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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,

vs.

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

Respondent.

No. 362001

RESPONDENTS' BRIEF

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I. INTRODUCTION

This is an appeal from an interim order in the second of three actions filed by Vivian Loomis Family, LLC. There has been no final order. Plaintiff appeals the denial of a Writ of Restitution. (*CP 109*).

Vivian Loomis Family, LLC is a family farm in Franklin County located near the City of Kahlotus. Vivian Loomis, LLC is a limited liability company owned by Vivian Loomis, mother, Theresa Bell, daughter, and Jeffery Bell (respondent), son. (*CP 75-97*).

The farm consists of 1,364.21 acres. (*CP 79*). A portion of the crop is dry land wheat, 1,113.1 acres. (*CP 80*).

A portion of the farm is the subject of three separate Conservation Reserve Program Contracts with the United States Department of Agriculture. (*CP 81-87*): Contract Number 49 (115 acres) (*CP 81*); Contract Number 44 (14.1 acres) (*CP 83*); and Contract Number 42 (116.6 acres). (*CP 85*).

Vivian Loomis, mother of Jeffery Bell and Theresa Bell, has been the manager of the limited liability company.

Jeffery Bell has been managing the property for the past 31 years. The wheat land was farmed on a crop share basis and he has been, by federal contract, designated as manager and participant of the Conservation Reserve Program Contracts. (*CP 790-87*).

II. RESTATEMENT OF FACTS

In 2016, under Franklin County Cause No. 16-2-50785-11, Vivian Loomis and Theresa Bell gave notice that they wanted to terminate the 31-year relationship. No reasons were given, and they attempted to terminate. Proper notice was not given and the case was dismissed. *(CP 96)*. The complaint in this case appears to attempt to reargue the case that the plaintiff lost in 2016. *(CP 3-6)*.

Jeffery Bell and his company, Largent Ranch, Inc., continued to farm the property in 2017. Jeffery Bell had every reason to believe and assume, because he had prevailed in the attempt to remove his tenancy, that he would continue farming as he had been for 31 years. He prepared the land for summer fallow for the 2018 crop and fertilized the property so he would have a crop in 2018. *(CP 76)*.

On September 15, 2017, Jeffery Bell and Largent Ranch, Inc. were given notice pursuant to RCW 59.12.035 that the holdover provisions were going to be exercised by the landlord and that he would be required to vacate the “agricultural lands.” RCW 59.12.035.

The next door neighbor began farming the wheat land in October of 2017. *(CP 1; RP 7)*.

The subject suit was filed over two and a half months after the “new” tenant was farming the wheat land.

An answer to plaintiff's complaint was filed (*CP 73, et seq.*) and it was pointed out to plaintiff that plaintiff could not, as a matter of law, remove the defendant from that portion of the property that was the subject of the contracts with the United States Department of Agriculture. The defendant has a right to manage that property until 2027. (*RP 7*).

There was never any amended complaint, additional notice, or supplemental legal description attempting to carve out the CRP land and the accessory buildings. However, at the time of the first court hearing (March 19, 2018), the attorney for the plaintiff stated in open court:

“We had modified the motion for order to make it explicitly clear that we are not seeking any of the CRP.” (*RP 10*).

It is important to note that all pleadings, at all times, and up to the present time, seek to exclude the defendants from the entirety of the property.

This case was heard by two superior court judges. The first superior court judge that heard the matter was the Honorable Jackie Shea Brown. Even though the pleadings at all times sought to remove the tenant from the entire five parcels, the landlord conceded the error of their claim. Plaintiffs now claim that despite the pleadings, they intend to remove defendants from the “shop and accessory building.”

RCW 59.12.035, the statute upon which they gave notice, only applies to “agricultural lands.”

Judge Jackie Shea Brown analyzed the issue as follows: inasmuch as the plaintiff appeared to be abandoning a claim against the defendants for occupying the entirety of the property, now want to amend the claim to require him to vacate the shop building. Judge Jackie Shea Brown saw two issues:

1. “Is the complaint sufficient to justify the writ request relative to the shop and the ancillary buildings?”
2. “Is the complaint sufficient for a writ, given that some of the land is covered by CRP?” (*RP 19*)

The matter was continued and then reheard by the Honorable Cameron Mitchell on April 2. Plaintiffs did not identify specific parcels of property, and made no attempt to delineate what portion of the farm, if any, they believed their notice actually covered. Judge Mitchell took the matter under advisement and on April 9 ruled as follows:

“So, the court is going to deny the motion for the writ of restitution to remove Mr. Bell from the ancillary buildings as I do believe that they are necessary for the ongoing performing of the CRP land and the state statute which allows plaintiffs to remove Mr. Bell in this case would operate to essentially remove him from the CRP lands.” (Emphasis ours). (*RP 10, 11*).

The court invited a motion to convert the unlawful detainer action into an ordinary civil action pursuant to *Munden v. Hazelrigg*, 105 Wn.2d 39, 711 P.2d 295 (1985), where the court stated:

“We hold that where the right to possession ceases to be at issue at any time between the commencement of an unlawful detainer action and the trial of that action, the proceedings may be converted into an ordinary civil suit for damages and the parties may then properly assert any crossclaims, counterclaims and affirmative defenses.”

The case was not noted for trial, and a final judgment was not entered, although the plaintiff filed a motion for reconsideration (*CP 111*), and pursuant to local rule, the court asked the defendants to reply to the motion for reconsideration. (*CP 130*). The motion for reconsideration was denied. (*RP 137*). The Court did not enter written findings of fact and conclusions of law as required by CR 52(a)(1). No findings were requested by the plaintiff and no evidence was taken, and no judgment was entered.

Instead of noting the matter for trial and having all issues heard by the court, plaintiffs decided to file this premature appeal before any final judgment was entered. (*CP 139*).

Having lost twice in the superior court, and rather than litigate the issues between the parties in the action that had been raised by the complaint and the answer, plaintiffs have now filed a third action under Franklin County Cause No. 18-2-50085-11. The third action asks the court to ignore the conclusions of the court in this case and grant relief contrary to the Court’s oral ruling in this case.

III. ARGUMENT

The complaint that was filed two and a half months after the neighbor began farming the wheat land does not resemble the claim that the plaintiff is now trying to make to this court. Pure and simple, the plaintiff's complaint demanded that the defendant must remove himself from the entire farm. (*CP 3-6*).

No pleadings filed by the plaintiff address the fact that the plaintiff is now only seeking to remove the defendant from a portion of the farm, and not the portion that has already been given to the neighbor, but is limited to the barn and shop. Nothing can be more confusing than trying to look at plaintiff's claim, representations made to the court; no pleadings, no legal description or description in any manner of the property now being sought. The simple argument is "get off." And then in open court the plaintiff's attorney concedes that that the plaintiff is not entitled to remove the defendant from the property he managed for the United States of America.

Family squabbles can become the most embittered and illogical. Such is certainly the case here.

Notice was given pursuant to RCW 59.12.035 which is entitled "Holding over on agricultural land." The claim now does not have anything to do with agricultural land. Apparently, the claim now does not

have anything to do with the plaintiff's complaint. The statutes cited by the plaintiff deal with year-to-year crop land such as the wheat land portion of the farm in question. The statute by its very terms is limited to "agricultural lands."

Webster's Encyclopedia Unabridged Dictionary of the English Language defines "agriculture" as follows:

"Agriculture. 1. The science or art of cultivating land in the raising of crops; tillage; husbandry; farming. 2. The production of crops, livestock, or poultry. 3. Agronomy."

Plaintiffs now want to convert this entire suit from what was filed and presented to the court to a claim that the language "agricultural lands" includes a barn or shop building. It is nothing more than one family member trying to jab the other family member in the eye, and should not be countenanced by the court.

Jeffery Bell has management responsibilities to take care of the CRP land in order for the money to be paid to his mother. The trial court, based on the record before it, concluded that the ancillary buildings were necessary for Jeffery Bell to perform his duties in caring for the CRP land. (*RP 10-11*).

The appellant invites the court to reverse the trial court on materials presented concerning the objectives of the CRP program. None of this material was submitted to the trial court and it is irrelevant to the

determination made by the trial court. No findings, conclusions, or judgment were ever entered. CR 52 (2) (A) requires findings and conclusions when granting or refusing temporary relief.

- Plaintiff admitted that defendants had an obligation to manage the CRP portion of the farm, and will through 2027. (*RP 11*).

The trial court properly ruled, based on the record before it, that there was no basis to eject Mr. Bell from the shop and barn, which is apparently the new claim now being asserted which was never asserted in the pleadings. (*RP 10, 11*).

IV. CONCLUSIONS

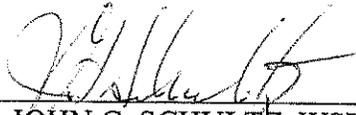
1. The pleadings of the plaintiff ask that the defendant be required to vacate the entire property.
2. When the plaintiff made the first appearance in Court, plaintiff recognized that he had no right to the relief sought, and the Court was advised that he wasn't seeking to have the defendant vacate the entire property, but only some undefined and undesignated portion of the property. Now he is apparently claiming a barn, shop or outbuildings.
3. There was no amendment to the pleadings, and it is undisputed that the neighbor had taken over the wheat farm portion of the farm two and one half months prior to the lawsuit for Unlawful Detainer.

4. Although the Trial Court made a verbal ruling, which apparently the plaintiff does not like, there have been no findings, no conclusions and no judgment.
5. There is no basis for this appeal. There has never been a final judgment.
6. If the Court of Appeals finds that there is a sufficient basis for review, defendant would suggest that predicated on the information provided to the Trial Court, the only order that was appropriate under the circumstances was a denial of the request for a Writ of Restitution.

DATED this 18 day of December, 2018.

LEAVY SCHULTZ DAVIS, P.S.

By



JOHN G. SCHULTZ, WSBA NO. 776
Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury under the laws of the State of Washington that on this date, I served a copy of this document via facsimile and legal messenger service as follows:

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<input type="checkbox"/>	Fax
<input type="checkbox"/>	Email
<input checked="" type="checkbox"/>	Legal Messenger Service

DATED at Kennewick, Washington this 19th day of December, 2018.

Andrea Armstrong

LEAVY SCHULTZ DAVIS, P.S.

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