

INTRODUCTION 4
ARGUMENTS..... 7
 **The Defendant Preserved Error Regarding the Trial Court’s Award of Damages to
 Plaintiffs**..... 7
 **Defendant Preserved Her Second assignment of Error Regarding The Trial Court’s
 Award of Attorneys Fees** 8
 The Trial Court Incorrectly Denied Defendant’s Second Motion for a Continuance..... 9
CONCLUSION..... 11

Table of Authorities

Gaines V Pierce County, 66 Wn. App 715 719, 834 P.2d 631 (1992)
Mielke V Yellowstone Pipeline Co., Wn App. 621, 624, 870, P.2d 1005 (1994)
Brutsche V City of Kent, 164 Wn. 2d 664, 673-674, 193 p. 3d 110 (2008)

States and Court Rules

RAP 2.5 (a)
RCW 4.84.180
RCW 4.84.250

INTRODUCTION

Plaintiffs statement of the case under the heading Statement of the Case beginning at page 1 of their reply brief is highly inaccurate both due to misstatement of facts and omission of important relevant facts. Although to a large extent plaintiffs responsive brief includes material that is clearly irrelevant to the issue at hand, the reply brief so mistakes the background of this case that it is incumbent upon the plaintiffs to respond. The following facts are stated in chronological order and will correct the picture presented by plaintiffs.

- June 1996 - Clark and Nola Jeli, owners, build landscaping features that combine lot 12, Rivercrest Estates, Phase V, volume J, page 31 and lot 20 Columbia Meadows Estates, Volume H, Page 874 into one 'estate' but keep them as separate tax parcels. *The boundaries between these two properties remain intact and unaltered. A visual inspection shows that any landscaping features are clearly identifiable and are in their respective lots.*
- June 2000 – Ms. Oriko purchases Lot 12, Rivercrest Estates, Phase V, volume J, page 31 and lot 20 Columbia Meadows Estates, Volume H, Page 874 as one 'estate' but keeps the two as 2 separate tax parcels. *The boundaries between these two tax parcels remain intact and unaltered. A visual inspection shows that any landscaping features are clearly identifiable and are in their respective lots.*
- June 2003 – Ms. Oriko deeds back lot 20 Columbia Meadows Estates, Volume H, Page 874 to Clark and Nola Jeli, original owners. *The boundary between Lot 12, Rivercrest Estates, Phase V, volume J, page 31 and lot 20 Columbia Meadows Estates, Volume H, Page 874 is reaffirmed and remarked as to the original boundary and the 2 tax parcels remain intact and unaltered. Visual inspections show all landscaping features to be clearly identifiable and are in their respective lots.*
- June 2003 – The Jeli's signed a contract requiring them to inform any prospective buyer of this agreement which repositioned the waterfall back to its original position so that no part of it was encroaching upon lot 20. The agreement also specifically states that this solution makes it unnecessary for the Jelis to deed back any land to the water fall and landscaping located on lot 20 as these were to remain part of lot 20. This also made it unnecessary for any future purchaser to convey any portion of lot 20 either by boundary adjustment or easement. **Again, the boundary between Lot 12, Rivercrest Estates, Phase V, volume J, page 31**

and lot 20 Columbia Meadows Estates, Volume H, Page 874 had thus been revived.

- **September 2003 – Richard Tackach and Kari Jonassen, Plaintiffs, acquire lot 20 Columbia Meadows Estates, Volume H, page 874, through conventional financing and through a real estate agent.**
 - **In the State of Washington title insurance and property inspection are required as part of the sale/purchase process. A property inspection was conducted and title insurance was issued.**
 - **In the State of Washington, a real estate agent is required to disclose defects which include encumbrances and liens. The property was acquired through Windermere Real Estate, a well known real estate agency. Appellant has personal knowledge that Richard Tackach and Kari Jonassen, Plaintiffs, visually inspected the property at the time of sale.**
 - **Richard Tackach and Kari Jonassen, Plaintiffs, have lived next door continuously since 1996, well over 14 years. As neighbors, they are intimately familiar with lot 20 Columbia Meadows Estates, Volume H, page 874 because this lot sits right next to their home.**
- **April 2005 - *two years after acquiring lot 20 Columbia Meadows Estates, Volume H, page 874 to augment their rather small size lot*, Richard Tackach and Kari Jonassen, Respondents, sent an email asking Ms. Oriko, Appellant, to *sign a licensing agreement to enable her to use the portion of the land that is vaguely described as lying between Lot 12, Rivercrest Estates, Phase V, volume J, page 31 and lot 20 Columbia Meadows Estates, Volume H, Page 874***
 - *Ms. Oriko, Appellant found this very disturbing because the boundaries between the two lots were and are still clearly marked. When Appellant asked Respondents if they wanted to sell that portion of land to her, Respondent said no.*
 - *Appellant declined any further contact/communication as it was becoming clear Richard Tackach and Keri Jonassen were deliberately becoming hostile towards appellant for no cause.*
- **June 2006 – Richard Tackach and Kari Jonassen filed a lawsuit against Ms. Oriko, alleging that Ms. Oriko had built a decorative pond, fountain and walking area made of stone pavers (collectively referred to as the “pond”) that encroach upon plaintiff’s property. CP 3-4. *This allegation is false. In its trial memorandum, Respondents admit that “ Defendant, Oriko did not build the pond and the surrounding landscaping features, Instead, the prior owners, Clark and Nola Jeli did”. TRI***

- June 2006 – December 9, 2009 – Plaintiff suffered a series of adversities starting with a bankruptcy and extended unemployment.
- February 2010 - Appellant moved the trial court for a continuance of both trial date and discovery deadlines. The court was aware that appellant had had to move to the Washington in search of employment. The court granted the continuance.
- May 15th, 2010 - Appellant moved the court for a second motion for continuance of both trial dates and discovery deadlines because she had a family member who was seriously ill.
- June 7, 2010 appellant was in an accident and could not attend trial. For some unknown reason, the second motion for continuance was not properly docketed, consequently, the court did not rule on the motion. *The laws stipulates that continuance can and should be granted were there is unavoidable casualty or misfortune preventing the party from persecuting or defending the action.*
- June 9, 2010 – Appellant communicated with plaintiffs via phone, advising it of her tragedy and that she could not return to Vancouver, participate in the trial. Appellant further communicated with the court and advised the same. The court acknowledged the receipt of the call and moved to notify the judge immediately.
- *The trial transcript indicate that neither the plaintiffs counsel or the judge, through his secretary and by extension, the court reporter, made any mention on record, of the telephone conversation defendant had with them ½ hr before trial. Instead the Judge asks, “I am assuming, because the other party has not arrived, you are moving for a default? That will be granted because this is the date set for trial”. Again, the law stipulates that continuance can and should be granted were there is unavoidable casualty or misfortune preventing the party from persecuting or defending the action.*
- The June 9th trial was wrought with mistakes, inadvertent, surprise, irregularity or excusable neglect that led to the entry of final judgment. Even plaintiffs themselves seem unaware of what brought them to court. I didn’t have to be here. *“ I mean, obviously, I have—and I don’t know the law, but – specifically, but as you can imagine, I’ve had to have this thing restaked once. The stakes are missing. This lawsuit—I really didn’t want to be here...”* We have expert witnesses I am paying for over something we all know that didn’t have to be that way...”
- The judge “counsel there is no other party here; I will admit that this in fact is flaming hearsay.

ARGUMENTS

I

The Defendant Preserved Error Regarding the Trial Court's Award of Damages to Plaintiffs.

The error was obvious. Defendant was unable to attend trial due to an accident. Both plaintiff's and the judge knew about this. Defendant called and spoke to Plaintiff and the Judge ½ hr before trial reminding them of her inability to travel to Vancouver to constitutionally defend herself at trial. The law stipulates that continuance should be granted were there is unavoidable casualty or misfortune preventing the party from persecuting or defending the action. RAP 2.5 (a).

Moreover, on the merits, defendant's first assignment of error is correct because The judge ordered quiet title. This was the case. Plaintiffs are not entitled to money judgment because the essence of the case was quiet title. There is no statute that allows a party to recover attorney's fees to establish quiet title. The error is preserved and **the issue is proper before the court.**

That the Plaintiffs were unaware they had title, that the boundary is clearly marked, (remarked by plaintiffs in 2006) or that what they perceive to be encroachment is in fact improvement, does not alter defendant's rights.

II

Defendant Preserved Her Second assignment of Error Regarding The Trial Court's Award of Attorneys Fees.

There is a meritorious argument on the fact that the judge awarded attorneys fees. First Plaintiffs' attorney argues that they are entitled to attorneys fees under two different statutes (RCW 4.84.180 and RCW 4.84.250). Nowhere in the complaint does Plaintiffs specifically request attorney's fees under RCW 4.84.250. Neither is there an amended complaint that specifically requests attorney's fees under RCW 4.84.250. **This error is obvious.**

The issue is proper before the court. A party is not entitled to relief beyond what they have requested in their complaint.

Defendant preserved her second assignment of error regarding the trial court's award of attorney fees.

Mover Plaintiffs failed to serve defendant notice of their motion for attorney's fees. Plaintiffs knew that defendant had moved to Washington, to seek employment. At no time did defendant receive notice that a motion for attorney's fees had been filed. In their reply brief, RB-8- Plaintiffs write, *"indeed, had defendant raised this issue, plaintiffs' would have had an opportunity to submit more detailed record of notice..."*

Plaintiff's note "In arguing that the trial court erred by awarding attorneys fees to plaintiffs, defendant argues that RCW 4.84.250 does not apply to lawsuits that seek to quite title" and she is correct.

Plaintiffs however, claim their lawsuit was for trespass not quite title. The legal standard for trespass is an interference with the right to exclusive possession of property¹. A party is liable for trespass is he or she intentionally intrudes onto the property of another². Intentional trespass includes failing to remove an item from real property that the trespasser had a duty to remove³. Plaintiffs claim that defendant has committed both negligent and intentional trespass by failing to remove the landscaping features after being asked to do so.

In its trial memorandum, Respondents admit that "Defendant, Oriko did not build the pond and the surrounding landscaping features, Instead, the prior owners, Clark and Nola Jeli did". TR1. Because the landscaping features were not put there by defendant, how can the defendant be liable to trespass? Since defendant did not put

¹ Gaines V Pierce County, 66 Wn. App 715 719, 834 P.2d 631 (1992)

² Mielke V Yellowstone Pipeline Co., Wn App. 621, 624, 870, P.2d 1005 (1994)

³ Brutsche V City of Kent, 164 Wn. 2d 664, 673-674, 193 p. 3d 110 (2008)

them there, she should not be liable for them. Moreover, the trial court ruled that these landscaping features are an improvement.

III

The Trial Court Incorrectly Denied Defendant's Second Motion for a Continuance.

Defendant properly placed the motion before the trial court for hearing but because the defendant was in an accident, she was constitutionally unable to defend herself before the court.

For reasons unknown to her, the second motion for continuance was not properly docketed, and the court did not rule on that motion.

The law stipulates that continuance should be granted were there is unavoidable casualty or misfortune preventing the party from persecuting or defending the action.

This issue is proper before the court.

CONCLUSION

For the reasons set forth above, the trial court's Money Judgment Quieting Title should be overturned.

Dated this 18th day of April 2011

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sheeba Oriko". The signature is written in a cursive style with a large initial "S".

She

Sheeba Oriko, pro se

Certificate of Service
(Tackach V. Oriko)

I HEREBY CERTIFY that on the 18th day of March, 2011 a true and correct copy of the foregoing APPELLANT SHEEBA ORIKO'S REPLY BRIEF was served upon the following parties in the manner indicated.

Washington State Court of Appeals
Division TWO 950 Broadway; Suite
300 Tacoma, WA 98402-4454

Rizzo Mattingly and Bosworth, PC 411
S.W Second Ave; Suite 200 Portland,
OR 97204

I declare under penalty of perjury and under the laws of the state of Washington (RCW 9A.72.085) that the foregoing is correct and true.

Executed at Washington, DC this 18th day of April 2011



She

Sheeba Oriko, pro se

11 APR 20 11:12:21
STATE OF WASHINGTON
BY _____
DEPUTY

COURT OF APPEALS
DIVISION TWO
TACOMA, WA