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I. ASSIGNMENT OF ERRORS

A. ASSIGNMENT OF ERRORS

1. The trial court erred when it granted Defendant's Motion for Summary Judgment, thereby dismissing the case.

B. ISSUES PERTAINING TO ASSIGNMENT OF ERRORS

1.1 Did the trial court err granting the Summary Judgment when it determined that the condition precedent, required by RCW 4.96 when filing an action against a Municipality, was not met?

1.2 Did the trial court err granting the Summary Judgment when it determined that a Personal Representative must be appointed when the RCW 4.96 claim form was filed?

II. STATEMENT OF CASE

This action arose from a motor vehicle collision that occurred on September 30, 2008. The collision occurred between Mr. Douglas Gregersen and Mr. Steven Skiles, an employee of Thurston County Public Utility District (Thurston PUD). Mr. Gregersen sustained injuries that required treatment. Mr. Gregersen died on July 2, 2009; the cause of his death is unrelated to the motor vehicle collision. A Tort Claim for Damages form was filed with Thurston Public Utility District (PUD). (CP 44). Even though Thurston PUD had their own claim form on their website, Plaintiff's attorney chose to create a form using the requirements stated in RCW 4.96.020 (3).

Because the parties could not settle the claim (CP 45), an Estate was created in order to commence an action against Thurston PUD. On September 15, 2011, Jennifer Gregersen, Mr. Gregersen's spouse, was appointed as Personal Representative of the Estate of Douglas Gregersen. (CP 30-31) A suit was filed against Thurston PUD, on behalf of the Estate of Douglas Gregersen on October 21, 2011. (CP1-5).

The Thurston PUD asserts, both in their Answer and this Motion, that the Claim for Damages that was filled on April 2011 did not comply with RCW 4.96 and that the Plaintiff's action is barred by "absence of standing".

The Thurston PUD presented a Motion for Summary Judgment. (CP 8-16) On May 18, 2012, after hearing both parties, Honorable Culpepper granted their Motion for Summary Judgment. (CP 8-16) A Motion for Reconsideration hearing was heard on June 8, 2012. Honorable Culpepper denied the Motion for Consideration.

III. ARGUMENT

A. STANDARD OF REVIEW

When reviewing an order for summary judgment, this court engages in the same inquiry as the trial court. Marthaller v. King Co. Hospital Dist. No. 2, 94 Wn. App 911, 915, 973 P.2d 1098 (1999). This court should affirm summary judgment if there is no genuine issue of any material fact and the moving party is entitled to judgment as a matter of

law. Marthaller, 94 Wn.App. at 915. This court considers all facts and reasonable inferences in a light most favorable to the nonmoving party, and it reviews all questions of law de novo. Marthaller, 94 Wn. App at 915.

B. THE TRIAL COURT ERRED GRANTING THE SUMMARY JUDGMENT WHEN IT DETERMINED THAT THE CONDITION PRECEDENT, REQUIRED BY RCW 4.96 WHEN FILING AN ACTION AGAINST A MUNICIPALITY, WAS NOT MET

The trial court made an error granting summary judgment because a claim form, meeting the requirements of RCW 4.96, was filled with the person authorized to receive the claim forms.

To pursue an action for damages against a Public Utility District (PUD), one must file a claim with the district complying in all respects to the terms and requirements for claim for damages set forth in RCW 4.96. RCW 54.16.110. Under RCW 4.96.020 (4), a claim for damages form must be presented, to the proper person, at least 60 days before commencing suit against the PUD. RCW 4.96.020 (3) sets the requirement of the content of the claim form. Filing a claim for damages form within the time allowed by law shall be a condition precedent to the commencement of any action claiming damages. RCW 4.96.010

The standard as to the content of the claim form and the procedure in filing the claim, that the Legislature has stated must be followed, is Substantial Compliance. RCW 4.96.020 (5) The Supreme Court in reviewing a former version of the RCW 4.96 had interpreted “substantial compliance” to require that the claimant make a “bona fide attempt to

comply with the law” and that the notice filed “must actually accomplish its purpose. Renner v. City of Marysville, 168 Wash. 2d 540, 546, 230 P.3d 569, 571 (2010). The intent of this claim filing statute is “to allow government entities time to investigate, evaluate, and settle claims” before they are sued. Renner at 545. Exact specificity is not required; the claimant simply must provide enough information to put the government on notice of the claim and its contents. Id. at 546.

This Court in Myles v. Clark County, WL 3870424 (2012) further stated the legislative intent of RCW 4.96 by quoting the House Bill Report that stated the following:

Injured plaintiff's claims are being denied because of the strict claim filing statutes. The original intent of the statutes was to provide notice so that the government can get the facts of the claim and investigate. They were not meant to be “gotcha” statutes. Some of the procedural requirements are tricky. Cases are being dismissed based on technical interpretations of the statute. The bill is aimed at restoring the original intent. It corrects historical unfairness and makes the statute functional. It requires notice to the government, but eliminates the barnacles of judicial bureaucracy.

The filed Claim for Damages form in this case (CP 44) does provide all the information that was needed to put Thurston PUD on notice of a Claim against them. In fact, in their Motion for Summary Judgment brief, they states that the content provided in the filed Claim for Damages form did substantially comply with the requirements of RCW 4.96. (CP 13, Ln 24-26) Furthermore, they do not state that there was any improper filing of the claim with the appropriate person, nor that the 60 day waiting

period was not followed. Finally, they do not state that they were not given proper notice with the information that was provided in the filed Claim for Damages form.

Viewing the evidence in a light most favorable to the nonmoving party, the content of the filed Claim for Damages substantially complied with the requirements of RCW 4.96. Furthermore, the procedural requirements were substantially complied with because the Claim for Damages form was filed with the proper person and 60 days passed before the commencing of this action.

C. THE TRIAL COURT ERRED GRANTING THE SUMMARY JUDGMENT WHEN IT DETERMINED THAT A PERSONAL REPRESENTATIVE MUST BE APPOINTED WHEN THE RCW 4.96 CLAIM FORM WAS FILED

Honorable Culpepper ruled that substantial compliance was not met in this case because the personal representative was not appointed prior to filing the claim form. (RP 13, Ln 4-6) The judge further states that RCW 4.96 requires that the person who is going to pursue an action against Thurston PUD must file the claim form against the PUD. (RP 12, 13, LN 23-25, LN1) Under the Substantial Compliance standard, both points are wrong.

Filing a claim for damages within the time allowed by law shall be a condition precedent to the commencement of any action claiming damages. RCW 4.96.010. There is nothing in RCW 4.96 that requires a Personal Representative be appointed to present a claim, for a deceased

person. Furthermore, there is no issue as to standing under RCW 4.96 when filing Claim for Damages form. The only issue, under RCW 4.96, is whether the Claim for Damages form provides enough information to give the Government Entity notice of a claim. In this case, the filed Claim for Damages form sustainably complied with giving notice of the the claim.

Thurston PUD states that both RCW 4.20.046 and RCW 11.48.010 requires that a Personal Representative for the Estate of Douglas Gregersen file the Claim for Damages form. This logic is flawed. Both statutes state that the Personal Representative is needed when an action is commenced.

Under RCW 4.20.046 (1) (bold added), it states that:

All causes of **action** by a person or persons against another person or persons shall survive to the personal representatives of the former and against the personal representatives of the latter, whether such **actions** arise on contract or otherwise, and whether or not such actions would have survived at the common law or prior to the date of enactment of this section

Under 11.48.010 (bold added), it states:

The personal representative shall be authorized in his or her own name to maintain and prosecute such **actions** as pertain to the management and settlement of the estate, and may institute suit to collect any debts due the estate or to recover any property, real or personal, or for trespass of any kind or character.

Under Black Law Dictionary 9th Edition, an “action” is defined as “a civil or criminal judicial proceeding”. Under CR 3, “ a civil action is commenced by service of a copy of a summons together with a copy of a complaint”. The filing of a Claim for Damages form does not commence

the action; the filing of the Claim form is to provide notice of a potential claim against the government entity.

The procedure set forth in RCW 4.96 is not the start of a lawsuit; it is to give Notice of a Claim for Damages before a lawsuit is filed. When commencing a lawsuit on behalf of a deceased person, then one needs to have a Personal Representative appointed for the deceased person's Estate. RCW 11.48.010. The claim for Mr. Gregersen's damages is still alive until the Statute of Limitations expires. RCW 4.16.080 (2).

In 2009, the Legislature amended RCW 4.96, which required liberal construction of the statute and deemed substantial compliance with the RCW 4.96 pre-suit filing requirements sufficient. Myles at 22. A liberal construction of RCW 4.96 will deem this claim form as substantially complying with the pre-suit claim form requirements.

RCW 4.96.020 (3)(a) states that the standard tort claim form must include, among other information, the **claimant's name**, date of birth, and contact information.¹ In this case, under the plain meaning of the statute,

¹ The standard tort claim form must, at a minimum, require the following information:

- (i) The claimant's name, date of birth, and contact information;
- (i) The claimant's name, date of birth, and contact information;
- (ii) A description of the conduct and the circumstances that brought about the injury or damage;
- (iii) A description of the injury or damage;
- (iv) A statement of the time and place that the injury or damage occurred;
- (v) A listing of the names of all persons involved and contact information, if known;
- (vi) A statement of the amount of damages claimed; and
- (vii) A statement of the actual residence of the claimant at the time of presenting the claim and at the time the claim arose.

the claimant would be Douglas Gregersen, given that the statute asks the for the claimant's date of birth.

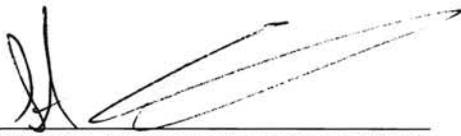
In addition, under RCW 4.96.020 (3)(b) (iii), the claim form can be signed by an attorney admitted to practice in Washington state on the claimants behalf, which was done in this case.

Under a substantial compliance standard, the claim form presented in this claim gave notice of the claim to Thurston PUD. They were not prejudiced at all in processing this claim.

V. CONCLUSION

In conclusion, the Appellant requests that this Court reverse the Trial court's Order granting Defendant's Summary Judgment on the basis that the Appellant did substantially comply with the requirements set forth in RCW4.96.

RESPECTFULLY SUBMITTED this 14th day of December 2012.



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CERTIFICATE OF SERVICE

I declare that I served the Brief of Appellant to which this Declaration is affixed on the attorney below:

MR. MARK JOHNSEN
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by serving a copy thereof certified by me a such, contained in a sealed envelope, to said offices at their regular address as noted above.

Dated this 14th day of December 14, 2012.



STEVE ALVAREZ

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