

FILED
SUPREME COURT
STATE OF WASHINGTON
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BY SUSAN L. CARLSON
CLERK

No. 97494-2

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

CHRISTOPHER DENNEY,

Petitioner,

v.

CITY OF RICHLAND,

Respondent.

SUPPLEMENTAL BRIEF OF RESPONDENT

Kenneth W. Harper, WSBA #25578
Quinn N. Plant, WSBA #31339
MENKE JACKSON BEYER, LLP
807 N. 39th Avenue
Yakima, WA 98902
(509) 575-0313
Attorneys for Respondent
City of Richland

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I. INTRODUCTION

Some final decisions of a trial court—even if not titled “judgment”—must be timely appealed or the right of appellate review will be lost. In particular, a trial court decision that disposes of all issues as to all parties—regardless of whether the decision reserves for future determination an award of attorneys’ fees or costs—is a final judgment and is subject to the 30-day appeal deadline. RAP 2.2(a)(1).

Prevailing litigants routinely seek from the trial court an order that grants all relief sought on the merits but reserves for later proceedings the task of confirming an award of attorneys’ fees or costs. Once this step is accomplished, a formal money judgment may be entered. But the time to appeal a case-ending summary judgment ruling begins to run before litigation over attorneys’ fees and costs has concluded.

As one authority has put it: “[t]he practical lesson is clear—counsel should appeal from the judgment on the merits, even if the issue of attorney fees is still pending.” 2A Karl B. Tegland, *Washington Practice, Rules Practice RAP 2.4* (2019).

Here, the trial court’s reservation for future determination of an award of attorneys’ fees and costs did not change the finality of the case-dispositive summary judgment order. It is important that the Court

affirm the result below because the finality of judgments is a fundamental aspect of jurisprudence. Litigation over attorneys' fees and costs should not result in extending the time to appeal otherwise final judgments. Litigants can always resolve any uncertainty by filing a notice of appeal within the 30-day period after entry of an order disposing of all substantive issues. An amended or supplemental notice of appeal may also be filed if a litigant is concerned that an award of attorneys' fees or costs requires review (although this is actually unnecessary under RAP 2.4(g)).

A ruling that affirms the decision below will confirm the current state of the law. A contrary ruling will inject uncertainty into the issue of when a trial court's case-dispositive summary judgment ruling is final for purposes of appeal.

Mr. Denney's arguments strain to defeat the simple result required by RAP 2.2(a)(1), *e.g.*, that his counsel was "affirmatively led to believe" that the summary judgment order was not appealable and that the effect of enforcing the rule is a "windfall victory." (Reply on Motion for Discretionary Review at 8, 5).

This is not an esoteric point of appellate practice.¹ The Court should be loath to extend the appeal deadline for a situation of counsel's

¹ The proposition that RAP 2.2(a)(1) defines appealable judgments as those that dispose of all the issues in a case has been stated in three unpublished appellate decisions issued

simple failure to follow RAP 2.2(a)(1). The Court should allow this appeal to proceed, but only as determined by the Court of Appeals in its ruling of July 17, 2019.

II. PROCEDURAL HISTORY

Mr. Denney sued the City of Richland in 2017, alleging violations of Washington's Public Records Act, Ch. 42.56 RCW. The parties filed cross-motions for summary judgment in January 2019. Following a hearing on February 8, 2019, Benton County Superior Court Judge Alex Ekstrom granted the City's motion for summary judgment and denied Mr. Denney's motion for summary judgment because the requested records were properly exempt from production as attorney work product.

The February 12, 2019, order on the parties' cross-motions states in relevant part as follows:

Based on the foregoing IT IS ORDERED, ADJUDGED AND DECREED:

1. Defendant City of Richland's motion for summary judgment is GRANTED;
2. Plaintiff Mr. Denney's motion for summary judgment is DENIED;

in just the time that the present matter has been pending. *See In re Krinke*, 8 Wn. App.2d 1010 at *2 (2019); *In re Marriage of Templin*, 7 Wn. App.2d 1010 at *6 (2019), *review denied*, 193 Wn.2d 1022 (2019); *Murray v. City of Vancouver*, 5 Wn. App.2d 1027 at *6 (2018), *review denied*, 192 Wn.2d 1024 (2019). Note: unpublished opinions cited pursuant to GR 14.1(a).

3. All claims and causes of action alleged by the plaintiff in this matter are DISMISSED WITH PREJUDICE; and
4. Defendant City of Richland is the prevailing party herein and may present judgment accordingly.

This order may be found at Exhibit A in the appendix to this brief. All subsequently-cited exhibits are also reproduced in the appendix. Final judgment for the City, in the amount of \$200, was entered on March 14, 2019. Exhibit B.

Mr. Denney filed a notice of appeal on April 1, 2019. Exhibit C. The notice of appeal sought review of both the February 12, 2019, summary judgment ruling as well as the March 14, 2019, final money judgment. Other than the issue of statutory attorneys' fees, nothing remained to be decided in this litigation after the February 12 summary judgment ruling.

The Court of Appeals correctly applied the Rules of Appellate Procedure under these circumstances. The Court of appeals recognized in its decision of July 17, 2019, that the appeal of Mr. Denney as to the final money judgment was timely. This did not, however, bring up for review the earlier summary judgment order.

III. ARGUMENT

- A. A trial court ruling that leaves for future determination only the issue of attorneys' fees or costs is a final judgment.**

Mr. Denney’s main argument is that his counsel “reasonably understood” that the trial court’s reservation of an award of attorneys’ fees and costs for a future date—which was the only matter still pending—“meant [that] the document that was still to be entered was the Final Judgment from which an appeal would lie under RAP 2.2(a)(1).” Motion for Discretionary Review at 3.

This argument should be rejected. Mr. Denney’s counsel was simply wrong. Under Washington law, case-dispositive decisions trigger the 30-day appeal deadline and will be beyond review unless a timely notice of appeal is filed. Mr. Denney’s argument is also unpersuasive because his counsel does not have a reasonable explanation for his misunderstanding of the law. Parties and courts routinely conclude the substantive legal issues at hand with case-ending summary judgment orders before turning to the matter of attorneys’ fees, costs, and entry of a final money judgment.

The matter is governed by RAP 2.2(a)(1), which states that an appeal lies from “[t]he final judgment entered in any action or proceeding, regardless of whether the judgment reserves for future determination an award of attorney fees or costs.” Nothing in RAP 2.2 precludes there from being a case-ending summary judgment order followed by entry of a money judgment (which may also constitute a

judgment for purposes of RCW 4.64.030, and from which an appeal may also lie). A litigant who seeks review of the earlier final summary judgment ruling must file a timely notice of appeal. Otherwise, the only matter that will be brought up for review, as here, is the award of attorneys' fees and costs, but not the merits underlying the summary judgment order.

The common law has long defined a final judgment for purposes of appeal as one that disposes of all issues as to all parties. *Collins v. Miller*, 252 U.S. 364, 370 (1920). This has been the case in Washington for at least 40 years. *See Seattle-First National Bank v. Marshall*, 16 Wn. App. 503, 507, 557 P.2d 352 (1976) (“A summary judgment in an action involving neither multiple parties nor multiple claims is a final appealable judgment.”). Courts will look to the content of the instrument, not its title, to make this assessment. *Wlasiuk v. Whirlpool Corp.*, 76 Wn. App. 250, 255, 884 P.2d 13 (1994).

A well-known treatise warns that a final judgment that reserves a determination of an award of attorneys' fees or costs is nevertheless appealable. 14A Douglas J. Ende, *Washington Practice, Civil Procedure* § 34.26 (2019). According to this source, a key point of the 2002 amendment of RAP 2.2 was to confirm that an appeal cannot be delayed pending a decision on costs or attorneys' fees. *Id.* at n.19.

The drafters' purpose statement accompanying the amendment to RAP 2.2 states that the rule "makes clear that a party may, and indeed should if review on the merits is desired, appeal from a final judgment whether or not an award of attorney fees or costs is reserved for future determination." RAP 2.2 Drafters' Comment, 2002 Amendment.

B. The explanations of Mr. Denney's counsel do not require an outcome contrary to RAP 2.2(a)(1).

Mr. Denney concedes that he did not file a timely notice of appeal of the summary judgment ruling but offers as an explanation that he did not wish to "interrupt[]" the proceedings before the entry of the final judgment. Motion for Discretionary Review at 5. This argument is a poor explanation. The law is clear that trial courts retain the authority to award attorneys' fees and litigation expenses even after review has been accepted. RAP 7.2(d). There would have been no "interruption" caused by Mr. Denney preserving his right to appellate review of the summary judgment order.

Mr. Denney similarly errs in attempting to justify his delay with the claim that a timely notice of appeal would have "divested" the trial court of jurisdiction. Motion for Discretionary Review at 6. Again, under RAP 7.2(d), this is a straw argument.

Mr. Denney does no better by claiming that language in either the summary judgment ruling or the final judgment lured him into his

inaction. Motion for Discretionary Review at 6-7. Examination of these documents does not reveal anything atypical or incompatible with RAP 2.2(a)(1). The summary judgment order explicitly resolved “all claims and causes of action alleged by plaintiff in this matter.” Exhibit A. The fact that the order set a later date for the presentation of final judgment should not have given rise to any confusion. After all, this is precisely what is contemplated by RAP 2.2(a)(1). Similarly, the designation of the final money judgment as a “final judgment” did nothing to alter the applicability of RAP 2.2(a)(1) to the earlier summary judgment order. Exhibit B. The summary judgment order was also a final judgment by definition at RAP 2.2(a)(1) regardless of what the final judgment stated. The final judgment recited that it was “entered on all claims,” which set the stage for its inclusion on the Clerk’s execution docket under RCW 4.64.060. But the final judgment did not do anything other than settle the issue of attorneys’ fees and costs. It did not modify the appealability of the summary judgment order. RAP 2.2(a)(1).

It is simply not sufficient for Mr. Denney to claim that either of these garden-variety pleadings caused him to err in applying one of the clearest bright-line rules in litigation. The truth of the matter is that Mr. Denney’s failure to file a timely notice of appeal was the result of unfamiliarity with the rules. Mr. Denney states that “when the trial court

had said that a judgment would be entered at a later date...that meant the document that was still to be entered was the Final Judgment from which an appeal would lie under RAP 2.2(a)(1).” (Motion for Discretionary Review at 3). This is a disavowal of responsibility for failure to follow the rule, not an argument for a different interpretation of the rule.

The explanations offered by Mr. Denney are intended to justify or explain his counsel’s mistake. The better approach is simply to apply the rules. The summary judgment order disposed of all claims of the parties. Exhibit A. This text made the summary judgment order subject to appeal. The final judgment recited that the earlier summary judgment order “granted dismissal to the City, [and] denied Mr. Denney’s motion for summary judgment, and designated the City the prevailing party herein.” Exhibit B. This further confirmed the appealability of the summary judgment order. The language from the final judgment did not change the legal effect of the summary judgment order.

If Mr. Denney’s counsel was guided by his belief that a later trial court decision would establish the deadline to appeal, then he simply overlooked the effect of the summary judgment order under RAP 2.2(a)(1). And if Mr. Denney’s counsel was unsure of how to proceed, there was no good reason to fail to at least file a protective notice of appeal anyway and guard against the risk of losing the right to review.

Sometimes a litigant must resolve uncertainties in determining when to file a notice of appeal. The rules provide for this. A premature notice of appeal would have been “treated as filed on the day following the entry of the decision.” RAP 5.2(g). A premature appeal is never fatal.

C. “Final judgment” for purposes of RAP 2.2(a)(1) is defined in a flexible manner to suit the Rules of Appellate Procedure and is not synonymous with a money judgment under RCW 4.64.030.

Mr. Denney is wrong to suggest that he has any evidence that the superior court clerk “did not understand” that the summary judgment order was a final judgment, or that the clerk “believed” there would be no final judgment until a later occurrence. Motion for Discretionary Review at 6. No law suggests that a litigant may consult the clerk’s understandings and beliefs in weighing whether and how to appeal. Nothing suggests that Mr. Denney did so here.

The fact that the clerk did not enter the summary judgment order on the execution document is irrelevant but unsurprising because the order did not contain the requirements of a money judgment summary prescribed by RCW 4.64.030. The clerk’s actions are purely ministerial, and in the absence of a final judgment conforming to RCW 4.64.030, there was nothing for the clerk to do with the summary judgment order

other than preserve it as part of the court case file. This in no way detracts from its finality for appeal purposes. RAP 2.2(a)(1).

D. Other court rules cited by Mr. Denney do not alter the applicability of RAP 2.2(a)(1).

Mr. Denney argues that the appealability of the summary judgment order was tolled and that—contrary to RAP 2.2(a)(1)—it was actually not final at all. Reply on Motion for Discretionary Review at 2. To support this argument, Mr. Denney cites a local court rule and argues that the summary judgment order was subject to *de novo* review at a later hearing in the same cause. *Id.* (citing Benton County Local Rule 59(e)(1)).

This line of reasoning is spurious for several reasons. First, the issue of appealability is governed not by local rule or some conception of potential *de novo* review but by the plain text of RAP 2.2(a)(1). Second, the summary judgment order was never subject to *de novo* review. Reconsideration and amendment of trial court rulings is governed by CR 59, and the standards are not *de novo*. See CR 59(a)(1)-(9). Third, a motion for reconsideration would have been timely only if filed within 10 days, and no reconsideration was sought. CR 59(b).

Mr. Denney briefly mentions CR 54(e), which governs the preparation of orders and judgments. Reply on Motion for Discretionary Review at 6. But this rule does not define appealable decisions. The

rule is of no assistance in this case. CR 54 recognizes that appeals originate with “decrees and orders” issued by superior courts. *See* CR 54(a)(1) (defining “judgment” to include “any decree and order from which an appeal lies”). RAP 5.2(a) requires a notice of appeal to be filed no later than “30 days after the entry of the *decision* of the trial court that the party filing the notice wants reviewed.” (emphasis added). This is consistent with the expansive use of the term “decision” in RAP 2.2. But a litigant wishing to understand whether a certain trial court decision is appealable in the first place must consult RAP 2.2(a), not CR 54.

To reiterate a key point, RAP 2.2 applies broadly to several types of “decisions,” not just final money judgments. RAP 2.2. Under RAP 2.2(a)(1), a final judgment is an appealable decision even though the judgment reserves for future determination an award of attorneys’ fees or costs.

E. Caselaw confirms the result reached by the Court of Appeals.

Guidance comes from *Carrara, LLC v. Ron & E Enterprises, Inc.*, 137 Wn. App. 822, 155 P.3d 161 (2007). In *Carrara*, the trial court issued an order granting the appellee's motion for summary judgment on July 8, 2005, which was similar to the order issued by the trial court in this case:

It is hereby ORDERED, ADJUDGED, AND DECREED that:

1. Defendant Ron & E Enterprises, Inc.'s Motion for Summary Judgment of All Claims is GRANTED.
2. Plaintiff Carrara, LLC's claims against Defendant Ron & E Enterprises, Inc. are dismissed with prejudice.

Id., at 826. The trial court subsequently issued an order granting the appellee attorneys' fees on August 8, 2005, and then entered a judgment in favor of the appellee on September 22, 2005. *Id.*, at 824.

The appellant filed a notice of appeal on October 21, 2005. *Id.* The appellee moved to dismiss because the notice of appeal was filed more than three months after the July 8 order granting the motion for summary judgment. *Id.*, at 825. Finding that the July 8 order was a "final, dispositive judgment," the court ruled that the appellant had until August 8 to file a notice of appeal. *Id.*, at 826. Because the appellant did not do so, "its appeal of the summary judgment [was] untimely." *Id.*; *see also Seattle-First National Bank*, 16 Wn. App. at 507 ("A summary judgment in an action involving neither multiple parties nor multiple claims is a final appealable judgment.").

The same result is appropriate in this case.

Mr. Denney argues that *Carrara* and *Seattle-First National Bank* should be distinguished because the summary judgment order in neither case stated that a later judgment would be entered. Motion for Discretionary Review at 9. It is unclear how Mr. Denney knows this to

be true because the cases do not confirm precisely what the summary judgment orders stated in full. But this is of little consequence either way. As shown above, the reservation until a later date of a decision on attorneys' fees and costs has no bearing on the finality question. RAP 2.2(a)(1). Here, that was all that was left to be done after the summary judgment ruling.

Mr. Denney also cites *Wlasiuk v. Whirlpool Corp.*, 76 Wn. App. 250, 255, 884 P.2d 13 (1994), but this case confirms the basic rule that a pending determination of attorneys' fees does not postpone the finality of a judgment that otherwise fully adjudicates a dispute. And on the issue of what makes a trial court decision appealable, the court looked to the effect of the decision rather than its label. *Wlasiuk*, 76 Wn. App. at 255. If the decision determines the rights of the parties, then it does not matter if it is followed by later subsidiary acts. *Id.* In dicta, the *Wlasiuk* court makes reference to whether a judgment is subject to reconsideration or *de novo* review as part of assessing its finality, but this is not central to the court's holding. The topic has no bearing on the current version of RAP 2.2(a)(1), which post-dates *Wlasiuk*. In all respects, *Wlasiuk* is in accord with the holding of *Carrara, Seattle-First National Bank*, and the Court of Appeals here.

F. Mr. Denney's request to enlarge time for filing a notice of appeal should be denied.

Mr. Denney urges the Court to extend the time for an appeal pursuant to RAP 18.8. Motion for Discretionary Review at 8-10. Mr. Denney has never actually filed a motion for this relief. RAP 17.1(a). Even if Mr. Denney had filed such a motion, relief would be inappropriate.

The time in which to file an appeal will be extended “only in extraordinary circumstances and to prevent a gross miscarriage of justice[.]” RAP 18.8(b). This language embodies a “public policy preference for the finality of judicial decisions over the competing policy of reaching the merits of every case.” *Shumway v. Payne*, 136 Wn.2d 383, 395, 964 P.2d 349 (1998).

“Extraordinary circumstances” include instances where the filing, despite reasonable diligence, was defective due to excusable error or circumstances beyond the party’s control. *Shumway*, 136 Wn.2d at 354 (citation omitted). A lack of prejudice to the responding party is irrelevant. *Reichart v. Raymark Indus., Inc.*, 52 Wn. App. 763, 766 n. 2, 764 P.2d 653 (1998) (noting that the prejudice “would be to the appellate system and to litigants, generally, who are entitled to an end to their day in court.”).

Extraordinary circumstances are, of course, uncommon. They were found to exist in *Scannell v. State*, 128 Wn.2d 829, 833, 912 P.2d

489 (1996), where a pro se litigant was confused by a recent rule change. *Scannell*, 128 Wn.2d at 833 (describing a recent change to the rules as “present[ing] a trap for the unwary” that “leads the unsophisticated pro se litigant to believe that RAP 15.2(a) has some kind of delaying effect on the 30 day notice of appeal deadline...”).

The circumstances of this case are not comparable. Mr. Denney is represented by experienced legal counsel. Mr. Denney has not identified any recent changes to the rules governing when a notice of appeal must be filed. To the contrary, caselaw teaches that an appeal of an order on summary judgment that dismisses all claims in a lawsuit must be filed within 30 days. *Seattle-First National Bank*, 16 Wn. App. at 507; *Carrara LLC*, 137 Wn. App. at 826.

IV. CONCLUSION

The decision of the Court of Appeals should be affirmed.

RESPECTFULLY SUBMITTED this 3rd day of January, 2020.

MENKE JACKSON BEYER, LLP



By:

Kenneth W. Harper, WSBA #25578
*Attorneys for Respondent
City of Richland*

DECLARATION OF SERVICE

I hereby declare that on the day set forth below, I electronically filed the foregoing SUPPLEMENTAL BRIEF OF RESPONDENT with the Supreme Court of the State of Washington, and arranged for service of a copy of the same on the parties to this action as follows:

Jesse Wing
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705 2nd Ave., Ste. 1500
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- Via WA State Courts' Portal
- Via First Class Mail
- Via Email
- Via Overnight Delivery

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Clerk of the Court
Court of Appeals Division III
500 N Cedar St
Spokane WA 99201

- Via WA State Courts' Portal
- Via First Class Mail
- Via Email
- Via Overnight Delivery

DATED THIS 3rd day of January, 2020, at Yakima, Washington.


Cindy Maley

APPENDIX

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EXHIBIT A

JUSTICE DELVIN
BENTON COUNTY CLERK

2019 FEB 12 AM 8:43

FILED

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF BENTON

CHRISTOPHER DENNEY, an individual,

Plaintiff,

v.

CITY OF RICHLAND,

Defendant.

NO. 17-2-02888-3

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT
AND DENYING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT

This matter came on for hearing on February 8, 2019, before the honorable judge of the above-entitled Court, on cross motions of the parties for summary judgment. Defendant City of Richland was represented by and through its associated counsel of record, Kenneth W. Harper and Menke Jackson Beyer, LLP, and Joel R. Comfort and Miller Mertens & Comfort, PLLC. Plaintiff Christopher Denney was represented by and through his associated counsel of record, Jesse Wing, Sam Kramer, and MacDonald Hoague & Bayless.

The Court considered the following documents and evidence in granting defendant City of Richland's motion for summary judgment and denying plaintiff Mr. Denney's motion for summary judgment:

ORDER ON SUMMARY JUDGMENTS - 1

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1. Defendant's Motion for Summary Judgment;
2. Memorandum in Support of Defendant's Motion for Summary Judgment;
3. Declaration of Heather Kintzley in Support of Defendant's Motion for Summary Judgment;
4. Declaration of Allison Jubb in Support of Defendant's Motion for Summary Judgment;
5. Declaration of Kenneth W. Harper;
6. Plaintiff's Motion for Summary Judgment;
7. Declaration of Jesse Wing in Support of Plaintiff's Motion for Summary Judgment;
8. Plaintiff's Opposition to Defendant's Motion for Summary Judgment;
9. Declaration of Jesse Wing in Opposition to Defendant's Motion for Summary Judgment;
10. Declaration of Ricky Walsh;
11. Declaration of Chris Denney in Support of Plaintiff's Motion for Order to Show Cause;
12. Defendant City of Richland's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment;
13. Plaintiff's Reply in Support of Plaintiff's Motion for Summary Judgment;
14. Reply Declaration of Jesse Wing in Support of Plaintiff's Reply in Support of Plaintiff's Motion for Summary Judgment;
15. Reply Memorandum of Defendant City of Richland;
16. Index of Records for In Camera Review;
17. Stipulated Order Requiring City of Richland to Lodge Records for In Camera Review;
18. Records Submitted by City of Richland with Order that Clerk Hold Under Seal Pending In Camera Review; and

1
2
3 19. Contents of sealed brown manila envelope of records submitted by City of
4 Richland under seal pursuant to order of the Court.

5 The Court heard oral argument of counsel and was otherwise fully apprised of the
6 facts and issues presented and now therefore finds and concludes:

7 1. There are no genuine issues of material fact so as to preclude summary
8 judgment in favor of Defendant City of Richland;

9 2. Defendant City of Richland is entitled to summary judgment as a matter of
10 law because the records in question constitute attorney work product and are therefore
11 exempt from production under the Public Records Act, Ch. 42.56 RCW, and were properly
12 withheld by the City of Richland in response to Mr. Denney's requests for public records;

13 3. Plaintiff Mr. Denney's motion for summary judgment is not legally well
14 founded and is denied.
15

16 Based on the foregoing IT IS ORDERED, ADJUDGED AND DECREED:

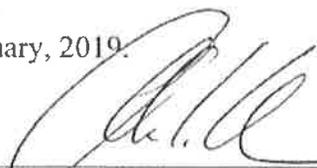
17 1. Defendant City of Richland's motion for summary judgment is GRANTED;

18 2. Plaintiff Mr. Denney's motion for summary judgment is DENIED;

19 3. All claims and causes of action alleged by plaintiff in this matter are
20 DISMISSED WITH PREJUDICE; and
21

22 3. Defendant City of Richland is the prevailing party herein and may present
23 judgment accordingly.
24

25 DATED THIS 12th day of February, 2019.

26
27 
28 HON. ALEX EKSTROM
29 SUPERIOR COURT JUDGE

30 //
ORDER ON SUMMARY JUDGMENTS - 3

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Presented by:

MENKE JACKSON BEYER, LLP

By: 
KENNETH W. HARPER, WSBA #25578
Attorneys for defendant City of Richland

Approved as to form and content; notice of presentation waived:

MILLER MERTENS & COMFORT, PLLC

By: _____
JOEL R. COMFORT, WSBA #31477
Attorneys for defendant City of Richland

MACDONALD HOAGUE & BAYLESS

By: _____
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EXHIBIT B

MAR 14 2019

FILED

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF BENTON

CHRISTOPHER DENNEY, an individual, Plaintiff, v. CITY OF RICHLAND, Defendant.	NO. 17-2-02888-3 FINAL JUDGMENT FOR DEFENDANT THE CITY OF RICHLAND
---	--

ORDER

This matter came before the Court on February 8, 2019, on cross motions of the parties. Defendant City of Richland was represented by and through its associated counsel of record, Kenneth W. Harper and Menke Jackson Beyer, LLP, and Joel R. Comfort and Miller Mertens & Comfort, PLLC. Plaintiff Christopher Denney was represented by and through his associated counsel of record, Jesse Wing, Sam Kramer, and MacDonald Hoague & Bayless.

The Court issued an order dated February 12, 2019, which granted dismissal to the City, denied Mr. Denney's motion for summary judgment, and designated the City the prevailing party herein.

FINAL JUDGMENT
FOR DEFENDANT - 1

MENKE JACKSON BEYER, LLP
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NOW, THEREFORE, final judgment is entered on all claims arising out of this matter. The City is awarded judgment against Mr. Denney in the amount of taxable costs incurred in the sum of \$200.00, for a total judgment of \$200.00.

SUMMARY OF JUDGMENT

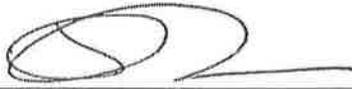
Judgment creditor: City of Richland, Washington
Attorneys for judgment creditor: Kenneth W. Harper
Menke Jackson Beyer, LLP
807 N. 39th Avenue
Yakima, WA 98902
Phone: (509) 575-0313
Judgment debtor: Christopher Denney
Taxable costs (statutory attorneys' fees): \$200.00
Interest owed to date of judgment: None
Total of judgment and taxable costs: \$200.00

DATED THIS 14 day of March, 2019.

ALEXANDER C. EKSTROM
HON. ALEX EKSTROM
SUPERIOR COURT JUDGE

Presented by:

MENKE JACKSON BEYER, LLP

By: 
KENNETH W. HARPER, WSBA #25578
Attorneys for defendant City of Richland

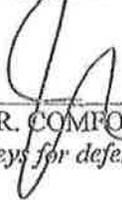
FINAL JUDGMENT
FOR DEFENDANT - 2

MENKE JACKSON BEYER, LLP
807 North 39th Avenue
Yakima, WA 98902
Telephone (509)575-0313
Fax (509)575-0351

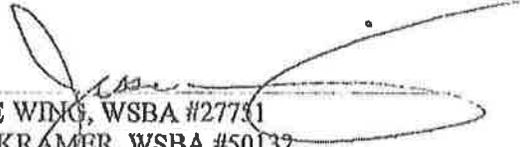
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Approved as to form and content; notice of presentation waived:

MILLER MERFENS & COMFORT, PLLC

By: 
JOEL R. COMFORT, WSBA #31477
Attorneys for defendant City of Richland

MACDONALD HOAGUE & BAYLESS

By: 
JESSE WING, WSBA #27731
SAM KRAMER, WSBA #50132
Attorneys for plaintiff Christopher Denney

FINAL JUDGMENT
FOR DEFENDANT - 3

MENIKE JACKSON BEYER, LLP
807 North 29th Avenue
Yakima, WA 99902
Telephone (509)575-0313
Fax (509)575-0851

EXHIBIT C

APR 01 2019

FILED

SUPERIOR COURT OF WASHINGTON FOR BENTON COUNTY

CHRISTOPHER DENNEY,

Plaintiff,

v.

CITY OF RICHLAND,

Defendant.

No. 17-2-02888-3

NOTICE OF APPEAL TO COURT OF
APPEALS, DIVISION THREE

[CLERK'S ACTION REQUIRED]

Under Rule of Appellate Procedure 2.2(a)(1), and Rule of Appellate Procedure 5.1(a), Plaintiff Chris Denney respectfully submits this Notice of Appeal in this matter. Specifically, Plaintiff/Appellant seeks review by the Washington Court of Appeals, Division Three, of the Benton County Superior Court's entry of judgment on behalf of Defendant, dismissing of Plaintiff's PRA claims (Order of Judgment attached as Exhibit A), on the basis of its Order Granting Defendant's Motion for Summary Judgment (attached as Exhibit B).

The names and addresses of the attorneys for each of the parties are:

Jesse Wing
Sam Kramer
MacDonald Hoague & Bayless
705 Second Avenue, Suite 1500
Seattle, WA 98104
(206) 622-1604
Attorneys for Plaintiff Chris Denney

NOTICE OF APPEAL TO COURT OF APPEALS, DIVISION THREE -

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MACDONALD HOAGUE & BAYLESS
705 Second Avenue, Suite 1500
Seattle, Washington 98104
Tel 206.622.1604 Fax 206.343.3961

COPY

APPENDIX - 13

1 Ken Harper
2 MENKE JACKSON BEYER, LLP
3 807 North 39th Avenue
4 Yakima, WA 98902
5 Telephone: (509) 575-0313
6 Attorney for Defendant City of Richland

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8 DATED this 25th day of March, 2019.

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MacDONALD HOAGUE & BAYLESS

By: 

Jesse Wing, WSBA #21751

JesseW@mhb.com

Sam Kramer, WSBA #50132

SamK@mhb.com

705 Second Avenue, Suite 1500

Seattle, WA 98104

Attorneys for Plaintiff

EXHIBIT A

To Notice of Appeal to Court of Appeals,
Division Three

JOSIE DELANEY
BENTON COUNTY CLERK

MAR 14 2019

FILED

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF BENTON

CHRISTOPHER DENNEY, an individual, Plaintiff, v. CITY OF RICHLAND, Defendant.	NO. 17-2-02888-3 FINAL JUDGMENT FOR DEFENDANT THE CITY OF RICHLAND
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ORDER

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The Court issued an order dated February 12, 2019, which granted dismissal to the City, denied Mr. Denney's motion for summary judgment, and designated the City the prevailing party herein.

FINAL JUDGMENT
FOR DEFENDANT - 1

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NOW, THEREFORE, final judgment is entered on all claims arising out of this matter. The City is awarded judgment against Mr. Denney in the amount of taxable costs incurred in the sum of \$200.00, for a total judgment of \$200.00.

SUMMARY OF JUDGMENT

Judgment creditor:	City of Richland, Washington
Attorneys for judgment creditor:	Kenneth W. Harper Menke Jackson Beyer, LLP 807 N. 39 th Avenue Yakima, WA 98902 Phone: (509) 575-0313
Judgment debtor:	Christopher Denney
Taxable costs (statutory attorneys' fees):	\$200.00
Interest owed to date of judgment:	None
Total of judgment and taxable costs:	\$200.00

DATED THIS 14 day of March, 2019.

ALEXANDER C. EKSTROM
HON. ALEX EKSTROM
SUPERIOR COURT JUDGE

Presented by:
MENKE JACKSON BEYER, LLP

By: 
KENNETH W. HARPER, WSBA #25578
Attorneys for defendant City of Richland

FINAL JUDGMENT
FOR DEFENDANT - 2

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Approved as to form and content; notice of presentation waived;

MILLER MERFENS & COMFORT, PLLC

By:


JOEL R. COMFORT, WSBA #31477
Attorneys for defendant City of Richland

MACDONALD HOAGUE & BAYLESS

By:


JESSE WINK, WSBA #27731
SAM KRAMER, WSBA #50132
Attorneys for plaintiff Christopher Denney

FINAL JUDGMENT
FOR DEFENDANT - 3

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EXHIBIT B

To Notice of Appeal to Court of Appeals,
Division Three

JACQUELYN
SCOTT COUNTY CLERK

2019 FEB 12 AM 8:43

FILED

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF BENTON

CHRISTOPHER DENNEY, an individual,

Plaintiff,

v.

CITY OF RICHLAND,

Defendant.

NO. 17-2-02888-3

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT
AND DENYING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT

This matter came on for hearing on February 8, 2019, before the honorable judge of the above-entitled Court, on cross motions of the parties for summary judgment. Defendant City of Richland was represented by and through its associated counsel of record, Kenneth W. Harper and Menke Jackson Beyer, LLP, and Joel R. Comfort and Miller Mertens & Comfort, PLLC. Plaintiff Christopher Denney was represented by and through his associated counsel of record, Jesse Wing, Sam Kramer, and MacDonald Hoague & Bayless.

The Court considered the following documents and evidence in granting defendant City of Richland's motion for summary judgment and denying plaintiff Mr. Denney's motion for summary judgment:

ORDER ON SUMMARY JUDGMENTS - 1

MENKE JACKSON BEYER, LLP
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1. Defendant's Motion for Summary Judgment;
2. Memorandum in Support of Defendant's Motion for Summary Judgment;
3. Declaration of Heather Kintzley in Support of Defendant's Motion for Summary Judgment;
4. Declaration of Allison Jubb in Support of Defendant's Motion for Summary Judgment;
5. Declaration of Kenneth W. Harper;
6. Plaintiff's Motion for Summary Judgment;
7. Declaration of Jesse Wing in Support of Plaintiff's Motion for Summary Judgment;
8. Plaintiff's Opposition to Defendant's Motion for Summary Judgment;
9. Declaration of Jesse Wing in Opposition to Defendant's Motion for Summary Judgment;
10. Declaration of Ricky Walsh;
11. Declaration of Chris Denney in Support of Plaintiff's Motion for Order to Show Cause;
12. Defendant City of Richland's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment;
13. Plaintiff's Reply in Support of Plaintiff's Motion for Summary Judgment;
14. Reply Declaration of Jesse Wing in Support of Plaintiff's Reply in Support of Plaintiff's Motion for Summary Judgment;
15. Reply Memorandum of Defendant City of Richland;
16. Index of Records for In Camera Review;
17. Stipulated Order Requiring City of Richland to Lodge Records for In Camera Review;
18. Records Submitted by City of Richland with Order that Clerk Hold Under Seal Pending In Camera Review; and

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19. Contents of sealed brown manila envelope of records submitted by City of Richland under seal pursuant to order of the Court.

The Court heard oral argument of counsel and was otherwise fully apprised of the facts and issues presented and now therefore finds and concludes:

1. There are no genuine issues of material fact so as to preclude summary judgment in favor of Defendant City of Richland;

2. Defendant City of Richland is entitled to summary judgment as a matter of law because the records in question constitute attorney work product and are therefore exempt from production under the Public Records Act, Ch. 42.56 RCW, and were properly withheld by the City of Richland in response to Mr. Denney's requests for public records;

3. Plaintiff Mr. Denney's motion for summary judgment is not legally well founded and is denied.

Based on the foregoing IT IS ORDERED, ADJUDGED AND DECREED:

1. Defendant City of Richland's motion for summary judgment is GRANTED;

2. Plaintiff Mr. Denney's motion for summary judgment is DENIED;

3. All claims and causes of action alleged by plaintiff in this matter are DISMISSED WITH PREJUDICE; and

3. Defendant City of Richland is the prevailing party herein and may present judgment accordingly.

DATED THIS 12th day of February, 2019.



HON. ALEX EKSTROM
SUPERIOR COURT JUDGE

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Presented by:

MENKE JACKSON BEYER, LLP

By: 
KENNETH W. HARPER, WSBA #25578
Attorneys for defendant City of Richland

Approved as to form and content; notice of presentation waived:

MILLER MERTENS & COMFORT, PLLC

By: _____
JOEL R. COMFORT, WSBA #31477
Attorneys for defendant City of Richland

MACDONALD HOAGUE & BAYLESS

By: _____
JESSE WING, WSBA #27751
SAM KRAMER, WSBA #50132
Attorneys for plaintiff Christopher Denney

MENKE JACKSON BEYER, LLP

January 03, 2020 - 4:32 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 97494-2
Appellate Court Case Title: Christopher Denney v. City of Richland
Superior Court Case Number: 17-2-02888-3

The following documents have been uploaded:

- 974942_Briefs_Plus_20200103162141SC497548_0886.pdf
This File Contains:
Briefs - Respondents Supplemental
Certificate of Service
The Original File Name was Supplemental Brief of Respondent.pdf

A copy of the uploaded files will be sent to:

- TimF@mhb.com
- janet@mjbe.com
- jessew@mhb.com
- julie@mjbe.com
- lindamt@mhb.com
- noemiv@mhb.com
- qplant@mjbe.com

Comments:

Sender Name: Cindy Maley - Email: cindy@mjbe.com

Filing on Behalf of: Kenneth W. Harper - Email: kharper@mjbe.com (Alternate Email: cindy@mjbe.com)

Address:
807 N 39th Ave
Yakima, WA, 98902
Phone: (509) 575-0313

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