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WASHINGTON STATE
SUPREME COURT

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**Washington State
Supreme Court**

Edenstrom et al.,

Case No.

v.

95960-9

Thurston County Resource Stewardship

Brief of Appellant

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Assignments of error

1. The trial court erred in dismissing this case as it is contrary to the customary usage of law; The Courts order is adverse to the case-law regarding proof of authority.
2. The trial court erred in dismissing the case as it erroneously applied the doctrine of Res Judicata.

Statement of the case

1. Theodore B Edenstrom, Dean G Edenstrom, and Logan A Edenstrom filed a petition for a writ of Quo Warranto in the Mason County Superior Court seeking to demand the Thurston County Resource

Stewardship Department to present their authority to regulate Petitioners private property and lawful enjoyment thereof. Relators believe that Thurston County Resource Stewardship is exercising authority repugnant to the terms listed within deeds, General Laws, Constitutional limitations, Administrative Procedures Act, and the common law cited by petitioners in their amended complaint.

2. Thurston County Resource Stewardship motioned for a dismissal on the grounds of Res Judicata, citing a recent 1983 action filed by Theodore B Edenstrom over a particular situation of many issues raised by these warrantless policies. The US District Court for the Western District of Washington dismissed the case on summary judgment, without prejudice, before the merits could be considered. See the Order of Dismissal issued by the Mason County Superior Court.

Argument

1. Does the Doctrine of Res Judicata apply to this case?

No. The case referred to for raising Res Judicata has a different cause of

action, remedy and involves an unconstitutional invasion and restrictions upon rights of a particular party without due process of law. This petition for Writ of Quo Warranto is an inquiry into the respondent's authority to create overreaching regulations and policies pertaining to land use and private rights, and unwarranted restrictions upon liberties affecting more than that of the Relators. Unless shown otherwise, Respondents are enforcing regulations on private property without consent, subject matter or territorial jurisdiction, in conflict with deeds and existing rights and contracts. If it is considered to be the same cause of action, the 1983 action was dismissed without prejudice, meaning it was dismissed without detriment to any existing right or claim. For the Mason County Superior Court to apply the County's argument of Res Judicata would cause prejudice, in contradiction to the federal courts dismissal of that referenced case without prejudice.

MCCONNELL v. ATTY GEN OF TX

- A dismissal without prejudice means the claimant has the right to sue again on the same cause of action and prevents "the decree of dismissal from operating as a bar to a subsequent suit." BLACK'S LAW DICTIONARY

469 (6th ed. 1990). *If a suit is dismissed without prejudice, res judicata has not occurred. Bell v. Moores, 832 S.W.2d 749, 755 (Tex.App. — Houston [14th Dist.] 1992, writ denied). If dismissal is with prejudice, res judicata applies and bars the right to bring an action on the same cause. Id. (citing Cowgill v. White, 543 S.W.2d 437, 439 (Tex.Civ.App. — Corpus Christi 1976, writ ref'd n.r.e.)).*

Black's Law Dictionary, sixth edition, Dismissal Without Prejudice

- Term meaning dismissal without prejudice to the right of the complainant to sue again on the same cause of action. The effect of the words "without prejudice" is to prevent the decree of dismissal from operating as a bar to a subsequent suit.

2. Can a Court arbitrarily and erroneously dismiss a prerogative writ in violation of many common law cases, if a proper petition for a Writ of Quo Warranto with merit on its face is filed in a Court of Competent jurisdiction?

The law shows that a governmental entity must be prepared to show its authority and protect, not infringe the private property rights of every landowner; For a Superior Court of the State of Washington to disregard the petitioners' case-law and allow a governmental entity to break the law with impunity would conflict with all the relators protected and established land rights.

Corpus Juris Secundum, Municipal corporations, Section 141.

3. *- The existence of the power or authority of a municipal corporation to act cannot be assumed but must be made to appear. The corporation claiming a right or power as against the public must be prepared to prove its authority.*

Corpus Juris Secundum, Municipal corporations, Section 180.

4. *Municipal powers and regulations, including police powers, are subject to the limitations of both the federal and state constitutions. In general, whatever the state itself is prohibited from doing is equally prohibited to its municipal corporations.*

Corpus Juris Secundum, Municipal Corporations, Section 184.

5. *Generally, and except insofar as concerns the exercise by a municipality of its police powers, the owner of a private property located within the municipal boundaries may use it for any lawful purpose or in any lawful manner that he or she may see fit, and a municipal corporation may not interfere with such right.*

Unless otherwise shown, Relators private property, along with many others, is not even subject to Thurston County's administrative procedures. The land at issue was appropriated prior to the creation of statutes enabling that administrative body. The land is intended to be under the control of the owner as described in Federal Letters Patent #782, Washington State tideland deed, and the terms of subsequent transfers. This land is located outside any plat created enlisting county planning services, dilemmas, and controversies.

Conclusion

Appellants respectfully request the Supreme Court to Reverse the

Order of Dismissal by the Mason County Superior Court and order the Superior Court to issue and follow through with the Writ of Quo Warranto, or allow appellants to exercise their right to file an original action with the Supreme Court.

Plaintiffs/Appellants reserve their rights to file an original action with the Supreme Court of Washington and reserve all arguments not raised in this appellant brief.

W/OUT PREJUDICE Logan Edenstrom

Representative of appellants

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I CERTIFY THAT ALL PARTIES
HAVE RECEIVED A COPY OF
THIS BRIEF.

Logan Edenstrom