

**FILED  
Court of Appeals  
Division II  
State of Washington  
7/16/2019 12:00 PM**

No. 53027-9-II

**COURT OF APPEALS  
DIVISION II  
OF THE STATE OF WASHINGTON**

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**BRAD A. HUDSON, Appellant Petitioner,**

**v.**

**DAVID GATES, Respondent**

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**RESPONSE TO RESPONDENT'S BRIEF**

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**I. INTRODUCTION**

Brad Hudson (“Hudson”) has chosen not to provide a copy of the transcripts of the trial. The transcripts only provide oral testimony to what the witnesses have written on other documents. The incurred cost to provide the documents that only reaffirm what the witnesses have already written and signed their name to is exorbitantly high. The documentation provided will allow the court to review the verdict.

**II. ISSUES**

- 1. All as previously stated in Appellant’s Brief of Negligence.
- 2. Did Brad Hudson prove the case within a case for legal Negligence case?
- 3. Can a jury violate matters of law in a trial?
- 4. Are the conclusions of law supported by the findings of fact?

**III. STATEMENT OF THE CASE**

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Petitioner Hudson sued David Gates (“Gates”) in Mason County Superior Court. Hudson had to prove that had Gates represented Hudson with that degree of skill, care, diligence, and knowledge possessed and used by a reasonable, careful, and prudent attorney in the State of Washington acting in the same or similar circumstances the outcome would have been favorable towards Hudson’s interests.

Hudson proved Michelle D. Thompson was the Engineer of Record (Exhibit 1 pages all, Exhibit 10 page 178 and Exhibit 19 pages all). Hudson proved the construction plans were submitted to Mason County Building Department (“County”) on 28 February 2006 (Exhibit 10 page 18). Hudson proved County approved construction plans on 06 April 2006 (Exhibit 10 page 19). Hudson proved no changes were designed by the Engineer of Record (Exhibit 1 page 1) or approved by County (Exhibit 10 page 18 thru 21). Hudson proved the footing detail designed by the Engineer of Record specify twenty inches wide vice constructed at sixteen inches (Exhibit 1 page 11, 12, 34, Exhibit 10 page 11, 12 and Exhibit 19 page 1 thru 8). Hudson proved the footing detail designed by the Engineer of Record specify eight inched deep vice constructed at six inches (Exhibit 1 page 11, 12, 34, Exhibit 10 page 11, 12 and Exhibit 19 page 1 thru 8). Hudson proved footings to be constructed below the frost line vice constructed at surface level (Exhibit 10 page 11, 12, 149 thru 151). Hudson proved the Restrained Retaining Wall foundation detail designed by the Engineer of Record specified 96 inches tall continuous vice constructed stepped down and not being continuous (Exhibit 1 page 11, 12, 25, 32, Exhibit 10 page 22, 145, 182 and Exhibit 19 page 1 thru 12). Hudson proved County was aware of foundation not meeting requirements of Engineer of Record (Exhibit 10 page 26). Hudson proved Framing detail concerning cutting, notching, blocking, sill plate, hold-downs, sheer walls and main support beam in basement not pocketed into foundation designed by the Engineer of Record were not followed (Exhibit 4 page 1 thru 8, Exhibit 9 page 28, Exhibit 10 page 7, 8, 13, 14 and Exhibit 19 page 1 thru 12). Hudson proved that Gates did not contact the Engineer of Record or County which a reasonable, careful, and prudent attorney using that degree of skill, care, diligence, and knowledge they possess to represent their client in the State of Washington to support an outcome favorable towards their clients’ interests (Exhibit 18 1 thru 40). Hudson proved Gates had no

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experience in construction or contract law since admittance to Washington State Bar Association in Superior Court. Hudson proved Gates had no experience in construction or contract law during representation of Hudson in Superior Court (Last Exhibit Presented to Jury). Gates did not contact or question the Engineer of Record, Lindal Cedar Homes, County, construction employees which a reasonable, careful, and prudent attorney using that degree of skill, care, diligence, and knowledge they possess to represent their client in the State of Washington to support an outcome favorable towards their clients' interests (Exhibit 18 1 thru 40). Gates did not verify testimony of Contractor at Deposition which a reasonable, careful, and prudent attorney using that degree of skill, care, diligence, and knowledge they possess to represent their client in the State of Washington to support an outcome favorable towards their clients' interests (Exhibit 18 1 thru 40). Gates had no experience in construction or contract law, therefore Gates could not represent Hudson with that degree of skill, care, diligence, and knowledge possessed and used by a reasonable, careful, and prudent attorney in the State of Washington acting in the same or similar circumstances.

Gates received a Change Order purporting Melissa Hudson's signature on or about 19 May 2008, 19 months after contractor termination and 13 months after contractor lawsuit began (Exhibit 12 page 19 and Exhibit 18 page 5). Melissa Hudson reply's to Gates stating, "I know nothing about a change order for step down walls on the sides of the home" (Exhibit 12 page 21) this established the forgery case. Arbitration was closed on 25 April 2009, which provided Gates 13 months for forensic analysis on Melissa Hudson's signature, none was provided. Gates had the burden of proof to carry to prove forgery and the Arbitration findings of facts "She bore the burden of proof that her signature was forged and failed to carry that burden (Exhibit 17 page 10). Hudson proved this is not the first time Gates was negligent. Hudson proved Gates was paid to hire a Forensic Expert to analyze Melissa Hudson's signature on 09 November 2009 (Exhibit 17 page 1). Hudson proved Gates did not hire a Forensic Expert until 25 January 2010, which is approximately 11 weeks later (Exhibit 18 page 28, Exhibit 15 page 1, 2, 5 and 6). Hudson proved Gates was negligent in informing Hudson of the proper retainer fee for Forensic Expert (Exhibit 15 page 8). Hudson proved Gates was negligent in providing examples to Forensic

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Expert for analysis (Exhibit 15 page 11 thru 14). Hudson proved Gates never obtained original Change Order for forensic analysis (Exhibit 15 page 24, 43 thru 45, 47, 49, 60 and Exhibit 18 page 1 thru 40).

Hudson Proved Gates was negligent in many other ways in Gates' representation of Hudson. Hudson proved Gates was negligent in maintaining proper control over documentation relevant to the case (Exhibit 15 page 12 thru 14). Hudson proved Gates never verified testimony from contractor (Exhibit 15 page 22 thru 23 and Exhibit 18 page 1 thru 40). Hudson proved Gates was negligent in appealing Arbitration decision to higher court (Exhibit 15 page 31, 86 and Exhibit 18 page 1 thru 40). Hudson proved Gates was negligent in establishing contractor's fiduciary duty with regards to explaining to Hudson the change order to engineered foundation (Exhibit 8 page 12, 20, 24, 41 and Exhibit 15 page 49). Hudson proved Gates was negligent in explanation of garnishment to Hudson (Exhibit 15 page 83, 95). Gates was negligent in proving a change order signed by the owner's does not grant authority to change an engineered foundation. Gates was negligent in proving a change order signed by the contractor does not grant authority to change an engineered foundation. Gates was negligent in proving a change order not approved by County does not authorize a change to an engineered foundation. Gates was negligent in the whole checks and balances between owner, contractor, building dept and engineer (Exhibit 1 page 1, 2, 11, 12, 25, 32, 34, Exhibit 6 page 3, Exhibit 10 page 18, 19, 20, Exhibit 17 page 4 thru 8 Contract line item #2 and Exhibit 19 page 1 thru 12). Gates was negligent in proving the Change Order that deviates from approved engineered foundation must be reviewed and approved by Building Department prior to construction (Exhibit 10 page 46). Gates was negligent in the only contact outside of his office to provide any supporting documentation or information was an individual to provide structural engineering analysis who was not qualified to make the analysis provided and missed other critical construction defects (Exhibit 18 page 1 thru 40). Hudson proved Gates was negligent by not obtaining the Engineer of Record or a structural engineer to provide construction defects of contractor willfully failing to follow approved engineered County building plans (Exhibit 1 page 1, 2, 11, 12, 25, 32, 34, Exhibit 6 page 3, Exhibit 10 page 18, 19, 20, Exhibit 17 page 4 thru 8 Contract line item #2, Exhibit 18 page 1 thru 40 and Exhibit 19 page 1 thru 12). Gates was negligent in providing rational on why an

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owner who paid the architect to draw the plans, paid the engineer to design the plans, and signed the contract for a contractor to build a house following the approved plans would sign a no cost change order. Gates was negligent in providing why the Hudson's would sign a Change Order to use 1/2 less concrete, no cost savings to the owner and require additional expense of additional lumber to frame basement with stepped foundation, additional expense of an engineer to design contractors method of attaching entryway and additional expense of concrete to deviate from the already approved plans. This negligence clearly shows an attorney who has no experience and failed to use the degree of skill, care, diligence, and knowledge possessed and used by a reasonable, careful, and prudent attorney in the State of Washington acting in the same or similar circumstances.

#### **IV. Conclusion**

In *Bingaman v. Grays Harbor Comm'ty Hospital* 103Wn. 2d 831, 699 P.2d 1230 (Wash. 1985) the issue is should the courts interfere with the conclusion of a jury when fairly made. The jury was responsible to decide if Gates represented Hudson with that degree of skill, care, diligence, and knowledge possessed and used by a reasonable, careful, and prudent attorney in the State of Washington acting in the same or similar circumstances. Hudson proved that Gates did not contact or question the Engineer of Record, Lindal Cedar Homes, County, construction employees all of which a reasonable, careful, and prudent attorney using that degree of skill, care, diligence, and knowledge they possess to represent their client in the State of Washington to support an outcome favorable towards their clients' interests. Therefore the conclusion by the jury was in error.

In *Merriman v. Cokeley*, 230 P. 3d 162 - Wash: Supreme Court 2010 the case is irrelevant. At issue is whether the boundary line claimed by the Merrimans was sufficiently certain and well defined before Ward Willits erected the barbed wire fence in 2002. Surveyor landmarks have too many variables therefore leave room for error. In this case, it is very specific the Engineer is the only individual that can

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change an engineered plan. The County is very specific, approved plans shall not be changed or altered without authorization from the Building Official. The word shall is very specific, the action cannot be negotiated. There is no authorization from the Building Official. The approved building plans are very specific the footing will be 20 inches wide. The approved building plans are very specific the footing will be 8 inches high. The County and law are very specific footing will be below frost line. International Building Code is very specific about depth allowed for cutting and notching. The approved building plans are very specific that the Restrained Retaining Wall is 96 inches high not stepped down. The approved building plans are very specific that the foundation is concrete due to load calculations. The approved building plans are very specific that the building plans do not provide framing detail for basement. The issues mentioned above are the focal point of this lawsuit; these are undisputed facts that Gates provided no evidence to the contrary.

*Streater v. White*, 613 P. 2d 187 - Wash: Court of Appeals, 1st Div. 1980. At issue is the findings of fact supported by substantial evidence? Based on the evidence provided, a reasonable mind might accept as adequate to support a conclusion. At issue is the conclusions of law supported by the findings of fact? Based on the evidence provided, yes.

Based on the clear, cogent and convincing evidence by Hudson and Gates providing no evidence to the contrary, the only conclusion that can be made is the contractor failed to follow approved County plans and Gates was negligent in his representation of Hudson. Therefore, Gates failed to represent Hudson with that degree of skill, care, diligence, and knowledge possessed and used by a reasonable, careful, and prudent attorney in the State of Washington acting in the same or similar circumstances the outcome would have been favorable towards Hudson's interests. Hudson proved the case within a case for legal Negligence.

Based on the clear, cogent and convincing evidence by Hudson and Gates providing no evidence to the contrary, the only conclusion to make is the Arbitrator abused its discretion in not applying case law and matters of law when rendering final decision. The Arbitrators comment of “The fact that she applied the sealant on the foundation wall was persuasive that she was aware of the conditions of the change order” is equivalent to saying because a car owner washes their car, they are a mechanic.

Based on the substantial evidence, which is clear, cogent, and convincing by Hudson and Gates providing no evidence to the contrary, the only conclusion to make is the findings of fact clearly support the conclusions of law.

Based on the verdict by the jury of “Gates filled out the paperwork and showed up to arbitration” does not reflect that degree of skill, care, diligence, and knowledge possessed and used by a reasonable, careful, and prudent attorney in the State of Washington acting in the same or similar circumstances and is not supported by law.

For the reasons set forth above the Appellant respectfully requests that the Court reverse the trial court’s ruling and find in favor of the Appellant and award me and my family a fair and just verdict to compensate me for my expenses and the cost of repairing my home and for the pain and suffering that my family has endured.

Respectfully submitted this \_\_\_\_\_ day of July 2019.

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**July 16, 2019 - 12:00 PM**

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**Appellate Court Case Number:** 53027-9  
**Appellate Court Case Title:** Brad Allen Hudson, Appellant v. David Gates, Respondent  
**Superior Court Case Number:** 16-2-00708-6

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COURT OF APPEALS OF WASHINGTON  
FOR DIVISION II

Brad Allen Hudson, ) No. 53027-9-II  
Plaintiff, )  
vs. ) PROOF OF SERVICE  
David Gates, )  
Defendant )

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PROOF OF SERVICE

I certify that I served a copy of this document and Appellant's Response to Respondent's Brief via hand delivery on the following:

David Gates  
10 NE Creelman Ln  
Belfair, WA 98528

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

DATED this \_\_\_\_ day of July, 2019, at Belfair, WA.

Brad A. Hudson

**BRAD HUDSON - FILING PRO SE**

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