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Trial Court No. 17-2-00870-3

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**COURT OF APPEALS FOR 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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**BRIEF OF RESPONDENT**

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**NORTHWEST JUSTICE PROJECT**  
Lisa M. Waldvogel, WSBA #25990  
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## I. INTRODUCTION

This lawsuit concerns Ms. Doerr's efforts to stop the Appellant, a mobile home park, from failing to pay its water bill and thereby cause a loss of service to Ms. Doerr's home. To prevent the City of Longview from shutting off the water during the litigation, the trial court issued a preliminary injunction on August 9, 2017, directing Appellant to pay the amount needed to prevent the water from being shut off. The order also ordered Appellant to continue to pay amounts as they become due. Finally, concerned about the impact of this lawsuit on Ms. Doerr's tenancy, the court ordered Appellant to not harass, intimidate, threaten or retaliate against her because of her lawsuit.

After issuance of the injunction, Appellant sent Ms. Doerr at least eight notices concerning her tenancy, some of which threatened her with eviction. Two notices indicated tenants had complained about Ms. Doerr. One of the tenant complaints was Ms. Doerr was distributing tenant right information. Several of the notices asked her to clarify a tenancy application, although it had been six years since Ms. Doerr had been approved as a tenant. Two notices demanded Ms. Doerr move her home out of the community and another two notices taunted Ms. Doerr for bringing a lawsuit when the water was not shut off. The culmination was an October 22, 2018 notice that told Ms. Doerr the City of Longview had required her to move her home as part of the Appellant's ongoing fence-

building project. Yet, this statement was false. Both the city attorney and the public works director confirmed the city required no such thing.

Based on the false allegation in the October 2018 notice, and the threat to Ms. Doerr's property from having to move her home, the court found Appellant violated the injunction and held Appellant in contempt. Because substantial evidence supports this finding, the Court should uphold it.

## II. COUNTERSTATEMENT OF ISSUES

### A. **There was substantial evidence that the Appellant did not comply with the August 9, 2017 preliminary injunction**

The Court did not err by finding Appellant in contempt of court because on August 9, 2017, the Court ordered Del Ray Properties, Inc. not to harass, intimidate threaten or retaliate against Plaintiff by reason of bringing her lawsuit. Between May and October of 2018, the Appellant sent Ms. Doerr a series of notices, with questionable lawful purpose, that put her in a continual state of stress and panic. The final communication was a notice to Ms. Doerr containing a fabricated claim that the City was demanding she move her home, and in the same notice, telling her because of the age of her home, she could neither move nor sell it. If not harassment, the October 22, 2018 notice was retaliation against Ms. Doerr for asserting her legal rights, as it threatened her eviction, putting Ms. Doerr in fear she would lose her home.

**B. The trial court did not abuse its discretion when awarding attorney fees under RCW 7.21.030 (3)**

Because Appellant intentionally disobeyed a lawful order in violation of RCW 7.21, the court has authority to enter actual costs and attorney fees pursuant to RCW 7.21.030. The trial court, utilizing its discretion, set a reasonable rate at \$275/hour, and ruled that proof of all of the notices was appropriate to demonstrate the October 22, 2018 notice was “animus, not a goof.” (CP 460, TR 128-131)

**III. COUNTERSTATEMENT OF FACTS**

Respondent, Sharon Doerr, was a resident at Del Ray I, a property owned by Appellant, when she received a series of shut-off notices for Appellant’s failure to pay their water bill to the City of Longview. CP 79, 82, 261, 180. Del Ray I is a community that includes not only Ms. Doerr’s home but 75 other residences, a majority of which have residents who are either senior or disabled. CP 79-80.

Ms. Doerr’s monthly rent includes the provision of water, sewer and garbage service, utilities supplied to Del Ray I by the City of Longview. CP 79, 82. Because the water had never been shut off after previous shut-off notices, Ms. Doerr had assumed Appellant had timely paid the \$1,609.73 that was requested in the July 2017 shut-off notice. CP 80, 82. To prevent the City of Longview from shutting off not only her water but water to the 75 other residences, Ms. Doerr filed a lawsuit and

obtained a preliminary injunction on August 9, 2017, directing Appellant to pay \$1,609.73, the amount directed to be paid in the shut-off notice, to continue to pay amounts for services provided by the City of Longview as they become due and not harass, intimidate threaten or retaliate against Plaintiff by reason of bringing her lawsuit. CP 63-70; 111-112. The court based this relief on, in part, Ms. Doerr's representation that after previous times she attempted to enforce her rights against the park owner, Appellant selectively enforced park rules against her. CP 80-81.

After having learned from the City of Longview that Appellant had caused a second set of shut off notices to issue, this time at Del Ray II, Appellant's second manufactured housing community, and had again become delinquent on their utility bill for services provided to Del Ray I, Ms. Doerr filed a Motion for Contempt for Appellant's failure to pay their water bill. CP 113-116. On October 4, 2017, Judge Michael Evans found Appellant to be in contempt of court for their failure to pay \$5,596.65. CP 239-245. Appellant appealed that order, and on April 25, 2018, Ms. Doerr filed her Response Brief in Division Two. *Id. Del Ray Properties, Inc. v. Sharon Doerr and Randall Beck*, Court of Appeals of the State of Washington Division II, No. 51222-0-II. Shortly thereafter, Appellant sent Ms. Doerr a series of notices that resulted in the court's ultimate ruling that a notice dated October 22, 2018 was harassment and served no legitimate or lawful purpose. CP 303-314, 323, 460-463.

The first notice was dated May 10, 2018 and requested Ms. Doerr execute a new application for tenancy, although she had already been approved as a tenant, had been living at Del Ray for over six years, and had paid her rent on time, every month, for the duration of her tenancy. CP 304, 307. On May 17, 2018, Ms. Doerr was on a community road, photographing a large ditch that impeded her ability to use one of the two exits to the community. CP 304. Two days later, the Appellant sent Ms. Doerr a notice asking her to mind her own business and stop bothering other tenants, although Ms. Doerr was on common and not private property when she took the pictures, had engaged in no improper behavior and was within her legal rights to take photographs of the road. CP 304, 308, 402.

On May 26, 2018 the Appellant sent Ms. Doerr a notice asking her why her current income had decreased by \$154 per month and why she had recently purchased three properties in Arizona when in fact, Ms. Doerr's sole income was social security income, it had steadily increased over the past several years and neither did she own any property in Arizona or make any recent purchases of real property. CP 304-305, 309.

On May 30, 2018, the Appellant accused Ms. Doerr of fraud for not disclosing a body massage business in her application, although Ms. Doerr does not have a body massage business. CP 305. In this notice, Appellant indicated they were evicting Ms. Doerr and she would need to move out no later than July 1, 2018. *Id.* In a second notice dated June 10, 2018, the

Appellant again indicated they were evicting Ms. Doerr, again stating she needed to move her home no later than July 1, 2018. CP 311. The reason Appellant gave for the second demand to move out is it would be impossible for Ms. Doerr to use her social security income to purchase nine properties worth \$521,450 in six years, although Ms. Doerr owns no property in Arizona and while she previously lived in Arizona for 25 years, was a contractor and owned three lots, she has not had ownership interest in any of those properties since approximately the mid to late 1990s. CP 304-305, 311.

After the initial round of notices, Del Ray Properties, Inc. was warned that if their harassment continued, Ms. Doerr would be seeking relief from the court by seeking an order on contempt. CP 294-296. After that, on September 8, 2018, the Appellant threatened to evict Ms. Doerr for allegations of referring neighbors to Northwest Justice Project for help with legal issues and taunted Ms. Doerr, by asking why Ms. Doerr's energy healing "didn't it [sic] save you from harm when the water wasn't shut off?" CP 312, 313 The notice alleged three tenants had complained Ms. Doerr was making trouble for the Park, although all Ms. Doerr had done was distribute information about a Manufactured Housing Owners of America sponsored tenant meeting to four of her neighbors. CP 402. Counsel for Sharon Doerr again asked Del Ray to cease their harassment. CP 300.

Finally, Del Ray took an action that made Ms. Doerr fear she would lose her home. CP 305. Around January 2018 the Appellant applied for a building permit to build a fence around the perimeter of Del Ray I. CP 397. Their application indicated the fence would border the property line on Douglas, 12<sup>th</sup> and Tennant. *Id.* It also indicated “trailers currently in the right-of-way to be moved prior to constructing new fence.” *Id.* Then, on October 22, 2018, the Appellant delivered to Ms. Doerr another notice, stating<sup>1</sup>:

5. The back five feet of your Trailer is parked on the City ROW. A City Law violation. The City is demanding your Trailer is removed from the City ROW.
6. Your trailer is not HUD. It can't be moved or sold.

CP 314. The notice also states, “[i]t appears you are fixing your mail box so it won't fall and injure somebody to pretend injury like from the water not being shut off.” CP 305, 314. James McNamara, City of Longview attorney, confirmed while several homes encroach on the city right of way, the city is not requiring any owners move their homes out of the right of way. CP 301-302. John Brickey, City of Longview Director of Community Development Director, clarified that Appellant, in their application, stated they would be moving trailers in the right of way prior to building a fence,

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<sup>1</sup> Notably, upon purchase of her home from Appellant in 2013, Ms. Doerr commenced her tenancy at Del Ray I and has been a tenant ever since. CP 79.

but the city did not mandate or request that homes currently in the right of way would need to be moved prior to constructing the fence. He further explained that many of the homes have been encroaching into the public right-of-way for decades and the placement of a fence on the property line does not trigger relocation. CP 407-408.

On or around December 17, 2018, Appellant sent a notice to the entire Del Ray I community, stating “[t]he person distributing false information in the Park has a lawsuit against Del Ray claiming injury because the water wasn’t ‘Shut Off’. No joke!” CP 323, 362. It continues the lawsuit will probably be dismissed in January 2019 and then notifies tenants if they do not renew their leases they will automatically become month to month tenants. CP 323, 352.

While Ms. Doerr presented all of the notices to the court to demonstrate the October 22, 2018 notice was not the product of a mistake, she only asked the court to hold Del Ray in contempt for the October notice. CP 114. Further, Ms. Doerr stated the notices harmed her because she had been in a continual state of stress and panic, never knowing when another of Appellant’s outrageous notices would arrive and disrupt her attempted peaceful enjoyment of her premises. CP 290-291, 305-306.

#### **IV. ARGUMENT**

##### **A. Standard of Review**

A finding of contempt is within the sound discretion of the trial court.

It will not be disturbed on appeal, barring an abuse of discretion. *Schuster v. Schuster*, 90 Wn.2d 626, 629-630 (1978), citing *State v. Caffrey*, 70 Wn.2d 120, 122-123 (1966). A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *Ameriquist Mortg. Co. v. Office of Attorney General of Washington*, 177 Wn.2d 467 (2013). Additionally, a finding of fact will not be overturned if it is supported by substantial evidence. *Blackburn v. State*, 186 Wn.2d 250 (2016). Substantial evidence exists “if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise.” *King County v. Wash. State Boundary Review Bd.*, 122 Wn.2d 648, 675 (1993).

The party challenging the trial court’s factual findings has the burden to prove they are not supported by substantial evidence. *Central Puget Sound Regional Transit Authority v. WR-SRI 20<sup>TH</sup> North LLC*, 191 Wn.2d 223, 251 (2018), citing *Blackburn v. State*, 186 Wn.2d at 251. When there is substantial evidence supporting a trial court’s factual findings, we “ ‘will not substitute [our] judgment for that of the trial court even though [we] might have resolved a factual dispute differently.’ ” *Id.* (quoting *Sunnyside Valley Irrig. Dist. v. Dickie*, 149 Wn.2d 873, 879-80 (2003) ).

However, a trial court decision will be affirmed, even if on a ground different from that relied upon by the lower court. *Lucas Flour Co. v. Local*

174, *Teamsters*, 57 Wn.2d 95, 103 (1960), *aff'd*, 369 U.S. 95 (1962); *Lane v. Skamania Crty.*, 164 Wn. App. 490, 497 (2011). A trial court decision to find a party in contempt will be upheld if the reviewing court can find any basis to uphold the court's decision. *State v. Boatman*, 104 Wn.2d 44, 45 (1985). The amount of fees are within the trial court's discretion and will be overturned only if there is an abuse of discretion. *Hsu Ying Li v. Tang*, 87 Wn.2d 796 (1976).

**B. Substantial evidence supports the trial court's finding that Appellant intentionally disobeyed the Preliminary Injunction Order**

Judge Warning did not abuse his discretion when he ruled the Appellant violated the preliminary injunction when Appellant sent the October 22, 2018 notice directing Ms. Doerr to move a home that they knew she could not move. While Judge Warning ruled the earlier notices did not rise to the level of harassment, when awarding attorney fees he noted the earlier notices established the October 22, 2018 notice was "a product of something other than a mistake."<sup>2</sup> RP 131. The court reasonably concluded the notice harassed Ms. Doerr because it told her two

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<sup>2</sup> A trial court's oral ruling can be used to interpret its written findings to the extent the oral ruling and written findings are consistent, *State v. Bynum*, 76 Wn. App. 262, 266 (1994) (citing *State v. Moon*, 48 Wash.App. 647, *rev. denied*, 108 Wn.2d 1029 (1987)), *rev. denied*, 126 Wn.2d 1012 (1995), although they cannot be considered as the basis for the trial court's decision because they have no final or binding effect unless formally incorporated into the written findings. See *State v. Mallory*, 69 Wn.2d 532, 533-34 (1966).

things: one, her home must be moved, and two her home could not be moved or sold because of its condition. The obvious implication, created under false pretenses, was that Ms. Doerr could no longer live in the park.

The October 22, 2018 notice was also retaliation under RCW 59.20.070(5), because it threatened her eviction, putting Ms. Doerr in fear she would lose her home. While the finding of harassment is supported by substantial evidence, alternatively, this Court can uphold the trial court's ruling by finding the notice retaliated against Ms. Doerr for bringing the lawsuit. In *Lucas Flour*, the trial court entered a judgment on tort liability and the appellate court upheld the judgment on a breach of contract theory, as the record supported a finding of breach of contract. 57 Wn.2d at 103. Likewise, this court has authority to uphold the trial court's finding of contempt based on Appellant's retaliatory conduct.

1. **Del Ray's notice of October 22, 2018, viewed in light of all of the facts, threatened Ms. Doerr with eviction**

Appellant's behavior violated Judge Evans' August 9, 2017 order not to "harass, intimidate, threaten or retaliate." CP 112-113. The first notice Del Ray sent, dated May 10, 2018, asks Ms. Doerr to execute a new application for tenancy, although Ms. Doerr had already been approved for tenancy, had been living at Del Ray for over six years and had paid her rent every month, on time, for the duration of her tenancy. CP 304, 307. The three notices that followed, dated May 26, 2018, May 30, 2018 and June

10, 2018, continue to ask Ms. Doerr to clarify alleged misstatements in her application for tenancy. CP 309-311. Aside from the allegations in each of these notices being false, even if Ms. Doerr had made a misstatement on her application, a discovery six years after she was approved for tenancy is irrelevant under the law, because RCW 59.20.080 (g) requires the discovery to be made within one year. A landlord may terminate a tenancy if:

The tenant's application for tenancy contained a material misstatement that induced the park owner to approve the tenant as a resident of the park, and the park owner discovers and acts upon the misstatement within one year of the time the resident began paying rent;

RCW 59.20.080(g). The May 26, 2018 notice accuses Ms. Doerr of having a decreased income, when in fact her income has been increasing every year. CP 304, 309. The May 30, 2018 notice accuses Ms. Doerr of operating a body massage business, submitting a fraudulent lease application and continues Appellant would never have approved her for a lease had she disclosed the body massage business on her application. CP 310. Ms. Doerr does not operate a body massage business. *Id.* She is an ordained minister and work relating to her ministry was started in 2015, well after she executed her initial lease application in 2012. CP 305. The June 10, 2018 notice again accuses Ms. Doerr of executing a fraudulent lease application because she failed to disclose that she purchased nine properties over a six year period. CP 311. Ms. Doerr stated she has not

had ownership interest in the Arizona properties since approximately the mid to late 1990s. CP 305. Appellant's May 30, 2018 and June 10, 2018 demands for Ms. Doerr to move her home by July 1, 2018 are threats to evict. They are not consistent with the comply or vacate requirements in RCW 59.20.080, and neither of the notices state grounds for a lawful or legitimate eviction.

Two of the notices, dated May 19, 2018 and September 8, 2018, reference tenant complaints against Ms. Doerr. CP 308, 313. The September notice states, "[t]he tenants are not interested in a referral to your free attorney Lisa." CP 313. Ms. Doerr is permitted under RCW 59.20.070(3) to distribute information to discuss mobile home living and affairs. When the court found Appellant in contempt, it ruled Ms. Doerr could continue to distribute tenant rights information, as long as it is distributed via U.S. Mail or in person. CP 468.

Aside from these two notices, Appellant's course of conduct leading up to the October 2018 notice consists of repeated demands regarding a tenancy application that was approved six years prior, upon Ms. Doerr's purchase of the home from Appellant and moving into the community. CP 303-314. It also includes two demands for Ms. Doerr to move her home for alleged lease violations, and taunting Ms. Doerr for the water never having been shut off. CP 310, 311.

On three distinct occasions, the Appellant taunted Ms. Doerr for

bringing a lawsuit for the water not being shut off, and one of those taunts was published to the entire Del Ray I community. CP 314, 313, 323, 352.

The September 8, 2018 notice states, “[t]he tenants are not interested in your ‘Energy Healing’. (sic) Why didn’t it save you from harm when the water wasn’t shut off?” CP 313. The October 22, 2018 notice states, “[i]t appears you are fixing your mail box so it won’t fall and injure somebody to pretend injury like from the water not being shut off.” CP 314. Then, a third time, on December 17, 2018, the appellant distributed a notice to all of the residents of Del Ray I, mocking Ms. Doerr for filing a lawsuit, although the only reason the water was not shut off by the City of Longview was because she filed the lawsuit. CP 323, 352. The notice is dated December 17, 2018 and states:

ALL TENANTS

Enclosed is a copy of your Lease, the Park Rules and State Law  
RCW 59.20.090.

The person distributing false information in the Park has a  
lawsuit against Del Ray claiming injury because the water  
wasn’t “Shut off”. No Joke...

This lawsuit will probably be “DISMISSED” in January....

Without Lease renewal you will automatically  
become a month to month tenant. Nothing will change for 2019

Park Management  
Del Ray Properties INC

*Id.* The taunting gives additional context to the October 22, 2018 notice, supporting the court’s finding that, “[t]he stated ‘crisis’ in the October 22,

2018 letter from Del Ray Properties, Inc. to Plaintiff Sharon Doerr is baseless and amounts to harassment.” CP 462.

Ironically, although Ms. Doerr was chastised for making tenant rights information available to other tenants, the December notice to all tenants misstates a significant tenant protection under the Manufactured Mobile Home Landlord-Tenant Act, namely that tenants in a manufactured housing community who own their homes and rent the lot on which their home is situated are entitled to a written rental agreement for a term of one year or more and while a one year rental agreement can be waived, the waiver must be in writing. RCW 59.20.090 states:

Unless otherwise agreed rental agreements shall be for a term of one year. Any rental agreement of whatever duration shall be automatically renewed for the term of the original rental agreement, unless a different specified term is agreed upon.

RCW 59.20.090 (1). The law also requires that a tenant waive, in writing, the right to such one year or more term. RCW 59.20.050(1).

Although counsel for Ms. Doerr sent notices on June 22, 2018, June 25, 2018 and September 24, 2018 asking for the harassment to cease, on October 22, 2018, the Appellant sent another notice to Ms. Doerr telling her the City of Longview has demanded she move her trailer, but the home is “not HUD” and cannot be moved or sold, thereby directly implying it would need to be destroyed. CP 294-300, 314.

Additionally, the notice accused Ms. Doerr of baseless parking and

garbage violations, making reference again to the water never having been shut off. CP 314. While the notice references it is a violation of city law to park on the street of the manufacturing housing community, the Appellant has provided no cite to any Longview municipal code indicating street parking is not allowed in a manufactured housing community. Appellant provides no proof that other residents received the same warning, even though other residents routinely parked on the streets. CP 403. For a Park Rule to be enforceable, it must apply to all tenants in a fair manner and not be retaliatory or discriminatory in nature. RCW 59.20.045 The allegation about the garbage can was false, as Ms. Doerr always kept her garbage can on her lot, with the exception of when she moves it out onto the street for trash pickup. CP 403.

The October 22, 2018 notice came almost nine months after the City of Longview issued a permit to allow Appellant to build a fence. CP 407, 397. In their January 2018 application with the City of Longview to build a perimeter fence, Appellant indicated, “[t]railers currently in the right-of-way to be moved prior to constructing new fence.” CP 397. This notice threatening eviction served no lawful purpose because it was completely the Appellant’s creation that Ms. Doerr would need to move, or worse, destroy her home, since according to the Appellant, Ms. Doerr’s home was not moveable. In his declaration dated February 7, 2019, Mr. Brickey, Director of Community Development, clarified the City did not

mandate or request that homes currently in the right of way be moved or would need to be moved, and in fact it was the Appellant's own assertion they planned to relocate several homes near Ms. Doerr's that sat on the fence line. CP 406-408. Mr. McNamara, attorney for City of Longview, confirmed that:

The City is aware that several units in the Del Ray I Mobile Home Park encroach on city right of way. Because these encroachments are an existing situation that has existed for decades, the City is not requiring any owners, including Ms. Doerr, to move their units out of the right of way.

However, should the units be removed in the future, the City would require that any replacement units be located so that they do not encroach into the right of way.

CP 301-302. While several homes were in the city's right of way, the Appellant has produced no evidence that even a single resident other than Ms. Doerr got a similar communication.

The preliminary injunction directed Appellant not to harass, intimidate, threaten or retaliate against Ms. Doerr by reason of her bringing the lawsuit. CP 111-112. While there are multiple definitions of harassment, a party who has been enjoined must obey the injunction according to its spirit, and in good faith. *In re: Lyman's Estate*, 7 Wn. App. 945 (1972), *opinion adopted*, 82 Wn.2d 693 (1973) (a party bound by a restraining order must abide by its clear intent and purpose, not merely its specific language).

Appellant's conduct violates both RCW 10.14.020 and RCW

9A.46.020. Ms. Doerr suffered substantial emotional harm. She stated she had fear when the mail delivery came because she worried about yet another notice from the park. CP 305-306. She went to the emergency room because she was having a panic attack, although she has no history of stress disorders. CP 305-306. The series of notices preceding the October 22, 2018 notice allow an objective determination Ms. Doerr's fear of being evicted and losing her home was reasonable. When Appellant directed Ms. Doerr to move a home that they knew she could not move, they threatened harm to Ms. Doerr's home. The October 22, 2018 notice fabricating an eviction was actually worse than a threat to evict, because if indeed Ms. Doerr would need to move her home, it would need to be destroyed, as it is too old to move, and selling it to recoup the equity would not be an option. Therefore the notice served no legitimate purpose. CP 314. While the court found Appellant's conduct to be harassment, in violation of the preliminary injunction, the Appellant also violated the provision not to retaliate against Ms. Doerr. The October 22, 2018 notice retaliated against Ms. Doerr because it threatened her with eviction and the destruction of her home. RCW 59.20.070 (5) prohibits a landlord from evicting a tenant for filing suit against the landlord for any reason. When Appellant threatened to evict Ms. Doerr by fabricating that the City of Longview was demanding she move her home off of the property line, they retaliated against Ms. Doerr, putting her in fear she would lose her home. While the Appellant

sent the notices under the guise of a legitimate purpose, they violated Judge Evans' order not to harass, intimidate, threaten or retaliate against Ms.

Doerr.

2. **The trial court considered and rejected Del Ray's explanation that it was unaware of the city's position until "on or before November 12"**

Nothing in Michael Carron's declaration refutes the fact that Appellant knew the city did not require the trailer to be moved, therefore it does nothing to undermine the trial court's reliance on Ms. Doerr's evidence. CP 348-353. His declaration is self-serving and conclusory. He presented nothing in his declaration to demonstrate who spoke to specifically who, and when, and with particularity, what was said. He presented no evidence as to why the fence needed to be built and why it could not be built around the homes on the right of way. There is no evidence that building the fence was anything other than a voluntary decision of the park. Mr. Carron presented no mitigating circumstances as to why voluntarily building a fence would justify displacing a long-term senior resident with limited income, particularly when complying with the city's demand would result in Ms. Doerr losing not only the shelter of her home, but the monetary value of her home. The demand for Ms. Doerr to move her home so Appellant could voluntarily build a perimeter fence was not accompanied by an offer of compensation. Appellant's statement that Del Ray learned on or before November 12, 2018 of the city's position

leaves open the possibility this discovery was made before the October 22, 2018 notice was sent. The court properly weighed Michael Carron's declaration against those presented by Ms. Doerr and found Ms. Doerr's evidence to be more convincing.

**C. The Court did not abuse its discretion in awarding Ms. Doerr \$7,590 in attorney fees**

When the Court ordered attorney fees and directed all further communication to be through counsel, the Court exercised its statutory authority to find Appellant in contempt and award attorney fees. CP 460-463. A court's contempt power is both statutory and inherent. *Graves v. Duerden*, 51 Wn. App. 642 (1988). A court may exercise its civil contempt powers under RCW 7.20.010 *et seq.* or by using its inherent powers. *Keller v. Keller*, 52 Wn.2d 84, 89 (1958).

RCW 7.21.030 (3) permits the court to order costs and attorney fees as a result of the contempt proceeding. RCW 7.21.030 (3) states, in part:

The court may, in addition to the remedial sanctions set forth in subsection (2) of this section, order a person found in contempt of court to pay a party for any losses suffered by the party as a result of the contempt and any costs incurred in connection with the contempt proceeding, including reasonable attorney's fees.

The trial court had authority to assess Ms. Doerr's reasonable attorney's fees to the Appellant and will be overturned only if there is an abuse of discretion. *Hsu Ying Li v. Tang*, 87 Wn.2d 796 (1976).

Counsel's declaration, in addition to specifying specific time spent

on specific tasks, described that all 27.6 hours logged were toward the second contempt action, the time entries include only time spent on tasks directly related to the motion for contempt, non-duplicative tasks and work necessary to obtain the favorable result in the case. CP 441-442. For example, communications from Ms. Waldvogel to counsel for appellant on June 22, 2018, June 25, 2018 and September 24, 2018 were not included in the time log. 294-300, 444-445. The time was entered contemporaneously or close in time after the services were performed and the entries were recorded in six-minute increments. CP 441-442. Additionally, the time entries specifically recorded specific tasks (i.e. appearance at the contempt hearing, reviewing pleadings in preparation of the hearing, etc.) *Id.*

After Ms. Schlatter raised her objections, including the assertion that Ms. Doerr prevailed on only one of eight counts and an attorney fee in the amount of \$390 was excessive and it should be set at \$250, the court ruled that:

Well, I do think that proof of all the communications was certainly within what was appropriate to establish that the one that I found as the basis for the contempt was a product of something other than a mistake. It was animus rather than a goof.

I do agree, though, that while Northwest Justice Project may have said that these are the fees that we think appropriate, I think in this community \$390 an hour is out of line, and I'll set the fees at \$275 per hour.

RP 128-131.

Trial courts must actively assess the reasonableness of all attorney fee awards and may not simply accept the amounts stated in fee affidavits. *Berryman v. Metcalf*, 177 Wn. App. 644, 657 (2013), *review denied sub nom.*, *Berryman v. Farmers Ins. Co.*, 179 Wn.2d 1026 (2014). The trial court generally considers the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. *Id.* at 660. A trial court abuses its discretion regarding the amount of attorney fees when its decision is manifestly unreasonable, based on untenable grounds, or made for untenable reasons. *Id.* Trial courts must exercise their discretion on articulable grounds, making a record sufficient to permit meaningful review. *Mahler v. Szucs*, 135 Wn.2d 398, 435 (1998); *Just Dirt, Inc. v. Knight Excavating, Inc.*, 138 Wn. App. 409, 415 (2007). In *Bering v. Share*, it was not an abuse of the court's discretion to assess \$7,000 in attorney fees and \$1,200 in costs against contemnors who had picketed outside the front of a medical building in knowing and intentional violation of a lawful injunction. 106 Wn.2d 212 (1986).

Written findings are not required as long as the trial court has made an adequate record to support the amount of the attorney fee award. *Estate of Bremer v. Walker*, 187 Wn. App. 450 (2015). Appellant cites *SentinelC3, Inc. v. Hunt*, 181 Wn.2d 127 (2014), although that case discusses RCW 23B.13.310(2), which conditions the availability of attorney fees on specific findings. *See Matter of Marriage of Carlson*, 7

Wn. App. 2d 1007 (2019). Additionally, *SentinelC3* cites to *Nordstrom, Inc. v. Tampourlos*, 107 Wn.2d 735 (2007), for the proposition a trial court must supply findings of fact and conclusions of law sufficient for a reviewing court to determine why the trial court awarded the amount in question, although in *Nordstrom*, there were issues litigated at trial and on appeal besides the Consumer Protection Act violation and the court held it would give Nordstrom an unfair benefit to award it attorney fees for aspects of the suit that had nothing to do with the CPA violations, when the plaintiff was successful on the CPA claim. Lastly, *Sentinel* clarifies what a record should contain, for example whether the rates billed were reasonable, and here, when the trial court set counsel's rate at \$275/hour, it stated while \$390/hour was requested, in Cowlitz County that was an excessive rate.

In *White v. Clark County*, 188 Wn. App. 622 (2015), the court remanded for entry of findings of fact and conclusions of law related to the amount of attorney fees awarded where the trial court did not conduct a lodestar analysis on the record or otherwise articulate how it arrived at the \$1,500 figure. Judge Warning held \$275 was a reasonable attorney fee, rejected the Appellant's theory that Ms. Doerr did not prevail on all counts, and then ordered \$7,590, or \$275 x 27.6 hours, to be paid no later than

April 26, 2019.<sup>3</sup>

The court made an adequate record and the attorney fee award should be upheld.

#### V. ATTORNEY FEES

A person found in contempt of court can be ordered to pay reasonable attorney's fees. RCW 7.21.030 (3) and RAP 18.1. Because there is statutory authority for provision of attorney fees, attorney's fees on appeal are recoverable. *See Washington State Communication Access Project v. Regal Cinemas, Inc.*, 173 Wn. App. 174, 222, 293 P.3d 413 (2013). *In re: Marriage of Curtis*, 106 Wn. App. 191 (2001), the court held it was permissible to award attorney fees incurred by a party in defending an appeal of a contempt order. Therefore, the Respondent respectfully requests attorney fees in an amount to be determined by the Clerk pursuant to RAP 18.1(d), or, in the alternative, as determined by the trial court after remand pursuant to RAP 18.1(i).

#### VI. CONCLUSION

The trial court did not abuse its discretion in finding that Appellant was in contempt of court and Ms. Doerr is entitled to the attorney fees

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<sup>3</sup> While the Judgment Summary indicates "corrected" attorney fees of \$7,590, consistent with Judge Warning ruling \$275 to be a reasonable attorney fee and counsel's fee affidavit requesting compensation for 27.6 hours of time spent, it appears the second correction in the Order on Hearing Re Second Finding of Contempt was not made, and for that reason the second amount still reflects the \$10,764.00 amount requested by counsel (\$390/hr x 27.6), although it should also indicate \$7,590.00. CP 460-463, 440-445.

awarded by the trial court. This Court should not substitute its own judgment for the trial court's credibility assessments and determination that Appellant was in contempt of court when it sent the October 22, 2018 notice with the fabricated representation that the City of Longview was requiring Ms. Doerr to move her home.

The trial court's finding of contempt and its award of fees and costs should be affirmed.

Respectfully submitted this 28<sup>th</sup> day of October 2019.

NORTHWEST JUSTICE PROJECT

/s/ Lisa Waldvogel

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## CERTIFICATE OF SERVICE

I certify that on the date shown below, I electronically filed the attached BRIEF OF RESPONDENT using the Court's Appellate e-filing system and delivered same by electronic service and by first class mail, postage prepaid to:

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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 this 28<sup>th</sup> day of October, 2019 at Longview, Washington.

/s/ Sherrill Strassburg \_\_\_\_\_  
Sherrill Strassburg  
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# NORTHWEST JUSTICE PROJECT

October 28, 2019 - 4:14 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 53229-8  
**Appellate Court Case Title:** Sharon Doerr et al, Respondents v Del Ray Properties, Inc. Appellant  
**Superior Court Case Number:** 17-2-00870-3

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