

FILED

OCT 16 2015

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

ORIGINAL

**Superior Court No. 13-2-04741-6
Court of Appeals No. 331113**

COURT OF APPEALS DIVISION III
OF THE STATE OF WASHINGTON

**City of Spokane,
*Respondent***

v.

**Blayne L. Dutton,
*Appellant.***

Appeal from the Superior Court of Spokane County

APPELLANT'S REPLY BRIEF

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ARGUMENT

A. The inspection performed by Code Enforcement was performed in violation of Mr. Dutton's Fourth Amendment and Article 1, Section 7 of Washington State Constitution .

Contrary to the Cities position, the record on appeal does not make it clear that Mr. Dutton's rights were not violated when City Code Enforcement inspected his property on March 8, 2013 and Building Department on April 10, 2013 absent a search warrant. "It is clear that the warrant requirement of the fourth amendment applies to entries onto private land to search for and abate suspected nuisances. *Michigan v. Tyler*, 436 U.S. 499, 504-07, 98 S.Ct. 1942, 1947-49, 56 L.Ed.2d 486 (1978); *Camara v. Municipal Court*, 387 U.S. 523, 530, 87 S.Ct. 1727, 1731, 18 L.Ed.2d 930 (1967)." *Conner v. City of Santa Ana*, 897 F.2d 1487 at 1490 (9th Cir. 1990).

Here, there was an inspection, followed by multiple other entries onto Mr. Dutton's property. The City purports that all information gathered to make a finding were obtained in "plain view." However, the inspection revealed various alleged defects of the property, some of which are difficult to imagine being discovered absent an entry onto the property itself. Among these cited issues were a determination that the property is abandoned, inadequate structural support for the rear entry room, a determination that plumbing was defective/inoperable, and missing glazing on a front window. Appellant's Brief, Exhibit B, p. 2. Moreover, several pictures were submitted into evidence with views of the sides

and back of the home. It would be difficult to obtain such photos without going onto Mr. Dutton's property as the public walkway was located in the front of the home. The property was surrounded by other homes on all sides.

Furthermore, Code Enforcement staff "reported a site visit was conducted on June 3, 2013 and the house and garage were found secure. Appellant's Brief, Exhibit B, p.2. In order to determine whether a structure is secure, one would necessarily have to enter onto the property. This visit was done similarly without a warrant and with no notice to Mr. Dutton, the property owner.

None of these entries onto Mr. Dutton's property were done with a warrant, or with Mr. Dutton's permission. To assess any kind of fee, lien, or taking against Mr. Dutton for a nuisance on this property absent a warrant violates Mr. Dutton's rights under the Fourth Amendment and Article I, Section 7 of the Washington State Constitution.

B. The Building Official and the City Hearing Examiner did not have jurisdiction in an action to prevent or abate a nuisance or in a case involving title or possession of real property where Article IV § 6 of the Washington Supreme Court places "original jurisdiction in all cases" of this type with the Superior Court.

While RCW 35.80 authorizes municipalities to enact ordinances to deal with unfit buildings, the issue here is different. In the September 24, 2013 appeal, Deputy Building Official Dan Skindzier testified that the property would be considered a nuisance. RP 10 September 24, 2013. Any nuisance properly

should have been addressed via RCW 7.48 and in the Superior Court and not through administrative action.

Washington State Constitution at Article IV § 6 sets out the Jurisdiction of the Superior Court: “The Superior Court shall have original jurisdiction in all cases which involve the title or possession of real property, or the legality of any tax, import, assessment, toll, or municipal fine, . . . of action to prevent or abate a nuisance; . . . and for such special cases and proceedings as are not otherwise provided for.” Thus, the application of RCW 35.80 to Mr. Dutton’s property in lieu of RCW 7.48 amounts to an unconstitutional application of RCW 35.80.

The Revised Code of Washington defines an Actionable Nuisance at RCW 7.48.010 as: “The obstruction of any highway or the closing of the channel of any stream used for boating or rafting logs, lumber or timber, or whatever is injurious to health or indecent or offensive to the senses, or an obstruction to free use of property, so as to essentially interfere with the comfortable enjoyment of the life and property, is a nuisance and the subject of an action for damages and other further relief.” The Revised Code further defines a public nuisance at RCW 7.48.130 as an action “which affects” equally the rights of an entire community or neighborhood. RCW 7.48.280 addressed the method for collecting damages and costs in abating a nuisance and does not allow for an administrative action.

The Cities’ assertion that the filing of this appeal in Superior Court is the relief that Mr. Dutton is seeking in this argument is nonsensical, as this argument

is based on the Superior Court being the original jurisdiction for this case. An appeal to Superior Court following multiple administrative appeals cannot possibly be construed as being original jurisdiction.

C. The Building Official and the City Hearing Examiner do not have jurisdiction to impose fines and liens against real property pursuant to Article IV § 6 which requires “original jurisdiction” in Superior Court.

Article I § 6 places original jurisdiction with the Superior Court “in all cases which involve the title or possession of real property or the legality of any tax, impost, assessment, toll.” The Spokane Building Official and City Hearing Examiner may not take action involving the “title or possession of real property” because the Superior Court has original jurisdiction over these issues.

Testimony indicates that Code Enforcement may take steps to demolish property under the process applied to Mr. Dutton. RP 9 September 24, 2013. Demolishment is uncontrovertibly a taking, which as noted above must be done through Superior Court. In addition, applying this process to Mr. Dutton’s property without following the proper procedure for a nuisance violates his right to due process.

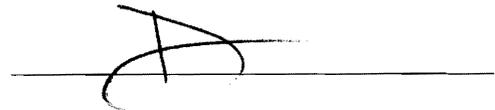
Further, Article I § 3 of the Washington State Constitution requires that a citizen may not be deprived of property without due process of law. The Washington State Constitution requires that a citizen may not be deprived of property without due process of law. The Washington State Constitution requires a specific form of due process in cases involving abatement of a nuisance or in

cases involving the “title or possession of real property” and as the building official’s action involves the “title or possession of real property” the matter must properly be held in the Superior Court.

III. CONCLUSION

This case must be remanded back to the Department of Code Enforcement for a proper hearing before the Superior Court because the issues must be heard as required by the Washington State Constitution as noted *supra*.

Respectfully submitted this 16th day of October, 2015.

A handwritten signature in black ink, appearing to be 'D. Phelps', is written over a horizontal line.

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**COURT OF APPEALS DIVISION III
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON)	
Respondent)	Cause No. 331113
)	Cause No. 13-2-047416
vs.)	
)	
)	
BLAYNE DUTTON)	DECLARATION OF
Appellant)	SERVICE
_____)	

I, Amber F. Henry, declare as follows:

That I am over the age of eighteen (18) years, not a party to this action, and competent to be a witness herein. That I, as an attorney in the office of Phelps & Associates, PS, served in the manner indicated below, the original of the Appellant's Reply Brief on October 16, 2015.

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500 N. CEDAR
SPOKANE, WA 99201

Legal Messenger
 U.S. Regular Mail

I further declare that I served in the manner indicated below a true and correct copy of the Appellant's Reply Brief on October 16, 2015.

SPOKANE SUPERIOR COURT
1116 W. BROADWAY AVE.
SPOKANE, WA 99260

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I further declare that I served in the manner indicated below a true and correct copy of the Appellant's Reply Brief on October 16, 2015.

TIMOTHY E. SZAMBELAN
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Signed at Spokane, WA on this 16th day of October, 2015


AMBER F. HENRY