

No: 51506-7-II

In the Court of Appeals of the State of Washington
Division Two

Brennan Heating and Air Conditioning LLC

Plaintiff / Respondent

vs.

Jeffrey M. McMeel

Defendant / Appellant

Brief of Appellant

Appeal from Thurston County Superior Court Case No. 17-2-06110-34,
The Honorable James J. Dixon

Jeffrey M. McMeel,
Appellant

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STATE OF WASHINGTON

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1. Assignments of Error

Appellant, Jeffrey M. McMeel contends that the following errors were made by the trial courts;

1. The *ex parte* court acted in excess of jurisdiction when it entered its November 17, 2017 Order to Show Cause based on a petition that did not include an affidavit of petitioner as required by statute.
2. The Trial Court acted in excess of jurisdiction on January 26, 2018 when it conducted a hearing and entered a judgment based upon a void show cause order and a presumption of jurisdiction.
3. The Trial Court abused its discretion by irregularities in the January 26, 2018 proceeding resulting in manifest errors affecting constitutional rights.

2. Issues Pertaining to Assignments of Error

Issue #1, Did the *ex parte* court obtain subject matter jurisdiction to issue a show cause order against McMeel without the affidavit of petitioner? (Assignments of Error # 1, # 2)

Issue # 2, Did the Trial Court obtain subject matter jurisdiction over the controversy if the show cause order is void? (Assignments of Error # 1, # 2)

Issue # 3, Was the Trial Court on January 26, 2018 required to reveal the jurisdiction of the court when challenged by McMeel three times? (Assignments of Error # 3)

Issue # 4, Was it lawful for the Trial Court to suppress McMeel's release of lien? (Assignments of Error # 3)

3. Statement of the Case:

This case involves a dispute between an employer, Brennan Heating and Air Conditioning, LLC ("Brennan") and a former employee, Jeffrey McMeel ("McMeel") over a sudden and unexpected termination that was conducted by telephone on July 8, 2017. McMeel had no prior warning that he was going to be fired since his job performance was deemed satisfactory by the company up until then. This sudden change in economic circumstances prompted McMeel to make a reasonable request for a few weeks of severance pay which Brennan denied. In mid 2016 McMeel was victimized by a conman who stole the majority of his life savings. The conman subsequently filed bankruptcy which left McMeel a party creditor. (U.S. Bankruptcy Court for Western District of Washington at Seattle, Case No. 16-11767) (CP 22) McMeel at the time of the firing was still reeling from the 2016 financial devastation and protested the perceived injustice by

filing what he believed to be a common law lien at the Thurston County recorder. (CP 16-20) The amount of the lien was subject to a typing error which McMeel did not catch before he filed the notice in the public record. The amount was intended to apply to Brennan's "\$1,000,000.00" errors and omission insurance.

On November 8, 2017 Plaintiff/Respondent Brennan mailed a petition for a show cause order against McMeel to Thurston County Superior Court clerk without oral argument. (CP 8) The clerk received the petition on November 13, 2017. That same day Brennan filed a civil case against McMeel, case number 17-2-06110-34, which the clerk classified as "miscellaneous." See **Exhibit A**. On November 15, 2017 the clerk assigned the case to Judge James J. Dixon. See **Exhibit B**. On November 17, 2017 Rebekah Zinn, *ex parte* court commissioner, heard the petition and entered a show cause order against McMeel which also set a hearing date for December 8, 2017 before Judge James Dixon. (CP 41-42) The hearing did not take place in December due to Brennan's inability to personally serve McMeel because they could not locate him.

Attorney Jacob A. Zuniga presented himself to both courts and McMeel as the attorney of record for the case although he never filed a

notice of appearance. A Notice of Appearance was filed on November 29, 2017 by attorney Lance A. Pelletier who filed nothing into the case except this notice. Zuniga's printed name appears below that of Pelletier's on the notice, but Zuniga did not sign the notice. The notice indicates only one attorney of record, Pelletier, whereby it states "the undersigned attorney," (singular) not "attorneys" (plural). See **Exhibit C**.

Around the third week in November 2017, McMeel was the victim of identity theft, the thief also gaining access to his mailbox key and mail. This deprived McMeel of notice of the case. He first learned about it on or about the first week in December 2017 when a google voice account was finally accessed which included a voicemail from Brennan's law firm, Stokes Lawrence, P.S. McMeel returned the call and spoke with an attorney whose name he doesn't recall and who informed him that Brennan was planning to sue him over the lien and that they were moving for service by certified mail.

On Wednesday, January 17, 2018, Zuniga emailed an offer of settlement to McMeel which was rejected because the terms were unreasonable and included waiving any wrongful termination claims McMeel might make against the company in the future. The next day,

January 18, 2018, McMeel was served the show cause order by certified mail. (CP 41-42) The order was signed by Zuniga which reinforced McMeel's belief that he was the attorney of record for Brennan. Acting upon that belief and desiring to clear the matter up as soon as possible he emailed Zuniga with questions about the best way to go about releasing the lien. Zuniga responded "...if you desired legal advice, you should consult with the lawyer of your choosing" and indicated that the hearing would go forward on the 26th of January.

McMeel, not exactly sure how to reverse the lien but acting in good faith, on January 19, 2018 created and filed a Release of Lien with the Thurston County Recorder, record number 4607488. (CP 53-54) Believing the lien was released and that the hearing would be cancelled, McMeel saw no reason to file the Release into the record. He was not able to obtain a copy of it until Wednesday, January 24, 2018 two days before the hearing, at which time he emailed it to Zuniga, still believing he was the attorney of record for the plaintiff, a corporation. (CP 58) Zuniga telephoned McMeel that day and told him he received the Release but indicated that there was something wrong with it. McMeel asked Zuniga what the error was so he could correct it. Zuniga mumbled something about a "grantor" but refused to

elaborate which meant McMeel was without enough information to make a recorded correction which he offered to do. Based upon Zuniga's unwillingness to cooperate with McMeel's efforts to settle the matter privately, McMeel felt it necessary to email Zuniga a notice regarding the threatened "attorney fees" and other relevant issues. (CP 58-61)

The next day, January 25, 2018, McMeel received an email sent by the law firm's practice assistant containing two attachments; Declaration of Jacob Zuniga and Proposed Judgment. Also that same day McMeel prepared a "Notice to the Court" which showed cause why attorneys' fees should not be granted. He emailed it to the clerk that afternoon and filed it into the case the next morning before the hearing. (CP 45-48)

McMeel, not satisfied with the proceedings, attended the hearing conducted by Judge James Dixon on January 26, 2018. Zuniga attended but no witnesses for Brennan were in the courtroom. (CP 43)

At the hearing McMeel offered a copy of the filed "Notice to the Court" to Judge Dixon. (RP 4) After accepting the copy from the clerk, Judge Dixon read the notice. (RP 5, line 11) Given the ambiguous nature of the proceedings, McMeel attempted three times to

discover what jurisdiction the Trial Court was operating under but Judge Dixon refused to acknowledge the inquiry. (RP 5- 6) After the second jurisdictional challenge the Trial Court found in favor of Brennan before allowing McMeel an opportunity to show cause. (RP 6) Because McMeel challenged jurisdiction three times and was refused notice of jurisdiction each time, he was unable to proceed in a fair manner. Unable to inform himself about what was going on he was unfairly stymied. When he finally realized that the Trial Court had ruled against him without providing him the opportunity to meet the burden regarding the lien, he attempted to present a copy of the lien release to Judge Dixon in the same way he had with the "Notice to the Court." (RP 7) Instead of accepting the release, Judge Dixon directed attention to Zuniga even though it was ascertained immediately that Zuniga had already received a copy before the hearing. (RP 7) The Trial Court ruled twice in favor of the plaintiff without citing any facts, evidence or conclusions of law to support the decisions. (RP 6, 8)

When judgment in the amount of "\$8,886.50" was entered for the plaintiff by the Trial Court McMeel asked for clarification on the form of payment because it was vaguely written. (RP 8) Since the jurisdiction of the Trial Court was being unfairly kept a secret, McMeel

wasn't sure if the judgment was entered in compliance with the Constitution of the United States and the laws made in pursuance thereof or not.

After the hearing McMeel ordered a transcript of the proceedings (CP 67 - 76) followed by serving and filing a timely Notice of Appeal on February 22, 2018.

4. Argument.

1. Request For Review of the Show Cause Order;

When McMeel, a *pro se* litigant, filed this appeal there were many aspects to this case he was unaware of. His lack of knowledge caused him to exclude parts of the record that he now realizes he should have included. Some of the excluded filings he is attaching as exhibits and hopes there is no rule against that. It is the best he can do at this point.

His notice of appeal failed to include the November 17, 2017 show cause order entered by a commissioner which purportedly formed the basis for the January 26, 2018 show cause hearing. (CP 77-79) McMeel asserts the show cause order was entered in excess of jurisdiction because the petition was not supported by affidavit of petitioner as required by statute. For these reasons McMeel moves this

Court for review of the November 17, 2017 show cause order pursuant to RAP 2.4 (b). This rule provides for review of an order not included in the notice of appeal when it prejudicially affected the trial court decision and was made before this court accepted review. The Trial Court was prejudiced by hearing a matter based on a void show cause order. As to the second condition, the order was made before this Court accepted review of the appealed judgment.

2. Basis For Review;

McMeel appeals the show cause order and judgment on the grounds they are both void. He contends the *ex parte* and Trial Court failed to acquire jurisdiction over the subject matter due to a fatal error in the petition and a record that does not contain all jurisdictional elements required for a special proceeding.

The plaintiff/respondent tendered the petition to the *ex parte* court instead of the superior court. The commissioner erred by accepting the petition without the required affidavit of petitioner and entered a void show cause order. Want of jurisdiction by the *ex parte* court voids all subsequent proceedings and decisions, but the Trial Court presumed the order was valid and entered a judgment which is also void for lack of subject matter jurisdiction.

Without verifying whether or not it had subject matter jurisdiction and acting in excess of jurisdiction on a mere presumption of jurisdiction the Trial Court abused its discretion by a) hearing a matter not properly before it, b) irregularity in the proceedings and c) refusing notice of jurisdiction. The report of the proceedings reveals abuse of discretion by the Trial Court when it denied notice of jurisdiction depriving McMeel of basic fairness which adversely prejudiced his efforts to defend. Lack of fairness always offends due process.

The errors complained of interfered with McMeel's claimed Constitutional right to a fair hearing which operates to deny procedural and substantive due process under the 14th Amendment to the U.S. Constitution and violates Const. Art. I § 3.

3. The Commissioner Acted In Excess of Jurisdiction;

McMeel filed a common law lien in Thurston County records "pursuant to RCW Ch. 60..." (CP 18) This chapter of the RCW was cited only because McMeel believed at the time that it was required. He now realizes it was a mistake to cite the RCW with reference to a common law lien as the legislature of Washington left the common law many decades ago. The real issue behind this case is whether or not

McMeel can be forced to waive his secured and claimed rights by accepting a statutory scheme in place of common law. However, since that issue could be deemed to be political in nature which no court can rule on, this appeal will focus on the errors committed within the statutory scheme which operated to violate McMeel's secured rights under both the State and federal constitutions.

Pursuant to the statutory scheme for common law liens, under RCW 60.70.060(1) Brennan filed a petition with the Thurston County Superior Court clerk seeking a show cause order against McMeel to appear and show cause why the common law lien should not be stricken and why other relief should not be granted.

RCW § 60.70.060 Petition for order directing common law lien claimant to appear before court.

(1) Any person whose real or personal property is subject to a recorded claim of common law lien who believes the claim of lien is invalid, **may petition the superior court of the county** in which the claim of lien has been recorded for an order, **which may be granted ex parte**, directing the lien claimant to appear before the court at a time no earlier than six nor later than twenty-one days following the date of service of the petition and order on the lien claimant, and **show cause, if any, why the claim of lien should not be stricken and other relief provided for by this section should not be granted.** **The petition** shall state the grounds upon which relief is requested, and **shall be supported by the affidavit of the petitioner** or his or her attorney setting forth a concise statement of the facts upon which the motion is based. The order shall be served upon the lien claimant

by personal service, or, where the court determines that service by mail is likely to give actual notice, the court may order that service be made by any person over eighteen years of age, who is competent to be a witness, other than a party, by mailing copies of the petition and order to the lien claimant at his or her last known address or any other address determined by the court to be appropriate. Two copies shall be mailed, postage prepaid, one by ordinary first-class mail and the other by a form of mail requiring a signed receipt showing when and to whom it was delivered. The envelopes must bear the return address of the sender. (emphasis supplied)

The clerk directed the petition to the *ex parte* court commissioner Rebekah Zinn without oral argument instead of the superior court judge assigned to the case, Judge James J. Dixon, who could have heard the petition *ex parte*. Commissioner Zinn heard the petition and entered a show cause order against McMeel without first verifying that all required elements supported the petition.

The scheme allows for any person wishing to contest a common law lien to do so by way of summary proceeding in the superior court of the county where the lien is filed in the public record, as “...may petition the superior court of the county...” The statute does not permit the summary proceeding to be heard by any other court. If the legislature has intended for the matter to be heard by any person other than a judge of a superior court, presumably the statute would have

allowed for that. In this case the petition was before the wrong court. Under the plain reading of the statute RCW 60.70.060(1), a summary proceeding may be taken advantage of by a petitioner and may be heard ex parte but must be heard in a superior court where matters are heard by judges, not commissioners.

“‘[A]nachronistic doctrine’ or not, the Legislature knew what it wanted and enacted it,” and this statute must “as with any other statute ... be construed to give effect to ... legislative intent.” *In re Estate of Little*, 106 Wash.2d 269, 276–77 (1986)

Even if the petition was before Judge James Dixon as it should have been the statute provides for an *ex parte* proceeding without McMeel’s knowledge or involvement. In that case Judge Dixon’s court would have assumed the characteristics of an inferior court of limited jurisdiction because the source of authority derives wholly from a statute and not the common law. When a superior court loses general jurisdiction by operating in a *statutory jurisdiction* all required jurisdictional facts must be of record in order for the court to obtain subject matter jurisdiction.

“Jurisdiction is the power to hear and determine a cause or proceeding.” *State v. Hampson*, 9 Wash.2d 278, 281, (1941)

Without every element and requirement satisfied under these circumstances, no court of limited jurisdiction or otherwise can acquire subject matter jurisdiction let alone in personam jurisdiction.

““Jurisdiction means the power to hear and determine.” *State ex rel. McGlothern v. Superior Court*, 112 Wash. 501, 505, 192 P. 937 (1920). “In order to acquire complete jurisdiction, so as to be authorized to hear and determine a cause or proceeding, the court necessarily must have jurisdiction of the parties thereto and of the subject matter involved.” *State ex rel. New York Casualty Co. v. Superior Court*, 31 Wash.2d 834, 839, 199 P.2d 581 (1948). “There are in general three jurisdictional elements in every valid judgment, namely, jurisdiction of the subject matter, jurisdiction of the person, and the power or authority to render the particular judgment.” *Marriage of Little*, 96 Wash.2d 183, 197, 634 P.2d 498 (1981).” *State v. Werner*, 129 Wash.2d 485 (1996)

In this case the missing element required by statute is the affidavit of petitioner which is not of record. The *ex parte* commissioner failed to verify whether or not she had authority to hear the matter and that all statutory requirements were met. Because she failed to verify she erred by entering the show cause order upon a mere *presumption* of jurisdiction, not actual jurisdiction. The petition itself is somewhat vague regarding jurisdiction and simply mentions the RCW under section “V. Authority.” (CP 5) Brennan erred by failing to include an

overt statement of jurisdiction and to inform the court that an affidavit of petitioner is a requirement for the special proceeding.

Const. art. IV, § 23 regarding court commissioners authorizes them to perform “like duties as a judge of the superior court at chambers, subject to revision by such judge, to take depositions and to perform such other business connected with the administration of justice as may be prescribed by law.” “As a judge” is not the same thing as “being a judge” elected by the people of the county. It appears that the “duties” commissioners are authorized to perform are of the same type and class as *depositions* since the article *specifically* mentions them only.

Admittedly the statutory scheme for commissioners under RCW 2.24.040 Powers (9) “To hear and determine *ex parte* and uncontested civil matters of any nature” makes it seem *as if* the commissioner possesses the requisite power. In this case “*ex parte*” is tied to “uncontested matters” which relies upon an irrebuttable presumption that all potential litigants automatically do not contest any proceeding under this scheme. This presumption of “uncontested matters” violates the due process clause of the 14th Amendment to the Constitution.

“As the Court noted last Term in *Vlandis v. Kline*, 412 U.S. 441, 446, 93 S.Ct. 2230, 2233, 37 L.Ed.2d 63,

‘permanent irrebuttable presumptions have long been disfavored under the Due Process Clause of the Fifth and Fourteenth Amendments.’” *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632 (1974)

Additionally, the oath commissioners take under the statutory scheme at RCW 2.24.020 Oath “Court commissioners appointed hereunder shall, before entering upon the duties of such office, take and subscribe an oath to support the Constitution of the United States, the Constitution of the **state** of Washington, and to perform the duties of such office fairly and impartially and to the best of his or her ability” (emphasis added) also violates the due process clause of the 14th Amendment for the same reason. This section conclusively presumes all parties accept “state of Washington” as the same political entity as the “State of Washington.” McMeel does not accept “state of Washington” and informed both Brennan and the Trial Court of this fact. (CP 44-47, 57) The common law oath for commissioners enacted by the Legislature of the State of Washington in 1909 contains an oath to the “State of Washington,” the State that was admitted to the Union in 1889. In spite of receiving said notice both the Trial Court and Brennan moved against him using a permanent irrebuttable

presumption that McMeel accepts the impostor “state” which offends the due process clause of the 14th Amendment to the Constitution.

In addition to the commissioner lacking *lawful* authority and operating under a *presumptive statutory authority* as shown, the petition contains a fatal jurisdictional defect which is the absence of a supporting affidavit of the petitioner. As admitted by Brennan, Section “IV. Evidence Relied Upon” is “...the **declaration** of Eric Beardemphl along with its exhibits.” (emphasis added) (CP 5) The petition falsely states “this ex parte petition is of the type and form permitted by RCW 60.70.060(1)...” (CP 6) when it is not of the type and form *required* by the statute because it factually fails to inform the court that the statute *requires an affidavit to support the petition as*

RCW 60.70.060(1) “The petition ... **shall** be supported by the affidavit of the petitioner...” (emphasis supplied)

Shall. As used in statutes, contracts, or the like, this word is generally imperative or mandatory. *Blacks Law Dictionary*, 4th Ed.

The petition is defective without a supporting affidavit of petitioner and confers no power on any court to hear it. The legislature intentionally made the affidavit of petitioner a condition precedent before the court could enter an order against a party not present to contest the proceedings.

In defiance of statutory requirements and with presumed legal knowledge Brennan chose to ignore the mandatory affidavit requirement and attached a declaration instead. (CP 9-11) This was no mistake since the petition was prepared and filed by this member of the Bar. Brennan isn't allowed to pick and choose which statutory requirements to adhere to and which ones to ignore.

“It is clear that the recital of one requirement of the statute in the order is a vital as any other, and if one requirement may be omitted, the other also may be omitted.” *In re. Egley's Estate*, 16 Wash.2d 681 (1943)

It is fair to presume this oversight by Brennan was intentional. Later in the petition Brennan specifically informed the court of its *statutory duty* to award attorney fees if Brennan should prevail. Brennan, admitting the imperative nature of the word “shall,” informs the court that “The language of RCW 60.70.060(4) is mandatory: If the court...determines that Mr. McMeel's claim of lien is invalid, the court “**shall**” issue an award of attorneys' fees and costs against Mr. McMeel.” (emphasis added) (CP 7)

RCW 60.70.060

(4) If, following a hearing on the matter, the court determines that the claim of lien is invalid, **the court shall** issue an order striking and releasing the claim of lien and **awarding costs and reasonable attorneys' fees to the petitioner** to be paid by the lien

claimant. If the court determines that the claim of lien is valid, the court shall issue an order so stating and may award costs and reasonable attorneys' fees to the lien claimant to be paid by the petitioner. (emphasis added)

This admission leaves no room for any excuse that failing to provide the required affidavit in order for the court to acquire jurisdiction was a mistake since Brennan admitted the mandatory nature of the word "shall" in another portion of the same statute.

"The prior communications argued by Sullivan are not part of the record. But it is irrelevant how often or forcefully Purvis was informally notified of alleged breaches of his lease. The landlord elected to proceed under RCW 59.12, but failed to perform the jurisdictional requirement of strict compliance. The court lacked subject matter jurisdiction. Its order is void." *Sullivan v. Purvis*, 90 Wash.App. 456 (1998)

In a case involving a claim of pension under the Industrial Insurance Act the claimant sought to perfect appeal to superior court under a statute. The superior court rejected the appeal because the claimant failed to serve the proper official as required by statute. That is exactly the case here with regards to the non-existent affidavit.

"The statute is too plain and the legislative intent too clear to admit of construction. To perfect an appeal to the superior court from an order of the Joint Board notice must be served on the director personally or by mail. In *MacVeigh v. Division of Unemployment Compensation*, Wash., 142 P.2d 900, at page 901, we

said:

‘The statute governing such appeals is plain, and it appears therefrom that the *superior court obtains no jurisdiction to review an order of the division unless the steps prescribed by the statute have been followed.*’ (Italics ours.)” *State ex rel. Bates v. Board of Indus. Ins. Appeals of...*, 51 Wash.2d 125 (1957)

It should be self evident that an affidavit, a term well known to the common law attesting to facts sworn to under oath and confirmed by a person authorized to do so, is required in summary proceedings such as this one, especially where it is a new action and the adverse party has no notice of it and is not present to contest the matter.

“Additionally, “[i]f the legislature uses a term well known to the common law, it is presumed that the legislature intended to mean what it was understood to mean at common law.” *N.Y. Life Ins. Co. v. Jones*, 86 Wash.2d 44, 47, 541 P.2d 989 (1975). And, when the constitutionality of a statute is in question, “every presumption favors the validity of an act of the Legislature, all doubts must be resolved in support of the act, and it will not be declared unconstitutional unless it clearly appears to be so.” *Grant v. Spellman*, 99 Wash.2d 815, 819, 664 P.2d 1227 (1983). Similarly, “[w]here our precedents contain language at odds with the constitutional powers of the superior courts, the constitution prevails.” *State v. Posey*, 174 Wash.2d 131, 140, 272 P.3d 840 (2012).” *Ralph v. State Dept. of Natural Resources*, 182 Wash.2d 242 (2014)

The record does not show that McMeel agrees to any process or proceeding outside the common law or outside the State of

Washington. Clearly all statutory jurisdictional requirements were not adhered to by Brennan and if they were possessed of the authority to waive limitations imposed by statute, equal application of the law would be offended.

The show cause order itself entered by the *ex parte* court admits the lack of an affidavit, stating “The court has reviewed the pleadings and files of record, which consists of the petition, the response (if any), and the reply (if any).” (CP 41) The record contains no mentions of an affidavit. Because there was no sworn testimony or evidence before the court the show cause order was entered based upon nothing more than hearsay put forth by an attorney who is not even the official attorney of record, Brennan failing to establish any facts upon which relief could be granted. The order also fails because it violates CR52 on decisions, findings and conclusions which requires generally “In all actions tried upon the facts without a jury or advisory jury, the court shall find the facts specially and state separately its conclusions of law.” There was no jury involved in the proceeding and findings of fact and conclusions of law as required are not included in the order.

Upon all of the above, including the conflict of law issues, the *ex parte* court acted in excess of jurisdiction when it entered the show cause order which is void for lack of subject matter jurisdiction.

4. Opportunity to Motion for Revision Denied;

The show cause order entered on November 17, 2017 was over 30 days old at the time Brennan moved for service by mail regarding said order. Service by certified mail was made on McMeel January 18, 2017 well outside the statutory 10 day window of opportunity to motion for a revision of a court commissioner's ruling.

Local Civil Rule 53.2 COURT COMMISSIONERS

(e) Revision by the Court.

(1) *Scope of Rule.* This rule applies to all motions for revision, whether the court commissioner presided over a hearing at the Main Campus Courthouse or at Family Court.

(2) *Filing and Service Deadline.* A motion for revision must be filed within ten days after the commissioner's order or judgment is entered (RCW 2.24.050) and must be served in the manner and time required by CR 5 and CR 6.

"The actions of a superior court commissioner are subject to revision by a superior court judge." *State v. Lown*, 116 Wash.App. 402, 407, 66 P.3d 660, review denied, 150 Wash.2d 1024, 81 P.3d 121 (2003) (citing RCW 2.24.050; *State v. Smith*, 117 Wash.2d 263, 268, 814 P.2d 652 (1991))." *In Re Marriage of Dodd*, 86 P.3d 801 (Wash. Ct. App. 2004)

Brennan knew or should have known when service by mail was requested that McMeel would automatically be denied the opportunity to motion for revision of the order due to expiration of the time allowed. Even taking into consideration CR6 (e) on time which allows three additional days to be added to the 10 day window when service by mail is authorized, McMeel would still have been denied the opportunity to challenge the commissioner's standing and ruling which also operates as a denial of due process under the 14th Amendment to the Constitution. Adherence to the rules provides for due process and fairness in proceedings.

5. Trial Court Acted in Excess of Jurisdiction and Abused Its Discretion;

McMeel involuntarily attended the show cause hearing on January 26, 2018. He walked into the Thurston County Superior Court in Olympia. The reader board identified the courtroom number that the hearing was to be held in. There was no public notice or sign outside the courtroom indicating that it was a court of limited jurisdiction such as one sees in King County Superior Court that has specially designated and clearly identifiable rooms for *ex parte* matters only.

Because he was not personally served with a summons and complaint and Zuniga stated in a phone call that he was not being sued, McMeel was confused about the jurisdiction of the Trial Court. The situation was so confusing that McMeel knew he needed a statement from the Court about the jurisdiction in order to have a fair chance to defend. *Not knowing what presumptions the Court was operating under with regards to his person and property made it impossible for him to properly defend.* He was unaware that the Trial Court, operating under purported authority of a void order under a presumption of jurisdiction, possessed no subject matter jurisdiction at the time. What he did know by reading the State constitution was that superior courts in Washington have general jurisdiction to hear matters of law, equity and probate. Not being dead when he walked into the courtroom, he knew by process of elimination the case had to be in one of the other two categories, law or equity, but he wasn't sure which one or both. At the time of the hearing, he had no knowledge of something called a "statutory jurisdiction."

So McMeel walked into what was *advertised* as a superior court acting in general jurisdiction. All superior courts in the State of Washington acquire authority pursuant to the State constitution.

“Article IV, section 6 of our state constitution, however, states that a superior court “shall ... have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court.” CONST. art. IV, § 6. *Ralph v. State Dept. of Natural Resources, supra*

State of Washington superior courts are courts of record in general jurisdiction.

“The superior court is a court of general jurisdiction. It has the power to try either legal or equitable proceedings, having concurrent jurisdiction in both. It is not a law court, nor an equity court, nor a probate court, but it is all the time the superior court of general jurisdiction, empowered to try all these differently termed causes under the title of a civil action; and when it has once acquired jurisdiction of that civil action it may proceed in an orderly way to determine equitable, legal, or probate controversies.” *Browder v. Phinney*, 30 Wash. 74 (1902)

““Under the Constitution, the superior court is a court of general jurisdiction. It has jurisdiction of equity cases, actions at law, and proceedings in probate. It has been held that, under the statute to which reference has been made, the executor derives his powers, not from the court, but from the will, and that he is in fact a trustee. *State ex rel. Phinney v. Superior Court*, 21 Wash. 186, 57 P. 337.”” *Golden v. McGill*, 3 Wash.2d 708 (1940)

Superior courts in the State of Washington by authority of her constitution are courts of record having power to hear and try actions at law, equity or both and probate matters sitting in general jurisdiction.

There is no statutory jurisdiction authorized by the State constitution.

General jurisdiction of a superior court is acquired in only one way.

“These rules are clearly intended to apply only to “civil actions” which invoke the general jurisdiction of the Superior Courts, and which are commenced by service of summons and complaint.” *Reeves v. Department of General Admin.*, 35 Wash.App. 533 (1983)

Because McMeel was not served a summons and complaint, Judge Dixon with regards to this matter was not operating a superior court of record in general jurisdiction *and intentionally withheld this information from McMeel upon his challenge to jurisdiction at the hearing.* Judge Dixon with superior legal knowledge, knowingly and intentionally, withheld notice of jurisdiction from McMeel, a *pro se* litigant, even upon repeated challenges.

“A party may challenge subject matter jurisdiction at any time, and a judgment entered by a court lacking jurisdiction is void. *Inland Foundry Co. v. Spokane County Air Pollution Control Auth.*, 98 Wn. App. 121, 123-24, 989 P.2d 102 (1999)” *In re Marriage of Ortiz*, 108 Wn.2d 643, 649-50, 740 P.2d 843 (1987)

McMeel tried three times to discover the jurisdiction Judge Dixon’s court was operating the case under but was refused notice of jurisdiction each and every time as follows.

Mr. McMeel: Oh. All right. So what I want to know is, before we proceed, I'm not sure what jurisdiction the plaintiff is bringing. And so I'd like to know what jurisdiction you are running this court under from so – before I can proceed.

The Court: Okay. Thanks. Mr. Zuniga, do you wish to be heard? (RP 5, lines 12-18)

Mr. McMeel: I'm waiting for an answer on the jurisdiction question before I can proceed.

The Court: Okay. Thanks. The court grants the petition. I'll sign an order that will remove the lien. I understand there is a request for attorneys fees and costs, but I haven't received anything. (RP 6, lines 3-9)

Mr. McMeel: I'm sorry. I have an objection.

The Court: Okay. I'll hear your objection.

McMeel: Objection is that I have a – I have not – I haven't gotten an answer to the jurisdiction question I asked the court. I have not yet been given a chance to show cause in here. That's what it – it's a show cause hearing. I wasn't given an opportunity to show cause.

The Court: That's why we're here. If you have – if you can show cause today, I'll hear from you. (RP 6, lines 15-25)

McMeel's timely jurisdictional challenge is preserved and not waived. When McMeel challenged jurisdiction the burden shifted to the Trial Court which previously had been operating under only a *presumption* of jurisdiction. Currently the burden is still on the Trial Court and it will remain there until this matter is settled. The Trial Court abused its discretion by failing to disclose the jurisdiction which interfered with McMeel's right to an impartial hearing and is a denial of due process under the due process clause of the 14th Amendment to the Constitution

and article 1, section 3 of the State constitution. The Trial Court has no discretion to ignore a challenge to jurisdiction and yet it proceeded to enter a judgment in favor of the plaintiff which operated to deny McMeel a fair hearing.

“It is argued that the Circuit Court of the United States had no authority to question the jurisdiction of the county court of Woodford county, and that its proceedings were conclusive upon the matter, whether erroneous or not. We agree, if the county court had jurisdiction, its decision would be conclusive. But we cannot yield assent to the proposition, that the jurisdiction of the county court could not be questioned, when its proceedings were brought collaterally before the Circuit Court. Where a court has jurisdiction, it has a right to decide every question which occurs in the cause, and whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other court. But if it act without authority, its judgments and orders are nullities; they are not voidable, but simply void, and form no bar to a recovery sought, even prior to a reversal, in opposition to them; they constitute no justification, and all persons concerned in executing such judgments, or sentences, are considered in law as trespassers.” *Williamson v Berry*, 49 U.S. 495 (1850)

Brennan apparently understands this concept since they have not proceeded to execution on the judgment as to do so could escalate the matter to a civil rights case in federal district court.

As shown, when a superior court assumes the *character* of an inferior court of limited jurisdiction such as where disputes are litigated by special or summary proceedings as in this case under RCW

60.70.060(1), *jurisdiction cannot be presumed and must appear on the record.*

“It is an established rule that **when a court of general jurisdiction has special and statutory powers conferred upon it, which are wholly derived from statute**, and not exercised according to the course of the common law, or are not part of its general jurisdiction, **it is to be regarded as quoad hoc an inferior or limited court, and its judgments to be treated accordingly, that is, its jurisdiction must appear on the record and cannot be presumed.**’ 1 Black, *Judgments*, 427, § 279.” *Junkin v. Anderson*, 12 Wash.2d 58 (1942) (emphasis added)

Even though the show cause order was void for want of jurisdiction, the Trial Court knew or should have known that operating under a presumption of jurisdiction was a fatal error in light of the repeated challenges. There is no excuse for the Trial Court’s failure to verify whether or not the show cause order was obtained legally and no excuse for the blatant disregard of McMeel’s secured right to a fair hearing.

Since the Trial Court is in possession of both the petition and the show cause order since November of 2017 it knew in advance that all required jurisdictional facts or statements satisfying the rule for courts operating in a *statutory jurisdiction* are not affirmatively on the

face of the record and should have cancelled the hearing for lack of jurisdiction.

“An appeal from an administrative tribunal invokes the appellate, not the general or original, jurisdiction of a Superior Court. *MacVeigh v. Division of Unempl. Comp.*, 19 Wash.2d 383, 142 P.2d 900 (1943). As such, the Superior Court is a court of limited, statutory jurisdiction, and all essential, jurisdictional facts imposed by the statutory procedure for such appeals must be met. *Lidke v. Brandt*, 21 Wash.2d 137, 150 P.2d 399 (1944); *Nafus v. Department of Labor & Indus.*, 142 Wash. 48, 251 P. 877 (1927).” *Reeves, supra.* (emphasis added)

The operation of every judgment depends on the jurisdiction of the court to render it and in this case the Trial Court is without subject matter jurisdiction. “If a court grants relief, which under the circumstances it hasn’t any authority to grant, its judgment to that effect is void.” *1 Freeman on Judgments*, 120c.

A close scrutiny of the judgment reveals factually false statements unsupported by the record as well as containing some of the same defects as the show cause order, as follows:

1. On page 1, paragraph 1 it falsely states “...Brennan...appeared through its corporate representative, Jeremy Pon...” (CP 49)
There is no mention in the record of Jeremy Pon appearing, physically or otherwise.
2. Page 1, paragraph 1 it falsely states “...Brennan...appeared

through...its attorney of record, Jacob A. Zuniga.” (CP 49) The record contains no notice of appearance for said attorney.

3. Page 1, paragraph 2 it falsely states “The Court received the evidence and testimony offered by the parties...” (CP 49) The record contains no record of any evidence or testimony offered by anyone at the time the judgment was entered. No one person testified at the hearing. Statements by attorneys do not constitute testimony.

4. Page 1, paragraph 2 it falsely states “The oral decision included the Court’s findings of fact and conclusions of law.” (CP 49) The record shows no findings of fact or conclusions of law, written or oral, by the Court in violation of CR52.

5. Page 2, paragraph 1 it falsely states “Consistent with its oral decision and its findings and conclusions of law, the Court enters final judgment in this matter as follows;” (CP 50) *See* number 4 above.

6. Page 2, paragraph 3 it vaguely states “2. The Court awards the following award of costs and fees against the Respondent and in favor of Petitioner: \$ 8886.50.” (CP 50) At the hearing McMeel asked Judge Dixon to clarify the symbol on the judgment. (RP 8, lines 17-20) The report of the proceedings does not report verbatim the judge’s response which actually was “The court has entered a judgment in the amount of eight thousand eight hundred eighty-six dollars and fifty cents.” The judgment does not contain the word “dollars” or “cents.” It contains a symbol followed by a set of numbers. (CP 63, 66)

7. Page 2, paragraph 5 it falsely states “4. The Court retains jurisdiction as to any issue that may arise under this judgment.” (CP 50) As a condition precedent, the Trial Court never having obtained subject matter jurisdiction, this statement is patently false and is meant to mislead a *pro se* adversary.

8. Page 2, lines 19-21 it falsely claims Jacob A. Zuniga is the attorney of record for Brennan in this matter.

9. There is no reference to an affidavit of petitioner.

“Jurisdiction exists because of a constitutional or statutory provision. A party cannot confer jurisdiction; all that a party does is to invoke it. See e.g., *Fay*, 115 Wash.2d at 197, 796 P.2d 412 (“statutory requirements must be met before jurisdiction is properly invoked.”) *JA v. State Dept of Social and Health Services*, 120 Wash.App. 654 (2004).

“When a court lacks subject matter jurisdiction, it must dismiss the case.” *Young v. Clark*, 149 Wash.2d 130, 133, 65 P.3d 1192 (2003)

Under the circumstances Brennan did not properly invoke statutory jurisdiction resulting in a void show cause order thereby prejudicing the Trial Court which heard a matter not properly before it based upon a false presumption of jurisdiction resulting in a judgment which is also void for want of subject matter jurisdiction.

Conclusion:

Neither the *ex parte* commissioner nor the Trial Court judge obtained subject matter jurisdiction due to a fatal statutory defect in the petition. Both the show cause order and judgment, entered in excess of jurisdiction, are void. The denial of McMeel’s procedural due process rights and violation of his substantive due process rights resulted in irreparable prejudice to his defense. Based upon the above and in the

interests of justice, McMeel requests this Court set aside the show cause order and judgment, dismiss the case with prejudice and enter an award for costs in favor of McMeel.

Respectfully submitted this May 21, 2018;



Jeffrey M. McMeel, Appellant

Declaration of Service;

I, Jeffrey McMeel, on May 21, 2018, deposited a copy of this Brief of Appellant in the mail to Brennan Heating and Air Conditioning LLC at the following address:

Attorney for Brennan Heating and Air Conditioning, LLC

Stokes Lawrence, P.S.
1420 Fifth Avenue, Suite 3000
Seattle, Washington 98101-2393
(206)626-6000

Dated this 21 of May, 2018.

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



Jeffrey McMeel

17-2-06110-34
CICS 1
Case Information Cover Sheet
2077704



17-2-06110-34

FILED
Superior Court
Thurston County, Wash.
Linda Myhre Enlow, Clerk

By 11/3/17
Deputy

CIVIL
THURSTON COUNTY SUPERIOR COURT
Case Information Cover Sheet (CICS)

Case Number Case Title Brennan Heating and Air Conditioning LLC v. McMeel

Attorney Name Jacob A. Zuniga

Bar Membership Number 48458

Alternate Email Address: Jacob.Zuniga@stokeslaw.com

(New Case Number will be Sent to this Email Address)

Please check one category that best describes this case for indexing purposes. Accurate case indexing not only saves time in docketing new cases, but helps in forecasting needed judicial resources. Cause of action definitions are listed on the back of this form. Thank you for your cooperation.

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|---|--|
| <input type="checkbox"/> ABJ Abstract of Judgment | <input type="checkbox"/> PRG Property Damage - Gangs |
| <input type="checkbox"/> ALR Administrative Law Review | <input type="checkbox"/> PRP Property Damages |
| <input type="checkbox"/> ALRJT Administrative Law Review-Jury Trial (L&I) | <input type="checkbox"/> QTI Quiet Title |
| <input type="checkbox"/> CRP Petition for Certificate of Restoration of Opportunity | <input type="checkbox"/> RDR Relief from Duty to Register |
| <input type="checkbox"/> CHN Non-Confidential Change of Name | <input type="checkbox"/> RFR Restoration of Firearm Rights |
| <input type="checkbox"/> COL Collection | <input type="checkbox"/> SDR School District-Required Action Plan |
| <input type="checkbox"/> CON Condemnation | <input type="checkbox"/> SPC Seizure of Property-Commission of Crime |
| <input type="checkbox"/> COM Commercial | <input type="checkbox"/> SPR Seizure of Property-Resulting from Crime |
| <input type="checkbox"/> DOL Appeal Licensing Revocation | <input type="checkbox"/> STK Stalking Petition |
| <input type="checkbox"/> DVP Domestic Violence | <input type="checkbox"/> SXP Sexual Assault Protection |
| <input type="checkbox"/> EOM Emancipation of Minor | <input type="checkbox"/> TAX Employment Security Tax Warrant |
| <input type="checkbox"/> FJU Foreign Judgment | <input type="checkbox"/> TAX L & I Tax Warrant |
| <input type="checkbox"/> FOR Foreclosure | <input type="checkbox"/> TAX Licensing Tax Warrant |
| <input type="checkbox"/> FPO Foreign Protection Order | <input type="checkbox"/> TAX Revenue Tax Warrant |
| <input type="checkbox"/> HAR Unlawful Harassment | <input type="checkbox"/> TMV Tort - Motor Vehicle |
| <input type="checkbox"/> INJ Injunction | <input type="checkbox"/> TRJ Transcript of Judgment |
| <input type="checkbox"/> INT Interpleader | <input type="checkbox"/> TTO Tort - Other |
| <input type="checkbox"/> LCA Lower Court Appeal - Civil | <input type="checkbox"/> TXF Tax Foreclosure |
| <input type="checkbox"/> LCI Lower Court Appeal - Infractions | <input type="checkbox"/> UND Unlawful Detainer - Commercial |
| <input type="checkbox"/> LUPA Land Use Petition Act | <input type="checkbox"/> UND Unlawful Detainer - Residential |
| <input type="checkbox"/> MAL Other Malpractice | <input type="checkbox"/> VAP Vulnerable Adult Protection Order |
| <input type="checkbox"/> MED Medical Malpractice | <input type="checkbox"/> VVT Victims of Motor Vehicle Theft-Civil Action |
| <input type="checkbox"/> MHA Malicious Harassment | <input type="checkbox"/> WDE Wrongful Death |
| <input type="checkbox"/> MSC2 Miscellaneous - Civil | <input type="checkbox"/> WHC Writ of Habeas Corpus |
| <input type="checkbox"/> MST2 Minor Settlement - Civil (No Guardianship) | <input type="checkbox"/> WMW Miscellaneous Writs |
| <input type="checkbox"/> PCC Petition for Civil Commitment (Sexual Predator) | <input type="checkbox"/> WRM Writ of Mandamus |
| <input type="checkbox"/> PFA Property Fairness Act | <input type="checkbox"/> WRR Writ of Restitution |
| <input type="checkbox"/> PIN Personal Injury | <input type="checkbox"/> WRV Writ of Review |
| <input type="checkbox"/> PRA Public Records Act | <input type="checkbox"/> XRP Extreme Risk Protection Order |

IF YOU CANNOT DETERMINE THE APPROPRIATE CATEGORY, PLEASE DESCRIBE THE CAUSE OF ACTION BELOW.

Lien Proceeding per RCW 60.70.060(1); RCW 60.70.060(3)

Please Note: Public information in court files and pleadings may be posted on a public Web site.

ORIGINAL EXHIBIT A



MC PUBLIC #3

FILED
SUPERIOR COURT
THURSTON COUNTY, WASH:

17 NOV 15 AM 8: 28

Linda Myhre Enlow
Thurston County Clerk

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY	
	Plaintiff/Petitioner,
VS.	
	Defendant/Respondent.

NO. 17-2-06110-34

NOTICE OF ASSIGNMENT and (NTAS)
NOTICE OF TRIAL SCHEDULING DATE

TO: THURSTON COUNTY CLERK
ATTORNEYS/LITIGANTS

PLEASE TAKE NOTICE:

1. This case is assigned to: **The Honorable James J. Dixon**
2. The trial scheduling date for this case is: **March 16, 2018.**

Do not come to court on the trial scheduling date. Do not call or e-mail the court.
Instead, file a scheduling questionnaire and serve it on the other parties. The questionnaire is attached to this notice. Review Local Court Rule 40 for more information about scheduling.

3. **Plaintiff/Petitioner:** You must serve both this notice and a blank scheduling questionnaire by 5 p.m. on March 02, 2018. If there is no proof of service, the court will not issue a case schedule order. Your deadline for filing and serving a completed scheduling questionnaire is March 09, 2018 at 5 p.m.
4. **All Other Parties:** You must file and serve a completed trial setting questionnaire by March 14, 2018 at noon. Joint submissions by both parties are also accepted on this date.
5. Failure to timely submit a scheduling questionnaire shall not be grounds to delay issuing a case schedule order, and it shall not be grounds to continue the trial unless good cause is demonstrated.
6. The court will not issue a case schedule order unless the case is ready to be scheduled. "Readiness" for scheduling is explained in Local Court Rule 40, which is available on the court's web site and law libraries.
7. Parties can obtain an earlier trial scheduling date by filing and serving a notice of issue form.

Dated this 15th day of November, 2017.

NOTICE OF ASSIGNMENT and
NOTICE OF SCHEDULING CONFERENCE

Thurston County Superior Court
2000 Lakeridge Drive SW, Building Two
Olympia, Washington 98502
(360) 786-5430

EXHIBIT B

E-FILED
THURSTON COUNTY, WA
SUPERIOR COURT
November 29, 2017
Linda Myhre Enlow
Thurston County Clerk

1 EXPEDITE
2 No Hearing set
3 Hearing is set
Date: _____
Time: _____
Judge/Calendar: The Honorable James J. Dixon
4 _____
5 _____
6 _____
7 _____
8 _____

9 IN THE SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY

10 BRENNAN HEATING AND AIR
CONDITIONING LLC, a Washington limited
liability company,

11 Petitioner,

12 v.

13 JEFFREY MARK McMEEL aka "The McMeel
14 Estate,"

15 Respondent.

Case No.: 17-2-06110-34

NOTICE OF APPEARANCE
(NTAPR)

Clerk's Action Required

16 TO: CLERK OF THE COURT

17 AND TO: RESPONDENT

18 PLEASE TAKE NOTICE that the undersigned attorney hereby appears for Petitioner,
19 BRENNAN HEATING AND AIR CONDITIONING LLC. All further pleadings and papers,
20 except original process, shall hereby be served upon said attorney.
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DATED this 29th day of November, 2017.

STOKES LAWRENCE, P.S.

By: /s/ Lance A. Pelletier
Lance A. Pelletier (WSBA #49030)
Jacob A. Zuniga (WSBA 48458)
1420 Fifth Avenue, Suite 3000
Seattle, WA 98101-2393
Telephone: (206) 626-6000
Fax: (206) 464-1496
E-mail: lance.pelletier@stokeslaw.com
E-mail: jacob.zuniga@stokeslaw.com
Attorney for Petitioner Brennan Heating and Air
Conditioning LLC

