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DIVISION II

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STATE OF WASHINGTON
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COA No. 48501-0-II
Trial No. 10-2-00115-0

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

WESLEY R. HANNIGAN, Respondent,
v.
VIT NOVAK & ZDENKA NOVAK, Appellant

BRIEF OF APPELLANT

Vit Novak
Pro Se

Appellant

1041 Wildlife Drive
Washougal WA 98671,
503 469-6176

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I. Introduction

For years, the Appellants, the Novaks, had suffered with

Respondent blocking their road, intimidating them with construction equipment, assaulting them, and damaging their property.

In June 2010, the Appellants, the Novaks, had a contractor build a turn-around on their property. Right after the construction, the neighbor, Mr. Hannigan, assaulted the Appellants, trespassed on their property and blocked their escape routes with construction equipment. The police cited Respondent Mr. Hannigan that day for disorderly conduct. The Skamania County deputy prosecuting attorney, Mr. McGill reached a stay in prosecution and stipulation with Respondent Mr. Hannigan on September 9th 2010. His attorney was Mr. Thomas J. Foley. The very next day, on Sept 10th 2010, Mr. Hannigan and his Attorney Thomas J. Foley sued the Novaks in Skamania County Superior Court. The Novaks hired attorney Bradley W. Andersen to defend them in that lawsuit.

In this quiet title lawsuit, Respondent Mr. Hannigan's claims were that the Appellants blocked a driveway and pulled land survey monuments on their property.

At trial, Plaintiff Mr. Hannigan's land surveyor, Gregory

Brown, testified that no land surveyor monuments were pulled. Land surveyor Gregory Brown further testified that he told Respondent Mr. Hannigan this fact before Respondent filed his lawsuit against the Novaks. Plaintiff Mr. Hannigan knew when he filed his lawsuit that his claim that the Novaks pulled survey monuments was a lie.

In his stipulation in State of Washington vs. Hannigan, Mr. Hannigan stipulated to the facts in the Police Report. Since it was a criminal matter, the standard of evidence is beyond a reasonable doubt. In that stipulation Police Officer Rasmussen found that the driveway was not blocked and was easily accessible by his police cruiser. When they filed the lawsuit, both Plaintiff Mr. Hannigan and his attorney Mr. Foley knew that the claim of a blocked driveway was a lie. Mr. Foley was Mr. Hannigan's attorney in State of Washington vs. Hannigan.

Mr. Hannigan falsely claimed in his lawsuit to have a 20-foot easement. There is no recorded document in existence that grants Respondent Mr. Hannigan or his lot #8 such easement.

II. Assignments of Error

Assignments of Error

1. The Skamania District Trial Court clerk and Deputy prosecuting attorney McGill obstructed justice by hiding the *State of Washington vs. Hannigan* stipulation from the Novaks in Sept 2010 to benefit plaintiff Mr. Hannigan.

2. The Trial Court erred in continuing the case when Plaintiff filed a *Declaration of Wesley Hannigan Regarding Status Report* on 04-26-2013.

3. The Trial Court erred in denying the Defendant's 04-08-2015 *Motion for CR-11 Sanctions* on the 04-30-2015 hearing date.

4. The Trial Court erred in not striking Plaintiff's 04-28-2015 *Response to Defendants Motion for CR-11 Sanctions.*

5. The Trial Court erred in entering the ORDER for the Plaintiff's *Response to Defendants Motion for CR-11 Sanctions* on 05-28-

2015.

6. The Trial Court erred in the denying the Defendant's *Response to Plaintiff's Note for Trial and Statement of Arbitrability* on 05-28-2015

7. The Trial Court erred in the denying the Defendant's *Objection to Plaintiff's ER-904* on 08-13-2015.

8. The Trial Court erred in the denying the Defendant's the right to present witnesses at the 08-26-2015 trial in their defense and allowing Plaintiff's felony perjury on a material fact.

9. The Trial Court erred in entering the JUDGMENT AND ORDER of December 3 2015, denying defendant's *Response to Plaintiff's Proposed Findings of Fact and Conclusions of Law* filed on November 30, 2015.

10. The Trial Court erred in entering the JUDGMENT AND ORDER of December 3, 2015, denying defendant's *Motion to Prove*

Jurisdiction filed on November 30, 2015.

11. The Trial Court erred by lying to the Defendants about court records on Dec 21 2015 and December 29th 2015.

12. The Trial Court erred in entering the AMENDED JUDGMENT AND ORDER of January 14th 2016, denying Defendant's *Response to Plaintiffs Motion to Supplement Findings of Fact and Conclusions of Law and Money Judgment.*

Issues Pertaining to Assignments of Error

1. The State of Washington vs. Hannigan stay of prosecution and stipulation was filed with the District Court Clerk on September 9th 2010. In that stipulation, Defendant Mr. Hannigan stipulates that the facts in Officer Rasmussen's police report are true. The police report says no driveway was blocked and the police cruiser was able to enter and exit Mr. Hannigan's property. The police report that Mr. Hannigan stipulated to further states that Mr. Hannigan blocked the Novaks escape routes with a bulldozer, trespassed on their property and assaulted them. After Mr.

Hannigan, now a Plaintiff, sued crime victims, the Novaks, they hired attorney Brad Andersen to defend them. The Novaks knew that Mr. Hannigan had been cited for disorderly conduct. They told their attorney Mr. Andresen and he went to get records about the case.

Mr. Andersen, the Novaks' attorney was not able to find any documents with the clerk even though the stipulation and stay was stamped filed on Sept 9 2010. Mr. Andersen went to Deputy Prosecuting attorney McGill and he had nothing either. Mr. Andresen used the police reports only. Plaintiff Mr. Hannigan filed his case against the Novaks the next day. The Novaks only learned of the Stay and Stipulation many years later.

Was this act obstruction of justice and fraud upon the Court by Mr. Hannigan, The District Court, and his attorney Mr. Foley in order to commit perjury and sue crime victims? Does the Trial Court lose jurisdiction due to the type of criminal conduct that violates the Defendants right to due process?

2. The Trial Court Clerk mailed a notice on 03-28-2013 to the

attorneys for dismissal of the case for want of prosecution under CR-41 (b)(2). The Plaintiff's attorney Mr. Foley did not serve or provide proof of service to the Defendants for Plaintiff's 04-26-2013 *Declaration of Wesley Hannigan Regarding Status Report* to extend the case.

As a result the case was extended without the Defendants knowing. Did the Trial Court error by not dismissing the case outright when CR-5(a) requires service? Did the Trial Court lose jurisdiction? Were the Defendant's Constitutional rights to due process violated? Can the Appellate Court throw out the Judgment and ORDER?

3. The Trial Court Clerk mailed another notice on 03-09-2015 to the Plaintiff and now pro-se Defendants for dismissal of the case for want of prosecution under CR-41 (b)(2). In response the Defendants filed the motion for CR-11 sanctions.

Did Trial Court error in denying the Defendant's 04-08-2015 *Motion for CR-11 Sanctions* on the 04-30-2015 hearing date? Was Plaintiffs case frivolous due to the argument that under legal canon

a criminal cannot benefit from their crimes? When a court filing is hidden and is discovered years later, can Defendants still win on the argument that criminals cannot benefit from their crimes? Was Plaintiff's case frivolous due to his failure to prosecute the case for years? Was the Plaintiff's case for an improper purpose given the fact that Plaintiff was under stay of prosecution and stipulated to facts that prove he perjured himself in his civil case? Should the case have been dismissed as Defendants request due to lack of service in Plaintiff's 04-26-2013 *Declaration of Wesley Hannigan Regarding Status Report?* Does every pleading, motion and legal memorandum have to be signed by an attorney as required by CR-11? Can a paralegal practice law including reviewing documents and filing them with the Trial Court without a lawyer's oversight? Was the fact that the Plaintiff already filed an improper TRO, combined with his failure to prosecute the case, combined with the lack of service frivolous?

4. Did the Trial Court error in entering the ORDER for the Plaintiff's *Response to Defendants Motion for CR-11 Sanctions* on 05-28-2015? Does a Plaintiff's motion have to be served on opposing party with proof of service? If opposing party discovers

service and proof of service was not done, should their motion to strike be granted?

5. Did the Trial Court error in entering the ORDER for the Plaintiff's *Response to Defendants Motion for CR-11 Sanctions* on 05-28-2015? If a motion is not served on opposing party can Plaintiff get an ORDER against the opposing party assuming it is not a properly filed ex-parte TRO motion? Can a lawyer hand deliver his motion to the Trial Court Judge directly without serving it to the opposing party? Can a lawyer hand deliver a letter to the Trial Court Judge that says "*Thank you for your kind attention in this matter. If you have any questions, please do not hesitate to contact me*" without serving it to the opposing party? Does conduct violate the Judicial Code of Conduct and WSBA Rules of Professional Conduct?

6. The Trial Court erred in the denying the Defendant's *Response to Plaintiff's Note for Trial and Statement of Arbitrability* on 05-28-2015. Can Plaintiff in a Quiet Title case which is in equity seek attorney costs and surveyor costs whilst saying arbitration does not apply due to the lack of monetary award?

7. The Trial Court erred in the denying the Defendant's *Objection to Plaintiff's ER-904* on 08-13-2015. Does the plaintiff lose the ER-904 evidence by not responding to the objection to ER-904 either at the hearing and trial? If the Trial Court denies a party to present the and the Plaintiff does not offer the complementary evidence under ER 106 s the objected evidence admissible?

8. The Trial Court erred in the denying the Defendant's the right to present witnesses at the 08-26-2015 trial in their defense and allowing Plaintiff's felony perjury on a material fact. Does the fact that the Plaintiff perjured himself on a material facts, perjured in the interrogatories on material fact? Can a plaintiff's lawyer and plaintiff knowingly lie in court on material fact?

9. The Trial Court erred in entering the JUDGMENT AND ORDER of December 3 2015, denying defendant's Response to Plaintiff's Proposed Findings of Fact and Conclusions of Law filed on November 30, 2015? If a plaintiff perjures himself on all material facts at trial and defendants have proof beyond a reasonable doubt, must the judgment and order be overturned when this is

discovered? If a plaintiff makes up all his claims does he have a case upon which relief can be granted? If the Judge makes mistakes on material fact is the trial court required to correct it?

10. The Trial Court erred in entering the JUDGMENT AND ORDER of December 3, 2015, denying defendant's *Motion to Prove Jurisdiction* filed on November 30, 2015.
Does the Trial Court lose jurisdiction when it fails to enter the Judgment and ORDER within 90 days? RCW 2.08.240 CR-52(e)

11. The Trial Court erred by lying to the Defendants about court records on Dec 21 2015 and December 29th 2015?

12. The Trial Court erred in entering the AMENDED JUDGMENT AND ORDER of January 14th 2016, denying Defendant's *Response to Plaintiffs Motion to Supplement*. Does the Court have have jurisdiction to enter the judgment after all time limits expire? Is the Judgment null and void?

III. STATEMENT OF THE CASE

Mr. Hannigan's' Criminal Case in State of Washington vs. Hannigan

Mr. Hannigan was criminally cited for disorderly conduct in *State of Washington vs. Hannigan* [CP pg. 387]. Mr. Hannigan's victims were Mr. and Mrs. Novak.

On September 9th 2010 Mr. Hannigan and his attorney Mr. Thomas Foley signed the *STIPULATED MOTION ORDER FOR STAY OF PROCEEDS AND STIPULATION TO FACTS* in *State of Washington vs. Hannigan.* [CP pg. 384-386]

Mr. Hannigan stipulated to the facts in police report. Point 5 reads: *"The defendant hereby stipulates to the admissibility of the facts contained in the police reports upon which the charge in this matter is based and acknowledges that such statements can be entered and used to support a finding of guilty if the court finds cause to revoke the order for stay of proceedings."* [CP pg. 385]

The facts in Officer Rasmussen's report were:

A. Police Officer Rasmussen had not trouble driving through with his patrol vehicle AND; [CP pg. 391]

B. Mr. Hannigan assaulted Mr. Novak with his bulldozer AND; [CP pg. 390]

C. Mr. Hannigan trespassed with his bulldozer on the Novak's property with his bulldozer AND; [CP pg. 390]

D. Mr. Hannigan excavated on the Novaks property with his bulldozer AND; [CP pg. 390]

E. Mr. Hannigan refused to remove bulldozer from the Novak's property. [CP pg. 390]

Overview of Mr. Hannigan's' lawsuit against Mr. and Mrs. Novak

Mr. Hannigan and his attorney Thomas Foley sued his victims the Novaks on Sept 10th 2010 [CP pg. 10-11], the very next day after the entry of the *stipulation and stay* in *State of Washington vs. Hannigan*. Mr. Hannigan's claims in the Wesley R Hannigan vs. Vit and Zdenka Novak lawsuit are (see complaint): [CP pg. 1-9]

A. That the Novaks blocked Mr. Hannigan's driveway to his lot #8 AND;

B. That the Novaks pulled land survey monuments from their own property that Mr. Hannigan hired a surveyor to set. Specifically, Plaintiff Mr. Hannigan's original filing under the "first cause of action

(quiet title)" section 2.5 asserts: "*Plaintiff subsequently hired Hagedorn Surveyors to locate the boundaries of the easement. Within approximately 12 hours of marking the easement by the surveyor, plaintiff noticed some of the pins were pulled or obliterated.*" AND; [CP pg. 2]

C. That Mr. Hannigan had a 20-foot easement through the Novaks property. [CP pg. 2]

After Mr. Hannigan filed this lawsuit, the Novaks hired Mr. Brad Andersen to defend them. Mr. Andersen went to the District Court to get any information and papers related to State of Washington vs. Hannigan [CP pg.23-59]. He did not find any. Mr. Andersen then went to the prosecutor's office and returned with nothing. Finally Mr. Andersen only got the police reports from the police. Those police reports are in exhibit F of the Defendant's DECLERATION OF VIT NOVAK IN SUPPORT OF DEFENDANTS' RESPONSE TO PLAINTIFF"S MOTION FOR RESTRAINING ORDER. Exhibit E in that declaration is a picture of Mr. Hannigan's assault with a bulldozer. [CP pg. 23-59]

From this point on in this STATEMENT OF THE CASE,

"Plaintiff" refers to Mr. Hannigan and "Defendants" refer to Mr. and Mrs. Novak.

The Trial Court Clerk mailed a notice on 03-28-2013 to the attorneys for dismissal of the case for want of prosecution under CR-41 (b)(2) [CP pg. 111]. The Plaintiff's attorney Mr. Foley did not serve or provide proof of service to the Defendants for Plaintiff's 04-26-2013 *Declaration of Wesley Hannigan Regarding Status Report* to extend the case. [CP pg. 112-114]

Defendant's attorney Brad Andersen filed a Notice of Appearance with the Trial Court on 06-27-2013. In that notice of appearance Mr. Andersen did not waive objection for service or objection to Jurisdiction. [CP pg. 115-117]

Defendants asked their attorney Mr. Andersen to do discovery and depositions. In response he filed a notice to attorney's intent withdraw on September 23 2013 and it was granted on October 17th 2013. [CP pg. 118-120]

The Trial Court Clerk mailed <u>another notice</u> on 03-09-2015 to

the Plaintiff and now pro-se Defendants for dismissal of the case for want of prosecution under CR-41 (b)(2). [CP pg. 126]

Defendant Novak's Motion for CR-11 Sanctions

The Defendant's filed a *Motion for CR-11 Sanctions* with the Trial Court on 04-08-2015. [CP pg. 127-132] The hearing date was on 04-30-2015. The Defendants argued in their CR-11 motion that:

A. Plaintiff committed crimes against the Defendants in this matter and criminals cannot benefit from their crimes.

B. Plaintiff's case frivolous due to his failure to prosecute the case for years.

C. That Plaintiff's case was filed for an improper purpose given the fact that Plaintiff was under stay of prosecution and stipulated to facts that prove he perjured himself in his civil case.

D. The case should be dismissed due to lack of service and proof of service to the Defendants in Plaintiff's 04-26-2013 *Declaration of Wesley Hannigan Regarding Status Report*

E. Defendants argued an attorney as required by CR-11 must sign every pleading, motion and legal memorandum. Plaintiff's attorney did not sign the 04-26-2013 *Declaration of Wesley*

Hannigan Regarding Status Report

F. Defendants argued that a paralegal cannot practice law including reviewing documents and filing them with the Trial Court without a lawyer's oversight. Plaintiff's attorney's paralegal filed and reviewed the 04-26-2013 *Declaration of Wesley Hannigan Regarding Status Report.*

G. Defendants argued Plaintiff already filed an improper TRO, combined with his failure to prosecute the case, combined with the lack of service made the case frivolous.

The Trial Court denied the Defendant's Motion for CR-11 sanctions. [CP 165-167]

Plaintiff's Response to Defendants Motion for CR-11 Sanctions

The Plaintiff's hand delivered a document titled "*Response to Defendants Motion for CR-11 Sanctions*" directly to the Trial Court Judge Brian Altman. [CP 137-139] In the cover letter of that document he hand delivered Mr. Foley wrote: "*Thank you for your kind attention in this matter. If you have any questions, please do not hesitate to contact me*". Plaintiff attorney Mr. Foley filed this with the Trial Court but did not serve Defendants nor did he file

proof of service.

Trial Court Judge found for the Plaintiff and entered ORDER on 05-28-2015. The ORDER sanctioned the Defendants $250 for the making the CR-11 motion. [CP pg. 165-167]

Defendant's *Response to* Plaintiff's Note for Trial and Statement of Arbitrability on 05-28-2015

The Trial Court denied the Defendant's *Response to Plaintiff's Note for Trial and Statement of Arbitrability* on 05-28-2015. [CP pg. 144-154]

Defendant's Objection to Plaintiff's ER-904

The Trial Court denied the Defendant's *Objection to Plaintiff's ER-904* on 08-13-2015. [CP pg. 267-281] The Trial Court Judge did not read through them and dismissed them outright with the Judge stating that it they be brought up at trial.

Plaintiff's Response to Defendants Interrogatories

The Defendants sent interrogatories and sent them to the Plaintiff. Plaintiff filed with the Trail Court on 08-19-2015 the

following answers: [CP pg. 288-311]

1.) **Interrogatory/Request:** "Which, when and by whom were the survey markers -that were allegedly obliterated- placed in ground for the first time?"

Response: July 16, 2010. Greg Brown of Hagedorn Engineering and Survey."

2) Interrogatory/Request: "Provide the survey record of the initial placement for the markers"

Response: Please see, attached, Exhibit 1.

3) Interrogatory/Request: Which, when (provide a time-frame) and by whom (provide their first and last names) were the survey markers obliterated?"

Response: Investigation suggests that Vit Novak obliterated the survey markers shortly after the survey was made.

4) Interrogatory/Request: Did a surveyor or Surveyors communicate to Mr. Hannigan that survey markers were indeed obliterated? Please provide their names, dates they visited and their findings.

Response: No.

16.) Interrogatory/Request: Did Mr. Hannigan ever block the road or the Novak's drive way"

Response: Investigation says no.

20.) Interrogatory/Request: Did Mr. Hannigan trespassed with a bulldozer on the Novak's free- and-clear property outside the easement area?

Response: Investigation says no.

21.) Interrogatory/Request: Did Mr. Hannigan assault Mr. Novak or any family members on Mr. Novak's property or the Maple View road?"

Response: Investigation says no."

22.) Interrogatory/Request: Did Mr. Hannigan ever trespass on Mr. Novak's property?

Response: Investigation says no.

In, Plaintiff's response to Defendant's interrogators and Requests for Production", Plaintiff Mr. Hannigan provided Hagedorn invoice No. 24735 dated August 16th 2010 that shows professional services for the period of 7/11/2015 through 8/31/2015. In that invoice "site visit to verify property corners had not been removed"

is listed as item 3. Plaintiff Hannigan paid 4,005.50 dollars for the service.

The Trial

At trial, Plaintiff Mr. Hannigan's land surveyor, Gregory Brown, testified that no land surveyor monuments were pulled [RP Vol I pg. 114-118]. Land surveyor Gregory Brown further testified that both he and Mr. Hannigan together observed this fact before he filed his lawsuit against the Novaks.

Defendant Mr. Novak argued Plaintiff had no deed, not quitclaim, no grantor or grantee to either Plaintiff or his lot #8 for a 20-foot easement through the Novaks property. Defendant cited *53 Wash. 646, 102 P. 756 SEYMOUR V. DUFUR (S. Ct. 1909)* that Plaintiff must win a quiet ejectment-title claim on the strength of his own title if at all.

JUDGMENT AND ORDER

Defendant's *Response to Plaintiff's Proposed Findings of Fact and Conclusions of Law*

The Trial Court entered the JUDGMENT AND ORDER [CP pg. 418-420] on December 3 2015, denying the Defendant's *Response to Plaintiff's Proposed Findings of Fact and Conclusions of Law* [CP 366-398] filed on November 30, 2015. In that document the Defendants argued that the Plaintiff's findings of fact and conclusion of law do not match the actual facts:

1. That the Land Surveyor testified that no survey monuments were pulled or obliterated [RP VOL I pg. 114-118] and that Plaintiff knew this when he filed his lawsuit

2. That Plaintiff Mr. Hannigan stipulated in State of Washington vs. Hannigan to assault, trespass, and the fact that his driveway access was not blocked [CP pg. 391]. Mr. Plaintiff lied in the Plaintiff's response to Defendant's Interrogatories [CP pg. 288-311]. The Defendants argued this was perjury on material facts.

3. The Defendants argued that The Washington Supreme Court ruled in *53 Wash. 646, 102 P. 756 SEYMOUR V. DUFUR (S. Ct. 1909)* that quiet title claims can be won on the strength of a title and the Plaintiff never presented his deed, plat, quitclaim, or title at trial in regard to Plaintiff's claim of having a 20-foot easement through Defendant's property.

Defendant's Motion to Prove Jurisdiction

The Trial Court entered the JUDGMENT AND ORDER of December 3 2015 [CP pg. 418-420], denying the Defendant's *Motion to Prove Jurisdiction* filed on November 30, 2015 [CP pg. 399-400]. The Defendants argued that the Judge loses jurisdiction when it fails to enter the Judgment and ORDER within 90 days. Defendant cited RCW 2.08.240 and CR-52(e).

Trial Court Clerk Obstruction regarding filed documents

The Trial Court committed obstruction by lying to the Defendants about court records when Defendants inquired if anything new was filed on Dec 21 2015 and December 29th 2015. Defendant Mr. Novak via telephone on Dec 21 2015 and via email on Dec 29th 2015 that nothing was filed past line 83 when in fact Plaintiff's *Motion For Order To Show Cause: Contempt* (line 85) and Plaintiffs *Motion to Supplement Findings & Judgment* (line 84) were both stamped filed on December 21 2015.

AMENDED JUDGMENT AND ORDER

The Trial Court entered the AMENDED JUDGMENT AND ORDER of January 14th 2016 [Supp. CP pg. 552-554], denying Defendant's

Response to Plaintiffs Motion to Supplement [CP pg. 540-541]. The Defendants argued the Court did not have jurisdiction due to the Court Rules time limits were exceeded.

Plaintiff's Motion For Order To Show Cause: Contempt

Defendants argued that Plaintiff's attorney Thomas Foley's *Motion For Order To Show Cause: Contempt* was not valid because he lied when the JUDGMENT AND ORDER was entered. He falsely stated that it was August 26 2015 when in fact it was Dec 3rd 2015. Defendants were nearly jailed for contempt because of Mr. Foley's false statements. Defendants almost did not show up for the hearing due to the Trial Court clerks' dishonesty that nothing was filed.

V. ARGUMENT

The Appellants bring three core parts to their argument. The first is to show that the Trial Court Judges' findings of facts are unfounded. The Second is to show the Trial Court Judge's conclusions of law are erroneous. The third is to show the breach of due process to the Defendants by the Trial Court, the Judge and the Plaintiff.

PART 1: THE TRIAL COURT JUDGE'S FINDING OF FACTS

The modern era of substantial evidence review of findings of fact begins with *Thorndike v. Hesperian Orchards, 54 Wn.2d 570,343 P.2d 183 (1959)*. Thorndike explains that a statute in place from 1893 to 1951 required the Supreme Court to review judicial findings de novo when the entire record was appealed. But the statute was repealed in 1951, returning Washington to the prior rule that the appellate court does not review factual findings de novo. The Thorndike opinion explains that henceforth appeals from judicial findings are governed by RCW 4.44.60: *"The findings of the court upon the facts shall be deemed a verdict, and may be set aside in the same manner and for the same reasons as far as applicable, and a new trial granted."*

In Grange v. Finlay, 114 Wn.2d 737, 745, 790 P.2d 1227 (1990). *"If there is substantial evidence supporting the verdict of the jury, as distinguished from a mere scintilla of evidence, the verdict must stand. By "substantial evidence" is meant that character of evidence which would convince an unprejudiced, thinking mind of the truth of the fact to which the evidence is directed."*

The Court said in Reynolds v. Dexter Horton & Co., 2 Wash. 185, 26 Pac. 221:

". . .Unless the finding was so clearly unfounded that it should have been set aside had it been made by the jury, we should not disturb it. It stands as a special verdict, and must be so treated."

The Skamania County Superior Court case finding of fact in Wesley R. Hannigan vs. Vit and Zdenka Novak is a special verdict. In civil cases, such as this one, the standard of evidence is preponderance of evidence.

For the Appellants Vit and Zdenka Novak to succeed in reversing the Trial Court Judge's Findings of Fact they clearly must have *"substantial evidence"* as in Grange v. Finlay, 114 Wn.2d 737, 745, 790 P.2d 1227 (1990).

Plaintiff's Claim: The Appellants blocked his driveway

In Criminal Trials the burden of proof is beyond a reasonable doubt. Since beyond a reasonable doubt is the highest standard of evidence it stands to reason that this meets or exceeds the standard of *"substantial evidence"*.

Respondent Mr. Hannigan made three main claims in his lawsuit against the Appellants. One of them was that the Appellants blocked Respondents driveway [CP pg. 2]. Respondent Mr. Hannigan was criminally cited for Disorderly Conduct [CP pg. 387] and on September 9th 2010 he signed a stipulation and stay in the State of Washington vs. Wesley R Hannigan case. [CP pg. 384-386]

Respondent Mr. Hannigan stipulated to the facts in police report. Point 5 reads: "*The defendant hereby stipulates to the admissibility of the facts contained in the police reports upon which the charge in this matter is based and acknowledges that such statements can be entered and used to support a finding of guilty if the court finds cause to revoke the order for stay of proceedings.*"

The fact is Officer Rasmussen wrote in his Police Report multiple times he had no trouble driving through with his patrol vehicle. Mr. Hannigan signed this stipulation. Since it was a criminal case the standard of evidence is beyond a reasonable doubt. This stipulation proves the Appellant's argument with

beyond a reasonable doubt standard of evidence that Respondent's driveway was not blocked.

Further, Respondent signed the stipulation on September 9th 2010 and sued his victims the very next day. Respondent knew when he filed this civil case that his claim that the Appellants blocked his driveway was false.

Plaintiff's Claim: The Appellants pulled or obliterated pins (Land survey monuments)

At trial Land Surveyor Gregory Brown testified that no pins were pulled [RP VOL I pg. 114-118]. They were all there. Direct testimony of Plaintiff's owns expert exceeds the standard of *"substantial evidence".* The Trial Court Judge's finding of fact is plainly wrong [CP 366-398]. In fact the Trial Court Judge gave the Appellants this finding orally at Trial but later denied the Defendants the ability to add this to the written finding of facts.

Surveyor Mr. Brown also testified that he was with Mr. Hannigan when he found them all in their place. Mr. Brown's firm invoiced (inv. # 24735) Mr. Hannigan $4,000.50 dollars for the work on

August 16th 2010. With the knowledge that it was false, Mr. Foley and Mr. Hannigan filed the lawsuit and this claim anyway on September 10th 2010.

Regarding the later Mr. Brown's false claim that the pins were "covered' in dirt. The Trial Court Judge found that Plaintiff was far away in Redmond OR at the 10 annual BMW motorcycle rider's gathering. Further, plaintiff also did not aver this in his complaint so he cannot get relief. [CP pg. 2]

Plaintiff's Claim: The Plaintiff has a 20-foot easement through the Appellants property

At trial Plaintiff failed to produce his deed, a quitclaim, grantor or grantee to a 20-foot easement on Appellants property for himself or his Lot #8. In the actual documents filed with the Skamania County Auditor there is no record of this 20-foot easement for Mr. Hannigan's lot in his deed, his Survey Plat. Plaintiff's complete lack of evidence is the "*substantial evidence*".

Plaintiff's Claim: The Plaintiff has a 30-foot and a 60-foot easement through the Appellants property

This was true. Appellants argue here that Respondent exceeded his rights for ingress and egress by engaging in violent criminal activity against the Appellants on their own property. In the balance, the rights of the Appellants to not live in fear and danger of being run over by Respondent's bulldozer outweighs his rights to access his property through the 30 and 60 foot easements on Appellant's lot #9. The danger is just too great and the Appellate Court must find that Respondent lost the 30-foot and 60-foot easements.

Plaintiff's Made Perjured Statements in Response to Defendant's Interrogatories:

Plaintiff Mr. Hannigan stipulated to the fact in State of Washington vs. Hannigan that he assaulted, trespassed on the property of the Appellants the Novaks. Trial testimony by the Land Surveyor Gregory Brown proved that Mr. Novak did not pull surveyor pins. Yet in his response to the interrogatories, [CP 288-311] Plaintiff Mr. Hannigan perjured that Mr. Vit Novak pulled survey Pins. Mr. Hannigan also perjured when he claimed he never assaulted or trespassed on the property of the Appellants the Novaks. This violates RCW 9A.72.020.

Part 2: Trial Court Judge's conclusions of law are erroneous

Defendant's Objection to Plaintiff's ER-904

The Trial Court denied to review the Defendant's *Objection to Plaintiff's ER-904* on 08-13-2015 [CP 267-281]. The Trial Court Judge did not read through them and did not review a single one. With the Judge stating that it be brought up at trial. Plaintiff never brought his response to the Defendant's objections at that hearing nor at the Trial Court Trial. Therefore under the law Plaintiff's evidence should be stricken from the record in fairness.

Defendant Novak's Motion for CR-11 Sanctions

The trial Court Judge erred in denying Defendant's 04-08-2015 *Motion for CR-11 Sanctions* on the 04-30-2015 hearing date [CP 127-132]. The fact is it is plain reading of the CR-11 rule is very clear. *"Every pleading, motion and legal memorandum of a party represented by an attorney shall dated and signed by at least one attorney of record".* To this day the 04-26-2013 Declaration of Wesley Hannigan Regarding Status Report to this day remains

unsigned by Plaintiff's attorney of record.

Further, Thomas J. Foley's duty under CR-11 is to read the pleading and ensure the after a reasonable inquiry that the pleading, motion, or legal memorandum is:

1.) well grounded in fact

2.) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law;

3.) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

The fact is by Plaintiff not doing service it caused unnecessary delay and increased the cost of litigation. The fact is not doing the service 04-26-2013 Declaration of Wesley caused the Trial Court to lose jurisdiction especially since the intent of the declaration was to extend on the Court Clerk's motion to dismiss it under CR-41 (b)(2).

The act of not prosecuting the case is itself frivolous. The fact is Plaintiff failed to prosecute his case and the Court Clerk, on two

separate occasions, sent notices of dismissal for want of prosecution under CR-41 (b)(2).

Further CR-11 states:

"*If a pleading, motion, or legal memorandum is signed in violation of this rule, the Court, upon motion or upon its own initiative may impose ...an appropriate sanction.*

The declaration was signed by L. Mattsen, who at the time was not licensed to practice law in the State of Washington according to the Lawyer Directory at the WSBA online site. Practicing law without a license violates RCW 2.48.180 and is a gross misdemeanor. Specifically:

(6) A violation of this section is cause for discipline and constitutes unprofessional conduct that could result in any regulatory penalty provided by law, including refusal, revocation, or suspension of a business or professional license, or right or admission to practice. Conduct that constitutes a violation of this section is unprofessional conduct in violation of RCW 18.130.180.

Since L. Mattsen works for Mr. Foley's law-firm, Mr. Foley is responsible her conduct.

Trial Court Lost Jurisdiction on the Case when Plaintiff Failed to Serve and Provide Proof of Service to the Defendants for Plaintiff's Declaration of Wesley Hannigan Regarding Status Report

Defendant's former attorney Brad Andersen when he filed a Notice of Appearance with the Trial Court on 06-27-2013 did not waive objection for service or objection to Jurisdiction. The Court lost jurisdiction due to Plaintiff's lack of service on 04-26-2013.

A criminal cannot benefit from their crimes

Plaintiff's case is frivolous due to the argument that under legal canon a criminal cannot benefit from their crimes. The leniency of the Prosecutor in State of Washington vs. Hannigan does not change the fact that Respondent stipulated to the facts he committed the crimes.

See Riggs v. Palmer, 22 N.E. 188, 189-90 (N.Y.1889), See Van Alstyne v Tuffy, 169 NYS. 173, 175(Sup. Ct. 1918). Criminals are not entitled to benefit from their crimes, Blacks' Law Dictionary 1856 (9th ed. 2009) (translating the maxim "no one can gain advantage by his own wrong").

The Appellants were assaulted by the bulldozer, were trespassed upon. They will have to live in fear and have bad memories whenever they visit their property.

Those who perjure lose their cases

Those who perjure lose their cases. In Alexander v. Jackson Radiology Assoc., P.A., et al., 156 S.W.3d 11 (Tenn. Ct. App. 2004), the Court of Appeals agreed that the plaintiff's perjury offended the basic principles underlying the judicial system. See also Potts v. Mayforth, 59 S.W.3d 167, 172 (Tenn. Ct. App. 2001)

Plaintiff's committed perjury when he filed his lawsuit as he knew Defendant did not pull survey pins. Pulling survey pins is actually a gross misdemeanor and the Plaintiff falsely accused them of it to frame them up. This false accusation destroyed the Defendants reputation professionally. That Plaintiff Mr. Hannigan lied in his response to defendant's interrogatories accusing Vit Novak of pulling stakes when Mr. Hannigan knew full well Mr. Novak didn't was a crime. Mr. Hannigan denied assaulting and trespassing in

response to Mr. Novak's interrogatories is also a crime of perjury. Mr. Hannigan stipulated to that fact that he assaulted Mr. Novak in State of Washington vs. Hannigan.

Plaintiff does not have a 20-foot easement for Quiet Title Easement and Ejection Lawsuit

Under 53 Wash. 646 102 P. 756 Seymour v Dufur (S, Ct. 1909), states the plaintiff in an ejectment must recover if at all on the strength of his own title. Mr. Foley did not present Mr. Hannigan's own title into evidence. Therefore the Plaintiff does not have the proof required under Seymour v Dufur to prove he has a 20-foot easement in this quiet title claim.

Plaintiff is not entitled to Attorney's fees or Damages in a Quiet Title Easement and Ejection lawsuit

For attorney fees, the ejectment theory states cannot get attorney fees – along with the fact that for relief in equity attorney costs are not typically given. *See Kobza v. Tripp, 105 Wn. App. 90, 95, 18 P.3d 621 (2001). See Haueter v. Rancich, 39 Wash.App. 328, 331, 693 P.2d 168 (1984)*

Plaintiff Committed Perjury To Win His Case On All His Claims

The law and court rules are such that even after a judgment is entered and after the deadline to appeal a judgment to the appellate court has expired one can overturn a judgment on the discovery of opposing party fraud or misrepresentation. CR-60 (b)(4) and RCW 4.72.010(4), defendants have relief from judgment in the case of fraud. The intent of the court rule and the law is obviously to prevent a miscarriage of justice.

It is a legal cannon that no one can obtain advantage for a crime they committed. See Riggs v. Palmer, 22 N.E. 188, 189-90 (N.Y.1889), See Van Alstyne v Tuffy, 169 NYS. 173, 175(Sup. Ct. 1918). Criminals are not entitled to benefit from their crimes, Blacks' Law Dictionary 1856 (9th ed. 2009) (translating the maxim "no one can gain advantage by his own wrong").

Defendant's Motion to Prove Jurisdiction

The Trial Court entered the JUDGMENT AND ORDER of December 3 2015, denying the Defendant's *Motion to Prove Jurisdiction* filed on November 30, 2015. The Defendants argued that the Judge loses jurisdiction when it fails to enter the Judgment

and ORDER within 90 days. Defendant cited RCW 2.08.240 and CR-52 (e). Therefore the Judgment and Order is null and void.

JUDGMENT AND ORDER and

Defendant's Response to Plaintiff's Proposed Findings of Fact and Conclusions of Law

The Trial Court entered the JUDGMENT AND ORDER of December 3 2015, denying the Defendant's *Response to Plaintiff's Proposed Findings of Fact and Conclusions of Law* filed on November 30, 2015. In that document the Defendants argued that the Plaintiff's findings of fact and conclusion of law do not match the actual facts:

1. That the Land Surveyor testified that no survey monuments were obliterated and that Plaintiff knew this when he filed his lawsuit
2. That Plaintiff Mr. Hannigan stipulated in State of Washington vs. Hannigan to assault, trespass, and the fact that his driveway access was not blocked. Mr. Plaintiff answered the lied in the Plaintiff's response to Defendant's Interrogatories. The Defendants argue this was perjury on material facts.
3. The Defendants argued that The Washington Supreme Court

ruled in *53 Wash. 646, 102 P. 756 SEYMOUR V. DUFUR (S. Ct. 1909)* that quiet title ejectment claims can be won on the strength of a title and Plaintiff never presented his deed, plat, quitclaim, or title at trial in regard to Plaintiff's claim of having a 20-foot easement through Defendant's property. [RP Vol I pg. 208]

AMENDED JUDGMENT AND ORDER IS NULL AND VOID

The plaintiff's MOTION TO SUPPLEMENT FINDING OF FACT AND CONCLUSIONS OF LAW AND MONEY JUDGEMENT is late. Plaintiff's motion was filed on December 21 2015 with the Court Clerk and the JUDGMENT AND ORDER was entered on December 3rd 2015. Under CR-52(b), "upon motion of a party filed not later than 10 days after entry of judgment the Court may amend its findings or make additional findings and may amend the judgment accordingly."

The JUDGMENT AND ORDER was entered on December 3rd 2015 therefore December 14th 2015 was the last day for the Plaintiff to file his motion to amend. The Plaintiff filed the MOTION TO SUPPLEMENT FINDING OF FACT AND CONCLUSIONS OF LAW AND MONEY JUDGEMENT on Dec 21st 2015 and that this is

past the deadline, hence null and void.

Further the AMENDED JUDGMENT and ORDER does not remedy the fact that Plaintiff committed perjury to obtain the result.

Part 3: Violation of due process

Plaintiff's Attorney had an Ethical Duty under the Rules of Professional Conduct to withdraw

Plaintiff's attorney Mr. Foley is obligated under the Bar Associations Rules of Professional Conduct to withdraw his case because his client's perjury the Court to withdraw his case.

Plaintiff's Fraud Upon the Court and Ex-Parte Communication with Trial Court Judge in regard to Plaintiff's Response to Defendants Motion for CR-11 Sanctions

The Plaintiff's hand delivered a document titled *"Response to Defendants Motion for CR-11 Sanctions"* directly to the Trial Court Judge Brian Altman. In the cover letter of that document he hand delivered Mr. Foley wrote: *"Thank you for your kind attention in this matter. If you have any questions, please do not hesitate to contact me"* [CP 137-139]. Plaintiff attorney Mr. Foley filed this with the

Trial Court but did not serve Defendants nor did he file proof of service.

Trial Court Judge found for the Plaintiff and entered ORDER on 05-28-2015. [CP 165-167] The ORDER sanctioned the Defendants $250 for the making the CR-11 motion.

1. The ex-parte "personal letter" and "reply to motion" does have a "hand delivered" marker indicating that Mr. Foley gave it to Judge Brian Altman directly.

2. Judge Altman did not, as required by the Judicial Code of Conduct Cannon 2.9 Ex-Parte Communication, notify Defendant that he received the letter.

3. Judge Altman did not, as required by the Judicial Code of Conduct Cannon 2.9 Ex-Parte Communication, reject and not rule on the ex-parte communication. Instead he ordered Defendant to pay Mr. Foley's attorney fee of 250 dollars.

Trial Court Clerk Obstruction regarding filed documents

The Trial Court committed obstruction by lying to the Defendants

about court records when Defendants inquired if anything new was filed on Dec 21 2015 and December 29th 2015. Defendant Mr. Novak via telephone on Dec 21 2015 and via email on Dec 29th 2015 that nothing was filed past line 83 when in fact Plaintiff's *Motion For Order To Show Cause: Contempt* (line 85) and Plaintiffs *Motion to Supplement Findings & Judgment* (line 84) were both stamped filed on December 21 2015. *See Ex. A*

Due to Plaintiff's attorney's regular conduct of not doing service the Defendants depended on the Court Clerk for accurate information about filings. They nearly did not attend the Contempt of Court hearing thinking it was not filed with the Court.

Plaintiff's Motion For Order To Show Cause: Contempt [CP 542-545]

Defendants argued that Plaintiff's attorney Thomas Foley's *Motion For Order To Show Cause: Contempt* was not valid because he lied when the JUDGMENT AND ORDER was entered. He falsely stated that it was August 26 2015 when in fact it was Dec 3rd 2015. A sanction against Plaintiff's attorney Mr. Foley is appropriate given that Defendants would have falsely faced civil contempt.

Plaintiff's hid the Stipulation and Stay in State of Washington vs. Hannigan in 2010

After Mr. Hannigan filed his lawsuit, the Novaks hired Mr. Brad Andersen to defend them. Mr. Andersen went to the District Court to get any information and papers related to State of Washington vs. Hannigan. He did not find any. Mr. Andersen then went to the prosecutor's office and returned with nothing.

Finally Mr. Andersen only got the police reports from the police. Those police reports are in exhibit F of the Defendant's DECLERATION OF VIT NOVAK IN SUPPORT OF DEFENDANTS' RESPONSE TO PLAINTIFF"S MOTION FOR RESTRAINING ORDER.

The State of Washington vs. Hannigan stipulation was stamped filed in on Sept 9 2010. The lawsuit was filed on Sept 10 2010. The fact that the Defendant's Attorney went to retrieve records and was only able to retrieve a "police report" for the *Defendant's Declaration in Support* motion proves filed Court Records were hidden from them by both the District Court Clerk and the Deputy

Prosecuting Attorney McGill. See *Wallace v. Kato, 549 U. S. 384, 388 (2007)*

VI. CONCLUSION

1. Reverse the entire Trial Court Judgment and Order against the Appellants
2. Reverse the entire Trial Court Amended Judgment and Order against the Appellants
3. Reverse the entire Trial Court decision on Defendants motion for CR-11 sanctions
4. Find Respondent's attorney Mr. Foley in contempt of court for Perjury due to his *Plaintiff's Motion For Order To Show Cause: Contempt* motion. Mr. Foley committed perjury when he stated that the JUDGMENT AND ORDER was entered on Aug 26 2015 instead of the actual date of Dec 3rd 2015.
5. Reverse the Trial Court decision that Respondent Mr. Hannigan and his Lot 8 have a 20-foot easement through the Appellant's property.
6. Reverse the Trial Court decision that Respondent Mr. Hannigan and his Lot 8 have 60 and 30-foot easements easement through

the Appellant's property due to Respondents criminal activity

7. Find that Respondent Mr. Hannigan is Vexatious and Frivolous litigant and grant an injunction against him filing lawsuits against the Novaks

8. Find that Respondent Mr. Hannigan committed Felony Perjury when he intentionally falsely stated the Appellants pulled survey monuments.

9. Find that Respondent Mr. Hannigan committed Felony Perjury when he intentionally falsely stated the Appellants blocked his driveway.

10. Sanction Respondent and his attorney Thomas Foley for filing a frivolous lawsuit

11. Award Appellants their entire attorney fees, court costs, expert costs and damages.

12. Refer Respondent Mr. Hannigan to the prosecuting attorney for prosecution for perjury.

March 28 2016

Respectfully submitted,

Signature
Vit Novak
Pro Se Appellant

RE: Is there any new filing in my case?

From : Sharon Vance <vance@co.skamania.wa.us> Tue, Dec 29, 2015 04:15 PM

Subject : RE: Is there any new filing in my case?

To : 'Vit Novak' <vit@neofocal.com>

No new entries - nothing past #83.

-----Original Message-----
From: Vit Novak [mailto:vit@neofocal.com]
Sent: 12/29/2015 3:44 PM
To: Sharon Vance
Subject: Is there any new filing in my case?

Dear Sharon,

Would you be so kind to check the court records for me?
* was there anything filed in my case 10-2-00115 0 (Hannigan vs Novak) past the line #83.

Thank you,

--
Vit Novak
Software Systems Architect
Neofocal Systems, Inc.
503-469-6176

From : Vit Novak <vit@neofocal.com> Tue, Dec 29, 2015 03:43 PM

Subject : Is there any new filing in my case?

To : vance <vance@co.skamania.wa.us>

Dear Sharon,

Would you be so kind to check the court records for me?
* was there anything filed in my case 10-2-00115 0 (Hannigan vs Novak) past the line #83.

Thank you,

--
Vit Novak
Software Systems Architect
Neofocal Systems, Inc.
503-469-6176

FILED
COURT OF APPEALS
DIVISION II
2016 MAR 31 AM 10: 35
STATE OF WASHINGTON
BY _____
DEPUTY

AFFIDAVIT OF SERVICE BY MAIL

COURT OF APPEALS, DIVISION II

Wesley R Hannigan, Respondent

Vit and Zdenka Novak Appellants

COA No. 48501-0-II, Trial No. 10-2-00115-0

I, Richard Kitamura, the undersigned mailer, being of sound mind and under no duress, do hereby certify, attest and affirm that the following facts are true and correct:

That on this 29 date of March 2016, on behalf of Vit Novak the undersigned personally mailed the following document via United States Postal Service:

BRIEF OF APPELLANT

One complete document as described above, properly enveloped and addressed one to each addressee at addresses as follows:

Thomas J. Foley, Esq

P.O.BOX 609

Vancouver, Washington 98666

AND

Wesley R. Hannigan

1401 I St

Washougal WA 98671

2. That I am at least 18 years of age. AND;

3. That I am not related to the recipients by way of blood, adoption, marriage, but serve as a "disinterested third party" AND;

4. That I am in no way connected to or involved in or with, the person and or matter at issue in this action.

I affix my signature to these affirmations this 29 date of March, 2016

Richard Kit