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No. 64819-5-I
(Consolidated with No. 65810-7-I)

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

HARLEY H. HOPPE & ASSOCIATES, INC.,

Appellant,

v.

KING COUNTY, a political subdivision of the State of Washington;
and SCOTT NOBLE, King County Assessor,

Respondent.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE SUSAN CRAIGHEAD

**AMENDED REPLY BRIEF OF KING COUNTY
ON CROSS-APPEAL**

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DIVISION I
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I. INTRODUCTION

The Superior Court incorrectly reentered judgment in favor of the County on Hoppe's claim that had already been finally adjudicated. This improper reentry of judgment did not resurrect the already expired appeal period. The *Hoppe I* appeal should accordingly be dismissed as untimely.

II. REPLY ARGUMENT

A. Summary Judgment Served as Final Judgment on Hoppe's Claim

On July 29, 2009, the King County Superior Court entered summary judgment fully adjudicating Hoppe's only claim in this case. CP 1216-18, 1219-20. The Court's July 29, 2009 Summary Judgment incorporated by reference a correspondence ruling and

ORDERED ADJUDGED AND DECREED that King County's motion for summary judgment is GRANTED. For each of the reasons set forth in King County's motion, Hoppe's claims against the County be and hereby are dismissed with prejudice.

CP 1216-18.

If no counterclaim had been pending at the time this Summary Judgment was entered, there would be no argument disputing the fact that the manner of dismissal (by summary judgment) and the particular phrasing of the Court's ruling

("ORDERED ADJUDGED AND DECREED") resulted in a final judgment that triggered RAP 5.2's thirty day appeal period. See Ron & E Enterprises, Inc. v. Carrara, LLC, 137 Wn.App. 822, 826, 155 P.3d 161 (2007) (summary judgment order which "ORDERED, ADJUDGED, AND DECREED" that defendant's motion for summary judgment was granted "was a final, dispositive judgment"); see also In re Estate of Black, 153 Wn.2d 152, 170, 102 P.3d 796, 806 (2004) ("grant of summary judgment is a final judgment").

While King County agrees that the pendency of its counterclaim prevented Hoppe from immediately appealing the July 29, 2009 summary judgment dismissal of Hoppe's Public Records Act claim¹, this RAP 2.2(d) limitation on appellate review was removed on November 23, 2009, when the Superior Court entered a stipulated order dismissing the sole remaining counterclaim. CP 1324-25. At that point, no further claims or causes of action remained to be adjudicated in the case, and the summary judgment that had previously fully disposed of all claims by Hoppe was subject to appeal. See Michael v. Mosquera-Lacy, 165 Wn.2d 595,

¹ See RAP 2.2(d) (generally requiring CR 54(B) findings in order to appeal a final judgment when other unresolved claims still remain).

600 - 01, 200 P.3d 695 (2009) (considering appeal of partial summary judgment after voluntary dismissal of remaining claims); Colbert v. Moomba Sports, Inc., 132 Wn.App. 916, 922, 135 P.3d 485 (2006) (considering appeal of partial summary judgment after voluntary dismissal of remaining claims); Kahn v. Salerno, 90 Wn.App. 110, 116 - 17, 951 P. 2d 321 (1998) (considering appeal of partial summary judgment following voluntary dismissal of remaining claims).

Indeed, on December 2, 2009, within thirty days after the November 23, 2009 final resolution of the Superior Court case, Hoppe filed its initial Notice of Appeal. CP 1-8. That initial Notice, however, inadvertently designated the wrong orders for review. Instead of appealing the summary judgment dismissal of Hoppe's public records claim, Hoppe indicated that it was seeking review of the stipulated order dismissing the County's counterclaim and of an earlier order that had denied the County's motion for summary judgment on its counterclaim. CP 1-8.

Orders denying summary judgment and stipulating to dismissal are generally not subject to appeal. See Baird v. Baird, 6 Wn.App. 587, 589, 494 P.2d 1387, 1389 (1972) (judgment by consent ordinarily not reviewable); Loc Thien Truong v. Allstate

Property and Cas. Ins. Co., 151 Wn.App. 191, 206, 211 P.3d 430 (2009) (denial of a motion for summary judgment is generally not an appealable order). Accordingly, on December 23, 2009, the Court of Appeals moved *sua sponte* to determine the reviewability of Hoppe's designated orders. CP 1377 ("It appears that the order appealed from is not reviewable as of right pursuant to RAP 2.2(a)."). The County likewise urged that the appeal be dismissed on grounds that orders designated by Hoppe, entering a stipulated dismissal of the County's counterclaim and denying the County's motion for summary judgment, were not reviewable. CP 1351-58.

To be clear, neither the *sua sponte* motion of this Court nor the County's response thereto suggested that Hoppe's initial notice of appeal was problematic based on lack of finality or prematurity. In fact, the County's response explicitly noted that it was the nature of the orders designated (not generally reviewable under RAP 2.2(a)) and not the timing of Hoppe's notice that precluded review.

King County believes that review of the July 20, 2009 Summary Judgment Order would have been proper if a timely notice of appeal had designated that decision for review. "Adjudged" verbiage in the July 20, 2009 summary judgment order, combined with subsequent stipulated dismissal of the remaining counterclaim rendered the case disposition final and subject to appellate review.

CP 1357.

B. No Proper Basis for Reentry of Judgment.

Instead of seeking to correct the notice of appeal that had been timely filed in this matter, Hoppe opted to voluntarily withdraw its initial appeal. This Court granted Hoppe's request and dismissed the appeal on January 7, 2010. CP 1379.

Hoppe then returned to Superior Court, however, and urged that judgment be reentered in favor of the County on the already fully and finally adjudicated public disclosure claim. CP 1326-42. King County opposed entry of the duplicative judgment order, pointing out that the Court's July 20, 2009 Summary Judgment ruling had already "Ordered, Adjudged and Decreed" that Hoppe's claim was dismissed with prejudice; that this prior entry of summary judgment already constituted a final dispositive judgment; that there was no basis in the civil rules for reentering a judgment that was already in place; and that Hoppe's sole purpose for seeking to renew judgment was to resurrect an already expired appeal period. CP 1343-79.

On January 21, 2010, the Superior Court granted Hoppe's request and reentered judgment in favor of King County on the previously adjudged claim. CP 1383-84. Hoppe then filed its

second notice of appeal in this case on January 27, 2010. CP 1385-86.

King County's cross-appeal challenges the Superior Court's decision to reenter judgment. CP 1390-94. As noted above, the Court's July 20, 2009 Summary Judgment constituted a final dispositive judgment on Hoppe's sole claim in this case. The trial court's decision to enter a second judgment on that claim can only be viewed as a reentry of judgment, for which there is simply no support in the civil rules.

Entry of judgment on the previously adjudicated claim was not justified by any civil rule. This was not an instance where plaintiff sought to reopen, alter or amend judgment pursuant to CR 59. Nor was this a case where additional judgment findings were necessary under CR 54(b) in order to allow for immediate review while additional claims are still pending. At the time Hoppe sought reentry of judgment, there were no claims pending -- much less any additional claims that would have necessitated special findings under CR 54(b) and RAP 2.2(d). Indeed, the reentered judgment at issue in this cross-appeal did not purport to include any of findings that are required in the context of CR 54(b). CP 1383-84.

Similarly unavailing is Hoppe's circular argument based on the expansive definition of "judgment" in CR 54(a) ("judgment ... includes any decree and order from which an appeal lies"). Hoppe contends that the summary judgment entered was not a "judgment" under this definition because it was not appealable (and that the summary judgment was not appealable after dismissal of the remaining counterclaim because it was not a judgment). As noted above, the Superior Court's entry of summary judgment was the final determination of the parties' rights with respect to Hoppe's public records claim. The summary judgment became a reviewable judgment at the time that the Court ordered dismissal of the only remaining claim in the case.

Finally, Hoppe's reference to CR 54(e) does not support the reentry of judgment. The subsection merely authorizes any party to prepare and present judgment when the prevailing party fails to timely do so itself. CR 54(e). As noted above, in this case, judgment had already been entered on Hoppe's Public Records Act claim. CR 54(e) in no sense authorizes a party to refile judgment on a claim for which judgment was already entered.

III. CONCLUSION

For these reasons, King County respectfully requests that this Court reverse the Superior Court's decision to reenter judgment in favor of the County and dismiss the *Hoppe I* appeal on grounds that it was filed beyond RAP 5.2 time limitations.

DATED this 2nd day of November, 2010.

RESPECTFULLY submitted,

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