trial, supported by the Declaration of Cristy Gunderson, CP 77-82, to continue the trial date and amend the Petition, continued to state, under oath, that the evidence would support the respondents Brazil were necessary party and that the Brazils property contained a possible site for an easement for the appellant to access his property. See CP 71-73.

Again, GB misleads the court that the appellant had to establish access through the Brazil property to reach his property. See GB page 7. This is not true.

The GB, at page 7, states that:

“Nappi's right to access on the Rogers' and Brazils' properties had already been litigated and adjudicated.”

Here GB admits again that the respondents Brazil were not necessary parties because the issue of easement over the Brazils' property had already been litigated.

“Collateral estoppel means that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot be litigated again between the same parties in any future lawsuit.” State v. Eggleston, 118 P.3d 959, 129 Wn.App. 413 (2005).

The trial court adhered to false and misleading facts but made several clear distinct inferences that the appellant was restrained from access over the Brazils’ property because of prior litigation but failed to recognize those facts in sanctioning the appellant for attorney fees.

Mr. Tiffany informed the trial court of prior litigation between the parties:

“...because these matters (Nappi v. Brazil and Rogersons v. Nappi) were already litigated, and that is what the summary judgment motion ruling was based on. Mr. Nappi knew that he had prior rulings on this, and he chose to file them again.” R3, page 4, lines 8-12.

“I don’t want to say much more than these matters were already litigated. Mr. Nappi alreadyhe was permanently enjoined from bring these matters (Nappi v. Brazil and Rogersons v. Nappi) again in trial.” R3, page 5, lines 10-15.

Mr. Tiffany was only correct that the appellant was permanently enjoined from litigating the Nappi v. Brazil order again. And intentionally omitted and disguised the fact that Mr. Tiffany’s clients, the respondents Gunderson and Ms. Pearson, moved the trial court to join the respondents Brazil as necessary parties not the appellant.

The GB and Mr. Tiffany now make a totally ridiculous statement to the court in regarding the respondents Brazil.

“Brazils were only proper parties if Rogers and Gunderson were, so their inclusion in the summary judgment proceedings helped show the whole picture.” See GB, page 9.

The GB, page 9, reasoning is completely wrong on its theory that the **“respondents Brazil was a proper party if the Rogers and Gundersons were”** and contradicts the case law filed in the GB.

The respondents Gunderson’s argument here is completely ridiculous on its face, not supported by case law, because respondents Gunderson failed to correctly read and interrupt the plain and simple terms and conditions of the Nappi v. Brazil Order, CP 135-137.

Mr. Tiffany is correct **only** on the fact that appellant was permanently enjoined from again litigating the Nappi v. Brazil issues, which appellant did not do. The fact is established by the record that the respondents Gunderson moved the trial court to join the respondents Brazil as a necessary party and the appellant argued against and did not in any way attempt or facilitate the joining of the respondents Brazil as a necessary party to the action. See CP 71-76; 77-82; 97-98; 180, lines 24-25; 181, lines 13-14, 25-28; 182, lines 5-6; 183, lines 19-23; and 184, lines 3-6; R3, page 7, lines 8-12; R3, pages 7- 8, lines 20-25, 1-5; R3, page 8, lines 6-11; R3, page 9, lines 16-19 .

The trial court correctly determined that **the respondents Brazil were not a necessary party** because of the prior Nappi v. Brazil order, CP 135-137, and on that fact, signed an order dismissing the Brazils from the case.

Thus, the trial court's determination that the Nappi v. Brazil Order would prohibit the appellant from joining Brazils as a necessary party would apply most definitely as to the respondents Gunderson joining the respondents Brazil as a necessary party in this case and to also considering an alternate route for an easement on the respondents Brazil's property, because of case law precedents in res judicata, collateral estoppel, and/or issue preclusion.

**ISSUE: DID THE RESPONDENTS BRAZIL'S PROPERTY
CONTAIN A SITE FOR AN ALTERNATE ROUTE**

RCW 8.24.015 is the controlling statute in joining property owners involved in the condemnation of land for a private way of necessity. See CP 139; AOB, page 37.

The respondents Gunderson filed many documents in the record that the respondents Brazils property contained a site for an alternate route to be considered by the trial court for an way of necessity for the appellant to use to access the appellant's landlocked property. See CP 18, lines 9-12; 72, lines 22-25; 73, lines 9-19; 79, lines 25-26.

The trial court's determination that Nappi v. Brazil order, CP 135-137, dismissed the respondents Brazil from being a necessary party to the current action also would prevent the trial court from considering the respondents Brazil's property for an alternate route for a way of necessity, pursuant to RCW 8.24.015.

The trial court incorrectly interrupted the requirements of RCW 8.24.015 with regard to joining a party in an action. See AOB, page 38; R6, page 23, lines 1-10.

A reasonable man would conclude from the trial court's decision to dismiss the respondents Brazil from the action based on the Nappi v. Brazil order, CP 135-137, that the respondent's Brazil's property did not contain an alternate site for a private way of necessity, and therefore, the respondent's Brazil's property did not meet the requirements of RCW 8.24.015 and the respondents Brazil should not have been joined in this action by respondents Gunderson because of the Nappi v. Brazil order.

Further, the trial court's erroneous interpretation of RCW 8.24.015 requirements was not supported by case law:

"...all adjacent properties need to be part of the proceeding." R6, page 23, lines 4-6.

"So to a certain extent, the reason why they are here had nothing to do with the merits of Mr. Nappi's case against them. It was a requirement so that complete justice could be done in this case." R6, page 23, lines 7-10; AOB, page 38.

The trial court by adding new requirements to the statute was in effect "the trial court legislating from the bench."

"We cannot rewrite or modify the language of the statute under the guise of statutory interpretation or construction." Graham Thrift Group v. Pierce County, 75 Wn.App. 263, 877 P.2d 228, 230 (1994).

Therefore, the respondents Brazil's property did not contain a site for an easement of necessity.

**ISSUE: WAS APPEALANT PROHIBITED FROM
CROSSING OVER THE RESPONDENTS ROGERS'-
GUNDERSONS' PROPERTY**

The trial court incorrectly made the determination that the Rogerson v. Nappi order, CP 120-121, permanently enjoined the appellant from crossing over any part of the respondents Roger's property and therefore, the appellant was prohibited from crossing over the respondents Gunderson's property.

Respondents GB leans heavily on the false premise and misleading fact that appellant was barred from crossing over any part of the Rogers' property by the Rogerson v. Nappi Order of Permanent Injunction, CP 120-121, and intentionally avoids the clear understanding and meaning and interruption of the wording in the Order of Permanent Injunction that appellant "**has not been barred**" from using "**the legally described easement**" which is the 30 foot wide easement that runs north on the easterly most border of the Rogersons' property (Rogers and the Gunderson property)."

And the respondents Gunderson particularly present the same exact language from the Rogerson v. Nappi order in GB, at page 4:

"This injunction prohibits Amedeo Nappi.....from traveling across a road that crosses the Rogerson property, "**other than the legally**

described easement” which is the thirty (30) foot wide easement that runs north on the easterly most boarder of the Rogersons’ property.”

This **legally described easement**”, is the undeveloped recorded easement, and is the same 30 foot easement that respondent Gunderson directs the trial court to review in her affidavit dated February 24, 2004, CP 18, paragraph No. 8, drawn on CP 20, 30, and 31, which is located on the Rogers’ and Gundersons properties that borders the Brazils’ property.

The same undeveloped easement that respondent Gunderson suggests and offers to the trial court to consider as a site for the appellant to use as an easement to his landlocked property, CP 18, paragraph No. 8.

The trial court completely ignored the fact in the record that was presented by the appellant to the trial court of the respondents Gunderson’s offer to settle this matter long before this case became misrepresented, misunderstood, and confusing to the respondents Gundersons, their attorneys, Ms. Pearson and Mr. Tiffany, and to the trial court.

The **legally described easement**”, is same undeveloped easement that Mr. Tiffany stated to the court that appellant has a right to use/travel on. See AOB, page 20; R6, page 4-5, lines 23-25; 1-8; CP 212.

“That is right, your honor. The only point that Mr. Nappi tries to bring up is that there is a 30 – foot easement. I don’t know how long it has been in existence, but let’s just say it has always been there. But it’s on the very border of my client’s property, as well as Michael Rogers’ property. There is no road there. However, if Mr. Nappi chose to build a road, he probably does have that right.” See R

The Rogersons v.Nappi Order for Permanent Injunction (CP 120-121) describes an exception that is the same undeveloped easement, 30 foot undeveloped recorded easement, mentioned numerous times by all the parties and particularly by respondents that the appellant has the right to use/travel over the Rogers' property at paragraph No.3 as follows: CP 120-121; 212;

"This injunction prohibits Amedeo Nappi...from traveling on a road that crosses the Rogersons' property, other than the legally described easement which is 30 feet wide easement that runs north on the easterly most border of the Rogersons' (Rogers and Gundersons) property."

The trial court abused its discretion by erroneously interrupting the simply language in the terms and conditions of the Rogerson v. Nappi order which clearly did not prohibit the appellant from using the legally described easement which is 30 feet wide easement that runs north on the easterly most border of the Rogersons' (Rogers and Gundersons) property."

Anyone reading the Rogerson v. Nappi Order's exception could come to but one conclusion appellant can use/travel on the undeveloped legally described recorded easement on the Rogersons' (Roger and Gunderson) property. Thus, appellant was not restrained from moving the court to do so by Petition.

ISSUE: WAS THE APPELLANT'S PETITION FRIVOLOUS

The appellant informed the trial court that he originally petitioned to use the legally described recorded easement on the Rogers-Gunderson

properties and that the appellant would use the legally described recorded easement if the trial court would order it. See R3, page 15, lines 1-24.

RCW 4.84.185 provides: "In any civil action, the court having jurisdiction may, upon written findings by the judge that the action...was frivolous and advanced with out reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses. including fees of attornevs. incurred in opposing such action.

The respondents Gunderson numerous times requested the trial court to consider the undeveloped 30 foot legally recorded easement that runs across the Rogers and Gunderson properties and that is the same 30 foot easement mentioned in the Rogerson v. Nappi order, CP 120-121, for the appellant to use as a way of necessity to access his property. See AOB, pages 9; 15; 18; 20; 21; 22; 23; 24; 25; 26; 2728; 29; 30; CP 4; 7; 18, paragraph No. 8; 24, lines 3-4; 25, lines 2-3 and lines 7-9; 28; 30; 31; 73.

The trial court was informed by the appellant that he would use the legally described undeveloped easement that the respondents Gunderson had no objection to the appellant using. See R3, page 15, lines 23.

Thus, if any one of the claims asserted was not frivolous, then the action is not frivolous. Brigs v. Vail, 119 Wn.2d 129, 137, 830 P.2d 350 (1992). Tiger Oil Corp. v. Dept. of Licensing, 88 Wn.App. 925, 946 P.2d 1235, 1241 (1997).

The trial court had the following conversation with the appellant after dismissing the appellant's Petition. See R6, page 26, lines 6-13.

Nappi: You're dismissing mv case?
Court: I am.

Nappi: On the grounds that I have no right to an easement on the property?

Court: Correct.

Nappi: You did read the injunction.

Court: I did.

The trial court ignored case law, the statements from the appellant that he would use the legally described undeveloped easement, the numerous written facts filed in the record by respondents Gunderson naming the legally described undeveloped easement as an alternate route and the many verbal admissions by Mr. Tiffany at hearings that the appellant "could use and had the right to use" the legally described undeveloped easement on the Rogerson-Gunderson property which is listed the Rogerson v. Nappi order. See CP 120-121.

The statute requires that the action be frivolous in its entirety. Brigs v. Vail, 119 Wn.2d 129, 133, 830 P.2d 350 (1992). Tiger Oil, at 1241.

Therefore, reviewing the above facts the appellants petition for an easement was not frivolous.

ISSUE: DID CR 11 SANCTIONS APPLY TO THE APPELLANT OR THE RESPONDENTS GUNDERSON

The trial court stated it applied CR 11 sanctions against the appellant for the following reasons:

1. Mr. Nappi not being the record owner of the property. See R3, page 27, lines 8-13.

2. Mr. Nappi for joining the respondent Brazils as a necessary party. See R3, page 25, lines 16-18.
3. Mr. Nappi being permanently restrained from access over the Brazils' property. See R3, page 27, lines 8-13.
4. Mr. Nappi being permanently restrained from access over the Rogers-Gunderson's property. See R3, page 27, lines 8-13.
5. Mr. Nappi had no basis to believe that this Court would give him legal right to right-of-way over the Gunderson property. See R3, page 27, lines 8-13.

The record, CP 202-203, provides undisputed proof that the appellant has a vested interested in said property. The trial court had personal knowledge of the Land Purchase Sale Agreement, CP 202-203. See R3, page 21, lines 14.

The trial court by its statements inferred that from its knowledge the respondents Gunderson did not join the respondents Brazil it was the appellant. See R3, page 14-18.

There should be no question that the extensive record clearly shows the respondents Gunderson moved the trial court to join the respondents Brazil. See CP 97-98; 146-157; 180-184; R3, page 7, lines 8-12; R3, pages 7-8, lines 20-25 and lines 1-5; R3, page 8, lines 6-11; R3, page 9, lines 16-19.

The appellant was permanently restrained, CP 135-137, from claiming access over the respondents Brazil's property. The facts and record, herein, clearly demonstrates that the appellant did not violate the Nappi v. Brazil order by joining the respondents Brazil as a necessary party in this action, the respondents Gunderson joined the respondents Brazil.

The Rogerson v. Nappi order, CP 120-121, clearly states the appellant has the right to use/travel on the legally described undeveloped easement on the Rogers-Gunderson's property and, therefore, was not permanently restrained from access over the respondents Rogers-Gunderson's property.

The correct interpretation and reading of the Rogerson v. Nappi order's, CP 120-121, terms and conditions provided the appellant the right to petition the court for an easement on the Rogerson-Gunderson property.

The respondents Gunderson's motion to join the respondents Brazil as a necessary party was barred by the terms and conditions of Nappi v. Brazil order and case law pertaining to res judicata, collateral estoppel, and issue preclusion.

The trial court made the following revealing statements, ignoring the established facts on the record, ignoring being properly personally notified on numerous occasions that the respondents Gunderson joined the Brazils, showed reluctance to sanction the respondents Gunderson for their actions, and declared its bias and prejudice toward the appellant:

"...if I felt that the Brazils has been brought into this case by some misconduct on the part of the Gundersons or attempted to avoid responsibility on the part of the Gundersons, I would be sympathetic to that, but I don't see that in this case." R3, page 29, lines 6-11.

"...I see ...the Gundersonsas innocent party....." R3, page 29, lines 12-13.

The trial court demonstrated further bias and prejudice toward the appellant by reading the requirements of CR 11 into the record for the reasons it intended to sanction the appellant and not the respondents Gunderson. See R3, page 27-28, lines 14-25; 1-23.

The trial court chose to ignore the facts that the respondents Gunderson “motion to join” the respondents Brazil was in violation of CR 11.

The trial court ignored the facts that the respondents continually fabricated, under oath, that alternate routes existed that should be considered on the respondents Brazil’s property and on other parcels.

Appellant through discovery requested Cristy Gunderson to describe where the alternate routes she mentioned in her declarations and memorandums (CP 16-19; 21-25; 71-73; 77-80) for the appellant to use to satisfy the appellant’s Petition for the trial court to consider and received the following. See CP 206, Interrogatory No. 2.

“Through Mr. Brazil’s propertyDrawn on the map with dash lines, marked with an ‘A.’” See CP 197; 198; 199; 201, Answer to Interrogatory No. 2.

“We have done no research to determine alternate routes for Mr. Nappi to access his property.” See CP 167, Respondent’s Supplemental Answers, Interrogatory No. 2.

The appellant moved the trial court for an order to compel discovery against the respondents Gunderson because respondents Gunderson

continually delayed in providing complete answers to discovery requests.

The appellant tried numerous by letters before moving the trial court for an order to compel discovery. See CP 43-55; 199-200.

Respondents Gunderson stated that the three family private road maintenance agreement was not in written form:

“The ‘three family private road agreement’ is a verbal agreement. We cannot produce something that does not exist in written form.” See CP 168, Request for Production No. 3.

Then respondents Gunderson filed a declaration (CP 77-80) with the trial court and therein which showed that respondent Gunderson lied under oath in her answer to the appellant’s discovery request.

“...easement of necessity for use of a private driveway utilized by the Rogers/Gundersons/Krockers for access to their properties, originally formed by filing of the road maintenance agreement between the Krockers and Rogersons recorded July 23, 1980 under Auditor’s file No. 1117072.” See CP 78, paragraph No. 7.

The appellant specifically pointed out to the trial court that the respondents Gunderson “intentionally lied under oath” to the appellants discovery requests. See CP 86-87.

Appellant pointed out to the trial court that the respondents Gunderson’s response completely denied the facts alleged in his Petition (CP 41-42) when in fact the respondents Gunderson had knowledge that appellant’s property was landlocked, was located in Thurston County appellant was listed as the registered owner and all the parties that had an

interest in the parties properties were named in the Petition. See CP 17-18, paragraphs No. 3, 5, 6, and 9.

“Judicial discretion is a composite of many things, among which are conclusions drawn from objective criteria; it means a sound judgment exercised with regard to what is right under the circumstances and without doing so arbitrarily or capriciously.” Byerly v. Madsen, 41 Wn.App. 495, 704 P.2d 1236, 1238 (1985).

The trial court showed it bias and prejudice toward the appellant when it chose to ignore the facts that respondents Gunderson failed to answer the allegations in the appellant’s Petition truthfully, had described alternate routes over respondents Brazil’s and other’s properties, without any research as described above and intentionally lied in answering the existence of a written road maintenance agreement, and most importantly, that respondents Gunderson moved the trial court to join the respondents Brazil as a party.

ISSUE: WAS THE AWARD OF ATTORNEY’S FEES JUSTIFIED

The record shows that the respondents Gunderson had first hand knowledge regarding the Nappi v. Brazil case before the appellant filed his Petition on February 13, 2004. See CP 17, paragraph No. 6; 96, Answer to Interrogatory No. 9; 24, lines 25-26; 25, lines 2-3, 226, entry dated 1/30/2004.

The record shows that respondents Gunderson continually delayed in answering appellant’s discovery requests, in a voluntary and timely manner.

See CP 43-55: 167-168, dated August 24, 2004; and 197-201, 200, dated November 17, 2004.

The record shows that the respondents Gunderson had to supplement their answers to appellant's discovery requests. See CP 167-168; 228, entry dated 8/05/2004; 229, entries dated 10/11/2004, 10/21/2004; 230, entries dated 10/28/2004, 10/29/2004.

On October 26, 2004, Ms. Pearson's moved Judge Casey, ex parte, for the following orders: protective, shorten time, show cause and declarations. Judge Casey had no authority to hear any issues or sign any orders in this case because an affidavit of prejudice was filed against her on February 17, 2004. See CP 15; 56-65; 229, entries 10/25/2004, 10/26/2004; 230, entries dated 10/27/2004, 10/28/2004, 10/29/2004.

The record shows that on February 2, 2004, the respondents Gunderson's attorney did the initial research with regard to the Nappi v. Brazil case regarding the principles of res judicata and collateral estoppel and existing case law which should have been more than sufficient notice that the respondents Brazil were not a necessary party to this action and preclude the need for further research and the expense of attorney fees on this issue. See CP 226, entries dated 2/02/2004; 2/17/2004; 2/20/2004.

The declaration of respondent Gunderson and Ms. Pearson's memorandum were replete with misrepresentations and statements and allegations that did not have any facts or research to support them. See CP 18, paragraphs No. 9, 11, 12; 226, entry 2/23/2004.

Respondents Gunderson moved the trial court to join the respondents Brazil as a necessary party in violation CR 11, case law pertaining to res judicata and collateral estoppel, and violating the terms and conditions of Nappi v. Brazil order.

The trial court in granting the respondents Gunderson's motion to join the respondents Brazil as a necessary party set into motion numerous needless expenditures by respondents Gunderson's attorney. See CP 230, entry dated 12/10/2004, 12/30/2004, 01/03/05, 01/05/05; 231, entry dated 01/14/2005, 01/18/2005, 01/19/2005, 01/21/2005, 02/04/2005, 02/08/2005; 232, entries dated 02/18/2005, 05/26/2006, 05/29/2006, 06/01/2006, (2) 06/02/2006, 06/07/2006, 06/14/2006, 06/23/2006, 07/07/2006; 233, entries dated (3) 07/10/2006, 07/11/2006, (3) 07/12/2006, (2) 07/13/2006, 07/17/2006, 07/21/2006, 07/27/2006, (2) 07/28/2006, 07/31/2006; 234, entries dated 08/03/2006, 08/04/2006, 09/27/2006, 09/29/2006, 10/03/2006, 10/05/2006, (3) 10/06/2006, 10/12/2006.

On November 3, 2006, the trial court inquired of the appellant what amount for attorney fees should be awarded the respondents Gunderson and the appellant provided notice to the trial court again that the respondents Gunderson misjoined the respondents Brazil and regarding the needless expense of respondents Gunderson's attorney fees after joining the respondents Brazil and the trial court responded three times that it had read the appellants brief and materials:

Court:Would you have a problem with the amount that they are requesting? See R3, page 18, lines 19-20.

Nappi: I asked about a recorded maintenance agreement. Ms. Gunderson flatly said, we don't have one; it's not in writing.... See R3, page 19, lines 14-25.

Nappi: Well, in my brief, I filed a quite extensive issue. There has been no good faith on the parts of the Gundersons. See R3, pages 18-19, lines 24-25, 1.

Court: What should the amount be? See R3, page 19, lines 2.

Nappi: Should be nothing, because they created this mess. If you look in that file, it is a pretty extensive file. I have filed a few more things. They have gone out and totally supported by their attorney, who knew these were lies and fabrications. See R3, page 19, lines 3-9.

Nappi: Well, if you read my brief - - See R3, page 22, lines 11-12.

Court: I did. See R3, page 22, lines 13.

Nappi: Well, they (Gundersons) have continually lied and fabricated things. There is no easement on the Brazils' property. That was litigated, and they kept saying there was an easement. Every one of the documents and attorneys (Ms. Pearson) affidavits says there is an easement across the Brazil's property. I explicitly asked them (Gundersons) to direct me to all the easements they have. She (Cristy Gunderson) filed a map. It's in there. She showed three on the Brazils' property knowing there was no easement on the Brazils'. It has been litigated. So they have continually done this. They have made that an issue every second. They have lied about everything. I can enumerate, keep going, but I have filed document after document explaining it to you. See R3, pages 22-23, lines 14-24, 1-6.

Court: I have read your materials. See R3, page 23, lines 6-7.

Nappi: I can't do much more that, your Honor. They (Gundersons) have blatantly lied. They have disrespected this Court in that matter. See R3, page 23, lines 8-11.

Nappi:and they (Gundersons) have done this blatantly here time and time again. See R3, pages 24, lines 4-5.

Nappi: I mean from the very moment that they (Gundersons) filed the February 24th brief or affidavit, the Gundersons said the easement

exists on Brazil's property, and they know that is not the case. See R3, page 24, lines 6-9.

Nappi: Like I say, they (Gundersons) should be sanctioned for this, your Honor, not awarded. They (Gundersons) created this mess. This mess would have been simply resolved many, many months ago, particularly, the joining after December of '05. In January, they (Gundersons) filed this brief, and you know I opposed that, and I didn't want to serve these people (Brazils), and you threatened me to do that. See R3, page 24, lines 12-20.

Court: I understand.... See R3, page 24, lines 21-22.

The appellant provide the trial court with specific facts that the respondents Gunderson and their attorney, Ms. Pearson had fabricated and continued to support that violated CR 11 and the trial court again, showed it bias and prejudice by ignoring the appellant's verbal and written information supported by the record.

The appellant, herein above, as carefully pointed out to the court the attorneys fee charges by Mr. Tiffany that were related to the Nappi v. Brazil case and all the costs related thereto that were unnecessary before and after the joining of the respondents Brazil as a party that should not be awarded to the respondents Gunderson.

ISSUE: RESPONDENTS BRAZIL'S ATTORNEY'S FEES

BB supports the trial record and the appellant that the respondent's Gunderson filed a declaration, motion-memorandum and order with the trial court joining the respondents Brazil as a necessary party. See BR, page 1-3 6-9.

BB argues that respondents Gunderson and Ms. Pearson should have been found liable for the respondents Brazil's attorney's fees because they had prior knowledge that the respondents Brazil should never have been joined in this action by the respondents Gunderson See BR, page 5-9; CP 182-184.

There is no evidence in the trial record that points to the appellant having caused the respondents Brazil to become a party to the current action.

Therefore, for the reasons described herein the respondents should be held liable for all of respondents Brazil's attorney's fees.

ISSUE: DID THE APPELLANT PRESENT AN ISSUE OF FIRST PRESSION TO THE TRIAL COURT

The respondents Gunderson's driveway could be considered a legal easement because of the prescriptive time the Krockers, Sturdevants, and Gunderson's have used it, Krockers from 1971 to present; Sturdevants from approximately 1975 to 1987; Gundersons from 1987 to present, by affidavit. See CP 78, paragraph No. 7.

The Rogers/Gundersons/Krockers private road maintenance agreement is filed with the Thurston County Auditor's Office and thus could be considered a legal notice of an easement to the public.

Washington case law requires at least ten years for a prescriptive easement to be established but this is not required because the parties have filed a written agreement as to the use, maintenance and location of the road

in the public record. Causing notice to the public that this particular road is being used as an easement by the three (3) parties as their easement for ingress and egress to their respective properties.

“As this appeal raised debateable issues of first impression concerning the jurisdiction elements of an appeal under the Pierce County Code, respondent’s request for attorney fees for a frivolous appeal is denied.” See Graham Thrift Group v. Pierce County, 75 Wn.App. 263, 877 P.2d 228, 231 (1994).

Therefore, the appellant presented an issue of merit with regard to the easement being used by the respondents Gunderson to access their property could be considered a legal easement.

ISSUE: DOES THE TRIAL COURT’S ORDER FINDINGS SUPPORT THE CR 11 SANCTIONS

The two (2) orders signed by the trial court contained findings that did not support the record as to the CR 11 attorney’s fees sanctions imposed and awarded by the trial court against the appellant. See CP 243-245, 247-248.

First the court need not enter findings when the request for CR 11 sanctions is rejected. It is the decision to impose the sanction that must be supported by the record. Skimming v. Boxer, 119 Wn.App. 748, 82 P.3d 707,711 (2004).

CP 243-245, the respondents Gunderson’s order, lacks any mention of the CR 11 sanctions imposed by the trial court or mention of any type of sanctions for attorney fees against the appellant.

CP 247-248, the respondents Brazil's order, under "Findings" mentions the "fees are awarded under CR 11" but fails to communicate which fees and any specific reason for the award of fees against the appellant.

Further, CP 248, Findings, lines 7-8, that:

James E Brazil was added as a defendant in this action due to his status as a property owner."

This fact is correct, but is misleading as to the inference that the appellant being the perpetrator that joined the respondents Brazil as a necessary party; the record clearly shows respondents Gunderson motioned the trial court. See CP 97-98.

Therefore, the orders signed by the trial court do not meet the basic requirements pursuant to Skimming v. Boxer above.

THE COUR PLEASE TAKE NOTICE: Respondents Gunderson's order states that it was seeking the following relief: (3) That the Court enter a Permanent Injunction prohibiting the Plaintiff Nappi to access his property using Defendants Gundersons' and Rogers' property except to the extent that an express, **effective 30 foot easement exists for Nappi's benefit along the northern most boundary of Gundersons' property.** See CP 244.

The respondents Gunderson's order (CP 243-245) again supports the only reasonable understanding of the terms and condition that the appellant can use/travel on the legally recorded easement over the respondents Gunderson's property. This adds further weight to the correct meaning of the terms and conditions in the Rogerson v. Nappi order (CP 120-121, paragraph

No. 3.) that the appellant has the right to use/travel on the “legally described easement” that crosses over the Rogers-Gunderson’s property.

CONCLUSION

Therefore, the above argument and the facts in the record and particularly, Nappi v. Brazil order (CP 135-137) support that the principle of res judicata legally prohibited respondents Gunderson from joining the respondents Brazil as a necessary party; the Rogerson v. Nappi order (CP 120-121) did not prohibit the appellant from using/traveling on the legally described easement on the Rogers/Gundersons property; and the respondents Gunderson’s declaration, motion and order (CP 71-76; 77-82; 97-98) prove that the respondents Gunderson joined the Brazils as a necessary party; the award of any attorney’s fees to the respondents Gunderson were not justified because of their actions in this case as described herein above and that most of the respondents Gunderson’s attorney’s fees were needless because of the respondents Gunderson joining the respondents Brazil as a party and other actions described herein; and the respondents Brazil’s attorney’s fees should be paid by the respondents Gunderson for making the respondents Brazil a party to this action; respondents Gunderson and Ms. Pearson should be sanction under CR 8, CR 37 and CR 11 for the above reasons stated herein above and Mr. Tiffany should be sanction under CR 11 for failing to inform the trial court and the Court of Appeals that his clients, the Gundersons,

joined the Brazils; and Mr. Tiffany's baseless argument on appeal that the respondents Brazil were as much a necessary party to the action as his clients the respondents Gunderson; and the appellant is entitled to an award under CR 11 against the respondents Gundersons for their actions in this matter and for causing this appeal to be filed as described herein above; respondents Gunderson should pay for the respondents Brazil's attorney's fees for defending this appeal; and the appellant is entitled to an award of his appeal costs and expenses; and the above demonstrates that the trial court showed its bias and prejudice toward appellant by its actions, the orders issued by the trial court reversed for the above reasons and this matter should be remanded back to the Thurston County Superior Court before an impartial judge and set for trial to resolve the pending issues.

Respectfully Submitted this February 24, 2008.


Amedeo Nappi, appellant/petitioner

COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

AMEDEO NAPPI,)
Appellant,) NO. 36487-5 II
)
vs.) DECLARATION OF AMEDEO NAPPI
)
CRISTY A. GUNDERSON, et al,))
Respondents.)

I, Amedeo Nappi, am competent to testify to the following facts from personal knowledge.

I am the appellant in the above entitled action. I own the property that I petitioned the trial court for an easement of right of way of necessity. My contract was filed in the record and presented to the trial court. See CP 202-203; Transcript of November 3, 2007

I do not own or have I ever owned or had any interest in the undeveloped 30 foot easement that in on the northern 30 feet of property owned by respondents Rogers and Gunderson as stated in respondents Gunderson's Brief, herein GB, at page 1.

The following statement from GB, page 1, is in correct and misleading:

"...appellant, by filing the present matter, attempted for a third time to gain a legal right to access his parcels through existing driveways/roads"

Rogersons sued me over using a portion of their property down by the common easement that all four properties, Rogersons, Gundersons, Krockers and Nappis, used at the time to access their parcels from the county road. This portion of property did not interfere with or contain any part of the Gunderson, Rogers, and Krocker driveway on CP 30.

This issue arose because none of the existing land owners had ever had their properties surveyed until appellant purchased his (10) ten acres. The Rogersons, Gundersons, and Krockers driveway was originally intended to be placed on the location of the recorded easement, but was not. Thus, appellant assumed that the driveway was in the right location and utilized the area of property until appellant obtained a survey of surrounding properties.

There was never any claim by me for any easement in the Rogerson v. Nappi case. At that time, I had access to my (10) acres. It was after the (10) acres were divided between my ex-wife and me that the issue of an access easement to my (5) five acres of property became an issue. .

This is the second time I have been involved in a case involving an easement. Nappi v. Brazil involved an implied easement. Rogerson v. Nappi did not involve any claim to an easement.

There is no evidence in the trial court record that the I never attempted a third time to gain access to my property by an existing driveway/road.

In the Nappi v. Rogerson case, the jury award for damages to the Rogersons was \$1.

Respondent Brazil's brief, at page 2, states the following:

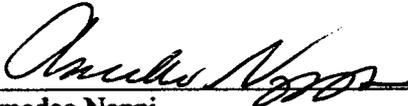
"Brazil, not yet having been notified of his potential joinder to this action, was not present to represent to the court that this matter was res judicata as to his property by prior litigation."

The above statement is false. On or about December 2006 and April 2007, I notified the court, on the record at hearings, that I had talked to Mr. Brazil regarding the respondents Gunderson motion to join him as a necessary party. Further after Mr. Brazil was joined, I informed Ms. Stickler, respondent Brazil's attorney, that I had informed respondents Brazil of the respondents Gunderson's motion to join respondent Brazil before the trial court signed the respondents Gunderson's Motion to join Brazil as a necessary party and after the court signed the order to join the Brazils.

I personally notified respondent Brazil's attorney, Ms. Stickler, that I had talked with her clients the Brazils about the respondents Gunderson motion to join them as a necessary party prior to the trial court signing the order. And I had informed the trial court that the Brazils did not want to be a party.

I did not motion the trial court to join the respondents Brazil in this current action. I opposed the joining of the Brazils in this action.

I state under the penalty of perjury and the laws of Washington State that the following is true and correct.



Amedeo Nappi

Done this 24th day of February, 2008, Olympia, Washington.

FILED
COURT OF APPEALS
DIVISION II

08 FEB 26 PM 2:57

STATE OF WASHINGTON
BY E DEPUTY

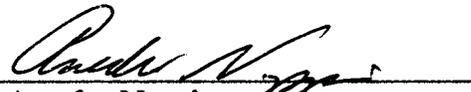
IN THE COURT OF APPEALS FOR WASHINGTON STATE
DIVISION II

AMEDEO NAPPI,)
) Appellant,) NO. 36487-5-II
v.)
) DECLARATON OF
CRISTY A. GUNDERSON AND JOHN DOE GUNDERSON,) SERVICE
Husband and wife; et al,)
)
) Respondents.)

I DECLARE:

1. I am over the age of 18 years, and I am the petitioner in this action.
2. I served the following parties by fax with a complete true copy of Appellant's Reply Brief
3. The date, time and place of service:
February 24, 2008, 11:29 p.m., Heritage Savings Bank: Blake Lindskog
February 24, 2008, 11:11 p.m., Michael Rogers
February 24, 2008, 10:57 p.m., Daniel Tiffany, attorney for Gundersons
February 24, 2008, 11:35 p.m., Eagle Home Mortgage, Inc: Jean Knight
February 24, 2008, 11:50 p.m., Mary Ann Stickler, attorney for Brazils
4. Service was made pursuant to RAP Rule 5.4(b): Delivered by fax

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


Amedeo Nappi

Done this 25th day of February, 2008, at Olympia, Washington.