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JUL 22 2019 13
Kim Morrison
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36348-1

No. 36468-1-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

13-2-01300-7

CHELAN COUNTY, a municipal corporation, Respondent.

v.

JEFFREY C. JONES, an individual,

FILED

Appellant.

JUL 22 2019

BRIEF OF APPELLANT

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

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Pro Se

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I INTRODUCTION

This appeal concerns a property owner's attempt to use his property consistent with its historic use, though one that no longer conforms to Respondent Chelan County's zoning code. The County brought this enforcement action to prevent the owner, Appellant Jeffrey Jones, from continuing to use his property along the Wenatchee River in Dryden, Washington, as a recreational vehicle park.

Following summary judgment, in which the Superior Court of Chelan County granted the County's motion in part, an issue remained for trial; namely, whether the property's historic, nonconforming use was sufficient to allow continued operation of the park despite the current zoning code. The trial was initially scheduled for February 20-21, 2018. Mr. Jones's counsel withdrew the prior month, and a witness for the County was unable to attend trial at that time, so the parties jointly agreed to continue the trial to a future date that was as yet undetermined.

The Superior Court mailed notices of the trial date (later set for August 23-24, 2018) to an improper address for Mr. Jones. His correct address was listed in the withdrawal notice filed by his former attorney. Mr. Jones did not discover the date of the trial until August 13, 2018, ten days before it was scheduled to begin. He filed a motion for a continuance that the Superior Court considered immediately before trial began. The Court

denied the motion, and the trial proceeded. Mr. Jones was unable to prepare for the trial, hire a new attorney, or subpoena witnesses that would testify concerning the nature of the property's historic use. Not surprisingly, following the trial the Superior Court found in favor of the County in all respects. Mr. Jones now appeals, seeking a new trial in which he is allowed to present all relevant evidence in his favor.

II. ASSIGNMENT OF ERROR

The Superior Court abused its discretion in denying Mr. Jones's motion to continue the trial.

III. ISSUE PRESENTED FOR REVIEW

1. Did the Superior Court abuse its discretion by denying Mr. Jones's motion to continue the trial?

IV. STATEMENT OF THE CASE

While most of the background facts are not necessary to decide the issue on appeal, the salient facts are presented here for context.

Mr. Jones acquired a piece of real property at 8703 Alice Avenue, Dryden, Washington, on September 8, 2005. CP 1011. The property was previously owned by Debra Anne Walker, who owned the property from 1994 to 2005, James Lowry, who owned the property from 1967 to 1994, and Robert Hagman, who owned the property prior to 1967. CP 1015. Mr.

Jones used the property as a recreational vehicle park, in which people parked their RVs and lived in them for extended periods of time.

In 2013, the County brought this enforcement action against Mr. Jones to close down the RV park. CP 1-12. Eventually, the County moved for summary judgment on its claims, which the Superior Court granted in part on February 22, 2016. CP 782-789. The Court found a genuine issue of material fact regarding the non-conforming use of the property, reserving that issue for trial. CP 784.

A new attorney appeared for Mr. Jones in October 2016, CP 891-892, and continued to represent him until withdrawing effective January 30, 2018, CP 899-901. The notice of withdrawal correctly stated Mr. Jones's mailing address in Leavenworth, Washington. CP 901. Trial was initially scheduled for February 20-21, 2018, CP 898, but was continued by stipulation of the parties to an uncertain date following June 1, 2018, CP 918-919.

Notices setting the trial for August 23-24, 2018 were subsequently mailed to Mr. Jones at an incorrect Post Office box in Dryden, Washington. CP 921, 922, 925. Mr. Jones did not learn of the trial date until August 13, 2018 when county officials visited his property, and he filed a motion to continue the trial. CP 961-964. The County responded stating that it had

mailed a letter on July 2, 2019 to Mr. Jones's correct address, which letter stated the new trial date. CP 972.

The Superior Court heard Mr. Jones's motion during pretrial proceedings. RP 7-18. The Court referenced a June 28, 2018 trial notice that was apparently sent to Mr. Jones at the correct address, though he did not receive it. RP 10:20-11:11. Curiously, the June 28 trial notice was not filed until August 22, 2019, almost two months later, CP 981, unlike prior trial notices, which were filed the same day, CP 921, 925. Nor did the County reference a June 28 trial notice in its response to Mr. Jones's motion. CP 967.

Largely on the basis of this June 28 notice, the Court denied Mr. Jones's motion. RP 16:7-8, 18:21-22. The trial proceeded over the next two days. RP 19-259. Mr. Jones was able to present testimony from only two witnesses who voluntarily appeared on his behalf. RP 165-177, RP 193-210. At the conclusion of the trial, the Court entered findings of fact and conclusions of law in the County's favor. CP 985-998. Judgment thereon was entered August 30, 2019. CP 1026-29. Mr. Jones timely appealed. CP 1049-1070, 1077-1105.

V. ARGUMENT

"In both criminal and civil cases, the decision to grant or deny a motion for a continuance rests within the sound discretion of the trial court."

State v. Downing, 151 Wn.2d 265, 272, 87 P.3d 1169 (2004). Such decisions are reviewed for an abuse of discretion. *Id.* "Where the decision or order of the trial court is a matter of discretion, it will not be disturbed on review except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). In this case, the Court should find that the Superior Court abused its discretion by denying Mr. Jones's motion to continue the trial.

The Superior Court mailed two trial notices to Mr. Jones at the incorrect address, despite having his correct address in the notice of withdrawal filed by his attorney several months earlier. The Court placed great weight upon the June 28 trial notice, which supposedly was sent to the correct address, but there are questions regarding this notice. First, Mr. Jones flatly denied ever receiving it. RP 10:20-25. Second, the notice in question was not filed until August 22, almost two month later, unlike the prior notices, which were filed on the date of the notice. Third, the County did not refer to such a notice in its response to Mr. Jones's motion for a continuance (but did refer to the two earlier notices), indicating that the County did not receive the notice either. A reasonable inference from these facts is that the notice may not have been sent on its nominal date, undermining the Court's reasoning in denying the continuance.

As it was, Mr. Jones was blindsided by the trial scheduled in August for which he did not receive notice. Having discovered the trial date only ten days before it began, he pursued a very rational course of action—he sought a continuance so he could hire a new attorney and prepare a defense. The Court denied him such chance, however, resulting in Mr. Jones's inability to present testimony from witnesses that could support his case regarding the historic use of the property. RP 12:16-18, 13:16-21, 16:16-17:1. The Court dismissed Mr. Jones's arguments regarding the relevance of this testimony and denied the motion. RP 18:18-22.

In the case of *MacKay v. MacKay*, 55 Wn.2d 344, 347 P.2d 1062 (1959), the Supreme Court of Washington found that a trial court abused its discretion by not granting a motion for a continuance. As here, the defendant in *MacKay* was not represented by counsel and a future hearing was not set for a date certain. *Id.* at 348-49. The defendant only learned of the presentation hearing the day before it was scheduled and appeared pro se, requesting a continuance to hire an attorney and prepare the information requested by the court. *Id.* at 347-48. The trial court denied the motion, but the Supreme Court reversed, finding an abuse of discretion. *Id.* at 349. As in *MacKay*, Mr. Jones did not receive the Court's trial notices, which were either mailed to the wrong address or are questionable as to when they were sent. Also, Mr. Jones learned of the trial shortly before it was to occur, and

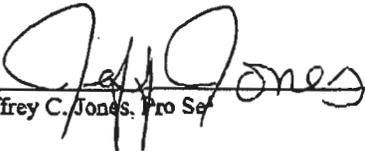
he did not have time hire an attorney or prepare his defense, needing to work to make a living. RP 17:22-25.

This Court should find that the Superior Court abused its discretion by denying a pro se defendant's motion for a continuance when, through no fault of his own, he was completely unaware of the trial date until only ten days before it was scheduled. Fundamental concerns of justice and fairness dictate that Mr. Jones be given a new trial in which he can present all relevant evidence showing that his use of the property is a valid, non-conforming use that should be allowed to continue. The Court should reverse the Superior Court's judgment and remand for a new trial.

VI CONCLUSION

Mr. Jones respectfully asks this Court to reverse the Superior Court's judgment and remand for a new trial.

Dated this 22nd day of July, 2019.



Jeffrey C. Jones, Pro Se

¹ This brief was prepared with the assistance of counsel.

Jeffrey C. Jones
 v
 Chelan County

13-2-01300-7

CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury of the laws of the State of Washington that I am over the age of eighteen and not a party to this action,

and that on July 22, 2019, I caused to be served a true and correct copy of

the foregoing document as indicated below: *Brief of Appellant*

(By U.S. Mail and by Email) in person
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Counsel for Respondent

Dated this 22nd day of July, 2019.

Served Cindy 11:05am

Jeff Jones

Jeffrey C. Jones