

ORIGINAL

COURT OF APPEALS  
DIVISION II

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

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**NO. 37660-1-II**

Appeal from the Superior Court for Thurston County  
Case No. 03-2-00586-7

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**THURSTON COUNTY,**

**Plaintiff/Respondent**

**v.**

**JOHN BURNELL,**

**Defendant/Appellant.**

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**BRIEF OF RESPONDENT**

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## **I. ISSUES ON APPEAL**

1. Appellant's Appeal of the Order Adding Additional Vehicles to Warrant of Abatement and Order of Contempt is untimely and without merit.
2. The Court did not err in denying Appellant's Motion for Reconsideration.

## **II. RELEVANT FACTS**

On August 1, 2003, summary judgment was granted for Thurston County against Appellant, John Alton Burnell. Appellant was found to be in violation of Thurston County Code [TCC] 23.40.060(F)(4)(a), Olympia Urban Growth Area [UGA] for illegal storage of "junk" or "hulk" vehicles on the properties at 2923 Kaiser Road, 2930 Kaiser Road, 2934 Kaiser Road and 2940 Kaiser Road, Olympia, Washington; TCC §§ 20.34.020 (8)(b)(ii) and/or 14.44.030 and .070, for mobile home placement without a permit; and Thurston County Sanitary Code (TCSC) Art. V § 5.3, for unlawful deposit and/or allowing deposit of accumulation of solid waste on his properties without a permit. (CP 14.) These violations constituted a public nuisance and the Appellant was ordered to bring all properties into compliance with TCC Chapters 20.34, 23.40 and the Thurston County Sanitary Code within 60 days of the judgment.

On November 30, 2007, the Court entered an Order Authorizing Clerk to Issue Warrant of Abatement and Ordering Forfeiture of Bond. (CP 80.) On February 25, 2008, Appellant filed a Motion to Restrain Abatement on Selected Items. (CP 83.) The hearing on Appellant's motion to restrain was held on March 11, 2008. (CP 87.) At this hearing, the Court ruled that "licensed vehicles" may not be removed by the County as "junk vehicles" until further hearing and ruling; that vehicles cannot be occupied while on the property; and that the County may remove "unlicensed vehicles" that are designated as "junk," unpermitted structures and mobile homes, and vehicles and items designated as "solid waste." (CP 87.) The Court ruled that the Warrant of Abatement filed on November 30, 2007 would go forward as scheduled. (CP 87.)

On March 12, 2008, Guy Jacques, Compliance Unit Supervisor with the Thurston County Development Services Department, conducted a site inspection of the Appellant's properties. (CP 89.) The purpose of the inspection was to re-inspect 11 junk vehicles in conjunction with the court order issued on March 11, 2008, as the Appellant had stated that the vehicles no longer met the definition of junk vehicles and were in accordance with TCC 20.03. (CP 89.) While at the properties, the Appellant repeatedly interfered with the inspection and physically struck

Jacques. (CP 89.) Jacques also identified individuals still residing in vehicles on the properties, against Court orders. (CP 89.)

On March 13, 2008, the Court set forth an Order Adding Additional Vehicles to Warrant of Abatement. (CP 90.) At that hearing, the Court found the Appellant to be in contempt of the Court's earlier orders, however did not impose sanctions. (CP 90.) The Court added that anyone continuing to reside in vehicles on the properties after that day would be considered as contemptuous action of the Court's ruling. (CP 90.)

On March 19, 2008, the Appellant filed a Motion for Reconsideration of the Court's order denying restraint on the abatement of certain items. (CP 92.) On March 28, 2008, the Court denied Appellant's Motion for Reconsideration, finding that the motion was without basis. The Court also found the Appellant in contempt, due to his continual refusal to comply with the Court's orders of March 11, 2008.

On April 28, 2008, Appellant filed a Notice of Appeal, seeking review of the Order Adding Additional Vehicles to Warrant of Abatement, dated March 13, 2008, and the Order of Contempt and Order Denying Motion for Reconsideration. (COA Pleadings Dk. 1.) After a series of delays and extensions granted by the Court of Appeals, Appellant filed the Brief of Appellate on July 8, 2009. (COA Pleadings Dk. 27.)

### III. ARGUMENT

#### **A. Appellant's Appeal of the Order Adding Additional Vehicles to Warrant of Abatement and Order of Contempt is untimely and without merit.**

Washington Court Rules of Appellate Procedure [RAP] 2.2(a)(13) allows the appeal of a Superior Court final order after judgment. Notice of appeal must be filed within 30 days after the entry of the decision of the trial court. RAP 5.2(a). *See Carrera, LLC v. Ron & E Enters., Inc.*, 137 Wn. App. 822, 155 P.3d (2007) (*finding a notice of appeal untimely that was filed more than 30 days after the final judgment*).

The Court Order Adding Additional Vehicles to Warrant of Abatement was filed on March 13, 2008. Under RAP 5.2(a), Appellant had until April 12, 2008 to file a timely notice of appeal. Appellant filed a notice of appeal on April 28, 2008, 15 days the final date to appeal of April 12. The appeal in regards to the March 13, 2008 Court order is clearly untimely and should be dismissed.

In the alternative, Appellant's claim that the Court erred in ordering the addition of JV 006 to the warrant of abatement is without merit.

The Court order of March 11, 2008 stated that vehicles cannot be occupied while on the property; and that the County may remove “unlicensed vehicles” that are designated as “junk,” unpermitted structures and mobile homes. (CP 87.) In his declaration submitted on March 7, 2008, Appellant submitted photos of JV 006 that showed the front of the bus with fresh paint and licensed. (CP 86.) However, in photos taken by Jacques on March 12, 2008, the entire vehicle is shown to still clearly meet the criteria of a junk vehicle pursuant to TCC 20.03. (CP 89, photo of JV 006, formerly JV 078.) The side photo taken by Jacques depicts several windows broken or missing, the interior filled with junk, a smokestack coming out of the right windows, and no tags displayed. (CP 89.) The Appellant’s argument that Jacques’ photos were manipulated to show the vehicles in a poor light is without supporting evidence and should be found to be without merit.

Additionally, it was on this occasion that Appellant interfered with the County’s efforts to abate this property by physically assaulting Jacques and halting the inspection. (CP 89.)

Appellant asserts no argument to the Finding of Fact made by the Court in the Order Adding Additional Vehicles and fails to provide new facts or legal authorities providing legal bases for reversal of the Court order.

**B. The Court did not err in denying Appellant's Motion for Reconsideration due to Appellant's failure to show a clear or manifest abuse of judicial discretion.**

Motions for reconsideration are addressed to the sound discretion of the trial court and will not be reversed absent a clear or manifest abuse of that discretion. *State v. Scott*, 92 Wn.2d 209, 212, 595 P.2d 549 (1979). *See Wagner Development Inc. v. Fidelity and Deposit Co.*, 95 Wn. App. 896, 906, 977 P.2d 639 (1999) (citing *Perry v. Hamilton*, 51 Wn. App. 936, 938, 756 P.2d 150 (1988)). An abuse of discretion exists only if no reasonable person would have taken the view adopted by the trial court. *In re Marriage of Muhammad*, 153 Wn.2d 795, 108 P.3d 779 (2005) (citing *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997)); *State v. Henderson*, 26 Wn. App. 187, 190, 611 P.2d 1365, review denied, 94 Wn.2d 1008 (1980). *See also Holaday v. Merceri*, 49 Wn. App. 321, 324, 742 P.2d 127, review denied, 108 Wn.2d 1035 (1987).

Thurston County Superior Court Local Rule (LCR) 59(a)(3) states:

Motions for Reconsideration are disfavored. The court will ordinarily deny such motions in the absence of showing of manifest error in the prior ruling or of a showing of new facts or legal authorities which could not have been brought to its attention earlier with reasonable diligence.

In his motion for reconsideration, the Appellant failed to show manifest abuse of discretion in the Court's ruling for denying restraint on

abatement of certain items on the properties. The Appellant also failed to show new facts or legal authorities which could not have been found earlier with reasonable diligence. All arguments and evidence presented to the Court in Appellant's motion had been previously ruled on.

Additionally, Appellant's motion also failed to comply with CR 59, which allows reconsideration under a showing of one or more of the following:

- (1) Irregularity in the proceedings or abuse of discretion;
- (2) misconduct of the prevailing party;
- (3) accident or surprise which ordinary prudence could not have guarded against;
- (4) newly discovered evidence, which through due diligence could not have been discovered and produced at trial;
- (5) excessive damages;
- (6) error in assessment of recovery;
- (7) no evidence to justify decision or the decision is contrary to law;
- (8) error in law properly objected to; and
- (9) substantial justice has not been done. Appellant has simply not asserted any substantive argument which falls under any of these causes.

In fact, at the time of the Appellant's motion, the Appellant was continuing to refuse to comply with the abatement process. In the Declaration of Jeff Raley, the Appellant was continuing to retain unpermitted structures on the properties. (CP 94.)

Even on appeal, Appellant continues to attempt to re-argue old rulings and issues. As such, Appellant has failed to address any substantive issues or make a showing of clear abuse of discretion by the Court in regards to the Order Denying Motion for Reconsideration.

**IV. CONCLUSION**

For the reasons stated above, the Appeal of John Alton Burnell should be denied as to all issues.

Respectfully submitted this 5<sup>th</sup> day of August, 2009.

EDWARD G. HOLM  
PROSECUTING ATTORNEY



DONALD R. PETERS, JR, WSBA #23642  
Deputy Prosecuting Attorney  
Attorney for Respondent Thurston County

A copy of this document was properly addressed and mailed, postage prepaid, to the appellant on August 5, 2009. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.  
Signed at Olympia, Washington.

Date: 8-5-09  
Signature: Lynda S. Olsen

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