

50031-1
No. 92920-3

SUPREME COURT
OF THE STATE OF WASHINGTON

CHRISTOPHER ENGLISH, an individual,

Appellant,

v.

STATE OF WASHINGTON, Department of Corrections and
STATE OF WASHINGTON, Department of Social and
Health Services,

Defendants,

and

and DENNIS ALVIN BUSS, individually,

Respondent.

BRIEF OF APPELLANT

John R. Connelly, Jr.
WSBA #12183
Micah R. LeBank
WSBA #38047
Connelly Law Offices
2301 North 30th Street
Tacoma, WA 98403
(253) 593-5100

Philip A. Talmadge
WSBA #6973
Talmadge/Fitzpatrick/Tribe
2775 Harbor Avenue SW
Third Floor, Suite C
Seattle, WA 98126
(206) 574-6661

Attorneys for Appellant English

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A. INTRODUCTION

Christopher English, a Department Corrections (“DOC”) inmate at McNeil Island, was seriously injured by the actions of Dennis Buss, a Department of Social and Health Services (“DSHS”) employee who covertly exploited his government position to use English and other inmates to work on a project for Buss’s own personal financial benefit. Buss did not ensure that the inmates had proper equipment to appropriate safety protections, and English sustained serious personal injuries due to Buss’s negligence.

English sued the State; his complaint specifically referenced Buss in numerous passages including being named in the parties section of the complaint. Buss was aware that his illegal conduct would result in litigation and he engaged in a lengthy administrative proceeding regarding his ethical violations. After the statute of limitations ran, English sought to amend his complaint to make clear that he was also suing Buss in his personal capacity.

A Pierce County Superior Court judge allowed the amendment and found that it related back to the filing of the original complaint pursuant to CR 15(c). Buss was then timely served with the amended complaint. A second judge, however, upon Buss’s CR 60 motion, in violation of Pierce County local rule, allowed the amendment decision under CR 15(a) to

stand, but then overrode his colleague's CR 15(c) decision, dismissing English's claim against Buss on statute of limitations grounds.

The trial court's actions were contrary to both CR 60 and CR 15(c) and should be reversed by this Court to allow English his day in court against Buss for his personal, egregious misconduct that resulted in serious injuries to English.

B. ASSIGNMENTS OF ERROR

(1) Assignment of Error

1. The trial court erred in granting Buss's CR 60 motion, limiting the relation back effect under CR 15(c) of an earlier order amending English's complaint, and dismissing English case against Buss on statute of limitations grounds by an order entered on February 26, 2016.

2. The trial court erred in denying English's motion for reconsideration in an order entered on March 21, 2016.

(2) Issues Pertaining to Assignments of Error

1. Did the trial court err in revising the order of another judge under PCR 7(c)(5)? (Assignments of Error Numbers 1, 2)

2. Does CR 60 apply to permit vacation of an interlocutory trial court order? (Assignments of Error Numbers 1, 2)

3. Even if CR 60 were available to permit the setting aside of an interlocutory trial court order such as an order permitting amendment of a complaint, did the trial court err in holding that such an amendment did not relate back to the filing of the original complaint because the trial court should not have applied the now disfavored “inexcusable neglect” prong of the test for relation back of complaints under CR 15(c)? (Assignments of Error Numbers 1, 2)

C. STATEMENT OF THE CASE

Christopher English, an inmate at the State’s McNeil Island¹ penitentiary, was seriously seriously injured while performing work on a project that was designed to personally benefit Dennis Buss, a DSHS employee.

Because the Legislature decided to terminate the McNeil Island Correctional Center as a penal facility, DOC and DSHS entered into a contract to transition the facility to DSHS’s use. CP 3, 17. The agencies agreed to have DOC inmates, supervised by DOC, to accomplish this result. *Id.*

In April, 2011, DSHS appointed Buss to be the assistant fire chief and fire safety officer at the McNeil Island fire station it operated. *Id.* On June 6, 2011, Buss used his DSHS position of authority to order four DOC inmate firefighters to Nancy Armstrong’s former residence at 209 Buck Road on McNeil Island where he instructed them to remove the structure

¹ The McNeil Island penitentiary was formerly a Department of Corrections facility; the Special Offender Unit is located on the Island and is operated by DSHS. CP 3, 17.

of a travel trailer, formerly owned by Armstrong,² from a metal frame. CP 4, 17. English was one of these four inmates. *Id.* Buss used official equipment belonging to DSHS, as well as DOC inmates contracted by DSHS, for his own private benefit to dismantle Armstrong's trailer and break down the trailer's pieces with the intent to transport the trailer off of the Island, and convert it to his personal use. CP 336. He had no authority to use DOC inmates for this plainly personal mission. CP 427-28.

Buss not only forced DOC inmates to perform work for his personal gain, he also improperly used DSHS equipment including the McNeil Island Fire Station squad truck and power equipment belonging to the McNeil Island fire station. CP 337. While misusing inmates and state property for his own private purposes, Buss failed to ensure that the work was performed in a safe manner, the tools supplied to the inmates were being used appropriately, or safety equipment was utilized. *Id.* For example, he failed to ensure that the DOC inmates had and used appropriate personnel protective equipment, and failed to ensure that inmates were using the correct or appropriate power equipment to cut the trailer apart. *Id.*

² Armstrong was a DOC nurse.

At the time of his injury English was using a Warthog saw with a ventilation blade used to cut through wood roofs during to gain access to a building's interior to fight a fire. *Id.* This saw blade was not properly used to cut through the metal and aluminum of the trailer. *Id.* The Warthog saw backfired and cut a large portion of English's left calf requiring him to be airlifted to Harborview Medical Center for emergency medical treatment. *Id.* Despite English's injuries, Buss persisted in his efforts to remove the trailer from the Island. *Id.*

On June 7, 2011 Buss also used his position to transport his own privately-owned vehicle onto McNeil Island on the DSHS-owned and operated vehicle barge. *Id.* On June 9, 2011, the day after English was airlifted to Harborview, Buss transported his personal truck onto the Island, placed the disassembled Armstrong trailer parts in it, and removed the 35-foot trailer from McNeil Island. CP 337-38.

DSHS through Kelly Cunningham, the CEO of the Special Commitment Center, CP 420, asked Arthur Stratton to conduct an independent investigation of the incident. CP 422. Stratton interviewed all of the witnesses involved in the incident and performed a thorough investigation. Based on his investigation, Stratton prepared an extensive report on December 1, 2011. CP 385-416. That report documented Buss's misconduct – the use of inmate labor for personal gain and the

failure to ensure that the inmates had the proper equipment for the job in violation of multiple policies, procedures, laws and administrative codes. *Id.*³ Stratton later testified that he thought that Buss's conduct demonstrated significant lapses in judgment, meriting significant discipline including and up to termination:

Q: You can still give your opinion.

A: If Mr. Cunningham had asked, I would tell him that this was – demonstrates significant lapses in judgment, significant lapses in following processes, and deserves significant discipline.

Q: Including and up to termination?

A: Yes.

CP 382.

Cunningham then sent Buss a detailed letter on March 27, 2012 regarding his misconduct that led to English's injuries and his possible violations of DSHS regulations or policies. CP 434-54. The letter's purpose was to notify Buss of possible discipline. CP 423. Cunningham believed that Buss's conduct was negligent and haphazard and that he disregarded the safety of the inmates including English:

Q: It says, "On June 8, 2011, while under your direction, inmate C.E. injured himself while using the chop (rescue)

³ Stratton's report was detailed in its interviews of witnesses and the addressing of agency regulations and policy, but its recommendation was narrow: "Management carefully reviews and considers the information contained in this report and take [sic] appropriate action." CP 414.

saw with the Warthog ventilation blade. Inmate C.E. was wearing his normal work pants, goggles, gloves, ear protection and boots; not the prescribed personal safety equipment of bunker coat, bunker pants, gloves, boots, helmet and eye protection. This demonstrates negligence on your part as the fire captain, fire department safety officer and as a Washington State employee"; correct?

A: Correct.

Q: Now, why did you find that this demonstrated negligence on Mr. Buss's part?

A: As the safety officer, it is my belief that he should have known what safety equipment was required, and he should have ensured that anyone using that type of a saw should have the equipment.

Q: Anything else?

A: The fact that he was directing the inmates to perform the work.

Q: Because he was directing them to perform this work that was outside the scope of the contract; correct?

A: Yes. And that would ultimately benefit him as an individual, and not the State.

CP 426. Cunningham testified further that Buss never should have used the inmates to dismantle the trailer because it was an abuse of his position of power and authority to order the inmates to perform dangerous work for his personal benefit. CP 426-28. Cunningham testified further that this was a preventable accident that shouldn't have happened in the first place. CP 428, 430.

DSHS, through Cunningham, terminated Buss because his actions violated numerous statutory provisions pertaining to ethical conduct of state employees and regulatory provisions relating to safety of persons under his supervision. CP 338, 429-30. He filed a union grievance. CP 430. Buss was allowed to resign in lieu of termination. CP 315, 430-31.

Buss also faced separate ethical charges before the Washington State Executive Ethics Board. CP 456-65. Those charges were based on an August 7, 2012 referral by DSHS. CP 456. Buss stipulated to facts in that proceeding, waiving his right to a hearing. CP 457. The stipulated facts, conclusions, and order are in the Appendix. The board determined Buss violated RCW 42.52.030, relating to conflict of interest, RCW 42.52.070, pertaining to securing special privileges from his public service, and RCW 42.52.160(1), relating to use of state resources for his personal benefit. CP 462-63.

English filed the present action against DSHS and DOC in the Pierce County Superior Court on June 3, 2014. CP 1-11. The case was initially assigned to the Honorable Vicki Hogan. English's complaint referenced Dennis Buss as a party in the "Parties and Jurisdiction" section of the Complaint. CP 1-2. He was also mentioned throughout the complaint. CP 1-11. DSHS and DOC filed an answer, admitting Buss had been DSHS's employee. CP 16 ("Defendants admit only that Dennis

Alvin Buss was an employee of the State of Washington Department of Social and Health Services.”). Over the next 15 months, the parties engaged in discovery including depositions of DSHS/DOC representatives. DSHS and DOC were each represented by the Attorney General’s Office. CP 16-21. DSHS/DOC disclosed Buss as a primary witness. CP 23.

In September 2015, English moved to file an amended complaint, adding claims against DSHS/DOC under 42 U.S.C. § 1983 and also formally adding Buss to the caption as a defendant. CP 37-53. Because this motion was filed after the statute of limitations had run, English also requested that the amendment relate back to the original filing of the complaint under CR 15(c). CP 50-52. English argued that Buss and DSHS/DOC shared a community of interest and the defendants were therefore obliged to notify Buss. CP 51. English also contended that Buss was named as a party in the original complaint and that the amendment merely changed the capacity in which he was being sued to include both his official and personal capacity. *Id.* DSHS/DOC did not oppose the motion, nor did they argue that the addition of Buss would cause them any prejudice, and the trial court entered an order on October 2, 2015 granting English’s motion to amend and allowing the amended complaint to relate back to the original filing of this case. CP 147-48. English filed the

amended complaint. CP 151-62. English served Buss on October 13, 2015 with a summons and the amended complaint. CP 163-64. On October 23, 2015 Buss appeared in the action. CP 518-19.⁴

Subsequently, English settled with DSHS/DOC and on November 18, 2015 and filed a notice of settlement that specifically confined the settlement to English and DSHS/DOC. CP 320-22, 521-22. The notice referenced Buss as the one remaining defendant who had not reached settlement in this matter and that the case was continuing against him. CP 521. The notice also stated that the parties had agreed to continue the trial date in the case. *Id.* Thereafter, on December 1, 2015 the parties submitted a stipulation and order to continue the trial date to May 1, 2016, which was also entered by the trial court. CP 524-27. The stipulation was signed by Buss's counsel. CP 527. That same day, a new case schedule was issued providing for a discovery cut-off of February 29, 2016 and a trial date of May 2, 2016. CP 529-30.

Rather than prepare the case for trial, Buss filed what he denominated a motion for summary judgment and relief from order pursuant to CR 60, seeking to set aside the trial court's amendment order. CP 217-33, 328-31. The trial court, the Honorable Edmund Murphy,

⁴ Buss replaced his former counsel Rick Cordes with Kelley Sweeney in December 2015. CP 189-91. Sweeney answered on Buss's behalf on January 8, 2016. CP 192-99.

presided over the hearing and granted Buss's motion, permitting Judge Hogan's CR 15(a) decision to stand but vacating her order with respect to CR 15(c) on relation back; in concluding that the amendment to add Buss did not relate back, the court determined that the statute of limitations barred English's action against Buss. CP 596-97; RP 34-36. English filed a timely notice of appeal to this Court. CP 611-15. English moved for reconsideration of the trial court's order, and the trial court denied that motion by an order entered on March 21, 2016. CP 600-09. English filed a timely amended notice of appeal in connection with that order. CP 610.

D. SUMMARY OF ARGUMENT

The trial court erred in reconsidering the decision of another judge without considering the requirements of a local rule limiting the ability of judges to reconsider rulings of other judges.

The trial court erred in allowing Buss to use a CR 60 motion, reserved to overturn improper judgments, to set aside another trial judge's order on the relation back under CR 15(c) of English's amended complaint that asserted a claim against Buss.

Even assuming that a CR 60 motion could be the procedural vehicle to challenge a CR 15 amendment of a complaint, the trial court erred in setting aside the order permitting amendment of English's complaint and its relation back to the time of the filing of the original

complaint. Buss was not prejudiced by the amendment. He was fully aware of the potential for such a lawsuit, given his discharge by DSHS and disciplinary proceedings both internally at DSHS and before the State Executive Ethics Board. He was named in the parties section of the original complaint. He also had a community interest with the State of Washington, a party that litigated with English, and later settled.

Finally, to the extent that the trial court's CR 15(c)/CR 60 decision rested on the inexcusable neglect prong of CR 15(c), a prong that is judicial gloss on the language of the rule itself, the trial court erred. This Court, like the United States Supreme Court has done on the counterpart federal rule, should abolish inexcusable neglect as a facet of the CR 15(c) analysis.

E. ARGUMENT

(2) Buss's CR 60 Motion Was Not Properly Before the Trial Court

The trial court granted Buss's motion to vacate under CR 60 with respect to the relation back of the amendment to English's complaint even though such an action violated Pierce County local rules on a judge revisiting the ruling of another judge, and CR 60 does not extend to such interlocutory rulings.

(a) The Trial Court's Action Violated PCLR 7(c)(5)

The trial court concluded that it had the authority to revisit Judge Hogan's order without addressing PCLR 7(c)(5) specifically. RP 34-36. Judge Hogan's order granting the amendment of English's complaint was entered on October 2, 2015. CP 147-48. Buss's motion to set aside that order was not filed until January 29, 2016. CP 217-33. If Buss's motion were a motion for reconsideration, it was untimely. A motion for reconsideration is timely only if the moving party files the motion within 10 days after the order in question has been filed, as provided in CR 59. *Schaefco, Inc. v. Columbia River Gorge Comm'n*, 121 Wn.2d 366, 367, 849 P.2d 1225 (1993).⁵

Rather, as a putative CR 60 motion, Buss's motion was not properly before the trial court. As noted in Karl B. Tegland, 3A *Wash. Practice* at 193, local court rules foreclose reapplication for the same relief:

Reapplication for same relief. The local rules in a number of counties of provide that when an order has been

⁵ As the motion simply reargued English's motion to amend, it was improper in any event. CR 59 does not permit parties to merely reargue issues already addressed. See *Anderson v. Farmers Ins. Co. of Washington*, 83 Wn. App. 725, 734, 923 P.2d 713 (1996), *review denied*, 132 Wn.2d 1006 (1997). Moreover, it should have been heard by Judge Hogan, not the trial court:

Motions for Reconsideration. A Motion for Reconsideration shall be heard by the Judge or Commissioner who initially ruled on the motion or to the Presiding Judge or his/her designee upon a showing of good cause. Temporary assignment of the Judge or Commissioner to a location other than the courthouse shall not be considered good cause.

refused in whole or part (unless without prejudice), or has been granted conditionally and the condition has not been performed, the same application may not ordinarily be presented to another judge. Such rules typically provide that a subsequent motion may be made upon allegedly different facts if the moving party submits an affidavit setting forth (1) what motion was previously made, (2) when and to which judge, (3) what order or decision was made on it, and (4) what new facts are claimed to be shown.

PCLR 7(c)(5) is just such a local rule. It provides:

Reapplication. No party shall reargue the same motion to a different judicial officer without showing by affidavit, what motion was previously made, when and to which judicial officer, what the order or decision was, and any new facts or other circumstances that would justify seeking a different ruling from another judicial officer.

Buss did not comply with PCLR 7(c)(5). The trial court should not have heard his motion. *Donlin v. Murphy*, 174 Wn. App. 288, 296-97, 300 P.3d 424 (2013) (party's effort to raise standing rejected on summary judgment; subsequent CR 12(b)(6) motion raising identical standing issue to a different judge barred).

The trial court erred in considering Buss's motion without complying with PCLR 7(c)(5).

(b) CR 60 Is Inapplicable to an Interlocutory Order

Additionally, the trial court erred in hearing Buss's CR 60 motion because CR 60 does not apply to an order granting a motion to amend; the rule contemplates vacation of *a judgment*. With regard to the trial court's

decision on a motion to amend, Buss's proper recourse was to seek discretionary review under RAP 2.3(b) or to await a final disposition by the trial court to seek appeal as of right. RAP 2.2. Buss did neither, and instead, filed a CR 60 motion to vacate the trial court's amendment order. CR 60 does not apply to vacate such an interlocutory decision.

Moreover, even if Buss's belated legal argument were correct, Washington courts have "long recognized the principle that an error in law will not support vacation of a judgment." *Port of Port Angeles v. CMC Real Estate Corp.*, 114 Wn.2d 670, 673, 790 P.2d 145 (1990). CR 60(b) does not authorize vacation of judgments except for reasons extraneous to the action of the court or for matters affecting the regularity of the proceedings. *Marie's Blue Cheese Dressing, Inc. v. Andre's Better Foods, Inc.*, 68 Wn.2d 756, 415 P.2d 501 (1966). Errors of law are not correctable through CR 60(b); rather, direct appeal is the proper means of remedying legal errors. *Burlingame v. Consol. Mines & Smelting Co.*, 106 Wn.2d 328, 336, 722 P.2d 67 (1986). The trial court erred in striking Judge Hogan's ruling on the motion to amend because CR 60 does not extend to an interlocutory ruling like an order on a motion to amend.

- (3) The Trial Court Erred in Dismissing English's Action Against Buss on the Basis of the Statute of Limitations Having Misapplied the Elements of CR 15(c) for Relation Back of the Amended Complaint to the Date of the Filing of the Original Complaint

Washington law has long supported a liberal interpretation of CR 15(a) on the amendment of pleadings to facilitate a proper decision on the merits and to avoid a formalistic approach to pleading practice that would ultimately prevent a just resolution of the case on the merits. David E. Breskin, 9 *Wash. Practice* at § 15.1. Indeed, amendment of pleadings is freely allowed by courts unless the adverse party is prejudiced by the amendment. *Wilson v. Horsley*, 137 Wn.2d 500, 505, 974 P.2d 316 (1999) (“The touchstone for the denial of a motion to amend is the prejudice such an amendment would cause to the nonmoving party.”). *Caruso v. Local Union 690 of Int’l Bhd. of Teamsters*, 100 Wn.2d 343, 349, 670 P.2d 240 (1983). Central among the factors of possible prejudice are undue delay or unfair surprise. *Id.* at 349-51.

Ordinarily, any amendment of pleadings relates back to the date the original pleading was filed and similar principles for amendment apply to relation back. CR 15(c) provides:

Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against the original party, the party to be brought in by amendment (1) has received such notice of the institution of the action that

the new party will not be prejudiced in maintaining her or his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the new party.

Washington courts construe this rule liberally on the side of allowing relation back where the amendment relates to the conduct, transactions, or occurrences of the original pleadings. *Miller v. Campbell*, 164 Wn.2d 529, 537, 192 P.3d 352 (2008); *Perrin v. Stensland*, 158 Wn. App. 185, 194, 240 P.3d 1189 (2010).⁶

New parties can be added under CR 15(c), even after the statute of limitations has run. This is because “once the notice and prejudice requirements of the rule have been met, any amendment does not subvert the policies of the statute of limitations.” *Hollywood Hills Citizens Ass’n v. King County*, 101 Wn.2d 68, 78, 677 P.2d 114 (1984). Where the elements of CR 15(c) are met, the amended complaint *mandatorily* relates back to the date of the original complaint’s filing. *Perrin*, 158 Wn. App. at 193. This Court in *Martin* discussed in detail what it described as CR 15(c)’s “two textual and one judicially created requirements.” 182 Wn.2d at 288. A party filing a motion to amend must document first that it meets the threshold requirement that the amended complaint arises out of the

⁶ In contrast to decisions on amendments under CR 15(a) which are reviewed for an abuse of discretion, *Wilson*, 137 Wn.2d at 505, this Court reviews issues relating to CR 15(c) de novo. *Martin v. Dematic*, 182 Wn.2d 281, 288, 340 P.3d 834 (2014).

same conduct, transaction, or occurrence, as did the first complaint here, here, in order for the amended complaint to relate back. *Id.* at n.3. The moving party must then show that the defendant has notice and will not be prejudiced by the amendment, and that but for the mistake concerning that defendant's identity, it would have been served. *Id.* at 288. The judicial gloss on CR 15(c) is that relation back may not occur if the failure to sue the defendant in the original complaint was the product of inexcusable neglect. *Id.*

(a) English's Amended Complaint Arose Out of Same Factual Nucleus

The trial court here correctly found that the amended complaint arose out of the same common nucleus of operative facts as the original complaint. The facts were *identical* in the two documents.

(b) Buss Had Notice of English's Action

Buss claimed below that he had no knowledge of this action, CP 309-10, and the trial court agreed. RP 37-38. But the trial court was wrong on this conclusion because the record here discloses that Buss had knowledge of English's action directly or indirectly, and Buss is not prejudiced by the amendment of English's complaint. Moreover, given the multiple job-related actions against him, Buss could not credibly claim

to be oblivious to the potential for a civil action to be filed against him personally for English's very serious personal injuries.

The proper focus for notice is whether the defendant knew or should have known that there was the potential for him to be named in a lawsuit, not based on plaintiff's knowledge of the defendant's identity. *Martin*, 182 Wn.2d at 291. Thus, the focus here is on what Buss knew or should have known, not what English knew or did not know. The notice is not confined to the complaint itself and may be derived from collateral proceedings. *RTC Transport, Inc. v. Walton*, 72 Wn. App. 386, 395-96, 564 P.2d 969 (1994). The trial court failed to properly credit the fact that Buss was the subject of an extensive internal DSHS investigations and state ethics board proceedings. Kelly Cunningham, the CEO of the Special Commitment Center and Buss's ultimate supervisor, and Arthur Stratton both investigated Buss's misconduct. He was terminated and stipulated to ethical violations arising from that misconduct. He was clearly on notice that he had the potential to be included in a lawsuit brought by English.

Washington courts have treated CR 15(c) notice liberally. For example, a mere change in the person's capacity in the litigation satisfies the notice requirement of the CR 15(c) test. This change of capacity concept has arisen in numerous circumstances such as the addition of a

bankruptcy trustee, *Miller, supra*, and the substitution of a motorist instead of guardian ad litem, *Kommavongsa v. Haskell*, 149 Wn.2d 288, 317, 67 P.3d 1068 (2003). *See also, Beal for Martinez v. City of Seattle*, 134 Wn.2d 769, 954 P.2d 237 (1998) (amendment changing status from GAL for children to estate's personal representative related back); *Craig v. Ludy*, 95 Wn. App. 715, 719, 976 P.2d 1248 (1999), *review denied*, 139 Wn.2d 1016 (2000) (amended complaint adding defendant's estate to case after defendant's death related back).

Here, the amendment adding Buss to the caption related back under CR 15(c) because the amended complaint was more in the nature of a change in Buss's capacity. Buss was named in the *parties* section of the original complaint and his name then appeared throughout the complaint. Buss's conduct has always been central to the case. The amendment simply added him to the caption as a formal defendant, in both his individual and official capacity.

Buss was not prejudiced by this amendment. Under RCW 4.16.170, service of process on one defendant tolls the statute of limitations as to unserved defendants. *Sidis v. Brodie/Dohrmann, Inc.*, 117 Wn.2d 325, 327, 815 P.2d 781 (1991). Because Buss was named in the parties section of the original complaint, the statute of limitations

should have been tolled upon the filing and service of the original complaint on DSHS/DOC.

Finally, the notice requirement is also met where there is a community of interest between the originally named defendant and the party to be added.⁷ For example, Washington courts have held that notice to an insurer constitutes notice to the insured. *Perrin*, 158 Wn. App. at 196; *LaRue v. Harris*, 128 Wn. App. 460, 115 P.3d 1077 (2005); *Schwartz v. Douglas*, 98 Wn. App. 836, 837, 991 P.2d 665, *review denied*, 141 Wn.2d 1003, 10 P.3d 404 (2000); *Craig*, 95 Wn. App. at 719-20, 729. In each of these cases, Washington courts held that notice to the insurer constituted adequate notice to the insured to the insured under CR 15.

That same community of interest that exists between an insurer and insured also exists when the defendants are represented by the same agent for claims purposes, *Korn, supra*, or the parties are represented by the same attorney, *De Santis v. Angelo Merlino & Sons*, 71 Wn.2d 222, 225, 427 P.2d 728 (1967); *Hendrix v. Memorial Hosp.*, 776 F.2d 1255, 1257-58 (5th Cir. 1985).

⁷ *Craig*, 95 Wn. App. at 719; *see also*, *Korn v. Royal Caribbean Cruise Line, Inc.*, 724 F.2d 1397, 1400-01 (9th Cir. 1984); *Schiavone v. Fortune*, 477 U.S. 21, 28, 106 S. Ct. 2379, 91 L. Ed. 2d 18 (1986).

Here, Buss shared a community of interest with DSHS. Buss is a former DSHS employee⁸ and, therefore, DSHS's notice of this claim was properly imputed to him from that employment relationship. Buss's actions were plainly central to the reasons for which DSHS/DOC were liable to English.

The trial court erred in concluding that Buss lacked notice of his potential to be sued given the official investigations of him, the mere change in his capacity, and the community of interest with DSHS/DOC.

(c) Inexcusable Neglect

Buss argued below that this element of the relation back test applies in Washington. CP 224-25. The trial court erred when it concluded that the amendment here was the result of inexcusable neglect, as defined in case law. RP 38-39. The trial court should never have even reached that aspect of the relation back test.

This Court should abandon the inexcusable neglect prong of the CR 15(c) relation back test. Inexcusable neglect does not appear anywhere in the text of CR 15(c). *Martin*, 182 Wn.2d at 291. That prong

⁸ Below, Buss argued that when the State refused to indemnify him because his actions were outside the course and scope of his employment he had no community of interest with the State. CP 228, 541. The fact that the State has now denied Buss a defense ex post facto for actions taken outside of the course and scope of his employment is of no consequence to the question of community of interest. The State's liability to English rested entirely on English's misconduct. That is the salient factor for the community of interest analysis, not whether he was entitled to a defense for his personal self-aggrandizement.

was a judicial gloss on the rule adopted from federal court analysis of the analogous federal rule by this Court in *N. Street Ass'n v. City of Olympia*, 96 Wn.2d 359, 369, 635 P.2d 721, 726 (1981) without detailed analysis.⁹ The United States Supreme Court abandoned the inexcusable neglect prong for the analogous federal rule in *Krupski v. Costa Crociere S. p. A.*, 560 U.S. 538, 130 S. Ct. 2485, 177 L. Ed. 2d 48 (2010). The Court articulated the purpose of relation back under Rule 15(c):

to balance the interests of the defendant protected by the statute of limitations with the preference expressed in the Federal Rules of Civil Procedure in general, and Rule 15 in particular, for resolving disputes on their merits.

Id. at 550. In rejecting the inexcusable neglect facet of decisions interpreting Rule 15(c), the Court focused on the point that the Rule speaks to what the party being added knew or should have known, not on the amending party's knowledge. Thus, the Court stated:

Respondent urges that the key issue under Rule 15(c)(1)(C)(ii) is whether the plaintiff made a deliberate choice to sue one party over another. Brief of Respondent 11-16. We agree that making a deliberate choice to sue one party instead of another while fully understanding the factual and legal differences between the two parties is the antithesis of making a mistake concerning the proper party's identity. We disagree, however, with respondent's position that any time a plaintiff is aware of the existence of two parties and chooses to sue the wrong one, the proper defendant could reasonably believe that the plaintiff made no mistake. The reasonableness of the mistake is not itself

⁹ The Court later disapproved of this decision in *Sidis* on other grounds.

at issue. As noted, a plaintiff might know that the prospective defendant exists but nonetheless harbor a misunderstanding about his status or role in the events giving rise to the claim at issue, and she may mistakenly choose to sue a different defendant based on that misimpression. That kind of deliberate but mistaken choice does not foreclose a finding that Rule 15(c)(1)(C)(ii) has been satisfied.

Id. at 549.

In *Perrin*, the Court of Appeals noted the United States Supreme Court's decision in *Krupski* and found the analysis in *Krupski* to be "highly persuasive," but left it to this Court to modify the holding in *North Street*:

Where a state rule parallels a federal rule, analysis of the federal rule may be looked to for guidance, though such analysis will be followed only if the reasoning is found to be persuasive. *Beal for Martinez v. City of Seattle*, 134 Wn.2d 769, 777, 954 P.2d 237 (1998). While we find the analysis by the United States Supreme Court in *Krupski* to be highly persuasive, we cannot modify *North Street*. Only our Supreme Court can decide that the "inexcusable neglect" factor should lose its place as an independent basis for denying relation back under CR 15(c).

Perrin, 158 Wn. App. at 200.

This Court also noted the abandonment of the inexcusable neglect prong in *Martin*, but the issue was not presented for determination in that case; this Court put the issue off for another day to determine whether it would follow the United States Supreme Court in abandoning the inexcusable neglect standard under the Washington's Civil Rules:

We originally adopted the “inexcusable neglect” requirement from the federal courts and their analogous federal civil procedure rule. We note that the United States Supreme Court has now eliminated “inexcusable neglect” from its analogous rule. *See Krupski v. Costa Crociere S.p.A.*, 560 U.S. 538, 541, 130 S. Ct. 2485, 177 L. Ed. 2d 48 (2010). However, the parties have neither addressed *Krupski* nor asked us to consider similarly eliminating our “inexcusable neglect” requirement. Thus, we leave that issue for another day.

Martin, 182 Wn.2d at 291.

This case now presents the opportunity to abandon the inexcusable neglect standard under the Washington Rules of Civil Procedure. English should not be required to endure the needless step of appealing to the Court of Appeals on this issue, a legal question already recognized by the Court of Appeals in *Perrin*, and this Court in *Martin*, that is one that must be decided by this Court. This prong does not appear in the text of CR 15(c) and the basis set forth in *Krupski* for abandoning the inexcusable neglect standard, a judicial gloss on the language of CR 15(c), is equally applicable under Washington law as it is under the federal rules.

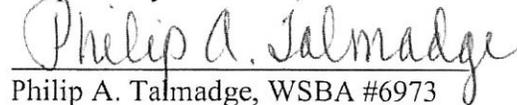
In sum, the trial court erred in concluding that Buss did not have notice of the original complaint and that the amendment here was the product of inexcusable neglect.

F. CONCLUSION

The trial court erred in ignoring PCLR 7(c)(5) and then in utilizing CR 60 to reverse the decision of another Pierce County Superior Court judge on the CR 15(c) effect of that court's decision to grant a motion to amend English's complaint. That court compounded its error by misapplying CR 15(c) and dismissing English's complaint against Buss on statute of limitations grounds. This Court should reverse the trial court's February 26, 2016 and March 21, 2016 orders and allow Christopher English his day in court against Dennis Buss on the merits.

DATED this ~~26th~~ day of July, 2016.

Respectfully submitted,



Philip A. Talmadge, WSBA #6973
Talmadge/Fitzpatrick/Tribe
2775 Harbor Avenue SW
Third Floor, Suite C
Seattle, WA 98126
(206) 574-6661

John R. Connelly, Jr., WSBA #12183
Micah R. LeBank, WSBA #38047
Connelly Law Offices
2301 North 30th Street
Tacoma, WA 98403
(253) 593-5100
Attorneys for Appellant
Christopher English

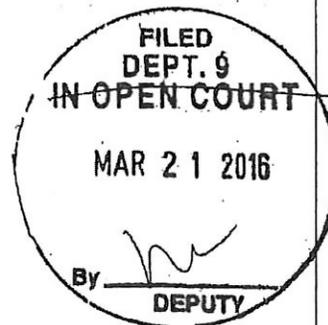
APPENDIX

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CONNELLY LAW OFFICES, PLLC



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

CHRISTOPHER ENGLISH, an individual,

Plaintiff,

vs.

STATE OF WASHINGTON, Department of
Corrections, STATE OF WASHINGTON,
Department of Social and Health Services, and
DENNIS ALVIN BUSS, individually,

Defendants.

Cause No: 14-2-09274-7

**ORDER DENYING PLAINTIFF'S MOTION
FOR RECONSIDERATION**

(OR)

THIS MATTER, having come before the Court upon Plaintiff's Motion to Reconsider Defendant Buss' Summary Judgment, and the Court having reviewed the Plaintiff's Motion for Reconsideration re: Defendant Buss' Motion for Summary Judgment.

THEREFORE, is hereby ORDERED, ADJUDGED, and DECREED that Plaintiff's Motion for Reconsideration is DENIED.

DATED this 21st day of March, 2016.


JUDGE EDMUND MURPHY

ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION - 1

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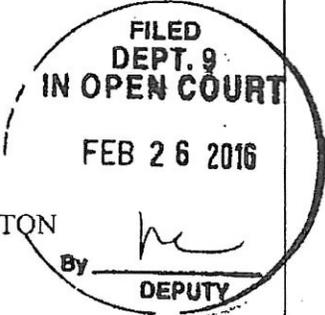
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14-2-09274-7 48446332 ORGSJ 02-29-16



SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

CHRISTOPHER ENGLISH, an individual,

Plaintiff,

v.

STATE OF WASHINGTON, Department of
Corrections, STATE OF WASHINGTON,
Department of Social and Health Services, and
DENNIS ALVIN BUSS, individually,

Defendants.

NO. 14-2-09274-7

Granting
~~ORDER DENYING~~ DEFENDANT
BUSS' MOTION FOR SUMMARY
JUDGMENT *EX*

THIS MATTER, having come on for hearing upon Defendant Buss' Motion for Summary Judgment and Relief from Order Pursuant to CR 60, and having reviewed fully the materials submitted, and having specifically reviewed:

1. Defendant Buss' Motion for Summary Judgment and Relief from Order Pursuant to CR 60;
2. Declaration of Kelley J. Sweeney in Support of Defendant Buss' Motion for Summary Judgment and exhibits thereto;
3. Plaintiff's Opposition To Defendant Buss' Motion For Summary Judgment;
4. Declaration of Micah R. LeBank in Opposition to Defendant Buss' Motion for Summary Judgment and exhibits thereto;

GRANTING
~~ORDER DENYING~~ DEFENDANTS' MOTION FOR SUMMARY JUDGMENT- 1

CONNELLY LAW OFFICES, PLLC
2301 North 30th Street
Tacoma, WA 98403
(253) 593-5100 Phone - (253) 593-0360 Fax

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5. Reply Brief in Support of Defendant Buss' Motion for Summary Judgment and Relief from Order Pursuant to CR 60; and

6. _____

THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED that Defendant Buss' Motion for Summary Judgment and Relief from Order Pursuant to CR.60 is

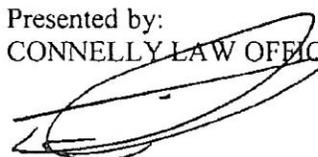
hereby ~~DENIED~~ ^{Granted}

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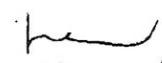
Done in Open Court this 26th day of February, 2016.


HONORABLE EDMUND M. MURPHY

Presented by:
CONNELLY LAW OFFICES

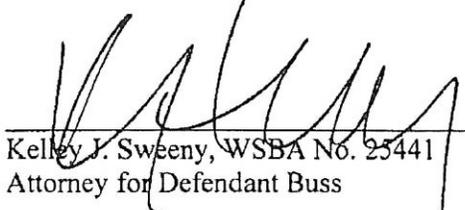


Micah R. LeBank, WSBA No. 38047
Attorney for Plaintiff

FILED
DEPT. 9
IN OPEN COURT
FEB 26 2016
by 
DEPUTY

Approved as to form:

LAW OFFICES OF SWEENEY, HEIT & DIETZLER


Kelley J. Sweeny, WSBA No. 25441
Attorney for Defendant Buss

*The court struck the language in ^{ms. 45} Judge Hogan's October 2, 2015, relating ^{em} back under CR 15(c).

^{GRANTED BY}
ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT- 2

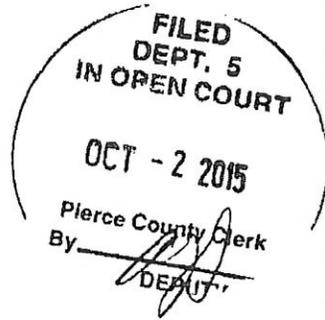
CONNELLY LAW OFFICES, PLLC
2301 North 30th Street
Tacoma, WA 98403
(253) 593-5100 Phone - (253) 593-0380 Fax

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SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

CHRISTOPHER ENGLISH, an individual,
Plaintiff,
v.
STATE OF WASHINGTON, Department of
Corrections and STATE OF WASHINGTON,
Department of Social and Health Services,
Defendants.

NO. 14-2-09274-7

**ORDER GRANTING PLAINTIFF'S
MOTION TO FILE AMENDED
COMPLAINT**

THIS MATTER, having come on for hearing upon Plaintiff's Motion to File Amended Complaint, and having reviewed fully the materials submitted, and having specifically reviewed:

1. Plaintiff's Motion to File Amended Complaint;
2. Declaration of Micah R. LeBank and exhibits thereto;
3. Plaintiff's Reply to Motion to File Amended Complaint; and
4. Second Declaration of Micah R. LeBank and exhibits thereto.

THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion to File Amended Complaint is **GRANTED**.

IT IS FURTHER ORDERED that the Amendments relate back to the original filing of this case under Civil Rule ("CR") 15(c).

14-2-09274-7

Done in Open Court this 2 day of October, 2015.

Vicki L Hogan
HONORABLE VICKI L HOGAN

Presented by:

CONNELLY LAW OFFICES

Micah R. LeBank, WSBA No. No. 38047
Attorney for Plaintiff

FILED
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Pierce County Clerk
By *[Signature]*
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BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Dennis Buss

Respondent.

No. 2012-37

STIPULATED FACTS,
CONCLUSIONS AND ORDER

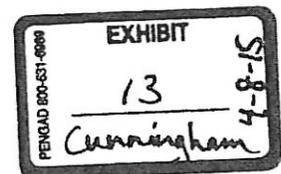
I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, DENNIS BUSS, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through MELANIE DeLEON, Executive Director. The following stipulated facts, conclusions, and agreed order will be binding upon the parties if fully executed, and if accepted by the Board without modification(s), and will not be binding if rejected by the Board, or if the Respondent does not accept the Board's proposed modification(s), if any, to the stipulation.

Section 1: PROCEDURAL FACTS

1.1. On August 7, 2012, the Executive Ethics Board (Board) received an agency referral from the Department of Social and Health Services – Special Commitment Center (SCC) – McNeil Island alleging that former Assistance Fire Chief Dennis Buss may have violated the Ethics in Public Service Act by using state resources for his personal gain and that he may have used his position to secure a special privilege. The Executive Ethics Board found reasonable cause on January 14, 2012.

STIPULATED FACTS,
CONCLUSIONS AND ORDER
DENNIS BUSS – 2012-037



02070001

1.2. The Board is authorized under RCW 34.05.060 to establish procedures for attempting and executing informal settlement of matters in lieu of more formal proceedings under the Administrative Procedures Act, including adjudicative hearings. The Board has established such procedures under WAC 292-100-090.

1.3. Dennis Buss understands that if Board staff proves any or all of the alleged violations at a hearing, the Board may impose sanctions, including a civil penalty under RCW 42.52.480(1)(b) of up to \$5,000, or the greater of three times the economic value of anything received or sought in violation of chapter 42.52 RCW, for each violation found. The Board may also order the payment of costs, including reasonable investigative costs, under RCW 42.52.480(1)(c).

1.4. Dennis Buss recognizes that the evidence available to the Board staff is such that the Board may conclude he violated the Ethics in Public Service Act. Therefore, in the interest of seeking an informal and expeditious resolution of this matter, the parties agree to entry of the stipulated findings of fact, conclusions of law and agreed order set forth below.

1.5. Dennis Buss waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or his acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-100-090(2) which provides in part:

The board has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the board accepts the stipulation or modifies the stipulation with the agreement of the respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or the respondent does not agree to the board's proposed modifications to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussions shall not be admitted into evidence at a subsequent public hearing.

1.6. If the Board accepts this stipulation, the Board will release and discharge Dennis Buss from all further ethics proceedings under chapter 42.52 RCW for matters arising out of the facts contained in the complaint in this matter, subject to payment of the full amount of the civil penalty due and owing, any other costs imposed, and compliance with all other terms and

conditions of the agreed order. Dennis Buss in turn agrees to release and discharge the Board, its officers, agents and employees from all claims, damages, and causes of action arising out of this complaint and this stipulation and agreed order.

1.7. If this Stipulation is accepted, this Stipulation and Order is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

1.8. If the Board rejects this stipulation, or if Dennis Buss does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing in front of the Board and Dennis Buss waives any objection to participation by any Board member at any subsequent hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Dennis Buss understands and agrees that this proposed stipulation and information obtained during any formal settlement discussions held between the parties shall not be admitted into evidence at a subsequent public hearing, unless otherwise agreed by the parties.

Section 2: FINDINGS OF FACT

2.1. Mr. Buss was the Assistant Fire Chief for the Special Commitment Center (SCC) located on McNeil Island for all times pertinent to this investigation.

2.2. In 2010 the state Legislature decided to close the Department of Corrections (DOC) facility located on McNeil Island (MICC) by April 1, 2011. In January 2011, DOC began transferring inmates from MICC to other DOC facilities throughout the state.

2.3. By April 1, 2011, there were approximately 50 inmates remaining at MICC. Of those inmates, 30 were dedicated to working for DOC to support the cleanup and closure operations. The remaining 20 inmates were dedicated to work under contract for SCC to support marine and fire department operations.

2.4. The 20 inmates that the DSHS Special Commitment Center contracted for from DOC were not intended to perform unskilled DOC cleanup work. SCC specifically contracted with DOC for Class IV semi-skilled inmate labor. The inmates were to assist in the operation of the passenger ferries and tugboats between McNeil Island and Steilacoom, work in the marine boatyard overhauling vessels, and to provide inmate support to the McNeil Island Fire Department. As inmate firefighters, they would operate fire trucks, support medical emergency responses, suppress building fires, fight wildfires and assist with responses to hazardous material spills.

2.5. Former DOC employee residents of McNeil Island had been notified by DOC that whatever personal property they left on the island after April 1, 2011 would be considered abandoned, become property of the state and would be disposed of for its scrap or recycle value with any remuneration gained going back to DOC to offset the cost of the cleanup.

2.6. On June 2, 2011, DOC received an email from former DOC employee resident Nancy Armstrong relinquishing any and all of her personal property still located at her former house, located at 209 Buck Road, McNeil Island to DOC.

2.7. Sometime prior to June 6, 2011, Mr. Buss contacted Daniel Fitzpatrick, DOC Correctional Program Manager (CMP) to inquire about the abandoned trailer located at 209 Buck Road. Mr. Buss told Mr. Fitzpatrick that he would like to have the trailer frame, but not the structure. At that time, Mr. Fitzpatrick gave permission for Mr. Buss to take the frame stating that the owner, Nancy Armstrong, had sent him an email allowing DOC to dispose of it. Mr. Buss did not ask Mr. Fitzpatrick if he could use DOC inmates to dismantle the trailer nor did Mr. Fitzpatrick give Mr. Buss permission to do so.

2.8. On June 6, 2011, Mr. Buss instructed DOC inmate firefighters C.E, M.C., T.P., and R.M. to dismantle the travel trailer located at 209 Buck Road. These inmates were under contract from DOC to assist the McNeil Island Fire Station, not to assist in the clean up of the island. Mr. Buss informed the inmates that he intended to take the trailer frame to make a car trailer.

2.9. SCC Fire Chief Michael Sanders, the direct supervisor of Mr. Buss, indicated that at the time of the alleged violations, he was unaware that Mr. Buss was using inmate firefighters to demolish the abandoned trailer.

2.10. Mr. Sanders told investigators that Mr. Fitzpatrick did contact him twice about the trailer and using inmates to cut it up as a training exercise. After some consideration, Mr. Sanders decided that it was more than they could do for training purposes and declined the offer.

2.11. On June 6, 2011, the four firefighter inmates removed the structure from the trailer frame. Mr. Buss directed the inmates to hook the bare trailer frame up to the McNeil Island Fire Department squad truck and transport the frame from the site at 209 Buck Road to the fire station.

2.12. Mark Blatman, DOC Construction Maintenance Supervisor, was assigned the job of decommissioning the island, which meant that he led the effort to remove much of the leftover materials as he could before DOC's departure from the island. Mr. Blatman was in charge of recycling and disposing of the DOC residential areas on the island.

2.13. Mr. Blatman's initial plan regarding the trailer at 209 Buck Road was to sell it to a scrap metal dealer. Scrap metal was selling for \$52 per ton.

2.14. On June 7, 2011, Mr. Buss arranged to have his personal vehicle, an F-150 Ford pickup truck, put on the SCC vehicle barge at Steilacoom by DSHS employee Brandon Weeks and transported to the island.

2.15. Mr. Weeks indicated that at the time of the request he thought that Mr. Buss had received the required approval to transport his personal vehicle to the island.

2.16. On the morning of June 8, 2012, Mr. Buss directed inmates C. E. and M. C. to go back to the site where they demolished the trailer and cut up the big pieces of metal and debris into a size that would fit into a dumpster.

2.17. The two inmates took the fire station squad truck to the trailer location. They had a discussion with Mr. Buss prior to leaving regarding what type of saw blades to use on the chop saw. Mr. Buss instructed them to take the used blades.

2.18. The two inmates met up with Mr. Blatman at the site sometime around 9:00 a.m. Inmates C.E. and M.C. started cutting up the larger pieces of debris. M.C. was using a state owned gas powered chain saw while C.E. was using a state owned gas powered circular saw with a large metal blade.

2.19. Later in the day of June 8, 2011, Chief Sanders observed the trailer frame attached to the personal vehicle of Mr. Buss while at the fire station. Chief Sanders did not give Mr. Buss permission to bring his personal vehicle onto the island or to take the trailer on the barge.

2.20. Assistant Fire Chief Joseph Rigney advised the Board investigator that his position as the Assistant Chief is a lead position and not a supervisory one.

2.21. Mr. Rigney told investigators that he did have a conversation with Mr. Buss concerning the trailer, but at no time did he ever give Mr. Buss permission to remove the trailer

using inmates. Mr. Buss told him that he was going to see if he could come over on a day off with his sons and cut it up. Mr. Rigney stated that he never spoke to Chief Sanders about the conversation.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Dennis Buss and over the subject matter of this complaint.

3.2. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein, subject to Board approval.

3.3. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from conducting activities incompatible with their public duty (Conflict of Interest). RCW 42.52.020 states:

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.

3.4. Based on Findings of Fact 2.1 through 2.21, Dennis Buss conducted activities incompatible with his public duty in violation of RCW42.52.020.

3.5. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from securing Special Privileges. RCW 42.52.070 states:

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

3.6. Based on Findings of Fact 2.15, 2.16 and 2.20 through 2.21, Dennis Buss secured special privileges in violation of RCW42.52.070.

3.7. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using state resources for their benefit. RCW 42.52.160(1) states:

No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

3.8. Based on Findings of Fact 2.1 through 2.22, Dennis Buss used state resources for his personal benefit.

3.9. The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360. The Board has set forth criteria in WAC 292-120-030 for imposing sanctions and consideration of any mitigating or aggravating factors.

Section 4: AGGRAVATING AND MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. Aggravating factors are that Mr. Buss was in a supervisory position within the DSHS, SCC, McNeil Island Fire Department; these types of violations significantly reduce the public respect and confidence in state government employees. It is a mitigating factor that Mr. Buss is no longer employed by DSHS.

Section 5: AGREED ORDER

5.1 For the violations RCW's 42.52 mentioned above, Dennis Buss will pay a civil penalty in the amount of, nine thousand dollars (\$9,000.00).

5.2 The civil penalty of \$9,000 is payable *at the rate of \$100.00 per month* ~~in full~~, to the State Executive Ethics Board

beginning within 45 days after this stipulation is accepted by the Board, or as otherwise agreed to by the parties.

II. CERTIFICATION

I, Dennis Buss, hereby certify that I have read this Stipulation and Agreed Order in its entirety; that my counsel of record, if any, has fully explained the legal significance and consequence of it; that I fully understand and agree to all of it; and that it may be presented to the Board without my appearance. I knowingly and voluntarily waive my right to a hearing in this matter; and if the Board accepts the Stipulation and Agreed Order, I understand that I will receive a signed copy.

I do not agree with all of the Findings of fact, nor am I admitting any guilt, I'm accepting this settlement in the interest of concluding this matter expeditiously. DB

Dennis Buss 3/25/13
Dennis Buss Date
Respondent

Stipulated to and presented by:

Melanie deLeon 4/22/13
Melanie deLeon Date
Executive Director

II. ORDER

Having reviewed the proposed Stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is

 ✓ ACCEPTED in its entirety;
 REJECTED in its entirety;
 MODIFIED. This Stipulation will become the Order of the Board if the Respondent approves* the following modification(s):

DATED this 10th day of May, 2013

 Lisa Marsh
Lisa Marsh, Chair

 Absent
Anna Dudek Ross, Vice-Chair

 M. Williams III
Matthew Williams, III, Member

 Samantha Simmons
Samantha Simmons, Member

* I, Dennis Buss, (accept) do not accept (circle one) the proposed modification(s).

 Dennis Buss 3/25/13
Dennis Buss, Respondent Date

DECLARATION OF SERVICE

On said day below, I electronically served a true and accurate copy of the Brief of Appellant in Supreme Court Cause No. 92920-3 to the following parties:

John R. Connelly, Jr.
Micah R. LeBank
Connelly Law Offices
2301 N. 30th Street
Tacoma, WA 98403

Kelley J. Sweeney
Law Offices of Sweeney, Heit & Dietzler
Attorneys at Law
1191 Second Avenue, Suite 500
Seattle WA 98101

Original E-filed with:
Washington Supreme Court
Clerk's Office
415 12th Street W
Olympia, WA 98504-0929

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: July 26, 2016 at Seattle, Washington.



Matt J. Albers, Paralegal
Talmadge/Fitzpatrick/Tribe

TALMADGE/FITZPATRICK/TRIBE

July 26, 2016 - 10:19 AM

Confirmation of Filing

Filed with Court: Supreme Court
Appellate Court Case Number: 92920-3
Appellate Court Case Title: Christopher English v. State of Washington, Department of Corrections, et. al.

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- matt@tal-fitzlaw.com
- bmarvin@connelly-law.com
- Jean069S.Young@libertymutual.com

Comments:

Brief of Appellant English

Sender Name: Matt Albers - Email: matt@tal-fitzlaw.com

Filing on Behalf of: Philip Albert Talmadge - Email: phil@tal-fitzlaw.com (Alternate Email: matt@tal-fitzlaw.com)

Address:
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