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Court of Appeals No. 53229-8-II  
Trial Court No. 17-2-00870-3

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

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SHARON DOERR and RANDALL BECK,  
Plaintiffs and Respondents

v.

DEL RAY PROPERTIES, INC., a Washington  
corporation,  
Defendant and Appellant.

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CITY OF LONGVIEW,  
Plaintiff,

v.

DEL RAY PROPERTIES, INC., a Washington  
corporation,  
Defendant.

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**APPELLANT DEL RAY PROPERTIES, INC.'S OPENING BRIEF**

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## **I. INTRODUCTION**

This appeal asks whether Appellant, Del Ray Properties, Inc. (“Del Ray”) can be held in contempt of court for taking certain action although such action was taken in reliance upon representations made to Del Ray by the City of Longview (“City”). It also asks whether the Superior Court’s award of attorney fees was proper.

## **II. ASSIGNMENTS OF ERROR**

1. The Superior Court erred in making Findings of Fact #1, #7 and #8. CP 462.
2. The Superior Court erred in entering its Order on Hearing Re Second Finding of Contempt (“Order of Contempt”). CP 460-63.
3. The Superior Court erred in awarding Respondent Sharon Doerr (“Doerr”) her “full attorney fees and costs.” CP 460-63.

## **III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

- A. A finding of contempt must be supported by evidence establishing that the alleged contemnor intentionally disobeyed a court order. On August 9, 2018, the Superior Court entered its Order Granting Motion for Preliminary Injunction (“Preliminary Injunction Order”) which, among other things, enjoined Del Ray from “harass(ing) \* \* \* Plaintiff by reason of her bringing this lawsuit.” On October 22, 2018, Del Ray provided written notice (“October 22<sup>nd</sup> Notice”) to Doerr that her trailer was parked within the City’s right-of-way and it would need to be moved. Del Ray’s notice was based upon the City’s instructions to Del Ray to include in its building permit application that “(t)railers currently in the right-of-way to be moved prior to constructing new fence.” The Superior Court found that the October 22<sup>nd</sup> Notice to Doerr constituted

harassment. Did the Superior Court err in finding that Del Ray intentionally disobeyed the Preliminary Injunction Order?

2. On March 13, 2019, the Superior Court awarded Doerr \$10,746.00<sup>1</sup> in attorney fees, referring to such fees as “full fees and costs.” Although the Superior Court found that an hourly rate of \$275.00 was reasonable, it made no finding that the final award was itself reasonable. The Superior Court relied upon impermissible block billing statements from Doerr’s counsel. Del Ray was found in contempt on only one of several alleged violations of the Preliminary Injunction Order. Did the Superior Court err in awarding Doerr all of her attorney fees and costs?

#### **IV. STATEMENT OF THE CASE**

##### **A. Del Ray’s Mobile Home Park**

Del Ray is the owner of a mobile home park in Longview, Washington known as the Del Ray I (“Community”). CP 64. Doerr is a resident of the Community. *Id.* Although water service to the Community is provided by the City, the tenants in the Community are not billed directly. CP 65. Instead, utility services are made part of each tenant’s monthly rental payment, and Del Ray has assumed responsibility for payment to the City for water services. *Id.* The underlying lawsuit pertains to allegations by Doerr that Del Ray refused or

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<sup>1</sup> The Superior Court’s *Order on Hearing Re: Second Finding of Contempt* (“*Contempt Order*”) is ambiguous. On page 2, it appears someone crossed out an award of \$10,764 and hand-wrote in its place the sum of \$7,590. CP 461. However, on page 4, the Superior Court expressly awarded \$10,760. CP 463.

otherwise failed to pay for water services, resulting in the City issuing shut-off notices, but never actually acted on the notices, to the Community tenants. *Id.*

**B. Issuance of Preliminary Injunction**

On August 7, 2018, Doerr filed a Motion for Preliminary Injunction. CP 71-78. Doerr sought an order requiring Del Ray to pay all pending invoices due for water service claimed by the City, and to timely pay all future invoices from the City. CP 71. Doerr also sought an order preventing Del Ray from retaliating against her for bringing the underlying lawsuit. CP 80-81.

On August 9, 2018, the Superior Court entered its Preliminary Injunction Order which, among other things, provided: “Defendant shall not harass, intimidate, threaten, or retaliate against Plaintiff by reason of her bringing this lawsuit.” CP 112.

**C. Del Ray Confers with the City**

Del Ray had long planned to build a fence around the Community to avoid code enforcement issues. On or about January 29, 2018, Del Ray submitted a *City of Longview Application and Permit* (“*Application*”) to the City for the purpose of constructing a fence along the Property line. CP 397-98. The City instructed Del Ray to include in the *Application* the following statement: “Trailers currently in the right-of-way to be moved prior to constructing new fence.” CP 373 and CP 397; Tr 105. Doerr’s trailer is in the right-of-way. CP 373.

**D. Notice to Doerr**

On October 22, 2018, Del Ray notified Doerr, in reliance upon the City's instruction to include the statement "Trailers currently in the right-of-way to be moved prior to constructing new fence" in the *Application* that she would need to mover her trailer. CP 314. Del Ray submitted evidence to the Superior Court that, with respect to the October 22<sup>nd</sup> Notice, "Del Ray was doing what it thought it needed to do pursuant to the City." CP 373.

On October 25, 2018, however, counsel for Doerr reached out to City attorney James McNamara inquiring:

Sharon Doerr, a resident at Del Ray I, has learned from Mr. Foster that because the back five feet of her home sits on the city's right of way, you are demanding she remove her home. Would you please confirm if his is indeed the case?

CP 301. Later that day, Mr. McNamara responded that "the City is not requiring any owners, including Ms. Doerr to move their units out of the right of way." *Id.* Doerr also submitted a declaration from the City's Director of Community, John Brickey, confirming that it is not the City's position that Doerr move her trailer. CP 406-07. Del Ray did not become aware of this until on or about November 12, 2018, and it is inconsistent with the instructions provided to Del Ray by a City clerk. CP 352.

**E. Second Motion for Contempt**

On November 9, 2018, Doerr filed *Plaintiff's Second Motion for Order to Show Cause Re Contempt for Refusal to Comply with Preliminary Injunction* (“*Contempt Motion*”). CP 288-291. Specifically, Doerr alleged seven separate violations of the *Preliminary Injunction Order*, to wit:

- (i) On May 10, 2018, Del Ray requested that Doerr execute a new application for tenancy. CP 307;
- (ii) On May 19, 2018, Del Ray issued a warning to Doerr regarding interference with other tenants. CP 308;
- (iii) On May 26, 2018, Del Ray inquired with Doerr about her income reduction. CP 309;
- (iv) On May 30, 2018, Del Ray inquired with Doerr concerning an alleged body massage business being run out of her residence. CP 310;
- (v) On Jun 10, 2018, Del Ray inquired with Doerr concerning possible fraudulent statements on her lease application. CP 311;
- (vi) On September 8, 2018, Del Ray issued a second warning to Doerr regarding interference with other tenants. CP 312; and,
- (vii) The October 22<sup>nd</sup> Notice discussed above.

On March 13, 2019, the Superior Court entered the *Contempt Order*, finding that the May 10<sup>th</sup>, May 19<sup>th</sup>, May 26<sup>th</sup>, May 30<sup>th</sup>, June 10<sup>th</sup> letters “do not

rise to the level of harassment.” CP 462. The Court made no finding regarding the September 8<sup>th</sup> letter. The Superior Court did find, however, pertaining to the October 22<sup>nd</sup> Notice:

4. The stated ‘crisis’ in the October 22, 2018 letter from Del Ray Properties, Inc. to Plaintiff Shanon Doerr is baseless and amounts to harassment.

\* \* \*

7. When the defendant sent the October 22, 2018 letter, it willfully refused to abide by the court order, and it had the ability to comply with the order.

8. Del Ray Properties, Inc. engaged in contempt of Court when they sent Ms. Doerr the October 22, 2018 letter.

CP 462.

The Superior Court also awarded Doerr her “full fees and costs” in the amount of \$7,590.00.<sup>2</sup> CP 461.

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<sup>2</sup> The amount originally included in the *Contempt Order* was \$10,764.00. That amount was crossed out and the \$7,590 amount was handwritten into the *Contempt Order*. On page 4 of the *Contempt Order*, however, the \$10,764.00 amount was *not* crossed out. CP 463. Del Ray understands that the amount actually intended to be awarded was \$7,590. If that amount is disputed by Doerr, the Court should remand to the Superior Court clarification.

V. ARGUMENTS

A. **Standard of Review.**

A trial court's decision on a contempt of court motion is reviewed for abuse of discretion. *Weiss v. Lonquist*, 73 Wn.App. 344, 363, 293 P.3d 1264 (2013). The amount of attorney fees awarded in a contempt proceeding is also reviewed for abuse of discretion. *Ethridge v. Hwang*, 105 Wash.App. 447, 460, 20 P.3d 958 (2001).

A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. \* \* \* A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.

*Midtown In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997).

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**B. Because Del Ray had a right to rely upon the City’s representation that Doerr’s trailer would have to be moved in order for Del Ray to install a fence, Del Ray had a legitimate reason to convey that information to Doerr. Del Ray’s notice was not designed to harass Doer, and it was not issued to Doerr because she initiated the underlying Superior Court Proceeding, but rather for a legitimate business reason.**

RCW 7.21.010 provides that in pertinent part: “(1) Contempt of court means intentional \* \* \* (b) (d)isobedience of any lawful \* \* \* order \* \* \* of the court(.)” Where the court bases its contempt finding on an order of the court, “the order *must be strictly construed in favor of the contemnor.*” *Stella Sales, Inc. v. Johnson*, 97 Wash. App. 11, 20, 985 P.2d 391 (1999). (Emphasis added.) The facts found to support a finding of contempt “must constitute a plain violation of the order. \* \* \* Although such proceedings are appropriate means to enforce the court's orders, since the results are severe, strict construction is required.” *Johnston v. Beneficial Management Corp. of America*, 96 Wash.2d 708, 713, 638 P.2d 1201 (1982). On appeal, an order of contempt will only be upheld if the Superior Court’s findings are “supported by substantial evidence.” *In re Marriage of Rideout*, 150 Wn.2d 337, 350, 77 P.3d 1174 (2003).

In this matter, Del Ray was ordered not to “harass \* \* \* Plaintiff by reason of her bringing this lawsuit.” CP 112. The Preliminary Injunction Order does not define “harassment,” and as this Court is aware, the Preliminary Injunction Order must be strictly construed in favor of Del Ray. *See Stella Sales, supra*. It is

reasonable to interpret the term “harassment” consistent with the Washington Legislature’s own definition of that term. No other definition was proposed by Doerr or suggested by the Superior Court.

At the Superior Court hearing on this matter, counsel for Del Ray directed the Superior Court to RCW 9A.46.020. TR 109. That statute provides in pertinent part:

- (1) A person is guilty of harassment if:
  - (a) Without lawful authority, the person knowingly threatens:
    - (i) To cause bodily injury immediately or in the future to the person threatened or to any other person; or
    - (ii) To *cause* physical damage to the property of a person other than the actor; or
    - (iii) To subject the person threatened or any other person to physical confinement or restraint; or
    - (iv) Maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety; and
  - (b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. "Words or conduct" includes, in addition to any other form of communication or conduct, the sending of an electronic communication.

(Emphasis added.)

Nothing in the October 22<sup>nd</sup> Notice can be construed to as a threat to Ms. Doerr's personal safety, nor a threat to *cause* physical damage to her property, nor a threat of confinement or restraint, or a threat to do any other act that would "substantially harm" to her physical or mental health or her safety.

The Superior Court did find that the October 22<sup>nd</sup> Notice "does threaten harm to Ms. Doerr's property." TR 112. The Superior Court added: "the defendant is in contempt with regard to that communication about the moving, *destruction* of the trailer." TR 112-13. These conclusions are not sustainable. Notifying Doerr that her trailer would have to be moved is not a threat to *cause* physical harm to her property, and nothing in the October 22<sup>nd</sup> Notice could reasonably lead the Superior Court to conclude that there was, in fact, a threat to destroy her property. Del Ray must be afforded the benefit of the doubt.

Even if the October 22<sup>nd</sup> Notice could be considered evidence, it is nonetheless insufficient to hold Del Ray in contempt, particularly where the Preliminary Injunction Order must be strictly construed in favor of Del Ray. *See Stella Sales, supra*. It does not matter whether the City, in fact, required removal of Doerr's trailer before Del Ray could construct the proposed fence. It *does* matter that Del Ray believed that to be the case, because that is, in fact, what it believed based upon instructions provided to them by the City's clerk.

C. **Although the trial court concluded that an hourly rate of \$275 was reasonable, the court did not make a mandatory finding that the total award of \$7,590.00 was itself reasonable. The Superior Court relied upon inappropriate block billing style statements, and it awarded Doerr “full fees and costs” although she only prevailed on one of several separate allegations of contempt. Del Ray is entitled to a remand to the Superior Court to allow for mandatory findings.**

“An appellate court will uphold an attorney fee award unless it finds the trial court manifestly abused its discretion. Discretion is abused when the trial court exercises it on untenable grounds and for untenable reasons.” *Berryman v. Metcalf, et. al*, 177 Wn.App. 644, 656-57, 312 P.3d 745 (2013). The *Berryman* court further reiterated: ““Courts must take an *active* role in assessing the reasonableness of fee awards(.) \* \* \* Courts should not accept unquestionably fee affidavits from counsel.”” *Id.* at 657, *quoting Mahler v. Szucs*, 135 Wash.2d 398, 434-35 (1998). To that end, the Washington Supreme Court held in *SentinelC3, Inc. v. Hunt*, 181 Wn.2d 127, 144, 331 P.3d 40 (2014), that the Superior Court “must supply findings of fact and conclusions of law sufficient to permit a reviewing court to determine why the trial court awarded the amount in question.”

Here, the Superior Court did find reasonable an hourly rate of \$275.00. CP 463. It did not, however, make *any* finding that the total amount awarded was reasonable. That is, it made no finding that the hours incurred by counsel, and the legal work counsel performed here were reasonable. Instead, it simply awarded “full fees and costs” to Doerr without any explanation. CP 463. This is

particularly egregious where, as here, Doerr's counsel provided a block billing statement in support of their requested fees. CP 444-45. A request for fees must segregate the time spent on issues for which an award of fees is authorized from time spent on other issues. *Smith v. Behr Process Corp.*, 113 Wash.App. 306, 344, 54 P.3d 665 (2002). While it is more likely than not that all of the time represented in Ms. Doerr's counsel's statements were related to the contempt hearing, it bears noting that Doerr did not prevail on the great majority of allegations of contempt. Indeed, she only prevailed on one "count," and the billings statements do not segregate the amount incurred to prosecute that one count. The Superior Court made no finding regarding that discrepancy.

The Superior Court erred in awarding "full fees and costs" where, as here, the moving party failed to meet her burden of proof on all but one allegation. The Superior Court did not make required findings, and the question of fees should therefore be remanded to the Superior Court to make the mandatory findings to support any award, and certainly an award that provides for "full fees and costs."

## **VI. CONCLUSION**

Del Ray did not intentionally violate the Superior Court's *Preliminary Injunction Order* when it issued to Doerr the October 22<sup>nd</sup> Notice. There is no evidence that Del Ray intended to harass Doerr. Should this Court find, however, that Del Ray was properly found in contempt of court, it should nonetheless



## CERTIFICATE OF SERVICE

The undersigned hereby certifies as follows:

1. My name is Patricia A. Repp. I am a citizen of the United States, over the age of eighteen (18) years, a resident of the State of Washington, and am not a party of this action.

2. On 14th day of August, 2019, the foregoing OPENING BRIEF was electronically filed using the Court's Appellate e-filing system and delivered the same by electronic service and by first-class United States mail, postage prepaid to the following persons:

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**I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF  
THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE  
AND CORRECT.**

DATED: August 14, 2019  
At: Vancouver, Washington

/s/ Patricia A. Repp  
Patricia A. Repp  
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## JORDAN RAMIS PC

August 14, 2019 - 10:45 AM

### Transmittal Information

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