

FILED

SEP 26 2013

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 309967

(Kittitas County Superior Court
No. 11-2-00228-7)

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

VERN THOMPSON,

Appellant,

vs.

KITTITAS COUNTY, subdivision of the
State of Washington,

Respondent.

**APPELLANT'S SUPPLEMENTAL BRIEFING ON
APPEALABILITY OF TRIAL COURT'S DECISION**

Richard M. Stephens, WSBA # 21776
W. Forrest Fischer, WSBA # 44156
GROEN STEPHENS & KLINGE LLP
10900 NE 8th Street, Suite 1325
Bellevue, WA 98004
Telephone: (425) 453-6206
Attorneys for Appellant

ORIGINAL

INTRODUCTION

The Court has requested that the parties brief the appealability of the Superior Court's decision in this matter. Specifically, the Court has requested clarification as to whether Appellant Vern Thompson's ("Thompson") appeal is discretionary or a matter of right, directing the parties to review RAP 2.2(c), RAP 2.3(a), and KCC 18.02.030(6)(e).

In concurrence with Respondent's Supplemental Brief of Kittitas County Regarding Appeal Status filed on September 19, 2013 ("County's Supplement"), Thompson's appeal is a **matter of right** pursuant to RAP 2.2(a)(1) and RAP 6.1. However, in spite of the consensus of this fact, Thompson believes that additional background and discussion is needed to fully satisfy one of the Court's questions—*i.e.* the applicability of the Rules of Appeal of Courts of Limited Jurisdiction ("RALJ").

SUPPLEMENTAL BRIEFING

In May 2011, the Hearing Examiner rendered his decision affirming the County's Notice of Violation against Thompson. CP 152. Following this decision, Thompson's prior counsel, James Denison, filed a notice of appeal both in Kittitas County District Court *and* Kittitas County Superior Court. CP 1.¹ In an abundance of caution, Mr. Denison filed in

¹ Although the notice of appeal was addressed to the Upper Kittitas County District Court, it nevertheless was specifically addressed to the Superior Court (line 12), sought review by the Superior Court (line 15), and was filed in Superior Court on June 11 as

both the District and Superior Court in order to strictly comply with the Kittitas County Code (“KCC”) provision governing appeals of code enforcement violations—namely KCC 18.02.030(6)(e). *Id.* Specifically, this code provision requires that appeals from a hearing examiner’s decision be filed in Superior Court, but pursuant to the RALJs. KCC 18.02.030(6)(e).²

Unfortunately, by applying RALJ to such appeals, the KCC 18.02.030(6)(e) unnecessarily convolutes appeals from the Superior Court—as evidenced by this Court’s request for supplemental briefing. Simply, RALJ only applies to “review by the superior court of a final decision of a **court of limited jurisdiction**”—*i.e.* district court. RALJ 1.1(a) (emphasis added). However, as correctly acknowledged within the County’s Supplement, Thompson’s notice of violation hearing was **not** held in a court of limited jurisdiction—that is, the hearing examiner is not a court organized under Titles 3, 35, or 35A of the RCW’s. RCW 3.02.010. Ultimately, “KCC 18.02.030(6)(e) merely prescribes the process of an appeal from the Hearing Examiner, and does not assert that

evidenced by the clerk’s stamp.

² The text of KCC 18.02.030(6)(e) reads as follows:

If no written request for reconsideration has been received by the authorized official within seven working days of the date of the order of the Hearing Examiner, the order shall be considered final unless appealed to Kittitas Superior Court. All such appeals shall be governed by Rules for appeal of decisions of Courts of limited jurisdiction (RALJ).

the Hearing Examiner is a court of limited jurisdiction.” County’s Supplement, at p. 1. In other words, this code provision is a local rule of convenience, which relies upon the RALJs for procedure.

Notwithstanding the foregoing, Thompson’s prior counsel strictly adhered to the RALJs—as required by KCC 18.02.030(6)(e)—and timely filed Thompson’s notice of appeal in district court pursuant to RALJ 2.4(a). CP 1.³ Specifically, RALJ 2.4(a) requires that:

A party appealing a decision subject to these rules must file a notice of appeal in the court of limited jurisdiction within the time provided by rule 2.5. This is the only jurisdictional required for an appeal.

However, no additional substantive proceedings were held in district court. Rather, Mr. Thompson’s counsel was merely complying with the provisions of KCC 18.02.030(6)(e). In the end, Thompson’s appeal is a **matter of right** pursuant to RAP 2.2(a)(1) and RAP 6.1.

RESPECTFULLY submitted this 24th day of September, 2013.

GROEN STEPHENS & KLINGE LLP

By:



Richard M. Stephens, WSBA # 21776

W. Forrest Fischer, WSBA #44156

10900 NE 8th Street, Suite 1325

Bellevue, WA 98004

(425) 453-6206

Attorneys for Appellant, Vern Thompson

³ See fn. 1 *supra*.

DECLARATION OF SERVICE

I, Linda Hall, declare:

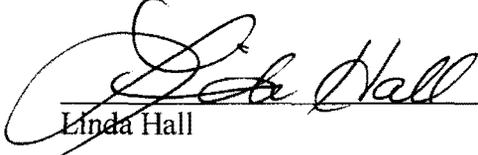
I am a citizen of the United States, a resident of the State of Washington, and an employee of Groen Stephens & Klinge LLP. I am over twenty-one years of age, not a party to this action, and am competent to be a witness herein.

On September 24, 2013, I caused a true and correct copy of the foregoing document to be served on the following person via the following means:

Neil A. Caulkins	<input type="checkbox"/> Hand Delivery via Legal Messenger
Deputy Prosecuting Attorney	<input checked="" type="checkbox"/> First Class U.S. Mail
Kittitas County Courthouse	<input type="checkbox"/> Federal Express Overnight
205 W 5th Ave., Ste. 213	<input type="checkbox"/> Electronic Mail
Ellensburg, WA 98926-2887	<input type="checkbox"/> Other _____

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

Executed this 24 day of September, 2013 at Bellevue, Washington.


Linda Hall