

FILED

JAN 11 2013

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 307956

IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III

KEVIN GRUDZINSKI,

Plaintiff/Appellant,

v.

RANDY GRUDZINSKI,

Defendant/Appellee.

APPELLANT'S REPLY BRIEF

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I. EVIDENCE OF HAZARDOUS SUBSTANCES WAS SUFFICIENT TO REQUIRE DENIAL OF SUMMARY JUDGMENT

Respondents' argument that there was no evidence of hazardous substances in the record below fails to mention the leaked hydraulic fluid from Randy Grudzinski's trailer, which was highlighted on page 8 of Appellant's Opening Brief. Respondents' refusal to address that evidence does not make it go away.

With respect to whether the material from the Stubblefield site contained hazardous substances, there is at the very least a dispute of fact presented by the evidence in the record. The only evidence cited by Respondents to support the argument that the Stubblefield material was not contaminated is Randy Grudzinski's own vague deposition testimony that "on our part, there were no issues," referring to only a portion of the Stubblefield site that Randy Grudzinski had purchased through an LLC. *See Am. Op. Br. of Resp. at 11* (citing CP 187, pages 69-70, and claiming that this evidence established that the EPA "concluded there were no environmental concerns"). The evidence presented by Appellant concerning Stubblefield, which is also ignored by Respondents, is that the Stubblefield site is currently awaiting cleanup and ranked as a Level 1 Hazardous Site by the Department of Ecology. CP 153, 156. There is also sufficient evidence in the record to support the allegation that material from Stubblefield was dumped by Respondents onto the subject property.

II. THE NEGLIGENCE CLAIM SURVIVED AND PASSED TO KEVIN GRUDZINSKI

Respondents are correct that the negligence claim originally belonged to Elsie Grudzinski, because she owned the properties at the time that Randy Grudzinski dumped on the properties. However, when Ms. Grudzinski died, those claims survived and became part of her estate. RCW 4.20.046(1). The fact that the personal representative of the estate did not make an assignment of the negligence claim to either of Elsie's heirs did not extinguish those claims, and nothing in the will operated as a release of those claims. Because Kevin Grudzinski was a 60% heir, he received at least 60% of the Elsie's claims against Randy Grudzinski. Respondents cite no legal authority supporting their argument that the negligence claims did not pass through Elsie's will.

III. KEVIN GRUDZINSKI HAS NOT BEEN COMPENSATED FOR CLEAN UP COSTS

As described in detail in Appellant's Opening Brief, the personal representative manipulated the valuations of personal property in the estate to create the appearance of compensating Kevin Grudzinski for clean-up costs. App. Op. Brief at 9-10. Again, Respondents wholly ignore this evidence, and simply rest on the self-serving statements that they obtained from their hand-picked personal representative. The record plainly demonstrates a dispute of fact concerning whether Kevin Grudzinski has been compensated for clean-up costs.

IV. KEVIN GRUDZINSKI DOES NOT HAVE UNCLEAN HANDS

Respondents also choose to ignore the evidence in the record on this point that the attorney for the estate told Kevin Grudzinski's attorney prior to closing the estate that claims for clean-up costs would survive closing the estate. App. Opening Br. at 10 (citing CP 112-113). At the very least, this creates a dispute of fact that precludes granting summary judgment to Randy Grudzinski based on the defense of unclean hands.

V. HEARING THE SUMMARY JUDGMENT MOTION 11 DAYS BEFORE TRIAL NECESSARILY PREJUDICED APPELLANT

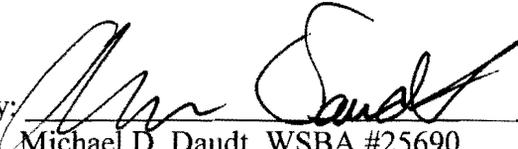
By waiting until the eve of trial to file their motion for summary judgment and scheduling the hearing only 11 days before trial in violation of CR 56(c), there was necessarily prejudice to Respondent. Scheduling the motion in that fashion prevented Kevin Grudzinski from being able to file a motion to stay under CR 56(f) and conducting discovery concerning the issues raised in Respondents' motion for summary judgment.

VI. CONCLUSION

Respondents' brief simply ignores the inconvenient facts in the record that demonstrate that summary judgment should not have been granted. The judgment of the trial court should be reversed.

RESPECTFULLY SUBMITTED AND DATED this 9th day of
January, 2013.

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DECLARATION OF SERVICE

I, Michael D. Daudt, declare that on January 9, 2013, I caused a true and correct copy of the foregoing to be served on the following by the means indicated:

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

DATED this 9th day of January, 2013.


Michael D. Daudt, WSBA #25690