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Court of Appeals  
Division III  
State of Washington  
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Court of Appeals No. 364305

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COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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HANS HENNINGS and KRISTINA HENNINGS, husband  
and wife, and MARENGO, LLC, a Washington Limited  
Liability Company,

Petitioner/Appellant,

**vs.**

CHICAGO, MILWAUKEE, & ST. PAUL RAILWAY  
COMPANY, a corporation of the State of Wisconsin, and  
THE STATE OF WASHINGTON, and ALL OTHER  
PERSONS OR PARTIES UNKNOWN claiming any right,  
title, estate, lien, or interest in the real estate described in the  
complaint herein.

Defendants/Respondent.

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APPELLANTS' REPLY BRIEF

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Toni Meacham, WSBA 35068  
Attorney for Appellants  
1420 Scootney RD  
Connell, WA 99326

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## **I. ARGUMENT**

The State's Response fails to address the proper and requisite analysis to determine this case on appeal. This Court must determine whether the absence of language in a very specific deed allows for an assumption of abandonment of a landowner's right. The heart of this case centers around the deed itself, drafted and recorded well before anyone reviewing this case or working on this case factored into any equation. This Court should reverse the trial court and allow this case to be determined on the merits.

### **A. The specific language in the 1918 Deed**

The 1918 Deed should be examined at great length by this Court. Said 1918 Deed lists the terminology in the 1907 Deed, listing out the specifics of the conveyance of the "strip of land one hundred (100) feet in width....." Said 1918 Deed then lists out the conditions of the conveyance, meaning that the land had to be used within four years, said deed on page 2 then states that "said railway was constructed upon said strip of land within four years from the date of said deed and has since been, and is, used and operated and...." The deed then goes on to release "CERTAIN CONVENANTS" and goes on to release the sidetrack and warehouse requirements. There is no mention of any release of the

reverter interest. Where said language is unambiguous and clearly subjects the conveyance to an automatic reverter in the event that the railroad abandons the use of the property, such as in this case, said land reverts back to the original landowner. *Alby v. Banc One Fin.*, 128 P.3d (Wash 2006); *Furst v. Lacher*, 149 Minn. 53 (1921). There is no “Whereas” specific to said interest. A clean version of said Deed is attached to the Responsive briefing from the State. Yet, even without this specific language, the State is asking for this Court to assume that is what was meant. The State seems to allege that the language abandoning property rights should be just read into the Deed itself. Washington Courts are rightfully reluctant to invoke common law principles disfavoring restraints to invalidate a bargain agreed to by the parties. *Alby v. Banc One Fin.*, 128 P.3d (Wash 2006). Looking at the time period, the education level, the negotiation disparity, and the evidence surrounding the transaction, this Court should conclude that the specific language in the document is all that was meant. No more. That the landowners at the time were only abandoning the warehouse and sidetrack that had not been built. This makes sense and it is what the document itself says in black and white. Reading assumptions into a

document and allowing the State to run roughshod over private property owners is a takings.

A condition such as the reverter interest was a huge negotiation success as this was always an inequitable negotiation when the railroad came into an area. A reverter interest of this type would be the most important part of the deed itself, so believing that a document would release such a term without specific language to do so, is far fetched. Allowing the State to make such an assumption and take away private property rights exceeds the power of the trial court.

**B. The State of Washington could only be granted what the Railroad had the power to convey.**

It is undisputed that the strip of land in question is no longer being used or operated as a railway. The strip of land, which was once used by the Chicago, Milwaukee, & St. Paul Railway Company as an active railway for many years, fell into disuse when the railroad went bankrupt. The deed allows for a reversion upon one (1) year of failing to operate and use the land for as a railroad, which occurred prior to the State of Washington's Quit Claim Deed. Said failure leads to the land being forfeited and reverting back to the original owner, their successors, or assigns, hence, the

Appellants in this matter. *Roeder Co. v. Burlington Northern, Inc.*, 105 Wash.2d at 571. To spell it out, the State could not be conveyed the property because said property had already reverted back to the original landowners one (1) year after the railroad stopped using said land. *McInerney v. Beck*, 10 Wash.515, 39 Pac.130 (1895). The State has no right, no standing, to even be part of this quiet title action.

The Quit Claim Deed used by the State of Washington in an effort to obtain strips of land from a defunct and bankrupt Chicago, Milwaukee, & St. Paul Railway company to use as trails across our great state, did not actually grant Washington any rights.

The issue becomes one of any quit claim deed, that the Grantor can only convey the rights that grantor possesses. A railroad easement established for use as a railroad, is extinguished the moment the railroad formally abandons railroad service as determined by proper authority. *King County v. Squire Investment Co.*, 59 Wn.App. 895. By the time the quit claim deed was recorded, Chicago, Milwaukee, & St. Paul Railway company, had stopped using the strips of land in question as a railway. This is not in dispute. Further, the grantor in this matter, could only grant to the State of Washington a right to use the land as a railway IF they still

had that right, which they did not, as it had already been forfeited and reverted back to the original landowner.

## **V. CONCLUSION**

Without specific language or evidence to show the release of the reverter, it was not possible for the State to prove that the reverter interest was released. Said interest was a specifically negotiated term of the Deed for the benefit of the Grantors. Said Grantors are the Appellants/Plaintiffs of this action and contend that the reverter interest is to their benefit which is why they brought this quiet title action. This is their land.

Further, the Deed conveying the land to the State could not do so because the land had already reverted back to said landowners when the land was no longer used as a railroad.

For the foregoing reasons, Appellants/Plaintiffs respectfully submit that (1) the court improperly granted the State of Washington's Motion for Summary Judgment on October 22, 2018. Appellants therefore respectfully request that the case should be remanded to the Superior Court for further proceedings on the issues stated above.

RESPECTFULLY SUBMITTED this 22<sup>n</sup> day of May, 2019.

/s/ Toni Meacham

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Toni Meacham, WSBA 35068  
Attorney for Appellant  
1420 Scootney Rd  
Connell, WA 99326  
509-488-3289

CERTIFICATE OF SERVICE

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Olympia, WA 98504-0100

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Andy Woo  
Assistant Attorney General  
Fish, Wildlife and Parks Division  
Washington State Attorney General's Office  
1125 Washington Street SE  
PO Box 40100  
Olympia, WA 98504-0100 (x) US

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The following documents were served on the parties via the service indicated above:

Appellant's Reply Brief

Signed at Connell, WA this 22<sup>nd</sup> day of May, 2019.

/S/ TONI MEACHAM

TONI MEACHAM – WSBA# 35068

Attorney for Appellants

**May 21, 2019 - 4:51 PM**

**Transmittal Information**

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