

FILED

JUN 15 2017

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 345726

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

WILLIAM RUMBURG and CAROL RUMBURG, husband and wife and the
marital community comprised thereof,

Appellant,

v.

FERRY COUNTY PUBLIC UTILITY DISTRICT NO. 1, a public utility
company; and JOHN DOE(S),

Respondents.

RESPONSE BRIEF OF APPELLANT

Douglas D. Phelps
(WSBA No. 22620)
Amber Henry
(WSBA No. 49146)
Katharine Allison
(WSBA No. 41648)
Phelps & Associates, P.S.
2903 N. Stout Rd.
Spokane Valley, WA 99206
Telephone: (509) 892-0467
Fax: (509) 921-0802
Attorneys for Appellant

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Appellant, through counsel, responds to the Defendant's reply brief. By this response brief, no attempt is made to set forth a response to each of Defendant's contentions, most of which are fully covered by the opening brief. Only those points requiring additional comment will be raised to assist this court in resolving the pertinent issues.

COUNTER ARGUMENT

A. The plain language and legislative intent of RCW 4.96.020 supports the Appellants' position that the claim was filed timely.

In its briefing, Defendant provides a tour of decisions made regarding the provisions of RCW 4.96.020 prior to the 2009 legislative changes to the statute. However, these previous decisions mean little to nothing at this point, since they interpret the prior statute. The statute was changed to provide potential plaintiffs with an additional five court days to the sixty day tolling period already added to the statute of limitations. The legislative history indicates that the legislature wants two things: to ensure that the government receives notice of suit against it, and to ensure that Plaintiffs are able to file suit. The fact that the legislature further indicated that substantial compliance is sufficient

underscores the importance to the legislature that Plaintiffs be benefitted by the changes.

It makes no sense whatsoever to add sixty days to the end of a statute of limitations regardless of when the notice of claim is filed, but then to deny the grace period. It prevents absurd results and preserves legislative intent to reverse the superior court on this issue. The government has had notice, and the plaintiff now has his opportunity to file suit.

B. RCW 4.96.020(5) supports the Appellants' position that they substantially complied with the statute's requirements for filing suit.

The Superior Court erred when it granted the Defendant's Motion to Dismiss under CR12(b)(6) because its interpretation of RCW 4.96.020(5) ignores the plain language of the statute which allows for substantial compliance. RCW 4.96.020(5) states that, "[w]ith respect to the content of claims under this section and **all procedural requirements** in this section, this section must be liberally construed so that substantial compliance will be deemed satisfactory. (emphasis added). The statute was amended in 2009 which changed the standard from strict compliance to substantial compliance. RCW 4.96.020(5); *Myles v. Clark Cnty., et. al.*, 170 Wn. Ap. 521, 529 (2012).

The Defendant cites to pre-2009 cases to support their position that strict compliance with the statute of limitations is necessary to comply with the statute. *Brief of Defendant Appellee*, p. 17. The Defendant fails to take into account the amendment to the statute in 2009 that clearly states in the plain language of the statute that the statute “must be liberally construed so that substantial compliance will be deemed satisfactory.”

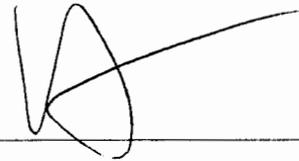
When interpreting statutes the first canon of statutory construction is the plain meaning of the statute. “[I]n interpreting a statute a court should always turn to one cardinal canon before all others. . . . [C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there.” *Connecticut Nat’l Bank v. Germain*, 503 U.S. 249 (1992). Indeed, “when the words of a statute are unambiguous, then, this first canon is also the last: ‘judicial inquiry is complete.’” *Id.*

Here, RCW 4.96.020 (5) is unambiguous. The plain language of the statute is clear that the legislature intended to change the standard from strict compliance to substantial compliance with respect to the content of claims and all procedural requirements. By following the canons of statutory construction the Defendant’s argument cannot prevail.

CONCLUSION

Based on the above, the Plaintiffs respectfully request that this Court reverse the decision of the Superior Court below and remand for trial.

DATED this 15th day of June, 2017.

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

Douglas D. Phelps
Phelps & Associates, P.S.
Attorney for Petitioner
WSBA #22620

Katharine Allison
Phelps & Associates, P.S.
Attorney for Petitioner
WSBA #41648

CERTIFICATE OF SERVICE

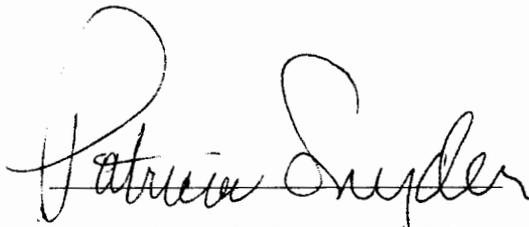
I HEREBY CERTIFY that on this 15th day of June, 2017, I caused to be served a true and correct copy of the foregoing to the following counsel of record, with costs of service prepaid:

Court of Appeals Division III
500 N. Cedar
Spokane, WA 99201

Legal Messenger

Scott C. Cifrese
Paine Hamblen LLP
717 West Sprague Avenue, Suite
1200
Spokane, WA 9901

U.S. Mail


PHELPS & ASSOCIATES, P.S.