

FILED
Court of Appeals
Division III
State of Washington
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COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

VIVIAN LOOMIS FAMILY, LLC,

Appellant,

v.

JEFFREY BELL and PAULA BELL and LARGENT RANCH, INC.,

Respondent

No. 362001

APPELLANT'S REPLY BRIEF

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TABLE OF AUTHORITIES

Cases	Page(s)
<i>Excelsior Mortg. Equity Fund II, LLC v. Schroeder</i> , 171 Wn. App. 333, 339, 287 P.3d 21, 24 (2012)	4
<i>Hous. Auth. of City of Pasco & Franklin Cty. v. Pleasant</i> , 126 Wn. App. 382, 387, 109 P.3d 422, 424 (2005)	3-4
<i>Jones v. Hogan</i> , 56 Wn.2d 23, 31, 351 P.2d 153, 159 (1960)	4
Statutes	Page(s)
RCW § 59.12.035	3-4
RCW § 59.12.180	3
Regulations	Page(s)
7 C.F.R. § 1410.6(a)	3
Court Rules	Page(s)
RAP 2.2	2
Secondary Sources	Page(s)
Webster’s Third New International Dictionary	4

In reviewing this matter, the Court is being asked to interpret RCW 59.12.035 and whether “agricultural lands” include ancillary agricultural buildings. Respondent Bell does not have any other contractual or legal basis for claiming a possessory interest in this real property which he continues to occupy. Bell’s assertion that the buildings are required for servicing the Conservation Reserve Program (CRP) are completely unsupported by the record beyond the arguments of Bell’s counsel. This possessory right in the buildings was not alleged in the answer. *CP 73-78*. These buildings are not included in the CRP contracts attached to Bell’s answer. *CP 81; CP 85*. The buildings cannot be included in the CRP by law. 7 C.F.R. § 1410.6(a). The arguments of counsel are not evidence. *See Jones v. Hogan*, 56 Wn.2d 23, 31, 351 P.2d 153, 159 (1960).

Bell also attempts to cast this as an interim appeal which not accurate. RAP 2.2(a)(3) provides that a party may appeal “any written decision affecting a substantial right in a civil case that in effect determines the action and prevents a final judgment or discontinues the action.” RCW 59.12.180 affirms that the rules of civil procedure and appellate procedure apply when the court sits in its unlawful detainer subject-matter jurisdiction. An order granting writ of restitution is commonly treated as decision which may be appealed under RAP 2.2. *See e.g. Hous. Auth. of City of Pasco & Franklin Cty. v. Pleasant*, 126 Wn. App. 382, 387, 109 P.3d 422, 424

(2005); *Excelsior Mortg. Equity Fund II, LLC v. Schroeder*, 171 Wn. App. 333, 339, 287 P.3d 21, 24 (2012).

Bell is also incorrect in his assertion that the pleadings do not reflect that the requested relief be limited to the ancillary farm buildings. *CP 100-03*.

A Writ of Restitution shall issue forthwith returnable ten (10) days after its date of issuance, restoring to the Plaintiff's possession of the following tac parcel numbers as assigned by the Franklin County Assessor: 102-230-024, 102-230-033, 102-240-022, 104-490-017, 104-600-014, except the property identified as 'CRP' on the map attached as Exhibit 'A'.

Id (emphasis added).

It is also worth noting that RCW 59.12.035 term "agricultural," not "agriculture" which Bell provides the dictionary definition for in his brief. "Agricultural" is defined as "of, relating to, used in, or concerned with agriculture b: characterized by or engaged in farming as the chief occupation" (emphasis added). There is no dispute that Bell is using the shops and the surrounding area to store his farm equipment. The use of this land falls comfortably within the definition of "agricultural" and the lands at issue are "agricultural lands." As a result, the Court should reverse the trial court with direction to issue an order granting writ of restitution restoring the shops and non-CRP land to Vivian Loomis Family, LLC.

DATED this 18th day of January, 2019

A handwritten signature in blue ink, appearing to read "Bret Uhrich". The signature is fluid and cursive, with the first name "Bret" and last name "Uhrich" clearly distinguishable.

BRET UHRICH, WSBA #45595

WALKER HEYE MEEHAN & EISINGER PLLC

January 18, 2019 - 6:04 PM

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