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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
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No. 283348

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON.

Respondent,

v.

LANA T. FRAZIER-TURNER and
JAMES R. LEE JR.

Appellants

v.

JAMES R. LEE SR.,

Respondent

YAKIMA COUNTY SUPERIOR COURT
CAUSE NO. 082038687
THE HONORABLE BLAINE G. GIBSON
Presiding at the Trial Court.

APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

I. INTRODUCTORY STATEMENTS.....1

II. ARGUMENT.....4

A. REPLY TO RESPONDENT.....1,2,4,6,7,9,AND10.....11

B. REPLY TO RESPONDENT.....3,5, AND 15.....15

C. REPLY TO RESPONDENT.....3,6,7,AND 10.....16

D. REPLY TO RESPONDENT.....11.....19

E. REPLY TO RESPONDENT... ..12.....20

F. REPLY TO RESPONDENT.....13.....21

G. REPLY TO RESPONDENT14.....22

H. REPLY TO RESPONDENT.....16.....26

III. REPLY TO FEE REQUEST & APPELLANTS' REQUEST FOR FEES27

IV. CONCLUSION.....28

TABLE OF AUTHORITIES

| <u>Authority</u> | <u>Page#</u> |
|---|--------------------|
| <u>Constitutional Provisions:</u> | |
| 5 th Amendment..... | 4,7,8,11,16,21 |
| 14th Amendment | 4,7,11,16,21,23,24 |
| <u>Federal Rules</u> | |
| Federal Rules of Evidence Article IX Rule 902 (1), (4), | 13,16 |
| 42 USC, section 1981..... | 4,28 |
| 42 USC, Sec 4625, 4651 and 4652 | 21 |
| 28 U.S.C. Sec 2254 | 16,23,24 |
| <u>Washington State Cases:</u> | |
| <u>Bohn v. Cody</u> , 119 Wn.2d 357,363 (1992), | 20 |
| <u>Dietz v. Doe</u> , 131 Wn.2d 835 935 P.2d 611 (1997) | 20 |
| <u>Dependency of A.S. v. Safouane</u> , 101 Wn. App 60, 72. 6P.3d 11(2000) | 28 |
| <u>Folsom v. County of Spokane</u> , 111 Wn.2d 256,263, 759 P.2d 1196, 1200 (1988).23 | |
| <u>In re Estate of Lint</u> , 135,Wash.2d 518, 957 P.2d 755 (1998) | 16,17,18 |
| <u>State v. Kirkman</u> , 159 Wn.2d 918, 935, 155 P. 3d 125 (2007) | 4 |
| <u>Marriage of Elam</u> 97, Wn.2d 11,650 P.2d 213 (1982)..... | 16 |
| <u>State v. Mannhalt</u> 33 Wn.App. 696, 704, 658 P.2d 15 (1983)..... | 23 |
| <u>State v. O'hara</u> , 167 Wn.2d 91,98 217 P.3d 756 (2009) | 4 |
| <u>State v Stubbs</u> , 144 Wash. App. 644 184 P. 3d 660 (2008) | 12 |
| <u>Federal Cases</u> | |
| <u>Baxter v. Palmigiano</u> , 425 U.S. 308, 318 (1976). | 13 |
| <u>Bilokumsky v. Tod</u> , 263 U.S. 149, 153-154 (1923) | 13 |
| <u>Boyd v. United States</u> 116 US 616 (1886) | 7 |
| <u>Brown v. Allen</u> , 344 U.S. 443,458, 73 S.CT 397, 97 LEd. 469 (1953), | 24 |
| <u>Fetterly v. Paskett</u> , 997 F.2d 1295, 1300 (9 th Cir. 1993, cert denied, 513 U.S. 914, 115 S.Ct.290, 130 L.Ed.2d 205 (1999) | 24 |
| <u>Hicks v. Oklahoma</u> , 447 U.S. 343,346, 100 S. Ct. 2227, 65 L.Ed 175 (1980)..... | 24 |
| <u>Jammal v. Van de Kamp</u> , 926 F.2d918,919 (9 th Cir. 1991)..... | 24 |
| <u>United States v.Hale</u> , 422 U.S. 171, 176(1975). | 12 |
| US Supreme Court (1866) | 29 |
| <u>Court Rules</u> | |
| RAP 2.2..... | 28 |

| | |
|-------------------------------|------------------------|
| RAP 2.5 (a)(3) | 2,4,5,6, 7,13,16,20,23 |
| RAP 9.2 (a) and (b) | 5 |
| RAP 10.3(b) section (a) | 4 |
| Rule 56..... | 14 |
| Rule ER 901 | 16 |
| RAP 12.2 | 28 |
| RAP 18.1(a)..... | 27 |
| RAP 18.9..... | 27 |

Washington State Statutes:

| | |
|------------------------|-----------|
| RCW 2.44.010 | 19 |
| RCW 4.92.150 | 28 |
| RCW 5.44.060 | 13 |
| RCW 5.44.130 | 5,13 |
| RCW 8.04.010 | 11,21 |
| RCW 8.04.130 | 4,5,27,29 |
| RCW 8.04.140..... | 12 |
| RCW 8.04.092 | 27 |
| RCW 8.04.094 | 3,14 |
| RCW 8.25.070 (2) | 27 |
| RCW 8.25.075 | 27 |
| RCW 9A.60.010 | 6,13,16 |
| RCW 11.12.020 | 17,22 |
| RCW 11.94.010 | 25,26 |
| RCW 42.44.130 | 13,16 |
| RCW 42.44.180 | 13,16 |
| RCW 60.04.021..... | 2 |
| RCW 60.04.211 | 2 |
| RCW 64.04.050 | 10 |
| RCW 64.08.050 | 13 |

Other Authorities:

| | |
|---|----|
| RPC 1.2 (c)..... | 20 |
| RPC 1.18 | 19 |
| WAC 468-100-002 (16) | 21 |
| WAC 468-100-002 (d) | 21 |
| WAC 468-100-002 (15)..... | 21 |
| Imwinkleried, Edward J. "Evidentiary Foundations," The Michie Company, (1995) 3 rd ED. Section (D) Authentication of Official Writings (1) The Doctrine, pg 52. | 16 |

I. INTRODUCTORY STATEMENT

Appellants James R. Lee JR and Lana T. Frazier-Turner are the injured parties and legal owners of property which was subject to the October 6, 2008 condemnation petition. The property was legally transferred January 15, 2008 by quitclaim deed by Mitzi Lee to her son and daughter the above appellants. Appellants Opening Brief 7-8. For further documentation, Mitzi Lee was required by the notary to renew her Washington State Identification card at the Department of Licensing in Auburn where she resides, as the old one had expired before she would notarize the documents. Mother signed her identification document card required at DOL and received her new card January 15, 2008. This was well in advance of the future condemnation petition. The property transfer was completely independent of any eminent domain action.

June 15, 2008 as stated in Respondent brief is incorrect as the recording date. The official recording of the deeds was accomplished June 16, 2008. The treasurer's document of the same date required for recording and tax purposes is public record and contains the signatures of appellants James R. Lee JR, Lana T. Frazier-Turner and that of our mother, the grantor Mitzi Lee, who was required to be physically present and sign the document in person. The treasurer's official stamp appears on the front of the deeds. All parties to the recording being: James R. Lee JR, (oldest son) Lana T. Frazier-Turner (second oldest daughter and caretaker for the past 14

years) and Mitzi Lee were required to certify under penalty of perjury that the foregoing was true and correct.

Respondent's Opening brief at Page 1 factually states that the parties to the condemnation petition were listed on the Amended Condemnation Petition on October 31, 2008. Mitzi Lee was not identified as such. Earl Lee who was to later present a constitutional issue and manifest error pursuant to RAP 2.5 (a) (3) should not have been but was CP (63) 404-451 pg 6. Appellants were clueless as to why Earl Lee had been added to the petition. Earl Lee had no lien established under RCW 60.04.021 or filed under RCW 60.04.211 6/29/2009 RP 3 line 17-21.

On April 7, 2009 Respondent Brief at 2, acknowledges in his Motion for Summary Judgment, that his claim was in separate property (being 1414) which was inherited property. Respondent Brief at 2, further identifies (1414) as "previously owned" separate property by his wife.

On January 8, 2009, the order in the first of two phases of the condemnation Petition Adjudicating Public Use and necessity was entered. Respondent Brief at 3, references the May 15, 2009 Stipulated Judgment and Decree of Appropriation contract agreed upon by the parties without trial or court involvement which satisfied the second phase thereby establishing the amount of compensation for property taken for public use which contained the element of immediate possession and use in exchange for payment of \$170,000. On May 15th 2009, the Summary Judgment motion was heard after James R. Lee Sr. the State of Washington, Yakima County, Earl S. Lee, Lana T. Frazier-Turner and James R, Lee Jr. stipulated to a Judgment and Decree of Appropriation. Respondent Brief at 3, documents that the summary judgment motion was heard after the Stipulated Judgment and degree of Appropriation was signed on May 15, 2009. May 29, 2009 the court granted James R. Lee Sr's equitable lien to the "community".

6/19/09 appellants were removed as parties having no legal interest. Appellants Opening Brief at 8. 6/23/09 RP at 3, the court was aware that a settlement had already been reached due to the May 15, 2009 signing. 6/23/09 RP at 6 lines 23-25, the court verified that James R. Lee Jr and Lana T. Frazier-Turner as owners and parties signed the settlement agreement. Appellant's did not wish to be involved in a trial did not expect one, nor did they "just decide" to proceed as stated 6/23/09 RP 3 line 22. RCW 8.04.094 a request must be made for trial. Appellants only wished clarification of an easement issue which was supposed to be amended on record with the court in case there was a future issue. 6/23/09 RP at 8-10. 6/23/09 RP at 10 line 20-23. The court acknowledged that there had been a final settlement with the State of Washington by appellants.

Due to the State's joiner in the brief of Respondent of James R. Lee, Sr. by the State in page 1 of State Brief. "The State of Washington, Department of Transportation (the "State), joins, in all respects, in the brief of Respondent James R. Lee, Sr." the State has assumed shared liability and responsibility. The State cannot claim as in the Statement of the Case at State's Brief 1-2, that the State is not involved in this proceeding on appeal. By joining respondents James R. Lee Sr., the State is irrevocably involved. Per States Joiner in the brief of respondent, when specifically referring to brief of State, Appellants will make reference as State Brief. Appellants will refer to Respondent Opening Brief or Respondent Brief in order to differentiate between the two. WSDOT represented by the Attorney General acknowledged the contract, the title company insured it, and all parties recognized and accepted the Settlement Agreement as a legal contract. The Attorney General is the advisor to the government agency being Washington State Department of Transportation referred to as WSDOT.

II. ARGUMENT

Respondent's Opening Brief does not conform to section (a) of RAP 10.3(b) to answer the brief of the appellant. Essentially Respondent Opening Brief has failed to answer issues in error and are thus uncontested. The Respondent Opening Brief, has listed numbered errors but has not answered them, for example but not limited to the following, 1, 2, 3, 4, 5 and so on. Eight has been omitted as to why there was a violation of RCW 8.04.130 permitting the withdrawing of funds during appeal. The critical errors cited by appellants appear in number for the most part in the responding brief and though having significant relevance to the issues raised by appellants, remain unanswered. Respondent attorneys, are the attorneys of record and have superior knowledge of the proceedings. Appellants opening brief clearly states the issues and provides argument. The respondent has made only a token effort at all by providing only brief generalized "umbrella" statements with regard to critical issues and errors and has jumbled them all together. Appellant's civil rights have been violated pursuant to 42 USC Section 1981. The Constitutional issues under the 14th Amendment with regard to due process and those of fair and just compensation under the 5th Amendment governing eminent domain have been completely ignored and are self evident. This is in a manifest error pursuant to RAP 2.5(a) (3) of constitutional dimension especially when the Respondent Answer brief avoids answer to fair and just compensation to owners when private property is taken for public use. This error is manifest affecting a constitutional right State v.O'Hara,167 Wn.2d 91,98 217P.3d 756 (2009) and State v. Kirkman, 159 Wn.2d 918,935, 155 P.3d 125 (2007).

Appellants have provided reporters transcripts to respondent as per the Commissioner's ruling of the May 17th 2010, and complied with section 9.2 (a) and (b) but the respondent has ignored them, as well as the ruling that was made concerning the merit of appellant's appeal. Respondent Opening Brief has made no reference or argument against facts in the verbatim reports being June 23, 2009 RP verbatim report transcripts and the June 29, 2009 RP verbatim decision transcript of proceedings which were provided due to request by respondent and in response to respondent's Motion to Dismiss. Respondent makes a small notation at the bottom of Respondent Opening Brief at 12; however Respondent has made no argument upon them in his brief. Appellants Opening Brief was submitted months before Respondents Motion to dismiss which was denied. Respondent has failed to oppose based upon the reports provided by any argument, as such appellants' arguments must be accepted in their entirety unopposed. They are factual court documents and are evidence of the soundness of Appellant's argument. Respondent cannot argue that Appellant has failed to use the reports to support assignments of error as Appellants have. Respondents were free to use them to oppose. Respondent was provided with the verbatim reports and Statement of Arrangements detailing what appellants wished to prove. The constitutional rights issues raised with relation to the condemnation petition form the very foundation of eminent domain law. They are clearly not frivolous as respondent has pronounced.

Pursuant to 2.5 (a) (3) mentioned briefly as it pertains to RCW 8.04.130 exposes a manifest error where monies were removed from the registry during appeal. Another manifest error questions Conclusions of Law 5, as why only one deed, recorded under Auditors File Number 7615931 "1414" the previously owned separate inherited property deeded to appellants was ruled as "is void and of no effect" while "1412" the community property deed was not. Can one deed be legal and the other not under the same ruling? This is clearly another manifest error

permitted to be raised pursuant to 2.5 (a).(3). There are two criteria by which an issue can be raised for the first time on appeal: (1) The error is manifest and (2) the error affects a constitutional right. Appellants believe that a fraud has been committed against appellants in violation of the settlement contract as neither Earl Lee or Respondent intended to follow through with the May 15, 2009 Settlement Agreement. This is a manifest error in violation of RAP 2.5 (a) (3). Both Earl Lee and Respondent attempted to disprove the validity of the deeds after they both signed the settlement contract. Earl Lee sought to prove forgery 6/23/2009 RP at 2 and judge corroborated same 6/29/2009 at 8 lines 17-24. Respondent attorney suggested the same 6/23/2009 at 17-18. The ultimate tragedy of the above is that appellants suffered the same penalty as they would have if they had been guilty.

There is no argument by either respondent in the Respondents Opening Briefs supporting why Appellants should have been removed as parties to the condemnation and deprived of fair and just compensation or any evidence as to why deeds were ruled void and of no effect. The arguments in States Responding Brief 3-4 support why Appellants should have been entitled to the award as record owners. Neither has argued that the deeds were void or should have been ruled as such pursuant to RCW 9A.60.010. Neither has cited any evidence of wrongdoing on the part of appellants or grounds for the court's decision. If there are grounds Respondents should be able to cite what they are. They have not answered breach of contract issues by the court or lack of specific performance. Respondent has not provided an argument to the errors raised by Appellants in the opening brief. Respondent has failed to provide argument and has minimized and omitted those issues with regard to the contradictions and non facts present in the findings of fact and conclusions of law pervading the written and verbal rulings where appellants have ascribed error. Further Respondent has not answered the due process procedural issues presented

which were violated that the appellants have found fault. Appellant's Opening brief at page 10, clearly establishes Appellant's contention under 6/23/09 RP at 17 lines 17-22. Pursuant to RAP 2.5(a) (3) of manifest error. 6/29/09 RP at 17-19 negative, false and prejudicial issues which have harmed Mitzi Lee and Appellants James R. Lee JR and Lana T. Frazier-Turner were permitted in court on allegations of Earl Lee and Marta Idowu. This proceeding compelled appellants to defend themselves. The fact that appellants had to do so was a violation of their civil rights and has led to dire consequences for our mother Mitzi Lee and Appellants James R. Lee JR and Lana T. Frazier-Turner. To be specific, there was no reason for the court to conduct a totally unnecessary trial on issues not in issue and on facts that did not need to be determined but upon allegations against appellants. This abuse of process by its very nature harmed James R. Lee JR and Lana T. Frazier-Turner and Mitzi Lee. Earl Lee who was never a party was added on the condemnation on the petition later making unfounded allegations which the court knew to be false and unrelated to the condemnation petition issues.6/29/09 RP at 3 and CP 27-28 The result as related to appellants is illustrated graphically by Boyd v. United States 116 US 616 (1886) the US Supreme Court stated that "It is equivalent to a compulsory production of papers to make the nonproduction of them a confession of the allegations which it is pretended they will prove".

The violations of pertinent and relevant requisites that form the very foundation of: evidence, basic common law, ruling statutory law, requisites of: deeds, wills, contracts, notarized documents, and relevant case law that have been cited and documented in Appellants opening brief all remain unanswered or not adequately addressed. The errors which the appellants have found fault in the judgment are specifically in conflict with federal law and statutory law. Numerous errors cited relating to RAP 2.5 (3) expose conflict with the statutes leading to constitutional errors. In the event of any conflict between this section and a statute, the statute

governs.” Appellants are victims of the court and of constitutional errors that deprived appellants of their rights and property. Pursuant to the Settlement Agreement and contract with the State Attorney General and WSDOT, granting immediate possession and use, the state agreed that it would pay appellants being owners of record, fair and just compensation for property taken from appellants.

Appellants have received no compensation pursuant to the contract at all due to the rulings in this eminent domain case. There was a breach of contract and a lack of specific performance. In not answering, the core issues Respondent has failed to defend. Simply omitting issues you do want to answer is not an answer. Doing so does not fulfill the requirement of a counter argument and does not provide sufficient review grounds against the argument of appellants. The failure to answer specific issues and errors on the part of the respondent must be taken as an admission of their validity.

This is a case involving eminent domain and the 5th Amendment, a clear Constitutional rights issue within the Bill of Rights; it involves inherited separate property, deeds and contracts in common law at minimum. The Respondent has substantially ignored the Appellant’s arguments with regard to the appeal. Where Constitutional rights are at issue appellants have overcome any presumption that their claims are without merit and frivolous.

Appellant’s position has been misrepresented and obscured by the court. None of the issues presented not related to the eminent domain “trial” were expected, anticipated or desired by appellants especially being involved in a forgery case precipitated by Earl Lee and Marta Idowu. 6/23/09 RP at 2. The court presented as though appellants were in agreement or desired the unnecessary “trial” which was carried out in spite of the fact that a settlement had already been reached on compensation which nullified the necessity for trial 6/23/09 RP at 3. Marta Idowu,

Earl Lee were given free rein to prove forgery, abuse, coercion exploitation . Marta Idowu and Respondent were seeking to obtain \$144,500 for the purchase of a house for Respondent 6/23/09 RP at 18, Why was Marta Idowu a nonparty to the condemnation petition given so much deference? Why did she think she should be arguing for \$144,500 when the settlement was \$170,000 to be shared with appellants as legal owners. Both Earl Lee and Marta Idowu sought to attack the quit claim deeds and at the same time accuse appellants of wrongdoing all permitted by the court. 6/23/09 RP 16-19. The court stated that the trial was for determination of compensation but instead the issues of the validity of the deeds and forgery were put in issue. This clearly did not need to be determined. Argumentative unnecessary testimony was entertained in the court 6/23/09 RP 24-30 but also revealing the ulterior motives of Earl Lee and Marta Idowu. Both claimed that the deeds were forged which was legally impossible and false. Why did the court permit this? 6/23/09 RP at 17 line 17. Marta Idowu admitted to illegally taping Lana T. Frazier-Turner and Mitzi Lee against their will in their own home under the guise of coming for a visit 6/23/09 at 25. She also made unproven allegations she knew to be false. Marta Idowu had been attempting to negotiate sale of the properties herself without authorization and unknown to Mitzi Lee or to appellants. Marta Idowu had entered into a verbal agreement with WSDOT June 23, 2008 WSDOT letter CP 418-421 (Letter to Lana T. Frazier-Turner and James R. Lee, Jr at paragraph 3, Beginning, "At the end of our meeting and ending the paragraph "I have not had any communication with either of you.") even though she had no legal right to do so. Marta Idowu and Earl Lee later went on to file a guardianship petition in bad faith at the direction of the court 6/29/09 RP at 12. Unrelated issues to seek unnecessary guardianship for Mitzi Lee against her will as well as false allegations against appellants were prejudicially and unnecessarily entertained. Appellants did nothing wrong. Appellants believed the proceeding

after the signed settlement agreement was to be for the distribution of funds. However the court had already made its decision after the settlement agreement of May 15, 2009 and prior to trial. Appellants thought the judge would make the rulings according to law. Earl Lee as a lien holder was due to an error committed by Earl Lee, Appellants' originally expected that there would be resolution of the issue of Earl Lee as a party to the Condemnation Petition by Earl Lee providing proof pursuant to RCW 8.04.094 then court would proceed to distribution of funds based on the parties ownership interest in the properties. The appellants saw no need for proceedings beyond those issues. It is evident that there is an absence of any grounds in the record for the judge to conclude that there was a testamentary issue regarding the deeds that needed to be decided. Quitclaim deeds had no conditions at time of making and none could be added afterwards. RCW 64.04.050.

Judge opined without testimony of Mitzi Lee, or anyone else, having no basis or grounds and in the face of evidence on 6/29/09 at 8-9. Quit claim deeds by their very nature cannot be construed as deeds RCW 64.04.050. The settlement agreement and funds deposit itself prove their validity. Court provided no specific basis in law or otherwise for concluding that a deed, which is clearly a deed was a testamentary instrument. The respondent provided no evidence for such a conclusion.. On what grounds do you speculate deeds as being wills as the judge did, especially when the grantor herself was a party in the recording, which is public record. The judge asks James R. Lee Jr and Lana T. Frazier-Turner June RP if they signed the settlement agreement acknowledging them as legal owners and parties to contracts with WSDOT then ruled later that appellants were not parties yet distributed the settlement on the basis of that contract. Appellants have a legal right and expectation of fair a just compensation. Court knew the proceeding on eminent domain was over but entertained and subjected appellants to false issues

of forgery he knew to be false as well as contrived and false issues which had already been investigated and found unsubstantiated by APS and Auburn Police where no charges have ever been filed against appellants nor have appellants been found guilty of anything. However this judge's ruling and filings of a guardianship petition by Earl Lee and Marta Idowu appellant's brother and sister have now been used to sustain finding of fact and conclusion based on this court's findings of fact and conclusions of law against appellants in favor of Marta Idowu and Earl Lee who filed the petition on the same false allegations against appellants they made in eminent domain "trial" suggesting forgery, coercion, neglect etc. Appellants have been unjustly subjected to ridicule, defamed by malicious, libelous and slanderous in a proceeding where neither appellants nor Mitzi Lee were present and being sustained against her wishes, predicated upon and permitted by a faulty ruling that has caused Mitzi Lee to be deprived of her rights.

A. REPLY TO RESPONDENTS....1,2,4,6,7,9, AND 10

The condemnation petition is commenced under state statute being 8.04.010 ,it is governed by precepts of the Bill of Rights and the United States Constitution specifically the Fifth and Fourteenth Amendments. Right and title is governed and determined by property ownership which cannot be taken away from a citizen without due process of law. The court ignored all of that and unconstitutionally took appellants property from them. Why? Where there is a violation of life, liberty or property there is a violation of Constitutional and civil rights. The court violated eminent domain law. Where there is a violation of the 5th Amendment, in this case fair and just compensation there is a violation of the 14th Amendment as well, specifically due process of law. Appellant's Opening Brief at 10. Respondent has not provided any sufficient

contrary arguments or authority supporting court's decision specifically as related to the above 1,2,4, and 9. This is a failure to contest assertions and is considered to be evidence of acquiescence to the assertions United States v. Hale, 422 U.S. 171, 176(1975). Insufficient response to an issue does not provide the appellant court with a reasoned argument for review State v Stubbs, 144 Wash. App. 644, 184 P.3d 660 (2008).

Appellants do not believe that the "trial" was necessary or authorized pursuant to RCW 8.04.140. Respondent after the signing of the settlement agreement May 15, 2009. Which included Earl Lee, CP 27-28, ruled not to be a party. who rejected the very contract that he signed and took issue with it later. Respondent attorney did not sign in "good faith" as they had the intent to undermine the contract later with a summary judgment motion the same day May 15, 2009. Later Respondent attorney sought to undermine the very deeds the contract they signed was based upon 6/23/2009 17-18. In doing so, they have committed a fraud. There was no "arm twisting." All parties signed acknowledging the May 15, 2009 contract on the basis of the legality of the deeds the contract of which there was no issue.

Appellants do not believe that there were any valid conflicting claim issues to decide pursuant to RCW 8.04.140 which required a "trial". Appellants did not request one. Appellants were satisfied with the amount of just compensation pursuant to the Settlement Agreement. Persons seeking monies to be disbursed according to the statute are to furnish to the court satisfactory evidence that he is entitled to monies. At that point the court could or should make the ruling as to satisfactory evidence. Earl Lee did not do this. Earl Lee needed only to be in court for the purpose of proving that he was entitled to a lien or had a party interest pursuant to RCW 8.04.140 It was not for the Appellants to prove he was not. He was a party to the petition due to a typographical error he made while trying to sue Bob Hall Chevrolet in another matter and listed

the 1414 assessor' number on the suit as being the property owned by Bob Hall Chevrolet. Earl Lee though not an owner of '1414' having no ownership interest or legal right to advance a suit in behalf appellant's property was proceeding in a lawsuit as though he did. For that reason he was removed. The appellant's should not have had to get Earl Lee removed themselves CP 27-28. 6/29/09 RP at 3, Court permitting Earl Lee to be on the petition was detrimental and damaging to appellants when he had no legal right to be on the condemnation petition. 6/23/09 RP at 2 Judge permitted issues unrelated to the condemnation petition and evidence and facts not in issue to be presented by Earl Lee and Marta Idowu persons who should never have been involved with the petition at all. Appellant's Opening Brief at 10. Appellants were compelled to defend themselves Baxter v. Palmigiano, 425 U.S. 308, 318 (1976). Appellants were placed into the position of defending themselves on non-issues of forgery and abuse; if appellants had not done so their silence or refusal would be taken as evidence against them. The testimony of Earl Lee and Marta Lee wrongly and prejudicially permitted was used against Appellants. Bilokumsky v. Tod, 263 U.S. 149, 153-154 (1923) In doing so the court violated the rights of Lana T. Frazier-Turner and James R. Lee JR. pursuant to 2.5 (a) (3) permitting a manifest error. There were no conflicting claim issues with regard to title to the land or real estate that required a "trial" or needed to be decided pursuant to this statute. It was not of duty or necessity for the court to preside over a proceeding to determine the validity of the deeds, when pursuant to all of the following: RCW 64.04.050 Federal Rules of evidence 902, Rule ER 901, RCW 42.44.180, RCW 42.44.130, RCW 5.44.130, RCW 5.44.060, RCW 9A.60.010 and RCW 64.08.050 it was not necessary. This had already been factually and legally determined. Appellants question the reason for this endeavor? The appellants were the legal owners of the property and that was not in issue. Earl Lee was to provide evidence to the court proving that he had a valid claim. This

did not require a "trial". All parties signed the settlement agreement which resolved the settlement issue. There were no equitable liens that had been established prior to the May 15, 2009 signing of the settlement agreement and Decree of Appropriation with the state. The Summary Judgment per Respondent brief at 3 granted Summary judgment in part on May 29, 2009. The motion regarding Summary Judgment and a marital community and separate property claim was filed April 7, 2009. Respondents agreed to the settlement agreement with the State in which all parties signed agreed that there were no issues with regard to the deeds, in fact all parties signing acknowledged their validity and legality. Pursuant to RCW 8.04.094 a trial for the purpose of assessing compensation and damages is to be moved for within 60 days of the date of the entry of the order of immediate possession and use. The issues are to be brought to trial within one year from the date of the order unless there is sufficient proof that the hearing could not have been held within the year. Appellants did not request a trial after signing the agreement. Respondents did not request a trial after signing the agreement. All agreed by signing the settlement agreement authorizing immediate possession and use the trial issues to be decided being: Issues of Fact and Issues of Law had been settled Appellant Opening Brief at 13. In 6/23/09 RP at 3. The pre trial schedule was nullified at settlement as were scheduled hearings on motions including the Summary Judgment motion, rule 56. Appellant asks how was there a summary judgment on the issues of settlement after the settlement had been reached. The method of determination of just compensation did not require a determination of deed status or validity which was not in issue. It had to do with who owned the property at the signing of the contract which was not in issue. This could not legally be disputed after all parties signed the Settlement Agreement which stipulated immediate possession and use. Compensation should have been determined strictly based on who owned what property at the signing of the settlement. The only

proceeding should have been distribution of funds. No unnecessary proceedings should have been conducted on a pretrial schedule which was no longer relevant and totally unnecessary. "Trial" should never have been held. Hearings held or that had been previously scheduled on after the May 15, 2009 settlement should have been void. Court could have and should have ruled at "trial" that the deeds were legal as they were "self authenticating" notarized documents under seal. 6/29/09 RP at 6, court questions appellants James R. Lee Jr. and Lana T. Frazier-Turner who could have sold all of the property for the bulk of \$300,000 dollars in a Settlement with WSDOT in eminent domain as to why they did not. Appellants need never have gone to court at all. Appellants were fully aware as the legal owners that they could have sold their interest all of the property at that price if they had wished to, Second Declaration of Larry Hook, CP 410-451. Appellants would have avoided the issues wrongly permitted in the eminent domain "trial". Appellants would not and should not have suffered the emotional distress, pain and harm visited upon them permitted by the court by disgruntled family members of false accusation relating to the: deed issues, and the vindictive, malicious and false allegations of forgery, coercion, neglect and abuse all investigated and found to be baseless by Adult Protective Services and Auburn Police which included interview of Mitzi Lee herself. It is puzzling that the court would express how terribly unfortunate "these people" didn't accept the offer appearing to advise that appellants should have sold the property, after ruling that they were not parties or owners. Judge acknowledged and accepted appellants as parties to the settlement contract (6/23/09 RP 10). There were no issues as to legality. The respondent has failed to respond to the arguments. By failure to oppose, the respondent concedes the arguments on the merits.

B. REPLY TO RESPONDENTS....3,5, AND 15

Appellants address the issue of their rights violations completely in Appellant's Opening Brief at 10 and prominently within the Appellant's Reply Brief. Appellants completely argue State v. Mannhalt at page 23 of Appellant's reply brief. The court violated eminent domain law in depriving the appellants of their civil right and property. Respondent has not answered how appellants were to advance their claims after having been removed as parties and owners and ruled as having no legal right under the condemnation petition to the settlement award. Respondent has failed as well to argue sufficient grounds for the ruling which violates appellant's constitutional rights pursuant to the 5th and 14th Amendments pertaining to fair and just compensation for private property taken for public use and co-violation of due process of law. Respondent has failed to respond to the arguments and again by failure to oppose Respondent concedes the argument on the merits.

C. REPLY TO RESPONDENTS....3,6,7, AND 10

Appellant's answers to these issues and Marriage of Elam in Appellant's Opening Brief at 11-12 and CP 22-28. Respondent brief cites In re Estate of Lint, 135, Wash.2d 518, 957 P.2d 755 (1998) Estate of Lint has no factual relevance to this case yet Respondent argues that the court findings are verities because of the "trial". Respondent attorney in concert with Earl Lee and Marta Idowu and permitted by the court, intentionally used this "trial" to falsely accuse appellants 6/23/09 RP at 17, line 20. This again illustrates another manifest error pursuant to 2.5 (a) (3) and unnecessary pursuant to: Federal Rules of Evidence Article IX Rule 902, RCW 5.44.130, Rule ER 901, RCW 9A60.010, among others. The judge heard a trial on forgery on allegations of Earl Lee and testimony of Marta Idowu on an issue of forgery that factually did not need to be determined nor did the testimony concerning validity of the deeds. RCW 42.44.180 and RCW 42.44.130. Although these documents were self authenticating as described

Imwinkleried, Edward J. "Evidentiary Foundations." The Michie Company. (1995) 3rd ED. Section (D) Authentication of Official Writings (1) The Doctrine. Pg 52. Non factual findings were sustained contrary to law which the Respondent argues should be accepted as the truth. Evidence is accepted by meeting the burden of proof meaning it is factually true not factually false. Marta Idowu admitted that she recorded Lana T. Frazier-Turners and Mitzi Lee against their will and in violation of the law 6/23/09 RP at 25. The trial should not have occurred and nothing that Marta Idowu or Earl Lee said should have been entertained as evidence. Both should have never been heard and the "trial" should not have been permitted as this "trial" is where false allegations and non-factual testimony occurred harming Appellants. This violated the constitutional rights of appellants and is a manifest error. There were no wills involved in this matter. No testimony whatsoever by mother that she intended the deeds to be wills Appellant Opening Brief at 14. Mother did not testify during the trial. Her participation as a party to the recording of the deeds with appellants which is public record is clear evidence of that fact. Deeds are the evidence themselves that they were not intended to be wills RCW 11.12.020. It remains unanswered by Respondent as to the grounds by which the court ruled deeds as wills. (6/29/09 RP 8-10) where judge speculated without any evidence or testimony of Mitzi Lee that the deeds were intended to be testamentary transfers and ruled that appellants had no interest in the settlement where appellants were legal owners of record. The respondent has not answered that issue. The respondents has not provided any argument or citation to the record as to how this "trial" legitimately relates to an eminent domain case or to appellants. Respondent has not argued that Lint is in any way related to the appellant's case. Respondent is again seeking to substitute prejudice in absence of proof, in doing so, attempting to replace burden of proof with assumptions and of reckless and erroneous speculation. Respondent has not provided any

justification or evidence as to why a deed should be viewed as a will. By not answering the Appellants Respondent concedes to appellant's argument. Respondent has provided no evidence for such a conclusion or ruling. The Respondent has failed to answer why the court ruled on one deed and not the other. Can one deed be legal and the other not? Why did the ruling specify and pertain to "1414" the previously owned separate inherited property of Mitzi Lee and excludes "1412" the community property from being void CP 22-26, Conclusion of law 5? The Respondent has failed to establish a factual bearing or relevance to this case of Lint in what can only be concluded as a thinly veiled attempt to subvert the issues. This is also a blatant attempt to prejudice this appeal case with a false and misleading citation as to any facts or issues in this matter. There was no guardianship or guardian ad litem until after the eminent domain court in an unnecessary court hearing gathered prejudicial, false and damaging testimony then unnecessarily advised Earl Lee to seek an unnecessary guardianship petition. There have never been to date any substantiated issues with regard to any DSHS Adult Protective Services investigation or of the Auburn Police department of abuse, neglect coercion, exploitation or anything else. Mother has never been out of Lana T. Frazier-Turner's care for the past 14 years nor has she ever been removed and lives there of her own free will and desire. Mother is active in the church and attends twice a week. Mother attends all family gatherings and social functions. She is happy and she is where she desires to be. There is no credible evidence to the contrary. Mother has regular doctor visits and checkups without fail, monthly case manager visitation and all are mandated reporters by law. This was and is the same situation existing prior to a guardianship based on false allegations, false information and a faulty judgment. Appellants have been deprived of rights, property and their good names. Guardianship court used the findings of fact and conclusions of law made in the eminent domain trial as their findings of fact

and conclusions of law along with Earl Lee and Marta Idowu's petition wrongly and prejudicially advised to be sought by this judge in another contradictory statement. 6/29/09 RP at 12. Both of the agencies DSHS Adult Protective Services and Auburn Police Department have repeatedly (due to the harassing vindictive reports) determined that the allegations of Earl Lee and Marta Idowu are without merit and; mother has attested to it herself as she is perfectly able to do so. Appellant Opening Brief at 10. Unfortunately for appellants and Mitzi Lee, the court ruling in the eminent domain case was used to advance a guardianship petition in order to "protect mother's assets" supposedly being the condemnation settlement which was being held in the registry, now empty, after being consumed by guardian ad litem and attorney's fees. The irony is mother didn't need protection per the ruling and never did but the (assets) monies now gone, did by decision of the court. This was accomplished without the presence of James R. Lee Jr., Lana T. Frazier-Turner and without Mitzi Lee over her protests and against the will of appellants and of Mitzi Lee.

D. REPLY TO RESPONDENTS....11

Appellants argue that there was no community interest by Respondent in originally separate inherited property that had been legally deeded to appellants by Mitzi Lee appellant Opening Brief at 11-12. Respondent can only sue in behalf of the community where there is community. In this case there was none with regard to "1414".

The burden of establishing an attorney relationship is with the client not determined by an unknown attorney acting unilaterally. RCW 2.44.010 defines the authority of an attorney in representing his client which is by agreement. Respondent attorney had no legal authority to represent the "community" or accept a "community award". The court did not have the

authority to make this award in violation of eminent domain law thus depriving the appellants of owners of record of their fair and just compensation. Court ruled 6/29/09 RP at 11, that Mitzi Lee was not a party. Mitzi Lee did not ask for respondent attorney to represent her at any time nor did she ever speak to respondent attorney. According to RPC 1.18, a person who discusses with an attorney is a prospective client, Dietz v. Doe, 131 Wn.2d 835 935 P.2d 611 (1997) and Bohn v. Cody 119 Wn. 2d 357, 363, 832 P. 2d 71 (1992). This issue presents another manifest error in violation of 2.5 (a) (3). Mitzi Lee not being in court ever during “trial” and never being named as a party, never sought for an equitable lien claim to be advanced in her behalf. Appellants have argued that this was in the interest of Respondent only. Pursuant to RPC 1.2 (c) There are two requirements for a client attorney relationship (1) Consultation with your client and (2) Your client’s consent after consultation. Respondent sought the entire settlement for himself. Respondent Reply Brief at 4, (CP 166-167). How could that not be against the interest of Mitzi Lee? This was a clear conflict of interest concerning Mitzi Lee and in violation of appellants right’s as owners of the property.

E. REPLY TO RESPONDENTS....12

Appellants did not argue that there was an agreement to settle claim proceeds deposited with the court. That is a misrepresentation. Appellants believed that Respondent signed a Settlement Agreement in October of 2008 with the State of Washington prior to the May 15, 2009 signing. in which Respondent agreed to \$66,250. Appellants argued that since Respondent’s signed that Settlement Agreement, they should abide by it. Appellants would not agree to that amount and continued with negotiation and mediation finally achieving the \$170,000 which appellants considered to be fair.

F. REPLY TO RESPONDENTS....13

The condemnation petition is authorized by Federal and Constitutional authority which includes and authorizes the state to proceed under its authority as well as under state law. Appellant opening brief at 10. Appellants' did not expect a breach of contract by the court of a valid legal contract as owners of property subject to a condemnation petition in the eminent domain case. Settlement Agreement and Decree of Appropriation (immediate possession and use) were signed May 15, 2009, by the Attorney General representing the government agency being the Washington State Department of Transportation This was a legal binding contract in consideration of fair and just compensation guaranteed under the 5th and 14th Amendments of The Constitution of the United States. The 14th Amendment extends due process to the State and therefore does bind this court as well as under RCW 8.04.010. State programs initiated under eminent domain are also authorized under provisions of 42 USC Section 4625,4651 and 4652. These concern relocation and real property acquisition policies for Federal and Federally assisted programs which at their core is that no owner should be required to surrender property in violation of fair and just compensation. Under these policies ownership and other issues are to be cleared up before trial. In this case there were no issues according to State Brief 3-4. Pursuant to WAC 468-100-002 (16) The Washington State Department of Transportation acts through agency of the Federal Highway Administration. The court itself has an agency relationship pursuant to WAC 468-100-002 (d) as an instrumentality of the state. It is the responsibility of the court in its position to administer negotiations under WAC 468-100-002-(15) The judge is not supposed to use his position to deprive owners of their rights and property. He is there to insure that owners receive fair and just compensation. Appellant Opening brief at 10.

Respondent has failed to respond to the arguments or the error. By failure to oppose respondent concedes the argument on the merits.

G. REPLY TO RESPONDENTS....14

The decision ruling on 6/29/2009 RP at page 11, the court ruled that Mitzi Lee was not a party to the condemnation petition. 6/29/2009 at 5 the court questioned whether there was a marital community. 6/29/2009 RP at 8, court ruled marriage defunct as of 1996. 6/29/2009 RP at 7 the court referred to a marital community then entered findings of fact and conclusions of law that it was defunct. Why was the court making all of these rulings concerning Mitzi Lee a nonparty? If Mitzi Lee was a nonparty, she was not entitled to a settlement nor did she sign a Settlement Agreement. The court essentially made her a party but contradicted its ruling as Appellant's have addressed in its errors. Mitzi Lee was ruled not a party then treated as a party. If Mitzi Lee was not a party, how did she have a community interest to share with Respondent?. Appellants' were referencing an error which would or could have potentially excluded Mitzi Lee from a monetary interest in "1412" being community property. The court speculated on issues he had no knowledge of 6/29/09 RP at 5. On 6/29/09 RP 8-9, the court speculated the deeds were to be testamentary with no testimony by Mitzi Lee to that effect and having no grounds whatsoever then ruled as such. RCW 11.12.020 concerns the requisites of a will concerning what is to be done after death yet mother recorded the deeds with appellants June 16 2008. On 6/29/09 RP at 6, the court the court ruled that "1414" started off as separate property " because she inherited it" but the land is still separate property of Mitzi Lee. The court did so even though it was deeded to appellants. 6/29/09 the court opines about the issue of the house. What the WSDOT through the condemnation Petition wished to obtain was the land for the freeway widening project which affected the house which the court has focused. The decision ruling 6/29/09 RP at 8-10, the

court without any grounds, evidence and in light of a valid legal contract and legal documents speculated, upon notarized documents accepted and undisputed prior to the signing of the settlement agreement, then signed by all of the parties including the Attorney General thus acknowledging the validity. They could never have been testamentary when Mitzi Lee herself was a party to the recording of the deeds June 16, 2008 being very much alive. Wills are wills and deeds are deeds. On 6/29/09 RP at 10, ruling that appellants James R. Lee JR and Lana T. Frazier-Turner had no interest in the 170,000 even though it was James R. Lee JR and Lana T. Frazier-Turner who negotiated the Settlement Agreement and were the primary parties to the contract and legal undisputed owners of record acknowledged by the Attorney General in the States Opening joined brief 3-4, representing and advising the governmental agency being WSDOT. If there would have been any issues at all of legality there would not have been a contract.

On 6/29/2009 RP at 12 the court stated that the court proceeding was not about guardianship yet on 6/29/09 RP at 11-12 beginning at line 16 Earl Lee on page 11 to page 12 line 1- 7 was advised to start a guardianship. The result being that the entire settlement was completely consumed in fees to the guardian ad litem of approximately \$35,000, attorney fees in favor of Marta Idowu seeking guardianship of over \$30,000 dollars and the remainder to two attorneys who never represented Mitzi Lee in court, completely depleting the settlement to zero. The supporting findings of fact and conclusions of law of this case was the evidence used to sustain the petition against appellants. The State and Respondent both cite State v. Mannhalt 33 Wn.App. 696, 704, 658 P.2d 15 (1983) presumably to argue that under the law of the case doctrine generally precludes retrial of the same issues in review in a subsequent appeal if there is no substantial change in the evidence at a second determination of the cause. Folsom v.

County of Spokane, 111 Wn.2d 256,263, 759 P.2d 1196, 1200 (1988). Appellants argue under 28 U.S.C. section 2254 and RAP 2.5 (a), review is permitted in the case of violation of the, Constitution, laws, or treaties of the United States. The Appellant's argue that legal and constitutional errors were made that deprived appellants of their rights and property. In Brown v. Allen, 344 U.S. 443,458, 73 S.Ct 397, 97 LEd. 469 (1953), the Supreme court held that all federal constitutional rights are incorporated through the 14th Amendment Due Process Clause and made applicable to the states. Due to the unconstitutional taking of appellant's property, this is a clear violation of fair and just compensation. Appellants also argue that the Constitution views, deprivation of life, liberty and property as rights violations similarly. "Where the state creates a liberty interest, (life and property) (my emphasis and insert) however, it is not correct to say the matter is "merely a matter of state procedural law." Hicks v. Oklahoma, 447 U.S. 343,346, 100 S. Ct. 2227, 65 L.Ed 175 (1980) "The failure of a state to abide by its own statutory commands may implicate a liberty interest protected by the Fourteenth Amendment against arbitrary deprivation by a state." Fetterly v. Paskett, 997 F.2d 1295, 1300 (9th Cir. 1993, cert denied,513 U.S. 914, 115 S.Ct.290, 130 L.Ed.2d 205 (1999). Appellants also argue that the trial court violated appellant's due process rights when the court permitted and presided over a so called "trial" unrelated to issues relevant to eminent domain or needing determination at trial which "fatally infects the proceeding as to render them fundamentally unfair." Jammal v. Van de Kamp, 926 F.2d918,919 (9th Cir. 1991). There were no guardianship issues presented prior to neither eminent domain trial nor questions concerning validity of deeds. It was clearly prejudicial to appellants for judge to advise Earl Lee 6/29/09 RP 12 to start a guardianship. This was highly improper was prejudicial and unrelated to eminent domain. The court knew the proceeding was on eminent domain but entertained contrived false and malicious issues of forgery, which had

already been investigated and found unsubstantiated by APS and Auburn Police where no charges have ever been filed against appellants nor have appellants been found guilty of anything. Mother continues to happily reside with appellant Lana T. Frazier Turner as she has for the past 14 years in spite of all of the allegations of disgruntled non parties of her own free will and desire. Mother has never had an issue with her decisions and fully and freely supports her son and daughter. March 28, 2009 appellants were granted full power of attorney by Mitzi Lee pursuant to RCW 11.94.101 not to act as attorneys. Appellant's Opening Brief at 8. There was never a necessity for a guardian for the court to advise Earl Lee 6/29/09 RP 12 to start a guardianship was prejudicial and completely unrelated to eminent domain. Judge knew the proceeding was on eminent domain but entertained contrived false and malicious issues of forgery, which had already been investigated and found unsubstantiated by APS and Auburn Police where no charges have ever been filed against appellants nor have appellants been found guilty of anything. However this judge's ruling and filings of a guardianship petition by Earl Lee and Marta Idowu appellant's brother and sister have now been used to sustain finding of fact and conclusion based on this judges findings of fact and conclusions of law against appellants in favor of Marta Idowu who and Earl Lee who filed the original petition on the same false allegations against appellants they made in eminent domain "trial" suggesting forgery, coercion, neglect etc.. Appellants have been defamed by malicious, libelous and slanderous acts in a proceeding where neither appellants nor Mitzi Lee were present and being sustained against her wishes, predicated upon and permitted by a faulty ruling that has caused Mitzi Lee to be deprived of her rights and property. Appellants maintain that in light of the facts, the law, the contract, the factual undisputed evidence ;but for the fact that appellants Constitutional rights

were violated no reasonable fact finder would have found in this fashion and made rulings that have wreaked such havoc.

H. REPLY TO RESPONDENTS....16

Mitzi Lee designated James R. Lee Jr. and Lana T. Frazier-Turner Power of Attorney pursuant to RCW 11.94.010 May 28, 2009 Appellant Opening brief at 8. Appellants never attempted to act as attorneys. Appellants accepted in order to protect our mother from harm to her health and wellbeing. Appellants know they are not attorneys and never tried to be. Guardianship was not accomplished until April 12, 2010 on a Guardianship petition filed October 13, 2009 by Earl Lee and Marta Idowu. The decision in this case was cited and used as evidence by the guardian ad litem in her report and to support the findings of fact and conclusion of law against appellants by the judge (particularly the voiding of the deeds and allegations of forgery) all casting negative and false aspersions on appellants but admitted and used to sustain an unnecessary and false guardianship petition. Unproven and false allegations of Earl Lee alleging forgery 6/23/09 RP at 2 and Marta Idowu elicited by Respondent Attorney 6/23/09 RP at 17 and allegations and testimony that had been investigated by DSHS Adult Protective Services and the Auburn Police Department on continuing harassing and malicious allegations that have not stopped, though having been fully investigated and found unsubstantiated by the above agencies.

Due to willful deceit permitted and sanctioned by the court by parties concerned only with their own selfish interests, wrongs of constitutional dimension were accomplished which Appellants are desperate to correct. Ultimately, Mitzi Lee was determined not to require protection due to the filing of the guardianship petition. But a guardian was determined to be

necessary in order to protect the assets and property of Mitzi Lee, being the Settlement award in the registry from appellants, who were allegedly trying to illegally take. Based on that same ruling the guardian is authorized to seek to reverse the deeds back into Mitzi Lee's name so the properties can be sold to cover guardianship expenses. Though the guardianship was not accomplished until April 12, 2010, by that time the \$85,000 in the registry was gone and everything else is at risk. Respondent's Opening Brief at 5. All was consumed by mercenary guardian ad litem and attorney fees. None of this would have occurred but for the violation of appellant's constitutional rights due to the court's eminent domain ruling. Appellants' power of attorney was suspended upon filing of the guardianship petition in October 13, 2009. Appellants were removed from power of attorney with reference made to the eminent domain ruling which implied that appellants were involved in some kind of wrongdoing. Appellants have never done anything wrong nor have we or had we been charged or convicted of anything.

III. REPLY TO FEE REQUEST & APPELLANTS' REQUEST FOR FEES

Appellants believe they are entitled to costs incurred as a condemnee as they stipulated to an order of immediate possession and use pursuant to RCW 8.25.070(2). The fact that State has joined with respondent attorney in suit will make the State responsible for fees RAP 18.1(a). Appellants and owners never received any compensation and are entitled to any and all fees and costs RCW 8.25.075. Attorney fees, in this case costs to pro se appellants will not be subtracted from a settlement per statute. Under RCW 8.04.130 concerning appellate review, condemnees are entitled for their costs to be paid by condemnor being the State. RCW 8.04.092 provides for same. As such, if any fees and costs are incurred they are the responsibility of the State. Respondents' requests for fees and costs are not the responsibility of the appellants and should be denied in any case. Respondents request for fees pursuant to RAP 18.9 alleges that

Appellants appeal is frivolous and/or was brought for the purposes of delay. Appellants' case contains numerous debatable errors unanswered. Appellants deny the claim advanced by Respondents wholeheartedly. Respondent's claims have no basis in fact and are completely false. Appellants appeal was brought due to violation of: eminent domain law, the contract, law, due process, civil and constitutional rights guaranteed by the Bill of Rights. Appellants do not believe these to be frivolous. Appellants civil rights and constitutional rights have been violated, pursuant to 42 USC section 1981 and as such RCW 4.92.150 also obligates the state for costs. Appellants request to be awarded their fees and costs according to the above, any relevant statutory provisions and RAP 2.2. Respondent has not answered appellant's relevant cited errors failing to oppose. By failure to oppose, respondent concedes the appellant's argument on the merits.

IV. CONCLUSION

Appellants request pursuant to RAP 12.2 and errors that the court overturn the trial court rulings of which appellant's have assigned error; that appellants and injured party be immediately restored to the economic position expected from the performance of promise without further court proceedings, awarded costs and for the court to take any further action that the interest of justice may require Dependency of A.S. v. Safouane, 101 Wn. App 60, 72, 6 P.3d 11 (2000). Appellants are victims of the violation of every cited Constitutional Provision, Federal Rule, Court rule and Washington State Statute. None of the proceedings as an outgrowth of the eminent domain condemnation ruling in any lower court should have ever occurred. The issues needing to be decided in the Appeals Court have formed the basis for the finding of fact and conclusion of law of the guardianship petition, and as a result appellants have been wrongly entered into an abuse system and ascribed with wrongdoing. Appellant's personal liberty is now

at risk, as well as their property due to future planned legal proceedings. Monies appellants believe was due them as legal and rightful owners entitled to fair a just compensation has not been paid, other was illegally removed from the registry and spent in violation of RCW 8.04.130 in spite of the ruling being appealed. Appellants believe that were it not for the trial court's ruling involving the errors cited by appellants as constitutional, procedural and legal errors, this travesty would not and could not have occurred. Where is the justice in this? We have done nothing wrong, and though not proven guilty of anything, we find ourselves ascribed with guilt with no evidence. To appellant's this is an additional clear violation of due process and appellants' civil and constitutional rights. Appellants beg the court for its help to rescue appellants from these wrongs and to shield and protect them from further persecution visited upon appellants in the name of the law. There was a terrible disservice to the integrity of the court clearly evidencing an abuse of process, to place into question issues that did not need to be asked, legal facts that did not need to be proved, then to justify same by abuse of authority and abuse of discretion. Appellants can only pray that the court will exonerate and vindicate appellants from the wrongs, abuse and unfairness suffered by appellants.

The Supreme Court wrote in 1866: "By protection of the law, human rights are secured; withdraw that protection, and they are at the mercy of wicked rulers, or the clamors of an excited people."

Respectfully submitted this 26 day of October, 2010

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