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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

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COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

KITSAP COUNTY,

Respondent,

vs.

LORNA YOUNG and COLIN YOUNG.

Appellants

APPELLANT'S REPLY BRIEF

Case # # 50361-1-II

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Restatement of the case

This civil case began with Kitsap's May 2, 2012 simultaneous execution of search warrants at the Young properties and Colin Young's home -which resulted in an unrestricted search his personal papers and affairs, his computer, his vehicles, and his protected "Car Collector" affairs. This then was followed by a five year, and still counting, unfounded "preliminary" injunction - which certain Kitsap officials intended, and effectively used, to seize the subject property and lock down Colin Young's Collector Car assets that could have been used to hire legal counsel in defense.

By design, Kitsap's "temporary" injunction prevented Colin Young from using his "collector car" assets to hire attorneys necessary to defend against the separate, but simultaneous, civil, administrative, and criminal actions which certain Kitsap officials planned and initiated. That certain Kitsap officials strategically planned and then set in motion with Kitsap's May 2, 2012 unlawful administrative searches of the Youngs' property and home is a matter of record.

Discovery has shown the overall operation was conceived and planned by way of collusion between several Kitsap officials and one private attorney. Outside agencies were recruited thereafter for further planning and peripheral expansion of the operation, as well as to "assist" with attaining the search warrants and prosecuting the parallel cases.

It was this core group of officials, who early in the planning stages of the operation against the Young's purposely compartmentalized exculpatory and other material information clearly known to certain County and State officials involved in planning and

execution of the operation, in order to ensure search warrant access to the Young properties - from which officials had been previously restricted by notice. At the same time the core officials artfully promoted false and misleading statements to other agencies and incoming officials.

False and misleading statements aside, the following material and exculpatory facts were deliberately omitted from the search warrant applications relied on this matter through deliberate measures of the core officials involved in this case:

- 1) Colin Young was part owner and manager of a local licensed vehicle wrecking yard Yank A Part LLC

- 2) The sole "source" relied on Kitsap's warrant application information was neither named or testified to for the purposes of credibility and veracity.

- 3) All information presented in the application for search warrant had come from Young's businesses partners and/or their attorney - who at the time still embroiled in a lawsuit with Colin Young for control of that business;

- 4) There is no state statute that criminalizes the tens of thousands of craigslist ads posted every day in Washington state for vehicle parts.

- 5) The "Summary" of the printed craigslist ads relied on in the application for search warrant as evidence supporting probable cause, was presented without identifying the original source of the ads, and without a statement identifying the author(s)

- 6) None of the craigslist ads relied on for that "Summary" in the application for search warrant were investigated to verify their authenticity.

7) The phone number in the supporting craigslist ads was conspicuously not identified in the application for search warrant, but it was misleadingly attributed to Colin Young. This is because the actual phone number from the list of printed ads was registered to a licensed vehicle wrecker at the time.

8) The search warrant affiant in this matter was the local WSP inspector who initially inspected the wrecking yard purchased by Colin Young and his partners, and who then approved their Vehicle Wrecker License Application, and then annually inspected that wrecking yard, knew full well that Colin Young was the manager of Yank A Part LLC ;

9) There was no evidence of any unlawful sale or purchase of any vehicle part by Colin Young or at the subject property.

10) There was no nexus presented which linked any craigslist ad or alleged unlawful wrecking yard activity to the subject properties or to Colin Young .

Clearly the forgoing information should have been within found within the pages of the applications for search warrant, but was purposely omitted by the collusion of involved officials seeking a predetermined outcome of getting administrative officials on the subject property. Here the purpose of withholding and compartmentalization, of the above 10 points, by officers of the court and other officials was to avoid the incidence of exculpatory information reaching the search warrant application, or the search warrant magistrate becoming aware of same, and causing the denial of the applications to search the subject properties – due to the lack of probable cause.

Moreover, the misleading of certain officials and the compartmentalization of material facts was necessary to ensure outside agency resources and officials would be available and participate in the months of planning and organizing required to execute the ruse that was Kitsap's operation to get its administrative officials onto the Young properties to search for administrative evidence, as well as to demonstrate the crippling effect of simultaneous prosecutions, that had been laid out in Kitsap's draft of ordinance set to give broad and sweeping police powers to its administrative officials

Here again, time has shown that the overall multi-jurisdictional operation against the Young was but a trial run of the new Ordinance, and was designed to spotlight the depths and effectiveness of the police powers proposed to be granted therein. It is no coincidence that the new Ordinance was drafted by the same Kitsap officials who brought the overall operation against the Young's, and were responsible for misleading of the search warrant magistrate in this matter by knowingly presenting false statements in the applications for search warrants by and omitting and compartmentalizing exculpatory facts that were clearly known to them.

A. Dismissal for Want of Prosecution

On page 31 of its Response Brief Kitsap argues that only one undissipated issue was presented in Young's Motion for Reconsideration of Dismissal. Yet the motion appendix starting on page 13 lists 16 undissipated issues joined at the time of the ruling CP 288.

It is noteworthy that it on requires one outstanding undissipated issue of material fact to defeat summary judgment.

On page 33 of its Response Brief Kitsap cites *Nicacio v. Yakima Chief Ranches, Inc.*, 63 Wash.2d 945, 389 P.2d 888 (1964) to support its position that Kitsap filing motion for summary judgment tolls the operation of CR41(B)(1) . The defendant in *Nacacio* moved for summary judgment. The motion was denied in a memorandum opinion, but no Order denying the motion was ever entered. The plaintiff then permitted more than a year to elapse without re-noting the case for trial, and the trial judge granted defendant's motion to dismiss for want of prosecution. The Supreme Court reversed the order of dismissal. The court concluded that the issue of law joined in the motion for summary judgment had never been resolved since the ruling had never been reduced to a written order. And since the issues joined in the motion for summary judgment had never been resolved by written summary judgment order, the one-year period never began to run.

The situation in *Nicacio* is unlike the situation before this court, however. The issue of law underlying Young's CR 41(b)(1) Motion to Dismiss for Want of Prosecution was resolved when the requisite one year began to run after "any issue" was joined by defendant's responsive pleadings of May 24, 2012 and June 11, 2012. The trial court record shows CR 41(b)(1)'s requisite year's time without activity ran from May 25, 2012 to May 25, 2013. Here, Kitsap failed to "note the case for trial" before Young's CR 41(b)(1) motion hearing after being provided at

least ten days notice of Defendants Motion to Dismiss for Want of Prosecution.

Accordingly, the requisite year was completed, at the latest, on May 25, 2013.

Neither the trial court's May 30, 2012 Order for Preliminary Injunction, or its June 18, 2012 Order on Motion for Reconsideration, stand as a final adjudication of any of the issues then joined for purposes of tolling the rule, such application of the Preliminary Injunction findings are specifically disallowed.¹ Even though the Trial Court ruled May 30, 2012 that the issue of "junk vehicles had been joined" by Young's responsive pleadings, the trial court clearly erred when it concluded that its preliminary injunction ruling served to dissipate the one "junk vehicle" issue, which stopped the running of the requisite year clock under CR 41(b)(1).

Even if either of the Trial Court's orders on preliminary injunction are considered the starting point of the running of the requisite CR 41(b)(1) year, such consideration adds only one week to the time without consequence,ⁱ

Here, and without excuse, Kitsap waited an additional five months after the CR 41(b)(1) year had run, then chose to file a motion for summary judgment, rather than noting the case for trial as required to escape dismissal.

Here Kitsap's dilatory conduct falls squarely within the operation of the rule and the running of the requisite year was most certainly not interrupted or tolled by

¹ "No extension of time is granted in the rule, nor contemplated by our decisions, in carrying on the normal pretrial activities prescribed by our rules ..." Gray v. Mathieson Chemical Corp., 160 Wash.Dec. 238, 373 P.2d 481; Davis v. Smith, 160 Wash.Dec. 721, 375 P.2d 397.

the occurrence of a summary judgment hearing, which then waited another year for a formal decision – thus distinguishing this matter from *Nicacio*.

Kitsap also cites *Storey v. Shane*, 62 Wash.2d 640, 384 P.2d 379 (1963) to support its position. In this case, joinder of issue took place with the service and filing of the answer and cross-complaint on February 10, 1961, and the rule would go into effect the next judicial day. Respondent's motion for summary judgment on June 20, 1961, was timely, as it left ample time for hearing on and disposition of the motion before the year would expire. The court's decision, handed down in its order of June 30, 1961, denying the motion, tolled the rule and set the time running again.

Like *Nicacio*, the defendant in *Storey* moved for summary judgment. However in this instance the hearing on the summary judgment motion, and the Order denying the motion 10 days later, both fell within the running of the requisite year for dismissal thus tolling the operation of the rule.

Both *Storey* and *Nicacio* are cases where summary judgment motion was heard before the motion to dismiss was filed. Additionally, in both these cases the running of CR 41(b)(1) year overlapped either the date of the summary judgment hearing and ruling, or the year overlapped some period of time between the summary judgment hearing and the formal decision. In both these cases joined issues were brought before the court for disposition by summary judgment. However, unlike the case at hand, no dilatory conduct by the plaintiff in those matters was shown. Here the record shows that Kitsap waited a total of 17

months to file their motion for summary judgment after issues were joined by Young's responsive pleadings.

On page 33 of Respondents Brief Kitsap states "*Young's motion to dismiss contained a simultaneous motion to continue summary judgement...*" However, the record clearly indicates Young's CR 41(b)(1) Motion to Dismiss was filed before Young's separately filed response to summary judgement, and that Young's CR41(B)(1) motion to dismiss was heard at the outset of the Dec. 20, 2013 hearing and clearly before the Trial Court heard summary judgment issues.

Still on page 33, without citation to authority Kitsap also attempts to put weight to the fact that Kitsap filed their motion for summary judgment 35 days prior to Young filing motion for CR41(B)(1) dismissal. In this instance, it is the sequence in which the motions are heard that is material and serves to control the outcome under the rule. The "when" that motions are filed for hearing, have no bearing on the operation of the rule.

Respondent further argue that defendants moved for continuance and caused delay and were thus responsible. Even if this were true, as briefed the requisite year had run many months before and no delay in that year can be attributed to the defendants. "The obligation to comply with the rule was plaintiff's." Bishop v. Hamlet, 58 Wash.2d 911, 365 P.2d 600 (1961). "When plaintiff neglected to note the case for trial within the time provided by the rule, the dismissal of the case was mandatory." Id.

Despite Respondent's pleadings on the issue, Kitsap's filing a motion for summary judgment cannot be equated to noting a case for trial. Here Kitsap

proposes the court expand the construction of CR 41(b)(1) to the effect of equating the filing a motion for summary judgment to “noting the case for trial,” relying on *Storey*. Kitsap’s reliance on *Storey* in this regard, however, is misplaced. But no supporting case law is provide to support this contention, and none could be found.

“Serving and filing a notice of issue of law and facts will not toll the rule. Thus, where notice of trial setting was served four months after the year had run, a subsequent motion to dismiss under this rule was upheld.” State ex rel. L. L. Buchanan v. Wash. Public Ser. Comm., 39 Wash.2d 706, 237 P.2d 1024. “But it is not the mere filing of the motion that tolls the rule. It is the court’s decision thereon, either in denial or granting in whole or in part, that sets the one year’s time running again. One cannot simply file the motion, let it lie dormant, and then assume that the cause has been renewed for an additional year.” Story , Id

C. Insufficient Evidence supports finding of Public Nuisance “Junk Vehicle”

Kim v. Lakeside Adult Family Home, 185 Wash. 2d 532, 374 P.3d 121, 133 (2016) (The party moving for summary judgment “bears the burden of demonstrating there is no issue of material fact, and all facts and reasonable inferences there from must be viewed in the light most favorable to the nonmoving party”).

Of the nuisance causes of action relating to “junk vehicle” that have now come forward in summary judgment, each require that the legislatively defined

condition precedent of KCC 9.56.020(9) be satisfied before determination of “junk vehicle”, and before each of the photographic exhibits attached to Steve Mount declarations in summary judgment can be considered as evidence of Junk Vehicles and then become relevant and admissible to the issue.

Specifically, the county’s only declarant, Steve Mount, is a layman, and is not demonstrated as an expert capable of assessing or demonstrating the material facts under KCC 9.56.020(9) as required for summary judgment on the issue of “nuisance junk vehicles,” and his deficient declarations absent of “conditions of fact” and mistakes of descriptions establish this. *Davies v. Holy Family Hosp.*, 143 Wash. App. 1012, 2008 WL 458617 (Div. 3 2008) (not reported in P.3d) (affidavits made in support of, or in opposition to, a motion for summary judgment must be based on personal knowledge, set forth admissible evidentiary facts, and affirmatively show that the affiant is competent to testify to the matters therein).

Accordingly under the rules of evidence Mount is not allowed to substitute opinion, conclusions, or speculation for evidence in summary judgment, and can only relate observed facts or personal knowledge. And this is a principal and material difference between civil court proceedings and the administrative hearing examiner proceeding. Yet that difference is distinguishing and serves to preclude application of collateral estoppel from the 2011 hearing examiner decision to the case at hand discussed below.

In his declarations Mount generally states the cars on the subject property are inoperable “inoperable or that the cars on the subject property are “junk vehicles”

and then relies on pictures to as proof of his assertions. The inference being that that the pictures are then relevant and serve to meet the burden of proof because Mount says that they show “junk vehicles.

Moreover, Pattern Jury Instruction **WPI 380.04 Nuisance Per Se** mandates insertion of a “brief description of the requirements of the statute” into **WPI 380.05 Nuisance – Burden of Proof – No Affirmative Defense** In this case that means describing the KCC 9.56.020(9) statutory elements that satisfy the condition precedent to establish a “junk vehicle.”

ER 104(a) Questions of Admissibility Generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of section (b)...

ER 104(b) Relevancy Conditioned on Fact. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court will admit it, or subject it to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

ER 401 Definition of “Relevant Evidence”. "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

ER 402 Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible. All relevant evidence is admissible, except as limited by constitutional requirements or as otherwise provided by statute, by these rules, or by other rules or regulations applicable in the courts of this state. Evidence which is not relevant is not admissible.

The first condition precedent that must be satisfied, concerns the county’s claim of “junk vehicles” on the subject property. Establishing “junk” vehicles on the subject property - as well as the relevancy and thus admissibility of the

photographic exhibits of vehicles under ER 104(b) and ER 104(a), rests specifically on Mount's declarative testimony to fulfill the requisite "condition of fact," called out in KCC 9.56.020(9) – which the county never did.

KCC 9.56.020 Definitions states:

(9) "Junk motor vehicle" means a motor vehicle meeting at least three of the following requirements:

(a) Is three years old or older;

(b) Is extensively damaged, such damage including, but not limited to, any of the following: a buildup of debris that obstructs use, broken window or windshield; missing wheels, tires, tail/headlights, or bumpers; missing or nonfunctional motor or transmission; or body damage;

(c) Is apparently inoperable; or

(d) Has an approximate fair market value equal only to the approximate value of the scrap in it

Against this strict and express backdrop, the county's burden of proof is satisfied only by Mount first accurately identifying and indicating the vehicle subject to the above ER 104(b) "condition of fact" and then substantively qualifying with testimony of specific personal knowledge and observation of qualifying material facts and that would allow him to substantively identify the presence of three qualifying elements from the above four KCC 9.56.020 (9) material elements defining "Junk vehicle." And this did not happen for any vehicle claimed to be "Junk" in any of Mount's declarations in this matter.

The foregoing are the specific elements of proof, or material facts, that must be substantively and specifically demonstrated, as a condition precedent, before a

sound basis for relevance and admissibility can attach to the county's photographic exhibits for the purposes of demonstrating "junk vehicles"

In the event Kitsap is in fact able to establish a "junk vehicle", it then under the WPI 380.05 – Nuisance, the county's burden to prove that an actual and substantial injury occurred, and identify the neighboring persons/property injuries.

However, nowhere in the County's affidavits supporting summary judgment is there any vehicle specifically identified and substantively demonstrated as to how it meets three of the four KCC statutory elements required for a finding of a "junk vehicle." Accordingly, without satisfying the condition precedent, no picture of any vehicle provided by the county is relevant under ER 104(b) and ER 401 to the issue of "junk vehicles" on the subject property, and they are therefore inadmissible as evidence supporting the county claims of "junk vehicle."

Accordingly, in finding "Ample Evidence" for summary judgment, the trial court abused its discretion by exercising a de facto waiver of the rules of evidence governing admissible and relevant evidence. The record clearly shows there was no initial "fulfillment of the condition of fact" for a "junk vehicle" finding as required under and KCC 9.56.020(9) and ER 104(b), to meet the requirements for relevant and admissible evidence under ER104(a), ER 401, ER 403, and ER 602

Here the trial court had to have relied on the county's only evidence in support of finding "junk vehicle" - Mount's declarations and photographic exhibits attached thereto.

ER 602 Lack of Personal Knowledge. A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of rule 703, relating to opinion testimony by expert witnesses.

In his declaration Mount does not demonstrate that he is an expert or that he has had specialized training or is capable of identifying make, model, or year, or value of any vehicle. In fact as previous briefed with supporting declaration of Colin Young, Mount assigns “junk” labels to vehicles he identifies as present on the subject property that do not exist and never have been present there.² *Martin v. Dematic*, 178 Wash. App. 646, 315 P.3d 1126, 1131 (Div. 1 2013), review granted, 180 Wash. 2d 1009, 325 P.3d 914 (2014) and rev'd on other grounds, 182 Wash. 2d 281, 340 P.3d 834 (2014) (in reviewing summary judgments, courts consider supporting affidavits and other admissible evidence based upon the affiant's personal knowledge).

Moreover in his declaration Mount fails to present the then current price of scrap in determining what is or is not a “junk vehicle,” or the current value or substantive calculations of the value of parts contained therein. Nor does Mount present or testify to making or the required comparison of the alleged “junk

² See previous declarations of Colin Young in this matter filed in response to Kitsap’s earlier summary judgment efforts that were continued to the hearing at issue here.,

vehicle” against the retail value of the vehicle for credible determination of qualification under the third material element of the KCC 9.56.020(9).

The fact that Mount does not even attempt to identify the even approximate the year of any vehicle, to satisfy the first element, demonstrates his lack of expertise. Specifically Mount’s lack of expert and knowledge was called the attention of the court in Colin Youngs’ Declaration dated

To grant summary judgment, the summary judgment court must have improperly placed weight on Mount’s abundant declaratory speculation and unsupported conclusory statements,³ without examining the county’s evidence for establishment of KCC 9.56.020(9)’s material elements “condition precedent,” or the “fulfillment of condition of fact,” as the premise for relevancy and admissibility declarations and exhibits the county submitted in support of summary judgment. *Peninsula Truck Lines, Inc. v. Tooker*, 63 Wash. 2d 724, 388 P.2d 958, 960 (1964) (plaintiff, as party moving for summary judgment, had burden of showing that there was no genuine issue of facts, irrespective of where burden would rest at trial).

In the county’s Response Brief and in its Amended Motion for Summary Judgment, as with most of Kitsap pleadings before the court, Kitsap typically presents a circular argument of complementary authentication - a fallacy of logic -

³ Kitsap’s habitually labeling of subject vehicles as “junk” is strategic and creates bias. “Junk vehicle” is conclusion of law and this type of labeling should be struck from consideration.

rather than demonstrating, or testifying to the evidence of the required “condition of fact,” which Mount either cannot, or does not, properly establish for any nuisances which the county claims in this matter. ”. Jones v. State, 140 Wash. App. 476, 166 P.3d 1219, 1228 (Div. 1 2007), rev'd on other grounds, 170 Wash. 2d 338, 242 P.3d 825 (2010) (when ruling on a summary judgment motion, a court cannot consider inadmissible evidence).

Throughout this case Kitsap has habitually run the following logical ruse in their pleadings to deceptively show that a condition exists:

Objective: a condition must be shown to exist. Solution: Show pictures and state they show a condition; making the photos relevant and admissible - then use the same photos to prove your statement that the condition exists. Several similar examples follow:

On p.7 of Kitsap's response brief the county states *“there is ample evidence in the record documenting the nuisance per se conditions on the property from 2011 to 2016 even if the May 2, 2012 search pursuant to criminal warrant is not considered..... As seen from the photographs attached to Mr. Mount's declarations many of the vehicles were present on the Property in the same location for over four years and, are extremely damaged and are apparently inoperable. The vehicle and vehicle parts are also visible from neighboring properties as well as from Big Valley Road, are within 250 feet of the property line, and are not screened.”*

On p.13 of its amended motion for summary judgment the county states "*The majority vehicles parked on the property are junk vehicles defined in KCC 9.56.020(9). As evidenced by the photos, many of the vehicles on the property are three years old or older, are damaged, and are apparently inoperable.* The county then calls out "a blue minivan" in Mount's 2016 photographic exhibits 2,5,7,13,14,16, and 19, declares it "at least three years old, apparently inoperable.

Here the county choses to ignore the fact the "junk vehicles" is an unproven conclusion of law and improperly uses it as a forgone conclusion. More egregious is the fact that the two preceding paragraphs are not testimony by the declarant Mount, but the testimony of the county attorney writing the pleading, and is without personal knowledge of the subject property. Clearly this is a violation of ER 602 - Lack of personal knowledge and pleadings of this nature should be struck from consideration.

C. Insufficient Evidence supports summary judgment finding of statutory "Vehicle Lot"

For the purposes of preclusion by collateral estoppel as to the issue of statutory KCC "Vehicle Lot" from the 2011 Hearing Examiner Decision on the subject property.

The record shows that the Hearing Examiner did not rule a statutory "vehicle lot" on the subject property. CP 509

On p.12 of county's response brief Kitsap argues that photos attached to Mount's 2016 declaration show more than ten vehicles "regularly stored" on the subject property in violation of KCC as an unpermitted "vehicle lot"

KCC 9.56 (18) "Vehicle" means every device capable of being moved upon a highway and in, upon, or by which any person or property is or may be transported or drawn upon a highway. Motorcycles shall be considered vehicles for the purposes of this chapter. Mopeds and bicycles shall not be considered vehicles for the purposes of this chapter.

KCC 9.56 (19) "Vehicle lot" means a single tax parcel where more than ten vehicles are regularly stored without approved land use by the department.

The first condition precedent to be met by the county is that the Declarant, Mount, must specifically identify each of at least ten offensive vehicles on the subject property. Then, as a "condition of fact" he must substantively describe how each of these vehicles are "regularly stored" from a basis of actual personal knowledge, in order to satisfy the statutory burden of proof that a vehicle lot under KCC 9.56 exists on the subject property.

Atherton Condominium Apartment-Owners Ass'n Bd. of Directors v. Blume Development Co., 115 Wash. 2d 506, 799 P.2d 250, 257 (1990) (summary judgment movant has burden to demonstrate that there is no genuine issue as to material fact and that, as a matter of law, summary judgment is proper; movant is

held to strict standard, and any doubts as to existence of genuine issue of material fact must be resolved against movant).

To accomplish identification of alleged qualifying vehicles, in his declaration Mount has circled vehicles in various photos taken in 2016 (a form of identification which arguably does not fall within the “strict interpretation” requirement of summary judgment) but then fails to substantively establish that the identified vehicles are “regularly stored.” In fact the pictures clearly show that the specified vehicles are “irregularly stored,” while the term “vehicle lot” calls to mind an application orderly assembly of vehicles to such areas as a parking lot, a car lot, or a mini storage facility.

Mount declares at par. 6 of his 2016 declaration “On the photographs are circles showing the most recognizable vehicles I could seepresent on the property on my various site visits that have not *appeared to have moved*. Here, by use of the word “appear,” Mount has presented pure speculation inadmissible for the purposes of a Declarant and summary judgment. In this regard “*vehicle lot*” condition precedent for a Public Nuisance under KCC 9.56 remains an outstanding issue of material fact which precludes summary judgment and a finding of a Nuisance per se. *Davis v. West One Automotive Group*, 140 Wash. App. 449, 166 P.3d 807 (Div. 3 2007), review denied, 163 Wash. 2d 1040, 187 P.3d 269 (2008) (on summary judgment, the court is allowed to consider only competent evidence).

Moreover shown above, and in earlier defendant pleadings the citizenry must guess at the application and meaning of the “vehicle lot” statute, and reasonable minds can easily derive at least two contrasting meanings for “regularly stored”. Jones v. State, Dept. of Health, 170 Wash. 2d 338, 242 P.3d 825, 831 (2010) (genuine issue of material fact exists, precluding summary judgment, if, after weighing the evidence, reasonable minds could reach different factual conclusions about an issue that is material to the disputed claim).

In its Response the county points to a new KCC definition that states “regular storage” means more than 72 hours. But that definition is a 2016 amendment to the county code that took place beyond the January 30, 2016 hearing, and points to the fact the “vehicle lot” the county was aware that its “vehicle lot” statute was unconstitutionally vague.

Kitsap also argues that Young has never applied for, or received, a permit from DCD for a vehicle lot on this property. The problem here is that there is no such “permit” for a “vehicle lot” available from the DCD or described in the Kitsap Code.

The pictures relied on by the county in this case, serve to illustrate that the KCC 9.56 Vehicle Lot statute, as applied to the facts in this case, is vague, and presents a material issue of fact that must be resolved by the jury, and cannot be resolved by Mount’s speculation and conclusory statements.

IV. CONCLUSION

Shown above this case should have been dismissed for want of prosecution,
And if not, it has been demonstrated the county failed to meet its initial burden at
Summary judgment and outstand issues of material fact remain..

Respectfully submitted Feb. 28, 2018,



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Lorna Young, Appellant pro se

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adjudication of the issues of fact or law.

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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY AP
DEPUTY

COURT OF APPEALS – DIVISION II
OF THE STATE OF WASHINGTON

KITSAP COUNTY,
RESPONDENT

Ct. Appeals Case # 50361-1-II
Superior Ct. Case # 12-2-01123-2

v.

LORNA YOUNG, et al,

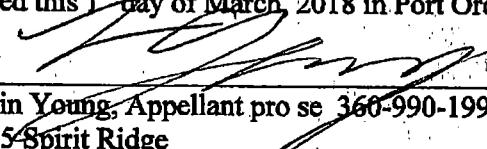
DECLARATION OF SERVICE
APPELLANTS' REPLY BRIEF

I, Colin Young, declare as follows:

- 1) I am over 18 years of age, a resident of Kitsap County, and I am an appellant in the above stated matter.
- 2) That on February 28, 2018, I served by personal service: Deputy Prosecutors for Kitsap County Laura Zippel and Nicholas Kiewik, attorneys for the Respondent, APPELLANTS' REPLY BRIEF at their office at 614 Division St, Port Orchard WA 98366.

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

Dated this 1st day of March, 2018 in Port Orchard, WA


 Colin Young, Appellant pro se 360-990-1990
 1785 Spirit Ridge
 Silverdale WA 98383