

71766-9

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No. 71766-9

IN THE WASHINGTON STATE COURT OF APPEALS

DIVISION ONE

CITY OF RENTON, Respondent

v.

ROBIN D. MILLER, Petitioner/Appellant

**ON DISCRETIONARY APPEAL FROM THE
KING COUNTY SUPERIOR COURT**

The Honorable Judge Bill Bowman

APPELLANT'S OPENING BRIEF

**Robin D. Miller
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A. ASSIGNMENTS OF ERROR

1. The Superior Court erred in finding that an insufficient record had been transmitted by the lower court.

2. The Superior Court erred in finding that there was a lack of evidence to consider.

3. The Superior Court erred in dismissing the RALJ appeal case based on the finding that there was a lack of evidence to consider.

4. The Superior Court erred in denying appellant's motion for reconsideration, the effect of which deprives appellant the due process right to receive a RALJ review on the record.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. The Superior Court found that an insufficient record for RALJ review had been transmitted by the lower court [CP-61] resulting in a lack of evidence to consider – yet these findings are unsupported (indeed contradicted) in the record [CP-01 through 80]. Do these findings constitute tenable grounds upon which judicial discretion may be based?

2. The Superior Court dismissed defendant's RALJ appeal case based on its finding that there was a lack of evidence to consider [CP-79 @ 7:13.0]. Does the Superior Court's order constitute an abuse of judicial discretion in this case?

3. The superior court denied appellant's reconsideration motion without explanation, effectively nullifying his statutory due process right

to a RALJ review on the record. [CP – 64] Does a denial of reconsideration, which serves to nullify defendant’s due process right to receive a RALJ review on the record, constitute an abuse of judicial discretion and/or a violation of due process?

C. STATEMENT OF THE CASE

At a contested hearing held July 25, 2013, the Renton Municipal Court found that defendant Miller had committed the traffic infraction of parking an unlicensed vehicle on a city street in violation of the City’s Ordinance RMC 10-10-3(F). [CP – 23] Miller sought review of the Municipal Court ruling by the King County Superior Court, as provided under RCW 46.63.090(5), by filing a timely Notice of RALJ Appeal (August 13, 2013) and subsequently his Designation of Record on RALJ Appeal pursuant to RALJ 6.2(a) (September 11, 2013) with the City of Renton. [CP – 4,5]

At the scheduled RALJ hearing (February 21, 2014), the superior court Judge declined to review the issues presented, stating that “**...what’s missing from this record is a designation of record from the court below for me to consider.**” [CP – 77 @ 2:01.5] Miller expressed his surprise that this information was not before the court and provided the Judge with a copy of his “Designation of Record on RALJ Appeal”, bearing the time/date stamp provided by the Municipal Court Clerk (September 11, 2013). [CP – 78 @ 4:13.0] The Superior Court Judge

accepted Miller's copy, stating that **"...I don't have anything before me, so um – you did what you were suppose to do and uh, based on the lack of evidence, I'll dismiss the case."** [CP – 79 @ 7:13.0] On February 21, 2014, the Honorable Judge Bill Bowman issued his Order which reads, **"IT IS HEREBY ORDERED that an insufficient record for review was transmitted by the lower court. The above captioned case is DISMISSED"**. [CP – 61]

Miller timely moved for reconsideration (March 3, 2014) but his motion was denied without comment (March 5, 2014). [CP – 62 - 66] Miller then petitioned this Court seeking Discretionary Review of the Superior Court's decision & subsequent denial of reconsideration which was granted by this Court's Order dated November 19, 2014.

D. ARGUMENT

1. THE FINDINGS RELIED UPON BY THE SUPERIOR COURT ARE SIMPLY UNTENABLE.

Findings of fact are reviewed under a substantial evidence standard, which requires that there be a sufficient quantum of evidence in the record to persuade a reasonable person that a finding of fact is true. Sunnyside Valley Irrigation Dist. v. Dickie, 149 Wn.2d 873, 879, 73 P.3d 369 (2003). An appellate court will uphold the trial court's factual findings as long as they are supported by substantial evidence. Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 819, 828 P.2d 549

(1992) ("Findings of fact supported by substantial evidence are verities on appeal.") The test of substantial evidence is whether there is "evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premise." Robinson v. Safeway Stores, Inc., 113 Wn.2d 154, 157, 776 P.2d 676 (1989) (quoting Holland v. Boeing Co., 90 Wn.2d 384, 390-91, 583 P.2d 621 (1978)). Review of the findings is therefore limited to examining the record to establish whether there is substantial evidence to support each of these findings.

But here, the Superior Court's evidentiary findings are in the negative – i.e. that (1) **“an insufficient record was transmitted for review by the lower court”** [CP - 61] and/or (2) **“...what's missing from this record is a designation of record from the court below for me to consider.”** [CP – 77 @ 2:01.5] So the appropriate “substantial evidence test” becomes a question of whether or not the required evidentiary record on RALJ appeal is missing or lacking in sufficient quantum from the Superior Court record to persuade a fair-minded person of the truth of the declared premise. Examination of the Superior Court record immediately reveals that the evidentiary record on RALJ appeal IS NOT MISSING NOR LACKING from the record in sufficient quantum as would be needed to support the declared premise. [CP – 01-80] Indeed, Miller filed a timely designation of record on RALJ appeal with the Renton municipal court and the entire lower court file was timely transmitted to (and filed in) the King County Superior Court in September of 2013.

In summation, a review of the evidentiary record before this Court confirms that, rather than a lack of RALJ evidence to consider as declared, in fact there is substantial evidence contravening those declared findings. When factual findings are found to be erroneous, defenseless, specious, unsustainable, or unsupported in the evidentiary record – Such Findings Are Untenable By Definition.

2. THE SUPERIOR COURT’S DECISION DISMISSING RALJ APPEAL BASED ON UNTENABLE GROUNDS, CONSTITUTES AN ABUSE OF JUDICIAL DISCRETION

A decision is based “on untenable grounds” or made “for untenable reasons” if it rests on facts unsupported in the record or was reached by applying the wrong legal standard. State v. Rundquist, 79 Wn. App. 786,793, 905 P.2d 922 (1995). And as discussed above, the Superior Court’s decision to dismiss the RALJ appeal rests on (indeed is based entirely on) the single premise that **“an insufficient record for review was transmitted by the lower court”**. [CP - 61] – a premise shown above to be demonstrably false and “untenable” in the record.

The abuse of discretion standard is applicable to this Superior Court decision and an abuse of discretion occurs when, as here, a decision is “manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.” Associated Mortgage Investors v. G.P. Kent Constr. Co., 15 Wn. App. 223, 229, (at 229), 548 P.2d 558 (1976). In addition, a

reviewing court will find an abuse of discretion when, as here, “the trial court’s decision is manifestly unreasonable, or is exercised on untenable grounds, or for untenable reasons.” State v. Blackwell, 120 Wn.2d 822, 830, 845 P.2d 1017(1993).

As confirmed in the record, the Superior Court’s decision to dismiss Miller’s RALJ appeal is entirely based on untenable grounds. Accordingly, under settled Washington law, the Superior Court’s Order constitutes an abuse of judicial discretion.

3. WHERE THE EFFECT IS TO NULLIFY APPELLANT’S STATUTORY DUE PROCESS RIGHT TO RECEIVE A RALJ REVIEW ON THE RECORD, THE SUPERIOR COURT’S DENIAL OF APPELLANT’S MOTION TO RECONSIDER RALJ DISMISSAL, CONSTITUTES AN ABUSE OF JUDICIAL DISCRETION.

While there is no constitutional right to appeal in civil cases; that right does exist in civil cases when granted by the Legislature or at the discretion of the court. City of Bremerton v. Spears, 134 Wn.2d 141, 949 P.2d 347 (1998) (quoting In re Dependency of Grove, 127 Wn.2d 221, 239, 897 P.2d 1252 (1995)). Our statutes provide that an appeal from civil infraction cases arising in courts of limited jurisdiction shall be to the Superior Courts. (RCW 2.08.020 & RCW 46.63.090(5)) Such appellate review is made subject to the Rules of Appellate Procedure for Courts of Limited Jurisdiction (RALJ) which “rules establish the procedure, called

appeal, for review by the superior court of a final decision of a court of limited jurisdiction subject to the restrictions defined in this rule.” (RALJ 1.1(a)). A further due process mandate under RALJ 9.1(a) provides that “The superior court shall review the decision of the court of limited jurisdiction to determine whether that court has committed any errors of law” as the basis for decision on appeal. As in Spears, supra at 148, “Mr. [Miller] had the right to appeal to the Superior Court the judgment that he had committed an infraction. IRLJ 5.1.”

The Rules of Appellate Procedure are to “be liberally interpreted to promote justice and facilitate the decision of cases on the merits” – RAP 1.2(a) & RALJ 1.2(a). Though Miller has properly sought appellate review of the Municipal Court’s ruling in this case, the Superior Court’s dismissal and subsequent denial of reconsideration fails to facilitate any decision being reached on the merits – indeed Miller’s opportunity for due process review has been nullified and unjustly terminated.

As stated in his Motion for Reconsideration [CP – 63], Miller had established with the King County Superior Court Clerk – KNT, that the transmittal of the designated record from the Renton Municipal Court was received, and indeed it was filed on September 13, 2013 – as confirmed by examination of docket listings #4 (“TRANSMITTAL LETTER – COPY FILED”) & #5 (“TRANSCRIPT”, which consists of 25 pages comprising the lower court record). [CP – 3-28] Whatever error, oversight or mishap resulted in the complete record not appearing before the Superior Court

RALJ hearing Judge; it appears unreasonable, under any standard of justice, that such a procedural accident should become a basis for depriving Miller of the due process right afforded under statute and RALJ rules to receive an appellate review on the merits of record in his case.

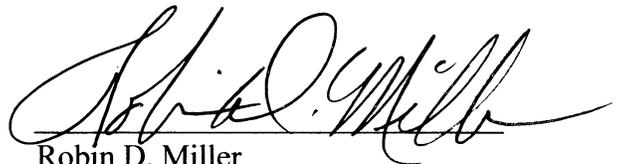
In an entirely analogous case, State v. Hurd, 127 Wn.2d 592, 593, Sept.(1995), our Supreme Court has ruled that, “In the absence of any sound justification, a trial court’s denial of a continuance in an appeal of a decision of a court of limited jurisdiction, which has the effect of denying the appellant’s RALJ 7.1 right to file a reply brief, constitutes an abuse of discretion.”. The same fundamental issue of one’s due process rights under the RALJ rules is applicable here. The Superior Court’s decision to deny Miller’s motion for reconsideration has the effect of denying Miller’s RALJ 5.1 due process right to receive an appellate review on the merits. The effect is to usurp and nullify the RALJ provisions rendering Miller’s access to a RALJ appeal nothing more than illusory. The Superior Court’s denial of reconsideration violates Miller’s due process right to due process

By straight-forward analogy under State v. Hurd (supra), the Superior Court’s denial of Miller’s motion for reconsideration, without explanation, constitutes a violation of due process and an abuse of judicial discretion.

E. CONCLUSION

For all the reasons set forth above, appellant respectfully seeks this Court's Order to: (1) Vacate the Superior Court's Order dismissing Miller's RALJ Appeal; and (2) Remand this case to the King County Superior Court with instructions to conduct the RALJ review on the record; and (3) Award appellant his reasonable & necessary costs on appeal pursuant to RAP 14.3 as the Court may deem reasonable and just.

Respectfully submitted and dated this 19th day of June, 2015



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