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Court of Appeals
Division II
State of Washington
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No. 50276-3-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

DAVID B. CATLIN,

Respondent/Cross Appellant

vs.

RAEANN PHILLIPS, Personal Representative of
the Estate of HEIDI M. CATLIN,

Appellant/Cross Respondent.

REPLY BRIEF OF RESPONDENT/CROSS APPELLANT

By MICHAEL A. CLAXTON
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I. Respondent is not challenging the trial court's findings, but its conclusions from those findings.

Respondent is not challenging the trial court's findings as it relates to waste. In fact, the record is replete with evidence of the waste committed by the decedent. Findings of fact N, R, T, U and W all amply support the fact that the decedent committed waste on the property, which was backed up by more than a hundred photographs (Exhibits 8.1 through 8.112, both inclusive), as well as videos (Exhibit 16) and testimony of witnesses (see testimony of David Brad Catlin, Janelle Tiegs, Aaron Craig, Roger Fraidenberg and Mike McEwen).

Rather, Respondent believes the trial court reached the wrong conclusions of law after making its findings.

"We review a trial court's decision following bench trial by asking whether substantial evidence supports the findings and whether the findings support the court's conclusions of law. . . . We review questions of law de novo." *Casterline v. Roberts*, 168 Wn. App. 376, 381, 284 P.3d 743 (2012) (citations omitted).

Further, "[c]onclusions of law are 'determination[s] . . . made by a process of legal reasoning from facts in evidence.'" *Id.* at 382-383.

Here, the judge in his oral ruling said: "It's clear to me from looking at the photographs and from hearing the testimony that Heidi

Catlin was *allowing a drug house* to exist there with *the needles, the garbage, the damages, the stolen metal*; and none of that, none of that was Mr. Catlin's fault." See Verbatim Report of Proceedings, p. 687 (*Emphasis added.*)

While the trial court found that the shop stove damage and fixing holes cut out of two doors constituted commissive waste (Findings of Fact, paragraph N, CP pp. 316-317), it also concluded that the debris heavily scattered around the property, the drug needles found extensively on the property, the massive amounts of cat feces and cat urine in the home and in the crawl space, the cracked and damaged windows and screens, the paint splattered inside the home and out, damaged siding, torn gutters, improperly installed electrical services and pried away metal roofing (Findings of Fact, paragraphs N, R, T, U and W, CP pp. 316-319) was all permissive waste. The trial court also specifically found that the decedent had reported and received payment for water damage, but then apparently did not fix the problem or did so poorly, resulting in extensive damage to the property. (Findings of Fact, paragraph F, CP pp. 315-316.) However, the trial court concluded that this, too, constituted permissive waste.

Simply put, allowing a home to become a drug house and all of the activities found specifically by the trial court do not constitute an

omission or ordinary negligence for which treble damages are not available. These were all affirmative acts. Accordingly, treble damages should have been awarded. *Graffell v. Honeysuckle*, 30 Wn.2d 390, 401, 402, 191 P.2d 858 (1948).

II. Respondent brought up the payments during the time the property was uninhabitable at time of trial, but the trial court neglected to include these damages.

As finding W points out, “[a]lthough the property was uninhabitable, Plaintiff continued making the mortgage payments, PUD payments and real estate tax payments.” (CP p.319.)

The trial court admitted Exhibit 2, which showed the monthly mortgage payment (\$1,169.63 per month), as well as Exhibits 6.35, 6.36, 6.37 and 6.100. Also, testimony was provided as to the purpose of these expenses. See RP.v3, pp. 336, 385, 386 and 387; RP.v4, p. 678. For whatever reason, the trial court did not allow the taxes or the power bill, nor for the mortgage. See Verbatim Report of Proceedings, p. 690.

This was an error of law. *Holmquist v. King County*, 192 Wn. App. 551, 565, 368 P.3d 234 (2016).

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III. The trial court had an obligation to award the appropriate interest rate.

RCW 4.56.110(3) specifies that the interest rate based on tortious conduct is two percentage points above the prime rate. Appellant had the correct interest rate as of the date of the trial (5.75%) (CP pp. 287-288), but that interest rate had increased to 6% as of the date of entry of the judgment.

“[R]egardless of who prepared the form of judgment, it is the responsibility of the court to enter a judgment which complies with the statute.” *Safeco Ins. Co. of America v. JMG Restaurants, Inc.*, 37 Wn. App. 1, 23, 680 P.2d 409 (1984).

Unfortunately, the trial court rounded the decimal point, and now Appellant wants to seize on the trial court’s mistake.

“It was the court’s duty to correct any provision of the judgment which was contrary to the terms of the statute. The trial court committed error by not doing so.” *Id.*

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IV. Conclusion.

For all the foregoing reasons and as set forth in the Brief of Respondent/Cross Appellant, Respondent requests the Court to deny all of Appellant's requests for relief, and requests this Court again:

1. Affirm the admission of Exhibit 17 as within the trial court's discretion as allowed by ER 702, 703 and 705;
2. Affirm the admission of the receipts as within the trial court's discretion as allowed by ER 904;
3. Affirm the trial court's base calculation of damages within the range of evidence presented and within the trial court's discretion;
4. Affirm the trial court's order abating interest on the judgment entered in the decree of dissolution as within the trial court's inherent powers to grant equitable relief;
5. Reverse the trial court's decision as it relates to the repairs needed because the home was turned into a drug house by the decedent as inconsistent with RCW 64.12.020 and remanding the case for a re-calculation of damages and an award of attorney fees;

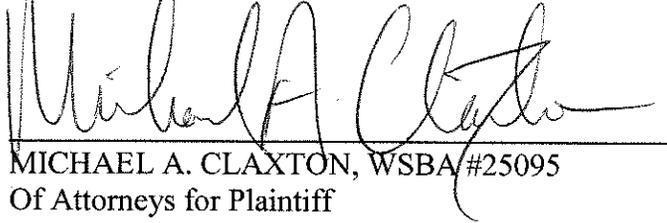
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6. Reversing the trial court's decision not to award damages associated with costs incurred in maintaining the home while it was uninhabitable; and
7. Reversing the trial court's entry of interest as inconsistent with RCW 4.56.110.

DATED: November 17, 2017.

Respectfully submitted,


MICHAEL A. CLAXTON, WSBA #25095
Of Attorneys for Plaintiff

CERTIFICATE

I certify that on this day I caused a copy of the foregoing REPLY BRIEF OF RESPONDENT/CROSS APPELLANT to be mailed, postage prepaid, hand-delivered and emailed to Defendant's attorney, addressed as follows:

Meredith Ann Long
Attorney at Law
1315 - 14th Avenue
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DATED this 17 day of November 2017, at Longview, Washington.


HEIDI M. THOMAS

WALSTEAD MERTSCHING PS

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Transmittal Information

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The following documents have been uploaded:

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