

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

No. ~~35939-1-II~~

37022-1-II

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WILLIAM A. LOONEY,

Plaintiff/Appellant

vs.

PIERCE COUNTY, a political subdivision of the State of Washington,  
KEN MADSEN, Pierce County Treasurer; and CLIFFORD M.  
BILLINGSLEA,

Defendants/Respondents

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

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**BRIEF OF RESPONDENT BILLINGSLEA**

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## I. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

A. Was Mr. Looney's case properly dismissed where Mr. Looney failed to pay, tender, or plead that he paid or tendered to Mr. Billingslea the amounts paid by Mr. Billingslea at the foreclosure sale? Assignments of Error 1, 3-9.

B. Was Mr. Looney's case properly dismissed where the record owner of the property at the time of the foreclosure sale was Lorraine Lane, who was deceased; where there was no evidence or proof as to who Ms. Lane's heirs or devisees were; and where Mr. Looney obtained a quitclaim deed to the subject property from individuals who were not in the chain of title with Ms. Lane? Assignments of Error 1, 3-9.

C. Was Mr. Billingslea properly awarded attorney fees and costs where the trial court found that there were no disputed facts, that Pierce County followed all proper procedures in conducting the foreclosure sale, that Mr. Looney did not personally tender the funds to cure or send someone with proof of agency to do so on his behalf, that Mr. Looney presented no competent evidence that the individuals who gave him the quitclaim deed were vested with ownership of the subject property, and that Mr. Looney's claims were therefore frivolous and advanced without reasonable cause? Assignments of Error 2, 10-13, 15.

D. Was Mr. Billingslea properly awarded attorney fees and costs when Mr. Looney attempted to redeem the subject property from the tax foreclosure without following the proper statutory procedures for doing so, and the subsequent litigation resulted in Mr. Billingslea being sued by Pierce County? Assignments of Error 2, 14.

E. Is Mr. Billingslea entitled to an award of fees and costs on appeal?

## II. STATEMENT OF THE CASE

On December 5, 2005, Mr. Billingslea was the successful bidder at a tax foreclosure sale of property commonly known as 3586 East Howe Street in Tacoma, Washington. CP 58, 70. At the time of the sale, the property was owned by Lorraine E. Lane. CP 98, 101. Apparently Ms. Lane passed away on October 3, 2003. CP 48. Prior to the tax foreclosure sale the property was abandoned and used as a manufacturing site for methamphetamines. CP 59, 68-89, 91-92.

A week or two after purchasing the property, while doing research in the Pierce County Auditor's office, Mr. Billingslea came across a deed for the property dated December 1, 2005. CP 46, 58. The deed was from Lee Ann Lane, Shelley R. Cummings, Sheryl Lynn Garrett, and Sandra Lee Teeter as grantors, to Willaim A. Looney as grantee. CP 46. Mr.

Billingslea did not know about this deed until after he purchased the property at the tax foreclosure sale. CP 58:7-11.

Mr. Looney claims that Lee Ann Lane, Shelly R. Cummings, Sheryl Lynn Garrett, and Sandra Lee Teeter are the surviving daughters of Lorraine Lane. CP 48. However, the estate of Lorraine Lane was never probated or administered. CP 22:3-4; CP 33:3. There is no deed of record from Lorraine Lane to any of her four alleged daughters, or anyone else. CP 98-110.

Three days before the tax foreclosure sale Mr. Looney sent a representative to the Pierce County Assessor-Treasurer's Office to tender a payoff for the delinquent taxes. CP 48. Mr. Looney's representative did not take with her any proof that she was in fact Mr. Looney's representative. CP 35. Mr. Looney's representative did not take with her any proof that Mr. Looney acquired title to the property from anyone with a recorded interest in the property. CP 35. The Assessor-Treasurer rejected the tender and proceeded with the tax foreclosure sale. CP 35.

Mr. Looney commenced suit against Pierce County and its Assessor-Treasurer on January 19, 2006, seeking to set aside the foreclosure sale or for damages. CP 1-5, 150-152. Pierce County then sued Mr. Billingslea. CP 10-15. Mr. Looney did not tender any funds to

Mr. Billingslea or Pierce County prior to commencing suit. CP 16-17, 59.

Mr. Looney did not allege in his pleadings that he tendered funds to Mr. Billingslea or Pierce County prior to commencing suit. CP 1-5, 150-152.

Mr. Looney did not file a pre-claim notice with Pierce County prior to commencing suit. CP 38-39. At a summary judgment motion on December 15, 2006, all of Mr. Looney's claims were dismissed. CP 111-117. Approximately one month later, the court awarded Mr. Billingslea fees against Mr. Looney on the basis that Mr. Looney's claims were frivolous or advanced without reasonable cause, and because Mr. Looney's actions involved Mr. Billingslea in litigation with Pierce County. CP 139-142. This appeal follows.

### **III. ARGUMENT**

**A. MR. LOONEY'S CASE WAS PROPERLY DISMISSED BECAUSE MR. LOONEY FAILED TO TENDER, OR PLEAD THAT HE TENDERED, PAYMENT TO MR. BILLINGSLEA OF AMOUNTS PAID BY MR. BILLINGSLEA AT THE FORECLOSURE SALE.**

Prior to commencing an action for the recovery of property sold at a tax foreclosure sale, the Plaintiff must tender, and plead that he or she tendered, all taxes, penalties, interest, and costs paid by the purchaser at the tax foreclosure sale. RCW 84.68.080, 84.68.090 and 84.68.100. RCW 84.68.080 provides:

Hereafter no action or proceeding shall be commenced or instituted in any court of this state for the recovery of any property sold for taxes, unless the person or corporation desiring to commence or institute such action or proceeding shall first pay, or cause to be paid, or shall tender to the officer entitled under the law to receive the same, all taxes, penalties, interest and costs justly due and unpaid from such person or corporation on the property sought to be recovered.

RCW 84.68.090 provides:

In all actions for the recovery of lands or other property sold for taxes, the complainant must state and set forth specially in the complaint the tax that is justly due, with penalties, interest and costs, that the taxes for that and previous years have been paid; *and when the action is against the person or corporation in possession thereof that all taxes, penalties, interest and costs paid by the purchaser at tax-sale, the purchaser's assignees or grantees have been fully paid or tendered, and payment refused.*

(emphasis added). Finally, RCW 84.68.100 provides:

The provisions of RCW 84.68.080 and 84.68.090 shall be construed as imposing additional conditions upon the complainant in actions for the recovery of property sold for taxes.

Mr. Looney admits that he failed to comply with any of the requirements provided in RCW 84.68 for commencing this action. CP 16-17, 59. He admits that he did not tender payment of taxes, penalties, interest and costs to Mr. Billingslea or Pierce County prior to commencing the underlying action. CP 16-17, 59. He also did not allege in his

pleadings that he tendered payment. CP 1-5, 150-152. Mr. Looney was on notice of these defects in his case. CP 8, 12-14, 16-17, 19, 42-43.

Because Mr. Looney failed to comply with the requirements of RCW 84.68 prior to commencing suit, his claims were properly dismissed. On this basis alone the trial court's decision can and should be affirmed.

B. THE TRIAL COURT PROPERLY DISMISSED MR. LOONEY'S CLAIMS BECAUSE THERE IS NO EVIDENCE WHO THE HEIRS OR DEVISEES OF LORRAINE LANE ARE, AND THE INDIVIDUALS WHO GAVE MR. LOONEY A QUITCLAIM DEED WERE NOT IN THE RECORDED CHAIN OF TITLE WITH LORRAINE LANE.

An individual wishing to cure tax delinquencies prior to a tax foreclosure sale must have a *recorded* interest in the subject property. RCW 84.64.060. In the present case Mr. Looney claims he had a recorded interest in the subject property because he received a quitclaim deed from four individuals purporting to be Lorraine Lane's heirs. He relies upon RCW 11.04.250 to argue that the four purported heirs were immediately vested with ownership of the property upon Lorraine Lane's death. However, at the time of the tax foreclosure sale, the four purported heirs had no recorded interest in the subject property. CP 98-110. Because the four purported heirs had no recorded interest in the subject property, Mr. Looney's deed from them is what might be called a "wild deed" since it

was not in any chain of recorded title deriving from Lorraine Lane.

Mr. Looney argues that he is aware of the proviso in RCW 11.04.250 that, "... no person shall be deemed a devisee until the will has been probated." RCW 11.04.250; *See also In re Wiltermood's Estate*, 78 Wn.2d 238, 472 P.2d 536 (1970). Mr. Looney then proceeds to argue that the statute does not prevent any such heirs (even though they have not been deemed such) from selling their interest in the property. Brief of Appellant, page 8. This assertion is contrary to the rule that heirs cannot treat estate real property as their own until the estate is closed. *In re Estate of Jones*, 152 Wn.2d 1, 14, 93 P.3d 147, (2004); *In re Peterson's Estate*, 12 Wn.2d 686, 734, 123 P.2d 733 (1942). To this date, there has been no determination that the four purported heirs/devisees are in fact heirs or devisees, because there has been no probate or estate administration as required by the statute. CP 48; RCW 11.04.250. Further, any interest the four purported heirs had in the subject property (as well as any interest Mr. Looney may have derived from them) was extinguished by the tax foreclosure sale. *Wilson v. Korte*, 91 Wn. 30, 33, 157 P. 47 (1916).

Although title "vests" in the heirs/devisees upon a decedent's death, there must be some sort of probate or estate administration in order to legally determine in whom title vested.

RCW 11.04.250; *In re Schmidt's Estate*, 134 Wn. 525, 236 P. 274 (1925); *see also* RCW 11.28.330 (procedure for adjudicating testacy, or intestacy and heirship if there is no other estate administration). In *Balch v. Smith*, La Fayette Balch died intestate and owning real estate. *Balch v. Smith*, 4 Wn. 497, 30 P. 648 (1892). Plaintiffs claimed to be the heirs of Ms. Balch, and they sought to recover possession of the real estate and to have title quieted in them. *Balch v. Smith*, 4 Wn. 497, 498-499, 30 P. 648 (1892). There was nothing in the complaint showing that the estate had been administered, or had already been concluded. *Id.* at 499. The Washington Supreme Court addressed the plaintiffs' contention that they were the decedent's heirs, stating,

. . . as a general rule, the allegation that several persons plaintiff are the heirs at law of the ancestor *is not sufficient to establish the fact*, even prima facie, that as such heirs they are jointly interested in the property to be recovered, and entitled jointly to maintain an action therefore. The general and ordinary rule would be that each heir would receive by the adjudication of the probate court a certain specific part of the estate of his ancestor, and he alone would be interested in and entitled to maintain an action therefore.

*Id.* (emphasis added).

Put a little bit differently, the current statute on this subject provides, "... no person shall be deemed a devisee until the will has been

probated.” RCW 11.04.250; *In re Wiltermood’s Estate*, 78 Wn.2d 238, 472 P.2d 536 (1970). In discussing the same language in the previous version of this statute, the Schmidt court observed,

The vesting of title is the existence of a fact, which is different from the proof of the fact.... It furnishes the adjudication of the fact and relates back to the time that the statute says the title shall vest. The proviso is ‘that no person shall be deemed a devisee until the will has been probated.’.... That is, the probating of the will is not necessary for the passing of the title or providing a devisee, **but as proof** of that kind provided for by the statute as to who shall be deemed to be the person in whom title was vested immediately upon the death of the testator.

*In re Schmidt’s Estate*, 134 Wn. at 528 (emphasis added).

The Washington Supreme Court in *Schmidt* stated, “It is certainly true . . . that, in order that title and the right of possession may be shown in a claimant as devisee under a will, the will under which the title is asserted must be admitted to probate in order to its admissibility as evidence.” *In re Schmidt’s Estate*, 134 Wn. 525, 529, 236 P. 274 (1925); citing *Tillson v. Holloway*, 90 Neb. 481, 134 N.W. 232 (1912). The probating of the will is necessary to prove who shall be deemed to be the person in whom title was vested. *Id.* at 528.

Certainly, if an order of the court is required to determine in whom title has vested as devisees under a will, the *administration* of an intestate

decedent's estate is even more necessary to determine the heirs, since no will exists naming said beneficiaries. In the present case, Mr. Looney alleges that the decedent's heirs quitclaimed their interest in the property to Mr. Looney. In fact, the only evidence in the record about who Lorraine Lane's heirs may be is Mr. Looney's own conclusory statement that,

I began some additional research in order to determine if Ms. Lorraine Lane had any heirs. Lorraine E. Lane was survived by four daughters: Lee Ann Lane, Shelley R. Cummings, Sheryl Lynn Garrett and Sandra Lee Teeter.

CP 48 (paragraph 3). This statement is insufficient to prove who Ms. Lane's heirs are. For all we know there could have been a will in which Ms. Lane left all her estate to charity. In any event, Mr. Looney certainly has not demonstrated that the four individuals Mr. Looney thinks are Ms. Lane's daughters are in fact her heirs.

Mr. Looney was given a quitclaim deed by people that Mr. Looney *claims* are Ms. Lane's heirs. Whether Mr. Looney received any interest in the property from the "heirs" of the decedent is a legal conclusion, which can only be decided by a probate court (or court administering an intestate estate). Therefore, it is undetermined whether Mr. Looney has a recorded interest in the Property.

Mr. Looney's argument that he can now provide proof in the underlying case would require application of the doctrine of "relation back." Brief of Appellant, page 10. However, the doctrine of relation back, "is a legal fiction invented to promote the ends of justice.... It is never allowed to defeat the collateral rights of third persons, lawfully acquired." *In re the Estate of Baird*, 131 Wn.2d 514, 519, 933 P.2d 1031 (1997) (citations omitted). Further, at the time of the attempted redemption by Mr. Looney, Pierce County had no way of knowing who Ms. Lane's heirs were. CP 98-110. Pierce County could only rely upon the recorded documents showing Ms. Lane was vested with title. *Id.*; RCW 84.64.060.

At this point in time, in the absence of the administration of the decedent's estate, it has yet to be proven whether Mr. Looney has a "recorded *interest* in the property," which is required by RCW 84.64.060 to make a pre-sale redemption payment. It is clear the alleged "heirs" never had a recorded interest since Looney admits title was of record in the name of Lorraine E. Lane just before he obtained his deed. CP 150. In the meantime, Pierce County lawfully conveyed the Property to Mr. Billingslea, pursuant to a tax foreclosure sale. One who purchases property at a tax foreclosure sale is prescribed by Washington law as

having new and untouchable title. The Supreme Court of Washington has held,

The regular foreclosure of such a [general tax] lien as was concededly had against this lot . . . vests in a purchaser at a sale held under such foreclosure *a new title independent of all previous titles or claims of title to the property.* Manifestly, *both record and possessory title are equally absolutely destroyed by such a foreclosure.*

*Wilson v. Korte*, 91 Wn. 30, 33, 157 P. 47 (1916) (emphasis added).

Deeds executed by the county treasurer are prima facie evidence in all controversies and suits in relation to the right of the purchaser to the real property thereby conveyed, that the real property conveyed had not been redeemed from the sale as of the date of the deed. RCW 84.64.180.

Therefore, the trial court property dismissed Mr. Looney's claims and its decision should be affirmed.

C. MR. BILLINGSLEA WAS PROPERLY AWARDED ATTORNEY FEES AND COSTS AGAINST MR. LOONEY PURSUANT TO RCW 4.84.185 BECAUSE THE UNDISPUTED FACTS AT SUMMARY JUDGMENT WERE THAT PIERCE COUNTY CONDUCTED A VALID TAX FORECLOSURE SALE, MR. LOONEY DID NOT PROPERLY TENDER TAXES OWING, AND THERE WAS NO EVIDENCE MR. LOONEY RECEIVED TITLE FROM ANY RECORD OWNERS OF THE PROPERTY AT ISSUE.

Mr. Billingslea was entitled to an award of fees and costs because Mr. Looney's claims were not supported by a rational argument of the law

or facts. On appeal Mr. Looney argues that there are “minimal findings” of fact to support an award of fees and costs, and that Mr. Billingslea must demonstrate Mr. Looney’s suit was motivated by spite, nuisance or harassment. Brief of Appellant, pages 12-14. However, there were substantial findings by the court, both in the order granting fees, and the order granting summary judgment. Further, no finding of spite, nuisance or harassment is required to award fees, although such a finding may be supported by the record in this case.

RCW 4.84.185, provides as follows:

In any civil action, the court having jurisdiction may, upon written findings by the judge that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in opposing such action, counterclaim, cross-claim, third party claim, or defense. This determination shall be made upon motion by the prevailing party after a voluntary or involuntary order of dismissal, order on summary judgment, final judgment after trial, or other final order terminating the action as to the prevailing party. The judge shall consider all evidence presented at the time of the motion to determine whether the position of the nonprevailing party was frivolous and advanced without reasonable cause. In no event may such motion be filed more than thirty days after entry of the order.

The provisions of this section apply unless otherwise specifically provided by statute.

RCW 4.84.185. An action is frivolous or advanced without reasonable cause if the non-prevailing party's position cannot be supported by a rational argument of the law or facts of the case. *Forster v. Pierce County*, 99 Wn. App. 168, 991 P.2d 687, *review denied*, 141 Wn.2d 1010 (2000). RCW 4.84.185 authorizes the imposition of an award against a "nonprevailing party" of attorney fees and costs incurred by the prevailing party in opposing any action, claim, or defense that is frivolous and advanced without reasonable cause. *Havsy v. Flynn*, 88 Wn. App. 514, 945 P.2d 221 (1997).

There was no dispute as to the facts in this matter, much less a dispute as to material facts. At summary judgment the trial court entered sixteen findings of undisputed facts. CP 113-116. These findings were either incorporated by reference or re-stated in the order awarding fees. CP 139-142. Mr. Looney admitted he sent a representative to tender unpaid taxes without proof of that representative's agency. Mr. Looney did not dispute that there was never a judicial determination as to who the heirs or devisees of Ms. Lane's estate were. Mr. Looney never disputed that there was no document of record showing who Ms. Lane's heirs or devisees were. Consequently, he was not in the chain of title with Ms. Lane.

The law in this case was also not in dispute. The statute setting forth the requirements for redemption clearly required that the person tendering payment have both a recorded interest, and if the person tendering did not have a record interest, some notarized proof of agency must be presented. RCW 84.64.060. It was undisputed that Mr. Looney was not the person who tendered unpaid taxes, and that the representative he sent to pay on his behalf did not have proof of agency with her as required by statute. There was no interpretation of the statute required to determine that he did not comply with the law when he attempted to redeem the property from sale. It is also undisputed that he did not have an interest in the property since there had never been a legal determination as to who Ms. Lane's heirs or devisees were. It is true, that as Mr. Looney argues, just because the plaintiff loses the case, the case is not necessarily frivolous. Brief of Appellant, page 12. But in the present case Mr. Looney did not advance any set of facts, or make any rational argument about the law, that could have conceivably led to a different result.

Finally, Mr. Looney's argument that spite, nuisance or harassment must be proven to support an award of fees is not supported by case law. The case that Mr. Looney relies upon, *Biggs v. Vail*, 119 Wn.2d 129, 830 P.2d 350 (1992), only addressed the issue of whether an entire case must

be frivolous, or whether simply asserting some frivolous claims justifies an award of fees. It does not stand for the proposition that the court must also find spite, nuisance or harassment as a motivating factor. Rather, the law defines a frivolous case as one in which the non-prevailing party's position cannot be supported by a rational argument of the law or facts. *Forster v. Pierce County*, 99 Wn. App. 168, 991 P.2d 687, review denied, 141 Wn.2d 1010 (2000). The findings entered in this case support such a conclusion, the facts submitted support such findings, and Mr. Looney has failed to demonstrate that the court abused its discretion in making those findings. Therefore the trial court's award of fees and costs to Mr. Billingslea should be upheld.

D. THE TRIAL COURT PROPERLY AWARDED MR. BILLINGSLEA ATTORNEY FEES AND COSTS PURSUANT TO THE ABC RULE BECAUSE MR. LOONEY'S ATTEMPT TO REDEEM THE PROPERTY FROM SALE WITHOUT FOLLOWING THE PROPER PROCEDURES AND SUBSEQUENT LAWSUIT AGAINST PIERCE COUNTY LED TO MR. BILLINGSLEA BEING SUED BY PIERCE COUNTY.

It was proper to award Mr. Billingslea attorney fees and costs under the "ABC Rule" because Mr. Billingslea was in no way connected with Mr. Looney's attempt to redeem the property from the tax foreclosure sale, had no knowledge of any such attempt to redeem, and yet he was sued by Pierce County due to the actions of Mr. Looney.

The “ABC Rule” provides, “...where the acts or omissions of a party to an agreement or event have exposed one to litigation by third persons... the allowance of attorney’s fees may be a proper element of consequential damages.” *Armstrong Construction Company v. Thomson*, 64 Wn.2d 191, 195, 390 P.2d 976 (1964). *See also Wells v. Aetna Insurance Co.*, 60 Wn.2d 880, 376 P.2d 644 (1962); *Murphy v. Fidelity Abstract & Title Co.*, 114 Wn. 77, 194 P. 591 (1921).

“In order to recover attorneys' fees under this principle, the plaintiff must show: (1) that the plaintiff had become involved in a legal dispute either because of a breach of contract by the defendant or because of defendant's tortious conduct...” *Manning v. Loidhamer*, 13 Wash.App. 766, 772, 538 P.2d 136, 140 (1975). In the present case, Mr. Billingslea became involved in a legal dispute because of Mr. Looney’s negligent and legally deficient attempt to redeem property from the tax foreclosure sale. Next, Mr. Billingslea must show, “(2) that the dispute was with a third party-not with the defendant...” *Manning v. Loidhamer*, 13 Wash.App. 766, 772, 538 P.2d 136, 140 (1975). In the present case the dispute was with Pierce County, not Mr. Looney, because Pierce County sued Mr. Billingslea. CP 10-15. Finally, Mr. Billingslea must show, “(3) that the plaintiff incurred attorneys' fees connected with that dispute.” *Manning v.*

*Loidhamer*, 13 Wash.App. 766, 772, 538 P.2d 136, 140 (1975). There is no dispute that Mr. Billingslea did so. CP 135-138.

“The fulcrum upon which the rule balances, then, is whether the action, for which attorney's fees are claimed as consequential damages, is brought or defended by third persons—that is, persons not privy to the contract, agreement or [e]vents through which the litigation arises.”

*Manning v. Loidhamer*, 13 Wash.App. 766, 773, 538 P.2d 136, 140 - 141 (1975). In the present case, Mr. Looney attempted to redeem property from a tax foreclosure sale without complying with the law for doing so. He obtained a quitclaim deed to the property at issue for a mere \$6,000 from individuals who were never legally determined to be the heirs of the record property owner. He then sent someone purporting to be his agent to tender payment, although that agent did not have the proper paperwork to demonstrate an agency relationship. After the property was sold at the foreclosure he never attempted to tender payment to Mr. Billingslea, which was a pre-requisite to filing suit. RCW 84.68.090, 84.68.100. When his attempt to redeem the property from sale failed, he then sued Pierce County, who in turn sued Mr. Billingslea.

Mr. Looney argues that Mr. Billingslea should be denied fees because the court did not enter findings on this issue. That is not true.

The trial court specifically found,

Mr. Looney's actions of attempting to redeem the Property from sale without following the proper legal procedures for doing so involved Mr. Billingslea in litigation with a third party, Pierce County.

CP 141, paragraph 6.

Next, Mr. Looney argues that Mr. Billingslea should have been denied fees and costs because, "Although plaintiff concedes that Billingslea was not the actual wrongdoer, he was aware going into the foreclosure sale that there were risks and made a decision to buy the property." Brief of Appellant, page 16. It is not clear what risks Mr. Looney is referring to in this statement. The undisputed evidence was that Mr. Billingslea had absolutely no knowledge of Mr. Looney's attempted redemption prior to bidding at the foreclosure sale. CP 58:7-11. Regardless, "being aware of risks" is not the same thing as "being connected with the original transaction."

Mr. Looney also argues that Mr. Billingslea offered to rescind the sale. Brief of Appellant, page 16. That is true, but only after the sale took place. CP 58-59. All this shows is that Mr. Billingslea probably would have accepted the tender required of Mr. Looney by RCW 84.68, had it ever been made. It does not show that Mr. Billingslea should be denied

recovery of his attorney fees and costs.

E. MR. BILLINGSLEA SHOULD BE AWARDED HIS FEES AND COSTS ON APPEAL.

Attorney fees on appeal are permitted if applicable law permits them. RAP 18.1. In the present case Mr. Billingslea was previously awarded fees and costs on the basis that Mr. Looney's claims were frivolous (*See* Section C of this brief) and involved Mr. Billingslea in litigation with Pierce County (*See* Section D of this brief). It should also be noted that this court previously rejected all of Mr. Looney's arguments in finding the trial court did not commit probable error justifying an interlocutory appeal. Appendix A attached hereto. Because Mr. Looney's claims and arguments are not supported by the record or the law, and because this appeal exposes Mr. Billingslea to the potential for additional litigation with Pierce County, Mr. Billingslea requests an award of fees and costs on appeal. In the event Mr. Billingslea's request for fees and costs on appeal is granted, he asks for permission to submit a cost and fee bill pursuant to RAP 18.1(d).

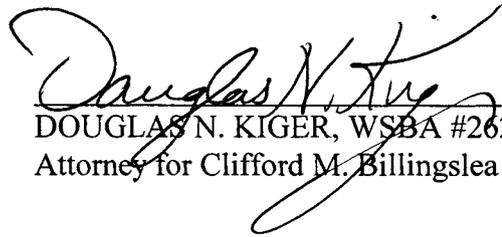
#### IV. CONCLUSION

For the reasons set forth above, Mr. Billingslea respectfully requests that the trial court decision be affirmed, and that Mr. Billingslea be awarded

fees and costs on appeal against Mr. Looney.

RESPECTFULLY SUBMITTED this 24<sup>th</sup> day of April, 2008.

**BLADO KIGER, P.S.**



DOUGLAS N. KIGER, WSBA #26211  
Attorney for Clifford M. Billingslea

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the 24<sup>th</sup> day of April, 2008, she placed with ABC Legal Messengers, Inc. an original Brief of Respondent Billingslea and Certificate of Service for filing with the Court of Appeals, Division II, and true and correct copies of the same for delivery to each of the following parties and their counsel of record:

Attorneys for Appellant, William A. Looney:

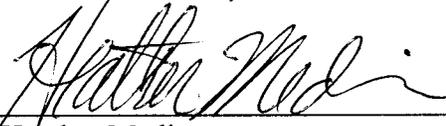
COMFORT, DAVIES & SMITH, P.S.  
Brian T. Comfort  
Jennifer M. Azure  
1901 65<sup>th</sup> Ave. W. Ste. 200  
Fircrest, WA 98466

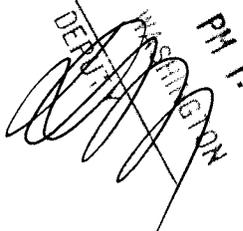
Attorney for Pierce County and Ken Madsen:

Robert P. Dick  
Deputy Prosecuting Attorney  
955 Tacoma Avenue South  
Suite 301  
Tacoma, WA 98402

**DATED** this 24<sup>th</sup> day of April, 2008, at Tacoma, Washington.

**BLADO KIGER, P.S.**

  
\_\_\_\_\_  
Heather Medina

FILED  
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DIVISION II  
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STATE OF WASHINGTON  
BY 

APPENDIX A

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

WILLIAM A. LOONEY,  
Petitioner,  
v.  
PIERCE COUNTY,  
Respondent.

No. 35939-1-II

RULING DENYING REVIEW

FILED  
COURT OF APPEALS  
07 JUL 30 PM 2:40  
STATE OF WASHINGTON  
BY [Signature]

William A Looney seeks review of Pierce County Superior Court orders (1) granting summary dismissal of his claims against Pierce County and its treasurer, Ken Madsen, and (2) awarding attorney fees and costs to third party defendant Clifford Billingslea.<sup>1</sup>

This lawsuit arises from the County's foreclosure of a tax lien and sale of real property. The property was owned by Lorraine Lane until her death on October 3, 2003. When the County filed its certificate of delinquency, on June 3, 2005, Lane was still listed as the owner; the property was vacant, had been used as a meth lab, and appeared to be uninhabitable. The County scheduled a foreclosure sale for December 3, 2005. On December 1, 2005, Looney obtained and recorded quitclaim deeds to the property from four individuals alleged to be

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<sup>1</sup> This matter was originally filed as an appeal. However, the trial court has never dismissed the cross claims brought by Billingslea and the County, and so no final judgment has been entered.

Lane's daughters. On December 2, 2005, someone purporting to represent him attempted to redeem the property. The County rejected the tendered funds and sold the property the next day to Billingslea. This lawsuit followed.

Looney contends that the County was required by RCW 84.64.060 to accept his tender, and the trial court therefore probably erred in dismissing his claims.<sup>2</sup> That statute provides, in pertinent part, that “[a]ny person owning a recorded interest in lands or lots upon which judgment is prayed . . . may . . . pay the taxes . . . at any time before the day of the sale.” RCW 84.64.060.

Looney did not own an interest in Lane's property unless the grantors did, indeed, have an interest to convey. He relies on the language in RCW 11.04.250 that:

When a person dies seized of lands, tenements, or hereditaments, or any right thereto, or entitled to any interest therein in fee or for the life of another, his title shall vest immediately in his heirs or devisees, subject to his debts, family allowance, expenses of administration and any other charges for which such real estate is liable under existing laws.

However, that statute contains a proviso: “That no person shall be deemed a devisee until the will has been probated.” RCW 11.04.250. Courts have interpreted this language to mean that an heir has no right to treat the property as his own until after the estate is closed. See *In re Estate of Jones*, 152 Wn.2d 1, 14 (2004); *In re Peterson's Estate*, 12 Wn.2d 686, 734 (1942).

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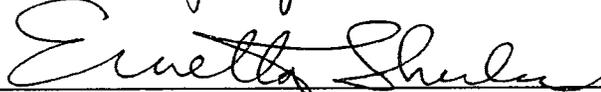
<sup>2</sup> Looney also invokes RAP 2.3(b)(4). However, neither the court nor the parties have stipulated that there is a controlling issue of law about which there are reasonable grounds for a difference of opinion.

Based on the law, the County could have rejected Looney's tender of payment on three grounds: First, he provided the County no evidence that the four grantors had an interest to convey, *i.e.*, that they were, indeed, Lane's heirs. Second, even were they the heirs, it does not appear that they had the present ability to alienate the property. Third, under RCW 84.64.060, if Looney wished to act through an agent to redeem the property, that person was required to provide notarized documentation of the agency relationship. The agent did not do so.<sup>3</sup> The trial court did not probably err in granting summary judgment.

Looney also asks this court to review the order awarding attorney fees to Billingslea. He offers no argument on this matter and has established no basis for review. Accordingly, it is hereby

ORDERED that review is denied.

DATED this 30<sup>th</sup> day of July, 2007.



Ernetta G. Skerlec  
Court Commissioner

cc: Jennifer Melissa Azure  
Brian T. Comfort  
Douglas N. Kiger  
Robert P. Dick  
Hon. Vicki L. Hogan

---

<sup>3</sup> Clerk's Papers at 2.