

No. 67515-0-I
No. 67704-7-I (Consolidated)

COURT OF APPEALS, DIVISION I,
OF THE STATE OF WASHINGTON

WILLIAM RALPH, individually,
Appellant,

vs.

STATE OF WASHINGTON DEPARTMENT OF NATURAL
RESOURCES, a Washington State Public Agency,
Respondent.

WILLIAM FORTH, individually; GUY BAUMAN, individually;
EILEEN BAUMAN, individually; LINDA STANLEY, individually and
as personal representative IN RE THE ESTATE OF CORAL COTTON;
ROCHELLE STANLEY as personal representative IN RE THE ESTATE
OF CORAL COTTON; DONALD LEMASTER, individually; and
DAVID GIVENS, individually

Appellants,

vs.

STATE OF WASHINGTON DEPARTMENT OF NATURAL
RESOURCES, a Washington State Public Agency; WEYERHAEUSER
COMPANY, a Washington Corporation; and GREEN DIAMOND
RESOURCE COMPANY, a Washington Corporation,

Respondents.

APPELLANT'S BRIEF

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I. INTRODUCTION

The appellants before this court, William Ralph and William Forth, are each one of six plaintiffs who filed a tort action in one county to recover from damage to real and personal property located in a different county.¹ In all six of these lawsuits, the defendants filed a motion to dismiss for lack of subject matter jurisdiction, arguing that RCW 4.12.010 limits jurisdiction for “any injuries” to real property to the county in which the property is situated.

Three judges heard three of the six cases and denied the defendants’ motions to dismiss for lack of subject matter jurisdiction; these cases are currently stayed at trial court, pending the outcome of this appeal. In the other three cases, two judges granted the defendants’ motions to dismiss. Two of the dismissed cases, *Ralph v. State Dep’t of Nat. Res.*, 67515-0-I, and *Forth v. State Dep’t of Nat. Res., et al.*, 67704-7-I, are the subject of this appeal.

Ralph and *Forth* were consolidated on appeal for judicial

¹ Five cases were filed in King County Superior Court: (1) *Davis et al. v. State Dep’t of Nat. Res. et al.*, King County Superior Court Case No. 10-2-42010-0 KNT (Cayce, J.); (2) *Forth et al. v. State Dep’t of Nat. Res. et al.*, King County Superior Court Case No. 10-2-42009-6 KNT (McCullough, J.); (3) *Carey et al. v. State Dep’t of Nat. Res.*, King County Superior Court Case No. 10-2-42011-8 KNT (Mack, J.); (4) *Ralph v. Weyerhaeuser, et al.*, King County Superior Court Case No. 10-2-42012-6 KNT (Gain, J.); and (5) *Ralph v. State Dep’t of Nat. Res., King County Superior Court Cause No. 11-2-05769-1 KNT (McCullough, J.)*. And one was filed in Pierce County Superior Court: *Triol et al v. State Dep’t of Nat. Res. et al.*, Pierce County Superior Court Case No. 11-2-06140-5 (Hogan, J.).

efficiency because both appeals involve identical legal issues arising from an identical procedural posture.

II. ASSIGNMENTS OF ERROR

Assignments of Error

No. 1: By relying on RCW 4.12.010, the superior court erred in dismissing Ralph's and Forth's lawsuit for lack of subject matter jurisdiction under CR 12(h)(3).

Issues Pertaining to Assignments of Error

No. 1: Washington superior courts have universal original jurisdiction over all cases and proceedings under article IV, section 6 of the Washington State Constitution. Does RCW 4.12.010 divest a Washington superior court of its universal original jurisdiction to hear a tort action, or is RCW 4.12.010 simply a venue statute where it applies?

No. 2: Even though these tort lawsuits partially involve real property, Ralph and Forth filed suit to recover monetary damages for injuries personal to them. Does RCW 4.12.010 even apply in this tort lawsuit?

III. STATEMENT OF CASE

The facts of this case are not disputed. Ralph and Forth are

residents of Lewis County, Washington, where they own real property. CP-Ralph at 3; CP-Forth at 2. In December 2007, their property flooded when landslides displaced waters from the Chehalis River. CP-Ralph at 3; CP-Forth at 2.

Seeking recovery from damages to real and personal property, Ralph and Forth filed suit in King County. CP-Ralph at 4, 11; CP-Forth at 5-6, 13. Their complaint alleged that the defendants' unreasonably dangerous and unlawful forest practices on steep and unstable slopes of the Chehalis River basin caused their properties to flood. CP-Ralph at 2, 4-7; CP-Forth at 2, 6-9. Ralph and Forth suffered monetary damages necessary to, among other things, restore real property, replace or repair personal property, and recover lost business expectancies. CP-Ralph at 10-11; CP-Forth at 9-12. They pleaded only special and general damages. CP-Ralph at 10; CP-Forth at 12.

The defendants moved to dismiss Ralph's and Forth's lawsuit under CR 12(h)(3) for lack of subject matter jurisdiction. CP-Ralph at 19-32; CP-Forth 38-48. Essentially, the defendants argued that Lewis County Superior Court was the only court with proper subject matter jurisdiction over the lawsuit because Ralph and Forth each alleged injury to his real property. CP-Ralph at 21-23; CP-Forth at 40-41. When an action arises out of an injury to property, the defendants contended, RCW 4.12.010

applies. CP-Ralph at 21-22; CP-Forth at 40-41. When RCW 4.12.010 applies, the defendants further contended, only the superior court in the county in which the real property is located—here Lewis County—has subject matter jurisdiction. CP-Ralph at 22; CP-Forth at 41.

King County Superior Court Judge LeRoy McCullough agreed with the defendants and dismissed Ralph’s and Forth’s lawsuit for lack of subject matter jurisdiction. CP-Ralph at 171-72; CP-Forth at 166-68. On this appeal, Ralph and Forth assert that King County Superior Court has subject matter jurisdiction over their lawsuit.

IV. SUMMARY OF ARGUMENT

Article IV, section 6 of our state constitution gives Washington superior courts universal original jurisdiction over all cases and proceedings. RCW 4.12.010 cannot be applied to limit this constitutional authority; doing so is an unconstitutional application of the statute. Without conceding that RCW 4.12.010 applies to this lawsuit, the proper remedy under RCW 4.12.010 is to transfer venue, not dismiss.

Alternatively, the superior court here erred in dismissing Ralph’s and Forth’s lawsuit because RCW 4.12.010 simply does not apply. RCW 4.12.010 applies to local actions affecting title to real property, not to Ralph’s and Forth’s negligence lawsuit in which they seek monetary damages personal to them.

V. ARGUMENT

A. The standard of review is de novo.

This court reviews de novo whether a particular court has jurisdiction. *Crosby v. Spokane County*, 137 Wn.2d 296, 301, 971 P.2d 32 (1999). Constitutional challenges are also reviewed de novo. *Weden v. San Juan County*, 135 Wn.2d 678, 693, 958 P.2d 273 (1998).

B. Article IV, Section 6 of our state constitution confers universal original subject matter jurisdiction on all Washington superior courts.

“Washington superior courts have jurisdiction by grant of authority from the Washington State Constitution.” *Williams v. Leone & Keeble, Inc.*, 171 Wn.2d 726, 820, 254 P.3d 818 (2011). Article IV, section 6 of our constitution provides, “The superior court shall . . . have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court.”

Our Supreme Court has interpreted article IV, section 6 as allowing “the legislature to limit the superior court’s jurisdiction in certain matters, provided it vests authority over such matters in some other court, presumably a court of limited jurisdiction.” *Young v. Clark*, 149 Wn.2d 130, 133, 65 P.3d 1192 (2003). Thus, the legislature has authority only to “carve out” the limited jurisdiction of inferior courts; otherwise, the superior courts retain universal original jurisdiction in all cases and over

all proceedings. Const. art. IV, § 6; *Young*, 149 Wn.2d at 133-34 (citing *Moore v. Perrot*, 2 Wn. 1, 4, 25 P. 906 (1891)).

C. King County Superior Court has universal original subject matter jurisdiction to hear Ralph’s and Forth’s lawsuit in tort.

“Subject matter jurisdiction refers to the authority of a court to adjudicate a particular type of controversy, not a particular case.” *Dougherty v. Dep’t of Labor & Indus.*, 150 Wn.2d 310, 317, 76 P.3d 1183 (2003). “Generally, all superior courts have precisely the same subject matter jurisdiction because they have the same authority to adjudicate the same ‘types of controversies.’” *Dougherty*, 150 Wn.2d at 317. The “‘type of controversy’” is the critical concept in determining whether a court has subject matter jurisdiction. *Dougherty*, 150 Wn.2d at 316 (quoting *Marley v. Dep’t of Labor & Indus.*, 125 Wn.2d 533, 539, 886 P.2d 189 (1994)). “‘Type’ means the general category without regard to the facts of the particular case.” *Dougherty*, 150 Wn.2d at 317. “It refers to the nature of a case and the kind of relief sought.” *Dougherty*, 150 Wn.2d at 317.

Here, the “type of controversy” is a tort action: Ralph and Forth sued the defendants for negligently managing forest resources, which caused them to suffer various monetary damages. The legislature has not divested Washington superior courts of authority to hear tort actions; thus, all Washington superior courts, including the King County Superior Court

here, have original subject matter jurisdiction to hear Ralph's and Forth's lawsuit. *Williams*, 171 Wn.2d at 820 (citing Const. art. IV, § 6) ("Where one state resident sues another in tort, the superior courts of Washington State have subject matter jurisdiction." (Emphasis added)); *see also J.A. v. State Dep't of Social and Health Servs.*, 120 Wn. App. 654, 660, 86 P.3d 202 (2004) ("Here, the type of controversy is a tort action against the State and, under RCW 4.92.010, each superior court may hear such a claim.").

D. The defendants' reliance on RCW 4.12.010 is misguided, and by agreeing with the defendants, the trial court applied RCW 4.12.010 unconstitutionally.

The defendants' position in this lawsuit has been that because Ralph and Forth have alleged an injury to real property, RCW 4.12.010 requires them to file in Lewis County, where their property is located. RCW 4.12.010 states, in relevant part:

Actions for the following causes shall be commenced in the county in which the subject of the action, or some part thereof, is situated:

(1) For the recovery of, for the possession of, for the partition of, for the foreclosure of a mortgage on, or for the determination of all questions affecting the title, or for any injuries to real property.

(Emphasis added). The defendants have continually contended that RCW 4.12.010 is a limit on Washington superior court's jurisdiction, as opposed to a venue requirement that Ralph and Forth may be required to follow if it

applies. The defendants' position is misguided.

Importantly, the defendants have thus far failed to acknowledge that modern jurisprudence distinguishes between venue and jurisdiction. *Dougherty*, 150 Wn.2d at 315. Jurisdiction ““is the power and authority of the court to act”” and “does not depend on procedural rules.” *Dougherty*, 150 Wn.2d at 315 (quoting 77 Am.Jur. 2D Venue § 1, at 608 (1997)) (emphasis added). “A court may acquire jurisdiction even though it is not the court of proper venue.” *Dougherty*, 150 Wn.2d at 315. But a court is not required to exercise jurisdiction when venue is in another court. *Dougherty*, 150 Wn.2d at 315.

By contrast, venue pertains to the “location” where a lawsuit may be brought. *Dougherty*, 150 Wn.2d at 316 (emphasis added). Venue concerns where adjudication occurs and ““where the suit may or should be heard.”” *Dougherty*, 150 Wn.2d at 316 (quoting 77 AM.JUR.2D Venue § 1, at 608 (1997)). ““Venue is distinguished from jurisdiction in that jurisdiction connotes the power to decide a case on its merits while venue connotes locality. Venue is a procedural, rather than jurisdictional, issue.”” *Dougherty*, 150 Wn.2d at 316 (quoting 92A C.J.S. Venue § 2, at 241–42 (2000)).

“While location determines venue, the ‘location of a transaction or a controversy usually does not determine subject matter jurisdiction.’”

Dougherty, 150 Wn.2d at 316 (quoting 20 AM.JUR.2D Courts § 70, at 384 (1997)). “Statutes which require actions to be brought in certain counties are generally regarded as specifying the proper venue and ‘are ordinarily construed not to limit jurisdiction of the state courts to the courts of the counties thus designated.’” *Dougherty*, 150 Wn.2d at 316 (quoting 77 AM.JUR.2D Venue § 44, at 651 (1997)); *see also Burnside v. Simpson Paper Co.*, 123 Wn.2d 93, 98-99, 864 P.2d 937 (1994) (noting that our state constitution gives Washington superior courts broad original jurisdiction and that an act should not be construed to limit that grant absent clear legislative intent); *see e.g., Young*, 149 Wn.2d 130; *Shoop v. Kittitas County*, 108 Wn. App. 388, 30 P.3d 529 (2001) (*Shoop I*), *aff’d on other grounds, Shoop v. Kittitas County*, 149 Wn.2d 29, 37, 65 P.3d 1194 (2003) (*Shoop II*).

By ignoring the distinctions between jurisdiction and venue, the defendants overlook the undisputable fact that RCW 4.12.010 designates the proper venue for local actions. Where it applies, RCW 4.12.010 designates the county (i.e., location) in which the action should be filed, not the court in which it should be filed. RCW 4.12.010 (“Actions for the following causes shall be commenced in the county in which the action . . . is situated.”). Nowhere does the statute indicate that one superior court has more jurisdictional authority—or power—to hear actions for “injuries

to real property.” RCW 4.12.010.

This is not a case where Ralph and Forth filed in a court of limited jurisdiction, such as a district court, when they ought to have filed in superior court. Instead, Ralph and Forth filed a tort action in superior court. Of course, the defendants’ are free to argue that venue is improper under RCW 4.12.010, but the defendants’ position in this litigation is simply unfounded; it cannot defend the position that RCW 4.12.010 restricts the universal original subject matter jurisdiction of all Washington superior courts to hear tort lawsuits. *Dougherty*, 150 Wn.2d at 315.

The *Dougherty* Court rejected “the theory that subject matter jurisdiction of the superior court varies from county to county.” *Dougherty*, 150 Wn.2d at 317. It recognized that “if ‘type of controversy’ depends on which county the case is filed or heard in, then all venue provisions would become subject matter jurisdiction provisions.” *Dougherty*, 150 Wn.2d at 317 (emphasis added). Here, the defendants advocate, and the superior court erroneously adopted, precisely what the *Dougherty* Court warned against: that linking the “type of controversy” to the county where the case was filed or heard would lead all venue provisions, like RCW 4.12.010, to become subject matter provisions. *Dougherty*, 150 Wn.2d at 317.

As a result of agreeing with the defendants' position, the superior court applied RCW 4.12.010 unconstitutionally, and thus, erred in dismissing Ralph's and Forth's tort lawsuit under CR 12(h)(3). *City of Redmond v. Moore*, 151 Wn.2d 664, 669, 91 P.3d 875 (2004) ("An as-applied challenge to the constitutional validity of a statute is characterized by a party's allegation that application of the statute in the specific context of the party's actions or intended actions is unconstitutional."). Even if RCW 4.12.010 were to apply, which Ralph and Forth do not concede, the proper remedy is merely to transfer venue, not dismiss. *Dougherty*, 150 Wn.2d at 319 (quoting *Okanogan Wilderness League, Inc. v. Town of Twisp*, 133 Wash.2d 769, 791, 947 P.2d 732 (1997) ("Elevating procedural requirements to the level of jurisdictional imperative has little practical value and encourages trivial procedural errors to interfere with the court's ability to do substantive justice.")).

This court should hold that RCW 4.12.010 cannot be applied to limit a superior court's universal original subject matter jurisdiction. Holding as such would prohibit future application of RCW 4.12.010 to limit subject matter jurisdiction, not invalidate the statute, as the defendants have before argued in this litigation. *City of Redmond*, 151 Wn.2d at 669. This court should further hold that, in so relying on RCW 4.12.010, the superior court erred in dismissing Ralph's and Forth's

lawsuit for lack of subject matter jurisdiction under CR 12(h)(3), and the proper remedy is to reverse and remand.

E. Ralph’s and Forth’s position with regard to RCW 4.12.010 is consistent with recent caselaw interpreting parallel statutes.

Ralph’s and Forth’s position that RCW 4.12.010 cannot be applied to divest Washington superior courts of their constitutionally granted original jurisdiction over tort claims is consistent with recent caselaw interpreting parallel statutes. That caselaw includes *Dougherty*, *Young*, *Shoop I*, and *Shoop II*.

In *Dougherty*, our Supreme Court considered RCW 51.52.110, the statute governing where to file industrial insurance appeals. *Dougherty*, 150 Wn.2d at 314-15. After a thorough discussion of jurisdiction and venue (discussed above in this brief), the *Dougherty* Court held that RCW 51.52.110 “establishes the appellate jurisdiction of the superior courts and also designates the proper venue for those appeals.” *Dougherty*, 150 Wn.2d at 317. “The statute’s references to the location of the superior courts where the appeals are to be heard refer to venue.” *Dougherty*, 150 Wn.2d at 317. “To hold otherwise would mean that the only type of proceeding over which the court of a particular county has subject matter jurisdiction is one involving persons who are residents of, or are injured within, the county.” *Dougherty*, 150 Wn.2d at 317.

In *Young*, our Supreme Court considered whether former RCW 4.12.020(3) (1941), violated article IV, section 6 of our constitution. *Young*, 149 Wn.2d at 133. Former RCW 4.12.020(3) gave a motor vehicle accident plaintiff “the option of suing either in the county in which the cause of action or some part thereof arose, or in the county in which the defendant resides, or if there be more than one defendant, where some one of the defendants resides, at the time of the commencement of the action.” *Young*, 149 Wn.2d at 133. The *Young* Court held, “Our previous interpretation of RCW 4.12.020 construed the statute to limit subject matter jurisdiction as among superior courts. So understood, the statute violates article IV, section 6 of the state constitution.” *Young*, 149 Wn.2d at 134. “[T]he filing restrictions of RCW 4.12.020(3) relate only to the venue in which such actions may be tried.” *Young*, 194 Wn.2d at 134 (emphasis added).

In *Young*’s companion case, *Shoop II*, our Supreme Court considered Former RCW 36.01.050 (1997), which limited the superior courts in which a county may be sued. *Shoop*, 149 Wn.2d at 33, 35. Relying on its holding in *Young*, the *Shoop* Court stated, “we hold our previous interpretation of RCW 36.01.050 (1963) as a jurisdictional statute is inconsistent with article IV, section 6 of the Constitution.” *Shoop*, 149 Wn.2d at 38. The *Shoop II* Court interpreted article IV,

section 6 as precluding “any subject matter restrictions as among superior courts,” and consequently, the court overruled prior decisions that interpreted former RCW 36.01.050 as jurisdictional. *Shoop*, 149 Wn. 2d at 37.

Equally important to our Supreme Court’s decision in *Shoop II* is Division One’s detailed discussion in *Shoop I* about the constitutional origin of Washington superior courts’ subject matter jurisdiction. In line with *Dougherty*, *Young*, and ultimately *Shoop II*, Division One aptly noted, “The concept that subject matter jurisdiction of the superior court varies from county to county is at odds with the concept of the superior court as a single bench whose subject matter jurisdiction ‘flows from constitutional mandate.’” *Shoop*, 108 Wn. App. at 308 (citing *State v. Werner*, 129 Wash.2d 485, 492, 918 P.2d 916 (1996)). Then, after citing article IV, section 6, Division One stated, “The constitution does not authorize the Legislature to prescribe or diminish the jurisdiction of the superior court.” *Shoop*, 108 Wn. App. at 396 (citing *Seattle v. Hesler*, 98 Wn.2d 73, 77, 653 P.2d 631 (1982)). “By creating a trial court with subject matter jurisdiction that cannot be whittled away by statutes, the constitution provides the foundation for an independent and coequal judicial branch of state government.” *Shoop*, 108 Wn. App. at 396.

Division One then distinguished venue. “In contrast to the subject

matter jurisdiction of the superior court, venue is an appropriate subject for legislation. Venue rules serve to limit a plaintiff's choice of forum to ensure that the locality of a lawsuit has some logical relationship to the litigants or the subject matter of the dispute." *Shoop*, 108 Wn. App. at 396. This can range from providing that certain actions "shall" or "may" be brought in a certain county or counties, depending on a host of factors. *Shoop*, 108 Wn. App. at 396. "The reasons for such rules are 'important to the Legislature and not to the courts.'" *Shoop*, 108 Wn. App. at 396 (quoting *McWhorter v. Superior Court*, 112 Wn. 574, 577, 192 P. 903 (1920)).

Division One also touched on the reason why caselaw surrounding jurisdiction and venue has not always been consistent: imprecise and casual use of the term "jurisdiction." *Shoop*, 108 Wn. App. at 397 (citing *Marley*, 125 Wn.2d at 541); *see also Dougherty*, 150 Wn.2d at 315 ("the separate issues of venue and jurisdiction have been blurred"). The court noted that some early Supreme Court decisions "display a tendency to speak of improper venue and lack of subject matter jurisdiction as though they mean the same thing." *Shoop*, 108 Wn. App. at 398; *cf.*, *Nash v. Superior Court*, 82 Wn. 614, 144 P. 898 (1914); *State ex rel. Christensen v. Superior Court*, 108 Wn. 666, 185 P. 623 (1919). Indeed, the defendants here have relied on a group of cases that fail to accurately

distinguish between jurisdiction and venue.

As *Dougherty*, *Young*, *Shoop I*, and *Shoop II* demonstrate, the modern trend is to distinguish between jurisdiction and venue. The distinction is important, appellate courts now recognize, because article IV, section 6 of our state constitution plainly gives all Washington superior courts original jurisdiction to hear all cases and all proceedings.²

F. Alternatively, RCW 4.12.010 does not apply to Ralph’s and Forth’s tort lawsuit because their claims are personal to them and transitory in nature.

1. Ralph’s and Forth’s claims are personal to them and transitory in nature.

Ralph’s and Forth’s claims are personal to them and transitory in nature because the claims simply encompass monetary damages to real property. *State ex rel. U.S. Trust Co. v. Phillips*, 12 Wn.2d 308, 316-17, 121 P.2d 360 (1942) (“surely the instant case, which is for damages only, must be . . . considered [transitory]”); *McLeod v. Ellis*, 2 Wn. 117, 122, 26 P. 76 (1891) (plaintiff not required to bring suit in county where property is located when action concerned merely monetary values, without any claim for injury to land); *Washington State Bank v. Medalia Healthcare L.L.C.*, 96 Wn. App. 547, 555, 984 P.2d 1041, 1047 (1999) (Generally,

² A similar trend is also apparent at the federal level, where courts have strived to “us[e] the term ‘jurisdictional’ only when it is apposite” and to “curtail . . . ‘drive-by jurisdictional rulings.’” *Reed v. Elsevier*, ___ U.S. ___, 130 S. Ct. 1237, 1243-44, 176 L.Ed.2d 18 (2010) (quoting *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 118 S. Ct. 1003, 140 L.Ed.2d 210 (1998)); see also *Payne v. Peninsula Sch. Dist.*, 653 F.2d 863, 869 (2011).

actions for monetary recovery are in personam and are transitory in nature); *Shelton v. Farkas*, 30 Wn. App. 549, 553, 635 P.2d 1109 (1981) (“[t]he term ‘transitory action’ encompasses those actions which at common law might be tried wherever personal service can be obtained as opposed to in rem proceedings which are local in nature”). Here, Ralph and Forth are solely seeking monetary damages, and the superior court will not have to deal directly with the real and personal property that the defendants are alleged to have negligently damaged. Accordingly, their claims are personal and transitory in nature.

McLeod lends support to this conclusion. There, the defendant cut down, removed, and disposed of trees located on the plaintiff’s property, causing damages valued at approximately \$4,200. *McLeod*, 2 Wash. at 119. The plaintiff did not file the suit in the same county in which the property was located, and the defendant challenged the superior court’s jurisdiction. *McLeod*, 2 Wash. at 119. Our Supreme Court held that the action was not one for injuries to realty but rather was an action for the value of trees “as personalty merely, without any claim for injury to his land.” *McLeod*, 2 Wash. at 122. Here, Ralph and Forth have similar claims of damage to real property, including flooding and landslides, that does not constitute “injury to [their] land.” *McLeod*, 2 Wash. at 122.

Furthermore, at least one Washington court has found an action

other than conversion to be transitory. *Silver Surprise, Inc. v. Sunshine Mining Co.*, 74 Wn.2d 519, 520, 445 P.2d 334 (1968). In *Silver Surprise*, the plaintiff brought a breach of contract claim concerning an exchange of conveyances and mining of property located in Idaho. The defendant asserted an affirmative defense of adverse possession. *Silver Surprise*, 74 Wn.2d at 521. The superior court dismissed for lack of subject matter jurisdiction because it viewed the subject of the action to be the determination of the title to the property in Idaho. *Silver Surprise*, 74 Wn.2d at 522. Our Supreme Court reversed, holding that the contract action was transitory and that “[t]he view is generally maintained that where the relief sought acts upon the party personally and does not require the court to deal directly with ‘the real estate itself’, the proceeding need not be maintained in the state or county where the property is situate.” *Silver Surprise*, 74 Wn.2d at 525-527. Instead, “where the basis of the action is transitory and one over which the court has jurisdiction, the court may hear and determine the action even though a question of title to foreign land may be involved, and even though the question of title may constitute the essential point on which the case depends.” *Silver Surprise*, 74 Wn.2d at 526.

Here, Ralph’s and Forth’s tort action seeks relief in the form of monetary damages personal to them and does not affect title to their

property. Their claims deals with an “injury” to real property only in the most literal sense: floodwaters damaged real property and personal belongings. But this form of “injury” is not what RCW 4.12.010 contemplates. Instead, RCW 4.12.010 contemplates an “injury” to real property in the more abstract sense, meaning that title is affected, and accordingly, RCW 4.12.010 requires such actions are to be brought in the county in which the property is located to protect future owners. *Seymour v. La Furgey*, 47 Wn. 450, 451-52, 92 P. 267 (1907) (“It is the policy of our law that all transactions affecting the title to real estate shall be matters of record in the county where such real estate is situated, so that any one concerned therewith may be informed as to the condition of its title by an examination of the public records in such county.”). Future owners will have nothing to gain from notice that the defendants’ negligence caused Ralph and Forth to suffer monetary damages. This action affects Ralph and Forth personally, not their land or title to land in the abstract.

Certainly Ralph’s and Forth’s real property is part of a lawsuit because floodwater damaged it, but contrary to the defendants’ position, this alone does not make the action local in nature. 14 Karl B. Tegland, *Washington Practice Civil Procedure* §6:5 (2011) (citing *State v. Superior Court of Spokane County*, 110 Wash. 49, 187 P. 708 (1920)) (“The mere fact that real estate is attached in an action which would otherwise be

considered a transitory action does not convert the action into a local action.”). To the contrary, as discussed above, Ralph’s and Forth’s lawsuits are transitory in nature because they seek to litigate their personal interests in the property and to recover in the form of the money damages that he suffered. *In re Marriage of Kowalewski*, 163 Wn.2d 542, 547, 182 P.3d 959 (2008) (Appellant failed “to recognize the distinction between jurisdiction to adjudicate personal interests in real property, which is a transitory action, and jurisdiction to adjudicate legal title to real property, which is a local action that must be brought in the situs state.”). Ralph and Forth only pleaded general and special damages; they only seek to be made whole personally for the defendants’ negligence.

2. RCW 4.12.025 (1) applies to transitory actions, not RCW 4.12.010.

When the action is personal and transitory in nature, RCW 4.12.025(1) applies, not RCW 4.12.010 like the defendants assert. “Although our statutes do not employ the terms “local” and “transitory,” the actions described in RCW 4.12.010, which must be brought in the county where the property is located, are “local”, while “transitory” actions are those described in RCW 4.12.025, which may be brought where the defendant resides.” *Washington State Bank*, 96 Wn. App. at 555; *State ex rel. U.S. Trust Co.*, 12 Wn.2d at 316-17, 121 P.2d 360

(1942) (“[transitory actions] must, in our opinion, be brought in the county, or one of the counties, where defendant resides.”). These holdings are consistent with the general trend to limit the applicability of the local action rules, such as RCW 4.12.010. *See Andrews v. Cusin*, 65 Wn.2d 205, 207, 396 P.2d 155 (1964) (“rules or statutes which require that actions for injuries to land be brought at the situs of the land have been severely criticized, as having no sound basis in reason”); *Mueller v. Brunn*, 313 N.W.2d 171, 796-97 (Wis. 1982) (stating that “courts wherever possible have consistently construed actions concerning real estate to be transitory rather than local” and that the trend is toward making all money damage actions transitory).

RCW 4.12.025(1) states:

An action may be brought in any county in which the defendant resides, or, if there be more than one defendant, where some one of the defendants resides at the time of the commencement of the action. For the purpose of this section, the residence of a corporation defendant shall be deemed to be in any county where the corporation: (a) Transacts business; (b) has an office for the transaction of business; (c) transacted business at the time the cause of action arose; or (d) where any person resides upon whom process may be served upon the corporation.

Here, Ralph’s and Forth’s lawsuit against the defendants is solely for monetary damages, is transitory in nature, and may be brought in King County, where the defendants reside. RCW 4.12.025(1). Consequently,

the superior court erred when it dismissed Ralph's and Forth's lawsuit under CR 12(h)(3) because RCW 4.12.010 does not apply to this case.

VI. CONCLUSION

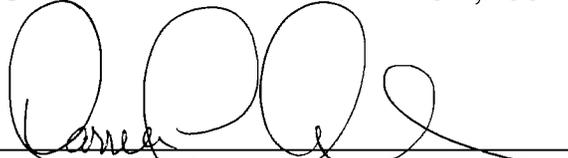
Ralph and Forth timely filed a tort action to hold the defendants liable for years of negligent forest management that caused damage to their real and personal property. They filed in King County Superior Court because article IV, section 6 confers original jurisdiction on all Washington superior courts to hear tort actions. Unfortunately, the superior court unconstitutionally applied RCW 4.12.010 to limit its universal original jurisdiction over Ralph's and Forth's tort lawsuit. In so doing, the superior court erred in dismissing their lawsuits for lack of subject matter jurisdiction under CR 12(h)(3), and Ralph and Forth respectfully request this court to reverse and remand.

Alternatively, this court should reverse and remand because Ralph's and Forth's lawsuit is transitory in nature and RCW 4.12.010 does not govern. Their real property is part of this lawsuit only insofar as it relates to their personal damages; title to their property will not be affected. Consequently, the superior court erred in dismissing Ralph's and Forth's lawsuit when it applied RCW 4.12.010, and this court should reverse and remand.

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RESPECTFULLY SUBMITTED this 7th day of February, 2012.

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Ami Erpenbach, being first duly sworn upon oath, deposes and says:

I am a citizen of the United States of America and of the State of Washington, over the age of twenty-one years, not a party to the above-entitled matter and competent to be a witness therein.

That on February 7, 2012, I placed for delivery with ABC Legal Services, a true and correct copy of the above document, directed to:

Mark Jobson
Attorney General of Washington
7141 Cleanwater Dr. SW
PO Box 40126
Olympia, WA 98504-0126
Attorney for: State of Washington Dept. of Natural Resources

DATED this 7th day of February, 2012


Ami Erpenbach
Legal Assistant to Darrell L. Cochran

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