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Court of Appeals No. 54038-0-II

IN THE WASHINGTON STATE COURT OF APPEALS, DIVISION II
MICHAEL TEFFT and ANGELA TEFFT, Husband and Wife, and
Washington Residents, and DAWN ALLEN and JASON HAENKE,
Washington residents;

Plaintiffs/Respondents,

vs.

RICHARD C. BARBER, and DEBRA L. CURTIS, Washington
Residents,
Defendants/Appellants.

APPELLANTS' BRIEF

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III. ASSIGNMENTS OF ERROR

1. The trial court erred in limiting the issues in this appeal to the issues stated in the Order for Partial Summary Judgment.
2. The trial court erred in adopting findings of fact in its Order for Partial Summary Judgment.
3. The trial court erred in granting partial summary judgment for Teffts and Allen/Haenke.
4. The trial court erred in denying Richard and Debra's Motion for Reconsideration.

IV. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did Teffts lack standing to challenge the Cottage Easement's presence on a portion of Parcel E? (Pertains to Assignment of Error No. 3).
2. Is the Cottage Easement is an easement in gross given to Richard Barber? (Pertains to Assignment of Error No. 3).
3. May the Cottage Easement be terminated? (Pertains to Assignment of Error No. 2).
4. Did Teffts take title to their property subject to the Cottage Easement? (Pertains to Assignment of Error No. 3).
5. Does the Cottage Easement remain on Parcel E? (Pertains to Assignment of Error No. 3).

6. Did the trial court err in denying Richard and Debra's Motion for Reconsideration? (Pertains to Assignment of Error No. 4).
7. Did the Cottage Easement merge with Parcel E? (Pertains to Assignment of Error No. 4).
8. Are Teffts and Allen/Haenke estopped to deny the presence of the Cottage Easement on Parcels B and E? (Pertains to Assignment of Error No. 4).
9. If they are denied access across Parcel E to State Route 302, are Richard and Debra entitled to an easement by necessity over the same route? (Pertains to Assignment of Error No. 4).
10. Should the Court reverse the trial court's order to Richard, Debra and their tenant to vacate the Cottage Easement and the order to post a surety bond? (Pertains to Assignment of Error No. 4).

V. STATEMENT OF THE CASE

Respondents, Michael and Angela Tefft, are the current owners of real property located at 8609 SR 302 in Pierce County. CP 3.

Respondents, Dawn Allen and Jason Haenke, are the owners of real property located at 8603 SR 302 in Pierce County. CP 181.

The Cottage Easement.

The center of controversy in this case is an easement, irregular in shape, located between the properties owned by the Teffts and Allen/Haenke. CP 47. That easement, hereinafter referred to as the Cottage Easement, was created in July 2010 by Debra Curtis who conveyed the easement to Richard Barber. CP 462. The conveyance specifically named Richard Barber as the grantee of the easement, and did not designate a benefitted parcel. CP 462.

The Cottage Easement was preceded by an earlier access easement. CP 51-54. That access easement gave Richard Barber access to two parcels of real property owned by him located north of the Tacoma-Lake Cushman transmission line. CP 51-54.

In 2010, Richard Barber and Debra Curtis executed a boundary line adjustment which extended a portion of the eastern boundary of the access easement further east onto the parcel of land then owned by Richard Barber, now owned by Allen/Haenke. CP 21. The effect of the boundary

line adjustment was to include the cabin within the Cottage Easement. CP 47.

At the time the Cottage Easement was executed, the property at 8609 SR 302 now owned by the Teffts was owned by Debra Curtis. CP 20-21. At that time, Richard Barber owned the adjacent property at 8603 SR 302. CP 21. In November 2010, Debra Curtis conveyed the property at 8609 SR 302 to Teffts' grantors, James and Melissa Kuntz, who conveyed the property to Teffts in 2015. CP 383-87.

The cabin

While Debra Curtis owned the property at 8609 SR 302, there was an old cabin located thereon. CP 370. The cabin, approximately 780 square feet, was 116 years old and in need of maintenance and a new roof. CP 374-75. Debra feared the cabin in its dilapidated state could have a negative impact on the value of the high-end new home on the property. CP 370.

In 2007, Debra and Richard contributed their time and money to completely rehabilitate the cabin. CP 374-75. Debra was motivated to rehabilitate the cabin by a desire to preserve as much as possible the original historical character of the log cabin's exterior. CP 370. This Debra felt she could only ensure if Richard owned the cabin outright, as he had put in his time, money and expertise into rehabilitating it, and he

also saw the value in the old structure that most builders would have torn down. CP 370.

Richard and Debra spent approximately \$49,400 to rehabilitate the cabin. CP 374-75. In 2019, the current assessed value of the cabin was \$76,006. CP 375.

Harassment from Teffts

Teffts began harassing Debra, Richard and their tenants several months after they moved into the home at 8609 SR 302 NW moved in in June 1, 2015. CP 370. The Teffts were in their yard trying to get a riding lawn mower working when Richard and Debra, who were working on the cabin easement, went over to introduce themselves. CP 370. At that time, Debra had her four horses on the property across the utility easement and she offered to introduce Teffts' daughters to the horses if they were interested. CP 370.

The two girls came over about a week later when Debra was feeding the horses, so they talked about the horses and they went back home. CP 370. After that initial meeting, the youngest girl came over and stayed awhile talking as Debra was cleaning the barn. CP 370. The girl talked about her family and other siblings, then somewhat apologetically said "*I'm sorry about the cabin, but my dad just wants it.*" CP 370. At that time, there hadn't been any discussion regarding the cabin or the easement

from Teffts, so Debra didn't know what the girl was talking about. CP 370.

Richard had a one year lease agreement with then-renter Peter Arthur who had only been in the cabin two months beginning April 13, 2016, when Tefft threatened through his first lawyer Kurt Salmon that the cabin was conveyed with the land. CP 371. At that point Debra felt obligated to tell Peter Arthur about the legal action and he decided to vacate and moved out on June 1, 2016. CP 371. Because of the threat and need to find a lawyer, the cabin sat vacant from June 1, 2016 until January 5, 2017. CP 371. As a result, Richard lost \$6,600.00 in rental income as Tefft had threatened to harass any tenants who rented it. CP 371. Richard also incurred \$2,500.00 in legal fees to defend his property right. CP 371.

As Debra drove across the easement at least once a day to feed and check the horses water tank, this bothered Mr. Tefft enough to have their family block the access into the utility easement with three of their cars. CP 371. At that time, Debra went over to tell Teffts they needed to move their cars so that she could cross. CP 371. Tefft came sauntering over and said they didn't have to move the cars. CP 371. Debra was able to slide through the front of where the cars were parked on foot and feed the horses, as she did have hay at the barn at that time. CP 371. Debra took

photographs of the cars and one of the Teffts' driveway to show they had plenty of parking in their circle driveway. CP 371.

In 2016, Mr. Tefft started coming across the utility easement and over to the barn to harass Richard and Debra when they were caring for the horses, even though that part of the utility easement was not part of his property. CP 371-72. On one occasion, Tefft threatened Debra's horses by saying, you know things can happen to the horses when the owners aren't around. CP 371. Tefft also said the same thing to Richard when he was at the barn another time. CP 371. At that point, Richard and Debra decided to move the horses as soon as possible to ensure their safety. CP 371. They moved the horses about three weeks later. CP 371.

Debra is the property manager for the cabin as she is also a realtor. CP 371. On January 2, 2017 around 4:45 p.m, Debra was showing the cabin to a potential renter, Bradley Stutland, when Tefft came over and approached Richard outside on the cabin easement and Richard told Tefft to stay off his property. CP 371-72. Richard then came inside the cabin to meet the tenant when Tefft pounded on the cabin door. Richard went outside to tell he was trespassing and to go away when Tefft stated, "*What will it take to make you just go away? I'll pay you \$20,000. Now you can be gone.*" Richard replied, saying "*Are you kidding I've spent twice that rebuilding it, do you think I'm stupid ?*" CP 372. At that point, Tefft said it

was unsafe for Teffts' daughter to walk down the paved access easement road to get home after school. CP 372. Debra had seen Teffts' daughter walk down the inside Hwy 302 fence line on the Teffts' property many times totally away from the front of the cabin. CP 372. Tefft then said he would just keep coming back and harassing them until they leave. CP 372. At that point, Richard told Tefft to get off his property or he would call the sheriff and Tefft then left. CP 372.

Thereafter Tefft put a gate across the Cottage Easement into the utility easement and bolted it closed with a heavy lock so that Richard's renter Bradley Stutland could no longer walk his dog on the public utility easement, and Richard could no longer get his riding lawn mower to the cabin easement to mow it. CP 372. Debra had told Bradley Stutland he could let his dog run on the property where the horses had been across the easement as it was cyclone fenced. CP 372. It was on one of these occasions that Tefft went over to the property across the utility easement to harass Bradley Stutland, asking him if it was his property knowing it wasn't but wasn't Teffts' property either. CP 372.

Tefft then began harassing Debra any time he was home, and when Debra would be at the cabin working outside to maintain the flower beds. CP 372. Tefft would start yelling at Debra about the water bill for the cabin that wasn't his concern, as the cabin has a separate bill. CP 372.

But Mr. Tefft took it upon himself to pay the bill even though Richard had started to pay it. CP 372.

On November 5, 2018, Richard went to the cabin to repair a light for the tenant Bradley Stutland. CP 372. When Richard was leaving the cabin to get into his car, Tefft came over onto the cabin easement and said he turned it off, referring to the water at the cabin which Bradley told Richard the water was off. CP 372. Richard, knowing the system has only one main shut off, went to the water management company, Northwest Water Systems, to tell them the well head had been turned off by the owners of the property the well head is on, Allen/Haenke. When the water company called Ms. Allen to tell her shutting off the system was illegal, Allen/Haenke turned the water back on. CP 373.

Richard and Debra's attorney instructed Tefft not to have contact with Richard, Debra or the tenant, but failed to comply, sending water bills to Richard's tenant Bradley Stutland in the mail, of which two of the letters were not postmarked but out directly into the mailbox. CP 373. Debra complained to the postmaster, but a mailman recommended getting a locking box. CP 373.

Teffts' acts of harassment have continued unabated. Recently, Teffts erected a large wood sign on their property opposite the cabin. CP 373. The large red lettering is undeniably intended to intimidate the new cabin renter. CP 373, 379.

Despite having been told not to have contact with the cabin renter or trespass onto the cabin, on February 22, 2019, Michael Tefft trespassed on to the Cottage Easement and taped a large manila envelope to the cabin window. CP 373.

The stress of being continually harassed whenever they go to the cabin and the ongoing litigation and the expense of defending his legal property has taken a toll on Richard's health, as documented by his doctor. CP 373. The stress induced by Teffts' harassment and litigation has dangerously increased Richard's blood pressure and has caused other serious medical conditions. CP 373.

Procedural History

Teffts filed a complaint for declaratory relief against Richard and Debra on December 3, 2018. CP 2-16. Service of summons was made upon Richard in December 2018. CP 266-68. On December 21, 2018, Richard and Debra filed their answer, affirmative defenses and counterclaim, for quiet title, declaratory judgment, tortious interference

with easement, and unjust enrichment. CP 271-82. On January 10, 2019, Teffts and Allen/Haenke filed their answer to counterclaim. CP 285-89.

On March 1, 2019, Teffts and Allen/Haenke filed a motion for partial summary judgment. CP 292-308. Therein, Teffts and Allen/Haenke argued the easements were appurtenant and perpetual, and not easements in gross. CP 303-06. Teffts/Allen/Haenke also argued they have the right to terminate the easements. CP 306.

In their response to partial summary judgment, Richard and Debra argued Teffts lacked standing to challenge the Cottage Easement's presence on a portion of Allen/Haenkes' property, the Cottage Easement is an easement in gross, that language in the Cottage Easement extending the benefit of the easement to Richard's successors and assigns does not alter the character of the easement as one in gross, that language in the easement providing it runs with the property does not make the easement appurtenant and the burden of the easement always runs with the land, the easement may not be terminated, Teffts took title to their property subject to the easement, and even if the easement merged with the property then owned by Richard, it was subsequently revived by the exception in the deed to Allen/Haenke. CP 346-55.

On March 29, 2019, the Pierce County Superior Court granted Teffts and Allen/Haenkes' motion for partial summary Judgment. CP 440-42. The order provides as follows:

The Plaintiff's MOTION FOR PARTIAL SUMMARY JUDGMENT is hereby GRANTED with regard to the following marked issues:

X The Court finds that the Easements are invalid because they purport to burden property not owned by the Grantor but owned by the Grantee at the time they were granted....

X The Court finds that since the Easements are invalid, or perpetual easements that run with the land, or "easements appurtenant," they can be terminated by the current Property Owners. (Footnotes omitted). CP 441.

On April 8, 2019, Richard and Debra filed their motion for reconsideration. CP446-55. Therein, they argued the order for partial summary judgment is interlocutory and can be changed at any time prior to final judgment, the Cottage Easement over Parcel B is not invalid, the Cottage Easement on Parcel E did not merge, the Cottage Easement is an easement in gross, the Easement was revived by the November 16, 2017

deed of Parcel E to Allen/Haenke, Teffts and Allen/Haenke are estopped to deny the presence of the Cottage Easement on Parcels B and E, if they are denied access across Parcel E to State Route 302, Richard and Debra are entitled to an easement by necessity over the same route, and the trial court should rescind its order to Richard and Debra to vacate the Cottage Easement and the order to post a bond. CP 448-54.

In their response to Richard and Debra's motion for reconsideration, Teffts and Allen/Haenke argued no grounds under CR 59 (a) had been presented by Richard and Debra. CP 464-65. Teffts and Allen/Haenke also argued judicial doctrines of *res judicata* and collateral estoppel precluded relitigation of issues resolved on summary judgment. CP 467. Teffts and Allen/Haenke also argued there is no language in the easements allowing to sever those allegedly invalid grants from the remainder of the easements. CP 468. Teffts and Allen/Haenke also argued there is no easement by necessity. CP 469. Teffts and Allen/Haenke also argued Richard and Debra could not raise a new argument regarding estoppel. CP 470. Tefft and Allen/Haenke also argued, without citation to authority, that the insurance carried by Richard was not a substitute for the bond required by the court. CP 471.

In their reply, Richard and Debra argued CR 59 applied to a motion for reconsideration entered after a final judgment, but the trial court's Order on Partial Summary Judgment did not dispose of all claims of all parties, and therefore was governed by CR 54 (b). CP 476. Richard and Debra also argued the court could consider evidence of their intent the Cottage Easement would not merge with Richard's ownership of Parcel E. CP 476. Richard and Debra also argued Teffts and Allen/Haenke misplaced reliance on *Olson v. Trippel*, 77 Wn. App. 545, 893 P. 2d 634 (1995), as that case was called into doubt in *Hollis v. Garwall*, 137 Wn. 2d 683, 974 P. 2d 836 (1999), wherein the court extended the "context rule" announced in *Berg v. Hudesman* 115 Wn. 2d 657, 801 P. 2d 222 (1990) to interpretation of deeds. CP 476-77. Richard and Debra also cited paragraph 8 of their joint declaration in which they testified neither intended all or any part of the Cottage easement would merge into Richard's then-ownership of Parcel E. CP 477.

Richard and Debra also argued their arguments are not barred by res judicata or collateral estoppel, as those doctrine requires a final judgment on the merits, and no such final judgment has yet been entered in this case. CP 477-78. Richard and Debra also argued the Cottage Easement over Parcel B is not invalid, that Teffts and Allen/Haenke's argument the easements do not provide for segregation of invalid provisions was

unsupported by any authority, and *Mountain Park Homeowners Association, Inc. v. Tydings*, 125 Wn. 2d 337, 883 P. 2d 1383 (1994) dealt with real covenants and said nothing about easements. CP 477. Richard and Debra also argued the Cottage Easement is an easement in gross, not an easement appurtenant, as it does not identify a dominant estate, but instead names a specific individual, Richard, as the grantee of the easement. CP 479.

Richard and Debra pointed out *Teffts and Allen/Haenke* present no authority contrary to Restatement of Property § 497, comment h or *Radovich v. Nuzhat*, 104 Wn. App. 800, 805, 16 P. 3d 687 (2001), and by reason of the November 16, 2017 deed of Parcel E to Allen/Haenke that subjected their interest in Parcel E to the Cottage Easement, that easement was revived, if it was ever extinguished. CP 480.

Richard and Debra also argued the financial loss Richard Barber will suffer from the loss of the cabin provides grounds under Restatement (Third), Servitudes § 2.10 to invoke an estoppel against *Teffts/Allen/Haenke* to deny the existence of the Cottage Easement on Parcel E. CP 480.

Richard and Debra also argued as there is no other viable route from the cabin to SR 302, they are entitled to an easement by necessity over the route set forth in the Cottage Easement. CP 480.

Richard and Debra also argued the trial court should rescind its order to them to vacate the Cottage Easement and to post a surety bond, as Teffts/Allen/Haenke were not entitled to summary judgment. CP 481. Richard and Debra also argued because Richard maintains liability insurance in the amount of \$500,000 per accident, a security bond is redundant. CP 481.

The trial court denied Richard and Debra's motion for reconsideration. CP 488-89.

Richard and Debra brought a Motion for Entry of Final Judgment and for Written Findings CP 490-500. Richard and Debra argued the case satisfied the requirements for entry of a final judgment under CR 54 (b). CP 493-98.

In their response, Teffts and Allen/Haenke argued they did not oppose certification of the Order Granting Partial Summary Judgment as long as it was limited to the three issues decided by the trial court. CP 627.

Teffts and Allen/Haenke also submitted extensive proposed findings of fact. CP 520-27. Richard and Debra objected on grounds findings are not proper on a motion for partial summary judgment. RP 4, p. 5-6.

On August 16, 2019, the trial court granted Richard and Debra's Motion for Entry of Final Judgment. CP 564-66. The trial court also adopted Teffts and Allen/Haenke's proposed findings. CP 553-54. The

trial court limited the appeal to the issues decided in the Order Granting Summary Judgment. CP 564-66.

On September 13, 2019, Richard and Debra filed their Notice of Appeal from the Order on Motion for Entry of Final Judgment, the denial of Defendants' Motion for Reconsideration and the Order for Partial Summary Judgment. CP 612-22.

VI. ARGUMENT

A. Standards of Review

Certification of a judgment under CR 54 (b) is reviewed for abuse of discretion. *Nelbro Packing Co. v. Baypack Fisheries, L.L.C.*, 101 Wn. App. 517, 523 n. 9, 6 P. 3d 22 (2000). A court abuses its discretion if it bases its ruling on an erroneous view of the law. *Washington State Physicians Exchange and Association. v. Fisons Corp.*, 122 Wn. 2d 299, 339, 858 P.2d 1054 (1993).

An appellate court reviews *de novo* an order granting summary judgment. *Kim v. Lakeside Adult Family Home*, 185 Wn. 2d 532, 547, 374 P. 3d 171 (2016). The court considers all the evidence presented to the trial court and engages in the same inquiry as the trial court. *Ibid.* The moving party has the burden of showing that there is no genuine issue as to any material fact. *Indoor Billboard/Washington, Inc. v. Integra Telecom of Washington, Inc.*, 162 Wn. 2d 59, 70, 170 P. 3d 10 (2007).

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VI. ARGUMENT

A. Standards of Review

Certification of a judgment under CR 54 (b) is reviewed for abuse of discretion. *Nelbro Packing Co. v. Baypack Fisheries, L.L.C.*, 101 Wn. App. 517, 523 n. 9, 6 P. 3d 22 (2000). A court abuses its discretion if it bases its ruling on an erroneous view of the law. *Washington State Physicians Exchange and Association. v. Fisons Corp.*, 122 Wn. 2d 299, 339, 858 P.2d 1054 (1993).

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The court will affirm a grant of summary judgment only if “*the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.*” CR 56 (c). The court must consider all facts in the light most favorable to the nonmoving party and can affirm a grant of summary judgment only if it determines, based on all the evidence, reasonable persons could reach but one conclusion. *Kim*, 185 Wn. 2d 547.

B. The trial court erred in limiting the issues to be heard in this appeal.

Error is assigned to the following paragraph of the Order on Motion for Entry of Final Judgment:

Any appeal shall be limited to the issues decided in the ORDER GRANTING PARTIAL SUMMARY JUDGMENT entered on March 29, 2019. (Plaintiffs’ Issues 1, 4 and 5)...CP 565.

Richard and Debra’s motion for final judgment was brought pursuant to CR 54 (b):

Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross claim, or third party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination

in the judgment, supported by written findings, that there is no just reason for delay and upon an express direction for the entry of judgment. The findings may be made at the time of entry of judgment or thereafter on the court's own motion or on motion of any party. In the absence of such findings, determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

The plain language of CR 54 (b) authorizes certification of claims. No language in that rule authorizes certification of issues only. The trial court therefore erred by limiting issues in this appeal to the issues listed in the Order Granting Partial Summary Judgment. CP 565.

Washington courts consider persuasive federal court interpretations of the Federal Rules of Civil Procedure. *Lietz v. Hansen Law Offices, P.S.C.*, 166 Wn. App. 571, 580, 271 P.3d 899 (2012). *Shudel v. General Electric Co.*, 120 F. 991, 994 (9th Cir. 1997), *Abrogated on other grounds by Weisgram v. Marley Co.*, 528 U.S. 440, 120 S.Ct. 1011, 145 L. Ed. 2d 958 (2000), holds Federal Rule of Civil Procedure 54 (b) authorizes review of final judgments on entire claims, not on individual issues.

The trial court below violated this rule by limiting the appeal to the issues listed in the Order Granting Partial Summary Judgment, thereby impliedly excluding any other arguments raised by Richard and Debra in opposition to partial summary judgment.

Richard and Debra plainly need to present to this Court their arguments raised against partial summary judgment. Several of those arguments address whether the Easements are invalid (Summary Judgment Issue 1). Other arguments raised by Richard and Debra in opposition to summary judgment address whether the Easements are invalid, or perpetual easements that run with the land, or are appurtenant, and can be terminated. (Summary Judgment Issue 4). Without access to their arguments raised against summary judgment, Richard and Debra will be severely limited in the arguments raised in their appeal.

In light of the foregoing, Richard and Debra ask the Court to be allowed to present all of their arguments raised in the trial court against partial summary judgment for Teffts and Allen/Haenke.

C. The trial court erred in adopting findings in connection with its order granting partial summary judgment to Teffts and Allen/Haenke.

Error is assigned to the following paragraph of the Order on Motion for Entry of Final Judgment:

The Court adopts the attached FINDINGS OF FACT AND CONCLUSIONS OF LAW Submitted by the Plaintiffs on August 7, 2019, in their Additional Response to Motion for Entry of Final Judgment. CP 565.

Washington courts do not recognize findings of fact submitted in connection with summary judgment. *Westberry v. Interstate Distributor Co.*, 164 Wn. App. 196, 209, 263 P.3d 1251 (2011); *Donald v. City of Vancouver*, 43 Wn. App. 880, 883, 719 P.2d 966 (1986). The findings adopted by the trial court should not be considered here.

D. The trial court erred in granting partial summary judgment for Teffts and Allen/Haenke.

A. Teffts lacked standing to challenge the Cottage Easement's presence on a portion of Parcel E.

In order to bring a legal challenge to the July 6, 2010 Cottage Easement, Plaintiffs must establish their standing to make such a challenge. *Timberlane Homeowners Association, Inc. v. Brame*, 79 Wn. App. 303, 307-08, 901 P. 2d 1074 (1995). In order to make such a challenge, Teffts must establish their standing to make such a challenge. This is usually done by establishing a property right in the subject property. *Timberlane*, 79 Wn. App. 309; *See also, Lakewood Racquet Club, Inc. v. Jensen*, 156 Wn. App. 215, 228, 232 P. 3d 1147 (2015).

In this case, Teffts challenge the presence of the Cottage Easement on Parcel E, but nowhere do they establish an ownership interests in Parcel E. Under *Timberlane* and *Lakewood Racquet Club*, Teffts therefore lack standing to challenge the presence of the July 6, 2010 Cottage Easement on Parcel E.

E. The Cottage Easement is an easement in gross given to Richard Barber.

Error is assigned to the following portion of the Order for Partial Summary Judgment:

The Court finds that since the Easements are invalid, or perpetual easements that run with the land, or “easements appurtenant,” they can be terminated by the-current Property Owners.

CP 44.

The Cottage Easement provides, in pertinent part, as follows:

COTTAGE EASEMENT

Debra Curtis owns a parcel of property which is described with particularity in Exhibit A which is incorporated by this reference which is known as Parcel B on a site plan prepared by PRIZM Surveying Inc. on June 24, 2009 which is described with particularity in Exhibit A. Richard Barber owns Parcel E which is shown on the site plan performed by PRISM Surveying Inc. which is described with particularity in Exhibit A.

Parcel E abuts Parcel B. There is a cottage constructed on a portion of Parcel B which Mr. Barber owns. The purpose of this

Easement Agreement is to grant Mr. Barber an easement for the cottage on Parcel B. NOW, THEREFORE, in consideration of mutual promises and \$10 and other valuable consideration, Debra Curtis (Grantor) grants to Richard Barber (Grantee) an easement on Parcel B for the cabins which is depicted on the PRIZM Surveying Inc. site plan prepared on June 24, 2009. The easement allows the cabin to occupy Parcel B as well as gives the Grantee the right to use and area surrounding the cabin which is depicted on Exhibit B on the PRIZM Surveying Inc. site plan. This easement gives the Grantee and his successors and assigns the right to have the cabin located on parcel B and to remain there in perpetuity as well as the right to maintain, repair, and replace the cabin and to use and enjoy the cabins and the area surrounding the cabins which is depicted on Exhibit B. This easement also gives the Grantee the right to construct out buildings in accordance with relevant codes on the easement area. This easement area is described in Exhibit C. This easement runs with the property and is binding on all successors and assigns....
CP 462.

Three features of the above Cottage Easement compel the conclusion it is an easement in gross. First, the Grantee is a named person, Richard Barber. Washington cases recognize the rule generally accepted throughout the country that an easement to a named person is an easement in gross. *See, e.g., Green v. Lupo*, 32 Wn. App. 318, 322, 647 P. 2d 51

(1982) (“*The designation of named individuals as dominant owners evidences an intent that the easement be personal to the named parties.*”).

Second, the Cottage Easement does not designate a dominant estate. The easement benefits Richard Barber, but does not identify another parcel of land to be benefitted. In contrast, the June 25, 2009 Access Easement identifies 2 parcels benefitted by that easement.

The absence of a parcel identified by the Cottage Easement as the parcel to be benefitted thereby is fatal to Teffts and Allen/Haenkes’ argument the easement is appurtenant. Note *Beebe v. Swerva*, 58 Wn. App. 375, 381, 793 P. 2d 442 (1990):

By definition, two estates are required for an appurtenant easement. An easement is generally defined as:

A right in the owner of one parcel of land, by reason of such ownership, to use the land of another for a special purpose not inconsistent with a general property in the owner.

Black’s Law Dictionary 599 (rev. 4th ed. 1968). See also *State ex rel. Shorett v. Blue Ridge Club, Inc.*, 22 Wash.2d 487, 494, 156 P.2d 667 (1945). An appurtenant easement is “[o]ne which is attached to and passes with the dominant tenement as an appurtenance thereof.” Black’s Law Dictionary 599 (rev. 4th ed. 1968).

The third reason why the Cottage Easement is in gross is the intent of the grantor. The intentions of parties are paramount in the absence of some overriding public policy which would prohibit creation of the entity intended. *Kemery v. Mylorie*, 8 Wn. App. 344, 346, 506 P. 2d 319 (1973). In their joint declaration, grantor Debra Curtis makes clear her intention to convey to Richard Barber an easement in gross on parcel B. CP 374.

Other features of the Cottage Easement do not compel a contrary conclusion. The fact the Cottage Easement gives Richard Barber's successors and assigns the right to have the cabin located on Parcel B does not alter the character of the easement as an easement in gross. In a well-reasoned analysis in *O'Donovan v. McIntosh*, 728 A. 2d 681 (1999), the Maine Supreme Court overruled earlier precedent and concluded an easement in gross could be assignable if such were the intent of the parties:

Although we have categorically stated that an easement in gross is not assignable, ...we have never applied the rule-that an easement in gross is not assignable-to frustrate the parties' clear intent, as set forth in the deed, that the holder may assign the easement.

Our focus on the intent of the parties in this case is in accord with those courts that assess the parties' intent to determine the alienability of an easement in gross. See, e.g., *Lindley v. Maggert*, 198 Mont. 197, 645 P.2d 430, 431 (Mo.1982) (easement freely

alienable when no language in the deed exists to limit right to alienate); *Weber v. Dockray*, 2 N.J.Super. 492, 64 A.2d 631, 633 (Ct. Ch. Div.1949) (assignability depends on intention of the parties, the nature of the burden on the servient tenant, and circumstances existing at time the grant was made); *Miller v. Lutheran Conference & Camp Ass'n*, 331 Pa. 241, 200 A. 646, 651 (1938) (“*There does not seem to be any reason why the law should prohibit the assignment of an easement in gross if the parties to its creation evidence their intention to make it assignable.*”); *Farmer’s Marine Copper Works, Inc. v. City of Galveston*, 757 S.W.2d 148, 151 (Tex.Ct.App.1988) (“*Although easements ‘in gross’ are personal to the grantee only, and are generally not assignable or transferable, the parties may create an assignable easement in gross through an express assignment provision.*”). Moreover, such an approach is consistent with those authorities that increasingly recognize and advocate the free alienability of easements in gross. See RESTATEMENT OF PROPERTY §§ 491, 492 (1944) (alienability of noncommercial easement determined by the manner and terms of its creation); 2 AMERICAN LAW OF PROPERTY § 8.82 (1952) (“*There seems to be no reason to deny to parties who create easements in gross the privilege of making them alienable if they wish to do so.*”); 4 RICHARD R. POWELL, POWELL ON REAL PROPERTY § 34.16, at 34-218 (1998) (noting only barriers to alienability of easement in gross is finding of creator’s manifest intent to bar alienation and courts’ misplaced fear of “resultant surcharge” on the land); 3 HERBERT THORNDIKE

TIFFANY, TIFFANY ON REAL PROPERTY § 761 (Supp.1998) (“[T]here is a growing recognition of the assignability of all easements in gross except those demonstrably intended to benefit only the individual who is its first recipient.”).

The conclusion that an easement in gross is assignable when the parties intend is consistent with our general policy favoring the free alienability of property. The alienability of an easement in gross promotes the free alienability of land, a general policy of property law. See RESTATEMENT OF PROPERTY § 489 cmt. a (1944). The Restatement explains that “[t]his policy arises from a belief that the social interest is promoted by the greater utilization of the subject matter of property resulting from the freedom of alienation of interests in it.” Id. In furtherance of this policy, we have adhered to the traditional rule of construction that whenever possible an easement is construed to be appurtenant to the land of the person for whose use the easement is created, thereby ensuring that the easement is alienable. See *Anchors*, 1998 ME 152, ¶ 10, 714 A.2d 134, 138; *LeMay v. Anderson*, 397 A.2d 984, 987 (Me.1979); *Davis*, 117 Me. at 540, 105 A. at 129. Similarly, we have held that a profit a prendre-the right to take from the land something that is a product of the soil-is freely assignable even when that right is in gross. See *Beckwith v. Rossi*, 157 Me. 532, 175 A.2d 732, 734 (1961). In addition, to give effect to the intent of the parties and promote alienability, we have abolished the technical requirement that the word “heirs” be used to preserve an interest of perpetual duration. See *O’Neill*, 527 A.2d at 324. **It is consistent with the policy of promoting a**

high degree of alienability that we hold an easement in gross may be assignable.

(Emphasis added).

728 A. 2d 683-84.

See also, Restatement 3rd of Property, Servitudes, § 4.6 (1) (c) (“*A benefit in gross is freely transferable.*”).

The reasoning of *O’Donovan v. McIntosh* and the many decisions from other states and treatises it relied upon as well as Restatement 3rd § 4.6 (1) (c) provide persuasive authority that Richard Barber may assign his rights in the Cottage Easement.

Teffts and Allen/Haenke argued the Cottage Easement is appurtenant because it provides it runs with the property. CP 303-04. It is true the Cottage Easement provides it “*runs with the property.*” Since the Cottage Easement does not have a dominant estate, only the burden runs with the property and is therefore appurtenant to Parcel B. *See* Restatement of Property 3rd Servitudes, §1.2 (3) (“*The burden of an easement or profit is always appurtenant...*”).

Teffts and Allen/Haenke argued, without citation to authority, that easements in gross do not extend beyond the life of the individual. CP 304. Teffts and Allen/Haenkes’ unsupported argument is at odds with Restatement 3rd Property, Servitudes, § 5.8 (1): “*Benefits in gross are property interests that are transferred by assignment or other conveyance*

effective to transfer an interest in land, and otherwise devolve as property of their owners. (Emphasis added).” See also, *Scott v. Lee and Donna Metcalf Charitable Trust*, 381 Mont. 64, 353 P. 3d 879, 882-83 (2015).

F. The Cottage Easement may not be terminated.

The trial court erred in concluding the July 10 Cottage Easement may be terminated by Teffts and Allen/Haenke. CP 441.

Teffts and Allen/Haenke misplace reliance upon *Cowan v. Gladder*, 120 Wash. 144, 206 P. 923 (1922) for the proposition they have the right to terminate the easements. In *Cowan*, the court held the grantor’s subsequent deed purporting to release the easement in that case, made after the grantor had lost control of the easement, was of no effect. 120 Wash. 145. *Cowan* does not support a power in Teffts or Allen/Haenke to terminate the July 10, 2010 Cottage Easement.

The law disfavors termination of easements. *Johnson v. Lake Cushman Maintenance Co.*, 5 Wn. App. 2d 765, 779, 425 P. 3d 560 (2018) (“*An easement is only extinguishable in certain situations, such as when the easement holder releases the easement by instrument that complies with the statute of frauds, the owner of the servient estate uses the easement adversely, the easement is abandoned, or the dominant and servient estates merge.*”). None of the recognized ways to terminate an easement are present in this case.

G. Teffts took title to their property subject to the Cottage Easement.

A successor in interest to the servient estate takes the estate subject to the easements if the successor had actual, constructive, or implied notice of the easement. *Johnson v. Lake Cushman Maintenance, Inc.*, 5 Wash.App.2d 765, 778, 425 P. 3d 560 (2018); *Hanna v. Margitan*, 193 Wash. App. 596, 606, 373 P.3d 300 (2016); *810 Props. v. Jump*, 141 Wash. App. 688, 699, 170 P.3d 1209 (2007). The easements appear as exceptions to Teffts' deed. CP 383-86. The Cottage Easement was recorded in Pierce County on July 16, 2010. Therefore, Teffts took title to parcel B subject to the easements.

H. The Cottage Easement remains on Parcel E.

Even assuming Teffts have standing to argue the Cottage Easement merged with Parcel E while it was owned by Richard Barber, the fact remains Dawn Allen and Jason Haenke took title to Parcel E subject to that easement. The Cottage Easement appears as Exception 14 to their deed. CP 388, 393. Thus, even if that easement merged while Parcel E was owned by Richard Barber, the easement was subsequently revived by the exception in the deed to Dawn Allen and Jason Haenke. *Radovich v. Nuzhat*, 104 Wn. App. 800, 16 P. 3d 687 (2001).

In *Radovich*, an easement for parking was granted on a vacant parcel in favor of the owner of a nearby commercial property. Over the years, ownership of the parcels changed hands several times, and several times the dominant and servient estates of the easement were held by the same party. Notwithstanding common ownership of the dominant and servient estates of the easement, the subsequent conveyances included reference to the parking easement.

Radovich brought suit to determine the continued existence of the parking easement. The other property owners argued the parking easement had been terminated. The trial court gave summary judgment for the other property owners. The Court of Appeals reversed, citing, *inter alia*, Restatement of Property § 497, comment h:

When an easement has been extinguished by unity, the easement does not come into existence again merely by severance of the united estates.... Upon severance, a new easement authorizing a use corresponding to the use authorized by the extinguished easement may arise. If it does arise, however, it does so because it was newly created at the time of the severance. Such a new creation may result, as in other cases of severance, from an express stipulation in the conveyance by which the severance is made or from the implications of the circumstances of the severance. (Emphasis added).

104 Wn. App. 805-06.

Radovich reveals the strength of Washington's policy against termination of easements.

Here, as in *Radovich*, the November 16, 2017 deed of Parcel E to Allen/Haenke subjected their interest in Parcel E to the Cottage Easement, thereby reviving the easement, if it was ever extinguished. CP 388, 393.

That easement is noted as Exception 14 to Allen/Haenke's deed:

Easement(s) for the purpose (s) below and rights incidental thereto as set forth in a document:

In favor of: Richard Barber
Purpose: maintain, repair and replace the cabin (cottage)

Recording Date: July 16, 2010
Recording No: 201007160568

CP 393.

Here, as in *Radovich*, Exception 14 gives sufficient information in the name of the grantee, the recording date and the recording number to identify the conveyance of the Cottage Easement, which contains a legal description. *See Bingham v. Sherfey*, 38 Wash.2d 886, 234 P.2d 489 (1951). Therefore, as in *Radovich*, the Cottage Easement was revived, if it was ever lost, by Exception 14 to the November 16, 2017 deed of Parcel E to Allen/Haenke. CP 393.

I. The trial court erred in denying Richard and Debra's Motion for Reconsideration.

Error is assigned to the trial court's denial of Richard and Debra's Motion for Reconsideration. CP 488-89. In their Motion for Reconsideration, Richard and Debra argued the Cottage Easement was not invalid, as on July 6, 2010, Debra still owned Parcel B. On that date, there was no legal impediment to Debra's execution to Richard of that part of the Cottage Easement on Parcel B.

The fact that the Cottage Easement extends on to a portion of Parcel E, which was then owned by Richard Barber, does not invalidate the entire easement. *See* Restatement of Property (First) § 497, comment c. (“*Where there is unity of ownership of some only of the interests which may exist in a dominant and a servient tenement, the easement continues to exist as to the remaining interests.*”); Tiffany on Real Property § 70 (“*...The estate which is merged, and as a result of the merger disappears, is necessarily an estate no greater in quantum than the estate in which it is merged...*”); 2 American Law of Property § 8.92 at 300 (Little, Brown and Company 1952) (“*The unity of title as to part of the premises included in a dominant and a servient tenement necessarily causes an extinguishment of the easement appurtenant as to, but only as to, the area included in the unity.*”). Therefore, regardless of what

happens to that portion of the Cottage Easement on Parcel E, it remains valid on Parcel B.

Teffts and Allen/Haenke argued in their response to Appellants' motion for reconsideration the Cottage Easement did not have a severability clause and therefore if the easement was invalid on Parcel E, it was invalid *in toto*. CP 468-69. Teffts and Allen/Haenke failed to cite any authority in support of that argument, so it should not be considered. *De Heer v. Seattle Post Intelligencer*, 60 Wn. 2d 122, 126, 372 P. 2d 193 (1962).

The rule limiting extinguishment of only that part of an easement subject to merger is consistent with Washington law that disfavors termination of easements. *See Johnson v. Lake Cushman Maintenance Co.*, 5 Wn. App. 2d 765, 779, 425 P. 3d 560 (2018).

J. The Cottage Easement did not merge with Parcel E.

Merger is a disfavored doctrine. *Radovich v. Nuzhat*, 104 Wn. App. 800, 805, 16 P. 3d 687 (2001). (“[T]he doctrine of merger is disfavored both at law and in equity, and there are exceptions to its application.”). Merger of estates will not be recognized where the party in whom the two interests are vested does not intend such a merger to take place. *Mobley v. Harkins*, 14 Wn. 2d 276, 282, 128 P. 2d 289 (1942). Neither Debra Curtis nor Richard Barber intended the July 6, 2010 Cottage

Easement would merge with his then-ownership of Parcel E. CP 458. Therefore, no part of the Cottage Easement merged with the ownership of Parcel E.

K. Teffts and Allen/Haenke are estopped to deny the presence of the Cottage Easement on Parcels B and E.

Restatement (Third), Servitudes § 2.10 (1) provides as follows:

If injustice can be avoided only by establishment of a servitude, the owner or occupier of land is estopped to deny the existence of a servitude burdening the land when:

(1) the owner or occupier permitted another to use that land under circumstances in which it was reasonable to foresee that the user would substantially change position believing that the permission would not be revoked, and the user did substantially change position in reasonable reliance on that belief; ...

In this case, from the date Plaintiffs Allen and Haenke took possession of Parcel E in 2017 until the commencement of this action in December 2018, Defendants continued to rent the cabin, and expend money to repair and maintain it. CP 458.

Loss of even a portion of the Cottage Easement threatens Defendants with substantial financial loss. As explained in paragraphs 22-44 of their Joint Declaration filed in opposition to Plaintiffs' Motion for Partial Summary Judgment, Richard and Debra have contributed substantial sums

of money and countless hours of their time in rehabilitating the cabin, as well as maintaining it, cleaning it, and renting it. CP 374-75. Loss of access through Parcel E will also make the cabin landlocked. Public policy will not permit property to be landlocked and rendered useless. *Hellberg v. Coffin Sheep Co.*, 66 Wash.2d 664, 666, 404 P.2d 770 (1965); *Tiller v. Lackey*, 6 Wn. App. 2d 470, 496, 431 P. 3d 534 (2018). As a result, Defendants will be unable to rent the cabin. Richard will suffer thousands of dollars in lost revenue.

In light of the foregoing, injustice can only be avoided by allowing Richard and Debra to access the cabin across Parcel E. For that reason, the trial court abused its discretion by failing to reconsider Richard and Debra's motion for reconsideration.

L. If they are denied access across Parcel E to State Route 302, Richard and Debra are entitled to an easement by necessity over the same route.

If the Court upholds the trial court's ruling as to the invalidity of the Cottage Easement on Parcel E, Richard and Debra will seek a ruling they are entitled to an easement by necessity over the same route. Washington courts recognize an easement by necessity. *Hellberg v. Coffin Sheep Co.*, 66 Wn. 2d 664, 404 P. 2d 770 (1965). An easement of necessity is an expression of a public policy that will not permit property to be landlocked and rendered useless. *Hellberg*, 66 Wn. 2d 666; *Visser v. Craig*, 139 Wn.

App. 152, 159, 159 P.3d 453 (2007); *Tiller v. Lackey*, 6 Wn. App. 2d 470, 431 P. 3d 534 (2018).

Although prior use is a circumstance contributing to the implication of an easement, if the land cannot be used without the easement without disproportionate expense, an easement may be implied on the basis of necessity alone. *Fossum Orchards v. Pugsley*, 77 Wn. App. 447, 451, 892 P. 2d 1095 (1995); *Adams v. Cullen*, 44 Wash.2d 502, 268 P.2d 451 (1954). There is no other viable route from the cabin to SR 302 other than the route set forth in the Cottage Easement. CP 458. Therefore, necessity dictates an implied easement over Parcel E be recognized in favor of Richard.

M. The Court should reverse the trial court's order to Richard, Debra and their tenant to vacate the Cottage Easement and the order to post a surety bond.

Because Teffts and Allen/Haenke were not entitled to summary judgment, it follows they were not entitled to an order requiring Richard and Debra and their tenant to vacate the Cottage Easement. Nor are Teffts and Allen/Haenke entitled to the order to post a surety bond.

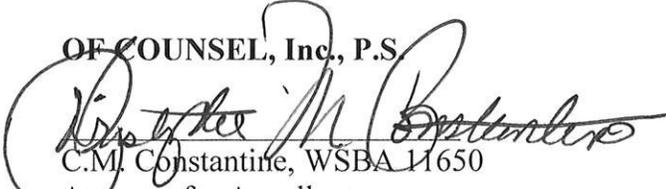
Even if Teffts and Allen/Haenke were entitled to a surety bond, Richard maintains liability insurance on the Cottage Easement in the amount of \$500,000 per accident and medical payments of \$1,000 per

each person and \$10,000 per accident. CP 459. A surety bond in the amount of \$25,000 is therefore redundant.

VII. CONCLUSION

The trial court erred in limiting this appeal to the issues in the Order for Partial Summary Judgment. The trial court erred in adopting findings in that order. The trial court erred in granting partial summary judgment for Teffts and Allen/Haenke. Teffts lacked standing to challenge the Cottage Easement's presence on a portion of Parcel E. The Cottage Easement is an easement in gross given to Richard Barber. The Cottage Easement may not be terminated. Teffts took title to their property subject to the Cottage Easement. The Cottage Easement remains on Parcel E. The Cottage Easement did not merge with Parcel E. Teffts and Allen/Haenke are estopped to deny the presence of the Cottage Easement on Parcels B and E. If they are denied access across Parcel E to State Route 302, Richard and Debra are entitled to an easement by necessity over the same route. The Court should reverse the trial court's order to Richard, Debra and their tenant to vacate the Cottage Easement and the order to post a surety bond.

Respectfully submitted,

OF COUNSEL, Inc., P.S.

C.M. Constantine, WSBA 11650
Attorney for Appellants

VIII. APPENDICES

1. Order on Motion for Partial Summary Judgment
2. Memorandum of Journal Entry, dated April 19, 2019
3. Order on Motion for Entry of Final Judgment



Hon. Kathryn J. Nelson
Hearing Date: March 29, 2019, 9:00 a.m.



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

MICHAEL TEFFT and ANGELA TEFFT,
Husband and Wife, and Washington
Residents, and

DAWN ALLEN and JASON HAENKE,
Washington Residents,

Plaintiffs,

v.

RICHARD C. BARBER, and DEBRA L.
CURTIS, Washington Residents,

Defendants,

and

BRADLEY STUTLAND, a Washington
Resident, and Tenant of Defendant,

and

SANDRA LIVINGSTON, a Washington
Resident, and Tenant of Defendant,

Additional Defendants/Parties
Whose Interests May Be Affected.

No. 18-2-13441-8

~~(PROPOSED)~~ ORDER FOR
PARTIAL SUMMARY JUDGMENT

(PROPOSED) ORDER FOR
PARTIAL SUMMARY JUDGMENT - 1

LAW OFFICES OF CYNTHIA ANNE KENNEDY, PLLC
P.O. BOX 147
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1 THIS MATTER came before the Court on the Motion for Partial Summary
2 Judgment filed by Plaintiffs Michael Tefft, Angela Tefft, Dawn Allen and Jason Haenke;
3 wherein the Plaintiffs sought expedited review of the first five issues in their Complaint
4 ("Plaintiff's Complaint"), challenging the validity and nature of three easements granted
5 to Richard C. Barber which negatively affect their properties: a First Cottage Easement
6 (No. 200906260301) dated June 25, 2009, an Access Easement (No. 200906260300)
7 dated June 25, 2009; and a Second Cottage Easement (No. 201007150586) dated July 6,
8 2010 (together, herein, the "Easements"); and the Court reviewed that Motion and the
9 supporting Declarations and attachments thereto, and other referenced Pleadings, as well
10 as any Opposition and Reply Briefs thereto, and heard any argument of Counsel;

11 NOW, therefore, it is hereby ORDERED, ADJUDGED and DECREED:
12 The Plaintiff's MOTION FOR PARTIAL SUMMARY JUDGMENT is hereby
13 GRANTED with regard to the following marked issues:

14 ~~X~~ The Court finds that the Easements are invalid because they purport to
15 burden property not owned by the Grantor but owned by the Grantee at the time
16 they were granted.¹

17 _____ The Court finds that the Easements are perpetual and run with the land.²

18 _____ The Court finds that the Easements are "easements appurtenant" and not
19 "easements in gross."³

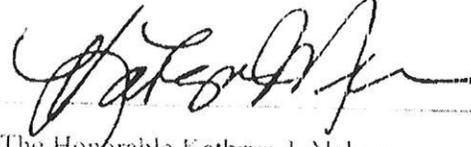
20 ~~X~~ The Court finds that since the Easements are invalid, or perpetual
21 easements that run with the land, or "easements appurtenant," they can be
22 terminated by the current Property Owners.⁴

24 ¹ Plaintiffs' Complaint, Issue 12.1.
25 ² Plaintiffs' Complaint, Issue 12.2.
³ Plaintiffs' Complaint, Issue 12.3.
⁴ Plaintiffs' Complaint, Issue 12.4.

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X The Court finds that Richard C. Barber, Debra L. Curtis and their tenant(s) must vacate the invalid or appurtenant Easement areas, within 30 days.⁵ During that period, the Defendants and their tenants shall hold the Property Owners harmless for any injuries or other liabilities arising from the Defendants' and/or their tenants' use of the Easement Areas, and the Defendants shall post a \$25,000 surety bond to cover any damages to Property Owners properties. The removal of personal property from the cottage shall be scheduled for a time mutually agreed by the Parties.

ENTERED this 29 day of March, 2019.


The Honorable Kathryn J. Nelson



Presented by:
LAW OFFICES OF CYNTHIA ANNE KENNEDY, PLLC

By Cynthia Kennedy
Cynthia Kennedy, WSBA #28212
Attorney for Plaintiffs, Michael Tefft,
Angela Tefft, Dawn Allen and Jason Haenke

Christophe Contente
WSBA 11655
Attorney for Defendants

⁵ Plaintiffs' Complaint, Issue 12.5.



18-2-13441-8 53186864 CME 04-22-19



IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

MICHAEL TEFFT
Plaintiff(s)

Cause Number: 18-2-13441-8
Memorandum of Journal Entry

vs

RICHARD C. BARBER
Defendant(s)

Judge/Commissioner: KATHRYN J. NELSON
Court Reporter: DANA EBY
Judicial Assistant: Kristine A Mairie

TEFFT, MICHAEL	Cynthia Anne Kennedy	Attorney for Plaintiff/Petitioner
TEFFT, ANGELA	Cynthia Anne Kennedy	Attorney for Plaintiff/Petitioner
ALLEN, DAWN	Cynthia Anne Kennedy	Attorney for Plaintiff/Petitioner
HAENKE, JASON	Cynthia Anne Kennedy	Attorney for Plaintiff/Petitioner
BARBER, RICHARD C	Christopher Martin Constantine	Attorney for Defendant
CURTIS, DEBRA L	Christopher Martin Constantine	Attorney for Defendant
STUTLAND, BRADLEY	Christopher Martin Constantine	Attorney for Defendant
BARBER, RICHARD C		
CURTIS, DEBRA L		
STUTLAND, BRADLEY		

Proceeding Set: Motion
Proceeding Outcome: Motion Held
Resolution:

Proceeding Date: Apr 19, 2019, 9:45 AM

Clerk's Code: MTHRG
 Proceeding Outcome code: MTHRG
 Resolution Outcome code:
 Amended Resolutcon code:

IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

MICHAEL TEFFT
vs
RICHARD C. BARBER

Cause Number: 18-2-13441-8
Memorandum of Journal Entry

Judge/Commissioner: KATHRYN J. NELSON

MINUTES OF PROCEEDING

Start Date/Time: Apr 19, 2019, 9:18 AM

Judicial Assistant: Kristine Maine

Court Reporter: DANA EBY

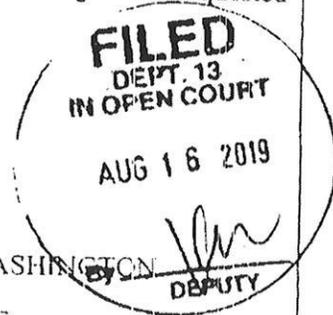
April 19, 2019 09:18 AM - This matter comes before the Court for a motion for reconsideration on the order for partial summary judgment. Present Cynthia Kennedy for the petitioner and Christopher Constantine for the defendant. Atty Constantine addresses the Court. **09:29 AM** - Atty Kennedy responds. **09:41 AM** - Atty Constantine replies. **09:44 AM** - Court denies motion. Atty Constantine requests interlocutory review. Atty Kennedy responds. The Court will certify interlocutory review. **09:46 AM** - This matter is at recess.

End Date/Time: Apr 19, 2019, 9:45 AM



18-2-13441-8 53728742 OR 08-21-19

Hon. Kathryn J. Nelson
Hearing Date: August 16, 2019, 9:00 a.m.
Oral Argument Requested



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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

MICHAEL TEFFT and ANGELA TEFFT,
Husband and Wife, and Washington
Residents, and

DAWN ALLEN and JASON HAENKE,
Washington Residents,

Plaintiffs,

v.

RICHARD C. BARBER, and DEBRA L.
CURTIS, Washington Residents,

Defendants.

No. 18-2-13441-8

~~(PROPOSED)~~ ORDER ON
MOTION FOR ENTRY
OF FINAL JUDGMENT

(PROPOSED) ORDER ON MOTION
FOR ENTRY OF FINAL JUDGMENT - 1

LAW OFFICES OF CYNTHIA ANNE KENNEDY, PLLC
P.O. BOX 1477
GIG HARBOR, WASHINGTON 98335
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THIS MATTER having come on regularly for hearing upon the Motion of the Defendants Debra Curtis and Richard Barber for an Order making the March 29, 2019 ORDER GRANTING PARTIAL SUMMARY JUDGMENT final for purposes of appeal; and the Court having reviewed the files including the following pleadings: the Defendants' Motion, the Plaintiffs' Responses to the Motion, the Defendants' Reply thereto and the Parties' Proposed Findings of Fact and Conclusions of Law; and having heard any argument of Counsel; and the Court being otherwise fully advised;

NOW, therefore, it is hereby ORDERED, ADJUDGED and DECREED:

The Defendants' MOTION for ENTRY OF FINAL JUDGMENT is GRANTED;

The Court finds there is no just reason for delaying entry of final judgment as to the issues decided in the ORDER GRANTING PARTIAL SUMMARY JUDGMENT;

The Court adopts the attached FINDINGS OF FACT AND CONCLUSIONS OF LAW submitted by the Plaintiffs on August 7, 2019, in their Additional Response to Motion for Entry of Final Judgment;

Any appeal shall be limited to the issues decided in the ORDER GRANTING PARTIAL SUMMARY JUDGMENT entered on March 29, 2019 (Plaintiffs' Issues 1, 4 and 5);

The Superior Court shall retain jurisdiction over the remaining issues in this case, pending the outcome of any appeal;

There being no just reason for delay, and pursuant to CR 54(b), the Court hereby GRANTING PARTIAL SUMMARY JUDGMENT entered on March 29, 2019 made FINAL for purposes of appeal.

ENTERED this 16th day of August, 2019.

[Handwritten Signature]
The Honorable Kathryn J. Nelson

FILED
DEPT. 13
IN OPEN COURT
AUG 16 2019
BY *[Signature]*
DEPUTY

1 Presented by:
2 LAW OFFICES OF CYNTHIA ANNE KENNEDY, PLLC

3 
4 By
5 Cynthia Kennedy, WSBA #28212
6 Attorney for Plaintiffs, Michael Tefft,
7 Angela Tefft, Dawn Allen and Jason Haenke

7 Approved by:
8 OF COUNSEL, INC., P.S.

9 
10 By
11 Christopher M. Constantine, WSBA #11650
12 Attorney for Defendants, Debra Curtis
13 and Richard Barber

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(PROPOSED) ORDER ON MOTION
FOR ENTRY OF FINAL JUDGMENT - 3

LAW OFFICES OF CYNTHIA ANNE KENNEDY, PLLC
P.O. BOX 1417
GIG HARBOR, WASHINGTON 98155
TELEPHONE: (206) 831-0002
FACSIMILE: (206) 831-4918

IX. CERTIFICATE OF MAILING

The undersigned does hereby declare that on February 13, 2020, he delivered a copy of APPELLANTS' BRIEF filed in the above-entitled case to the following persons:

Cynthia Kennedy Law Office of Cynthia Anne Kennedy, PLLC P. O. Box 1477 Gig Harbor, WA 98335	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Overnight Courier <input type="checkbox"/> Electronically via email <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Via Washington State Appellate Courts' Portal
Clerk Washington State Court of Appeals, Division II 930 Broadway, Suite 300 Tacoma, WA 98402-4454	<input type="checkbox"/> Via U.S. Mail <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via E-mail <input checked="" type="checkbox"/> Via Washington State Appellate Courts' Portal

DATED this 13th day of February 2020.

By: 
Printed Name:

OF COUNSEL INC PS

February 13, 2020 - 3:19 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 54038-0
Appellate Court Case Title: Michael Tefft, et al, Respondents v. Richard Barber, et al, Appellants
Superior Court Case Number: 18-2-13441-8

The following documents have been uploaded:

- 540380_Briefs_20200213150705D2313127_7541.pdf
This File Contains:
Briefs - Appellants
The Original File Name was Appellants Brief.pdf

A copy of the uploaded files will be sent to:

- cynthiakennedy@kennedylegalsolutions.com

Comments:

Sender Name: Christopher Constantine - Email: ofcounsel@mindspring.com
Address:
PO BOX 7125
TACOMA, WA, 98417-0125
Phone: 253-752-7850

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