

FILED

APR 19, 2016

Court of Appeals
Division III
State of Washington

No. 327043

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

WESLEY B. AMES and STANELY R. AMES,

Appellants

vs.

DARLEEN AMES and ARLETA PARR,

Respondents.

RESPONDENTS' SUPPLEMENTAL BRIEF

CHRIS A. MONTGOMERY
ATTORNEY FOR RESPONDENTS
Montgomery Law Firm
344 East Birch Avenue
Colville, WA 99114-0269
(509) 684-2519
WSBA # 12377

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Statutes

RCW 4.84.25010
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Regulations and Rules

RAP 14.110

ASSIGNMENTS OF ERROR

Respondents do not assign error to the decision of the Spokane County Superior Court and request that the judgment below be affirmed. Respondents also request attorney fees and costs on appeal.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Appellants failed to establish either factual or legal causation for their claim to damages for increased insurance costs sufficient to overcome Respondents' Motion to Dismiss/Summary Judgment.

STATEMENT OF THE CASE

This court has asked the parties to address whether the issue of causation is ripe for review in this case and if so, have appellants produced sufficient evidence on causation to overcome respondents' motions for summary judgment. Respondents incorporate by reference the statement of the case set forth in their Respondents' brief.

ARGUMENT

I. Standard of Review

In seeking summary judgment, the moving party bears the initial burden of showing that there is no genuine issue of material fact. *Young v. Key Pharms., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). A moving defendant can meet this burden by showing that there is an absence of evidence to support the plaintiff's case. *Howell v. Spokane & Inland Empire Blood Bank*, 117 Wn.2d 619, 624, 818 P.2d 1056 (1991). The burden then shifts to the plaintiff to come forward with sufficient evidence to establish the existence of each essential element of the plaintiff's case. If the plaintiff does not submit such evidence, summary judgment is appropriate. 117 Wn.2d at 625. A nonmoving party must present more than "mere possibility or speculation" to successfully oppose summary judgment. *Doe v. Dep't of Transp.*, 85 Wn. App. 143, 147, 931 P.2d 196 (1997). Further, "a non-moving party may not rely on speculation or on argumentative assertions that unresolved factual issues remain." *White v. State*, 131 Wn.2d 1, 9, 929 P.2d 396 (1997). Viewing the evidence in a light most favorable to Wes and Stan Ames, the trial court properly awarded summary judgment to Darleen Ames and Arleta Parr.

II. The Current Appeal is Ripe for Review.

In their Complaint, Appellants Wes and Stan Ames contended that Darleen Ames and Arleta caused them to pay increased insurance costs on their parents' farm because Darleen and Arleta had interfered with the activities of their insurance agent, Fran Jenne. Fran Jenne (who had been sent by Stan to his parent's farm) was taking pictures of Roy and Rubye's house and property *after* the trial court, during the then-existing litigation (Stevens County case)¹ between Roy and Rubye Ames and their sons, Wes and Stan Ames (Appellants), had barred Wes and Stan from entering the farm upon which Roy and Rubye lived.

Ripeness is a hurdle that requires the basic facts underlying a dispute to be resolved before the dispute reaches court. *Thun v. City of Bonney Lake*, 164 Wn. App. 755, 265 P.3d 207 (2011). A controversy is ripe when (1) an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative or moot disagreement, (2) between parties having genuine and

¹ On July 15, 2011, Roy Ames brought a Complaint to Establish Breach of Resulting Trust and/or Constructive Trust, or in the alternative a Life Estate in Stevens County Superior Court Case No. 2011-2-00373-4 (Rubye later joined with Roy) after a bitter dispute arose with Wes Ames and Stan Ames and Merita Dysart (an elder daughter) on the one side versus their parents, and the younger siblings, Arleta Parr and Randy Ames, on the other side. Roy and Rubye dismissed their request for a Life Estate, and sought return of full fee title, with an equitable lien to be filed in Stan's and Wes's favor securing all of the monies paid by Stan and Wes for the property. Wes and Stan counterclaimed asking the court to "exercise its *equitable* powers under the resulting trust doctrine and impose a life estate in favor of Roy and Rubye Ames on the real property at issue in this suit.

opposing interests, (3) which involves interests that are direct and substantial rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive. *Clark County v. Rosemere Neighborhood Ass'n*, 170 Wn. App. 859, 888, 290 P.3d 142 (2012).

Each of the four elements is present in this case. A dispute exists as to whether the actions of Darleen Ames and Arleta Parr interfered with any prospective insurance contract between Wes and Stan and the insurance company covering the property upon which their parents lived. The parties dispute whether the alleged interference actually was the proximate cause of any increase in the insurance costs. The question of causation and damages is direct and substantial, and this court's determination will provide a final and conclusive resolution.

III. Appellants Failed to Establish Either Factual or Legal Causation; The Trial Court Properly Granted Respondents' Motion to Dismiss/Motion for Summary Judgment.

Wes and Stan's Complaint specifically asserted that Darleen and Arleta were grossly negligent and acted willfully when they falsely imprisoned Fran Jenne, that the false imprisonment caused Fran Jenne to decline to provide insurance to Wes and Stan, and that as a result Wes and

Stan were damaged because they had to pay higher insurance costs from another provider (CP 1-9). Wes and Stan's claim must fail because they have provided no evidence that the cost of insurance was affected by Darleen and Arleta's conduct, nor have they shown that they actually had to pay any higher insurance premiums. In fact, they have paid no insurance premiums at all.

Negligence requires duty, breach, and resultant injury; and the breach of duty must also be shown to be a proximate cause of the injury. *Petersen v. State*, 100 Wn.2d 421, 435, 671 P.2d 230 (1983). A claim for tortious interference with a contractual relationship or business expectancy requires five elements: (1) the existence of a valid contractual relationship or business expectancy; (2) that defendants had knowledge of that relationship; (3) an intentional interference inducing or causing a breach or termination of the relationship or expectancy; (4) that defendants interfered for an improper purpose or used improper means; and (5) resultant damage. *Leingang v. Pierce County Medical Bureau*, 131 Wn.2d 133, 930 P.2d 288 (1997)

The purposeful interference denotes purposefully improper interference. Intentional interference requires an improper objective or the use of wrongful means that in fact cause injury to the person's contractual relationship. *Exercising in good faith one's legal interests is not improper*

interference. Leingang, 131 Wn.2d at 157 (citing *Commodore v. University Mechanical Contractors, Inc.*, 120 Wn.2d 120, 137, 839 P.2d 314 (1992) and *Schmerer v. Darcy*, 80 Wn. App. 499, 505, 910 P.2d 498 (1996)).

Washington law recognizes two elements to proximate cause: Cause in fact and legal causation. Cause in fact refers to the "but for" consequences of an act—the physical connection between an act and an injury. *Hartley v. State*, 103 Wn.2d 768, 777-78, 698 P.2d 77 (1985). "It is a matter of what has in fact occurred." W. Prosser, *Torts* 237 (4th ed. 1971). Proximate cause means a cause which, *in a direct sequence unbroken by any new independent cause*, produces the injury complained of, and without which such injury would not have happened. *Fisher v. Parkview Properties*, 71 Wn. App. 468, 859 P.2d 77 (1993). A determination of proximate cause is generally a question of fact, although with undisputed facts the question may become a determination of law. *Hartley v. State*, 103 Wn.2d 768, 777-78, 698 P.2d 77 (1985).

Legal causation rests on policy considerations as to how far the consequences of a defendant's acts should extend. It involves a determination of whether liability *should* attach as a matter of law given the existence of cause in fact. If the factual elements of the tort are proved, determination of legal liability will be dependent on "mixed

considerations of logic, common sense, justice, policy, and precedent." *Id.* (quoting *King v. Seattle*, 84 Wn.2d 239, 249, 525 P.2d 228 (1974)).

In the present case, the element of factual causation is missing because the cost of insurance was completely unrelated to Darleen and Arleta's actions when they stopped Fran Jenne from improperly entering their parents' property and taking pictures at Stan's behest. At the time the insurance agent entered the property, Wes and Stan were under a Stevens County court order prohibiting them from entering their parents' farm. Despite this order, they sent the insurance agent out to the parents' land with no advance notice. Because Fran Jenne was also the agent who had provided Roy and Rubye coverage, and because the agent represented that she was "there for the insurance company," and because the agent did not disclose she was on the property on behalf of Wes and Stan, Roy and Rubye granted her permission to come on their land. It was only *after* it became clear that the agent was taking pictures in areas that were not included in the existing insurance, did anyone realize her true purpose was to conduct an insurance assessment on behalf of Wes and Stan. At that point, Darleen and Arleta sought to prevent Fran Jenne from trespassing or taking pictures on behalf of Wes and Stan.

Arleta and Darleen, in good faith, believed Wes and Stan were once again abusing their parents' rights to quiet possession of the farm;

they believed in good faith that the existing court order enjoining Wes and Stan from entering the farm was being violated; they believed that the existing court order prevented agents of Wes and Stan from entering the property. Stan chose to send someone out to their parents' home on to act on his and Wes's behalf, as their agent, without making advance arrangements to make sure their actions did not violate the existing preliminary injunction. It was Stan's actions in sending Fran Jenne to act for him without appropriate advance notice or permission, triggering Darleen and Arleta to intervene on their parents' behalf, which led Fran Jenne to determine that she did not want to involve her agency in the family dispute.

Other facts negate the causation element. For example, the increased cost of the insurance was clearly shown to be the direct result of the condition of the unfinished improvements to the addition to Roy and Rubye's home, *not* the result of Darleen and Arleta's action to prevent Fran Jenne from taking pictures on the property. Whether or not the intervention had occurred on that day, the cost of insurance was directly attributable to the unfinished construction ((Letter from Fred Lee, Account Executive of HUB International, CP 90-92). Not only did Wes and Stan fail to overcome this fact with other proof, they actually contended it was the unfinished condition of the property which directly caused the

increased costs of insurance. Consequently, the Stevens County court imposed the insurance costs on Roy and Rubye *at Wes and Stan's request*. Trial, Findings of Fact, Conclusions of Law and Rulings were entered on December 4, 2012 (Declaration of Chris A. Montgomery Authenticating Documents, Ex. "W," Docket No. 359 at p. 11). The "but for" test articulated in *Hartley v. State, supra*, has not been met.

In the Stevens County case, the unfinished condition of the home was in part attributed to the actions of Wes and Stan in refusing to obtain the necessary permits so Roy and Randy could finish the work on the home addition. This was remedied by the Stevens County Court's order that "Wesley B. Ames and Stanley R. Ames shall obtain a building permit to allow Roy A. Ames and Rubye M. Ames to complete new construction on the property." Trial, Findings of Fact, Conclusions of Law and Rulings were entered on December 4, 2012 (Declaration of Chris A. Montgomery Authenticating Documents, Ex. "W," Docket No. 359 at p. 11). Again, there is no causal link between the actions of Darleen and Arleta and the increased cost of insurance. Wes and Stan contributed to the increased insurance costs.

Wes and Stan have offered no proof of actual damages caused by Darleen and Arleta. At the Stevens County trial, Wes and Stan specifically requested that Roy and Rubye be required to pay the increased cost of

insurance due to the unfinished construction. The court so ordered. Wes and Stan have not had to pay for the insurance; no damage has occurred. Thus, the element of legal causation is not met. In other words, whatever the conduct of Darleen and Arleta, no liability should attach because there was no resultant injury or damage. *Hartley v. State, supra*.

ATTORNEY FEES

Pursuant to RCW 4.84.250, 4.84.270 and 4.84.290, RAP 14.1 and 18.1, Respondents Darleen Ames and Arleta Parr hereby request that they be awarded attorney fees. *Mackey v. American Fashion Inst. Corp.*, 60 Wn. App. 426, 804 P.2d 642 (1991). At trial, Wes and Stan sought "damages of at least \$7,500."

If Respondents are the prevailing party on appeal, they are entitled to reasonable attorneys' fees and costs incurred on appeal.

CONCLUSION

In view of the foregoing facts and authorities, Defendants Darleen Ames and Arleta Parr respectfully request this Court to dismiss this appeal. Wes and Stan have not produced any evidence whatsoever that the actions of Darleen Ames and Arleta caused them to incur damages in the form of increased insurance costs. Those increased costs were due to

independent factors, such as the condition of the home and the refusal of Wes and Stan to obtain the necessary permits so that repairs and construction could be completed. The elements of both factual and legal causation have not been shown.

Respondents renew their contention that the trial court in the present case properly granted summary judgment. Wes and Stan complained about increased insurance costs (the damages alleged herein) in the Stevens County case, they argued that the negligence of Respondents (among others) was the cause of this increase, and they successfully shifted those insurance costs (whatever the cause) to Roy and Rubye Ames. No damages were suffered.

Respondents also respectfully request they be awarded attorney fees and costs for this appeal.

DATED April 18, 2016

Respectfully submitted,


Chris A. Montgomery
Montgomery Law Firm
Attorney for Respondents
WSBA #12377

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jointly and individually,)

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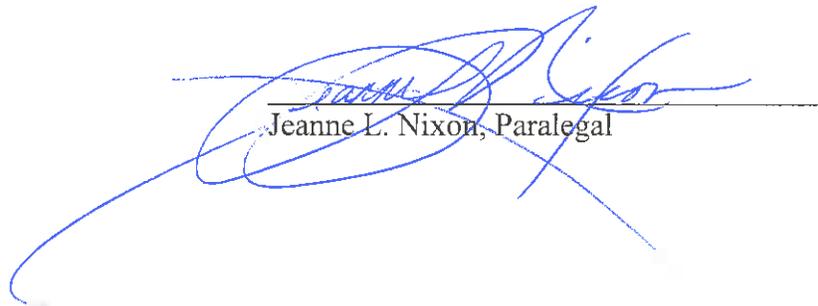
CERTIFICATE OF SERVICE
OF RESPONDENTS'
SUPPLEMENTAL BRIEF

I certify that I served a copy of the Respondents' Supplemental Brief on the following parties or their counsel of record on April 18, 2016, as follows:

<u>Party</u>	<u>Method of Service</u>
Wesley B. Ames 4154 Q Deer Creek Road Valley, Washington 99173	<input type="checkbox"/> US Mail Postage Prepaid <input type="radio"/> Certified Mail Postage Prepaid <input type="radio"/> Federal Express <input type="radio"/> UPS Next Day Air <input type="radio"/> By Fax <input type="radio"/> Hand delivered by: <input checked="" type="checkbox"/> Email to: wbames@gmail.com
<u>Party</u>	<u>Method of Service</u>
Stanley R. Ames 2180 SW Pheasant Dr. Beaverton, OR 97006	<input type="checkbox"/> US Mail Postage Prepaid <input type="radio"/> Certified Mail Postage Prepaid <input type="radio"/> Federal Express <input type="radio"/> ABC/Legal Messenger <input type="radio"/> UPS Next Day Air <input type="radio"/> By Fax <input type="radio"/> Hand delivered by: <input checked="" type="checkbox"/> Email to: stansnotes50@yahoo.com

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

DATED this 18th day of April, 2016, at Colville, Washington.



Jeanne L. Nixon, Paralegal