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SUPREME COURT  
STATE OF WASHINGTON  
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BY ERIN L. LENNON  
CLERK

**SUPREME COURT  
OF THE STATE OF WASHINGTON**

**No. 1008813**

**Appeal from Court of Appeals No. 37812-8-III**

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**Stevens County, Washington, ex rel  
Tim Rasmussen,**

**Petitioners,**

**vs.**

**DONALD L. DASHIELL, et al,**

**Respondents**

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**RESPONDENTS' MOTION TO DISMISS**

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## **I. IDENTITY OF MOVING PARTY**

This motion is brought by the Respondents, DONALD L. DASHIELL, et al, (hereinafter, “the Officers”) through their attorney of record, Julie C. Watts. The Officers were the defendants in the trial court and appellants before the court of appeals.

## **II. STATEMENT OF RELIEF SOUGHT**

The Officers move for the dismissal of Mr. Rasmussen’s *Petition for Review* filed with this Court on April 27, 2022.

## **III. FACTS RELEVANT TO MOTION**

Mr. Rasmussen is the prosecutor for Stevens County.

Mr. Rasmussen did not seek or receive the authorization of the Stevens County Board of Commissioners to proceed with an appeal to this Court.

Mr. Rasmussen did not seek or receive the authorization of the Stevens County Board of Commissioners to proceed with this lawsuit.

On March 21, 2019, Mr. Rasmussen filed suit against the Officers claiming that each individual officer was personally liable on his bond for the Stevens County Board of Commissioners' approval of allegedly unconstitutional gifts.<sup>1</sup> Simultaneously, Mr. Rasmussen filed his *Ex Parte Motion for Leave to Maintain Action on Behalf of Stevens County*.<sup>2</sup> In that document, he acknowledged that “[o]rdinarily, county commissioners must approve the filing of an action in the name of the county. See RCW 36.32.120(6).”<sup>3</sup>

On July 23, 2019, without hearing, Judge Moreno entered the *Ex Parte Order RE: Leave to Maintain Action on Behalf of Stevens County*, in which she concluded that leave of court was not required and indicated, without explanation, that Mr. Rasmussen “may” proceed with the action.<sup>4</sup>

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<sup>1</sup> CP 14-30.

<sup>2</sup> CP 31-36.

<sup>3</sup> CP 35.

<sup>4</sup> CP 64-65.

Judge Moreno subsequently entered summary judgment in favor of Mr. Rasmussen and entered a judgment against the Officers in the amount of \$130,326.25.<sup>5</sup>

The Officers appealed to Division III of the Washington State Court of Appeals.

On March 31, 2022, Division III entered a published opinion reversing Judge Moreno's decision, saying:

We reverse. The alleged unconstitutional gifting was not something the Stevens County commissioners did in their individual capacities. It was done collectively by the board as a legislative body. As such, individual bond liability was not available. Furthermore, because the commissioners were not alleged to have been involved in collecting or receiving public funds, they could not be held individually liable on their bonds without some sort of culpable misconduct. No such allegation has been made. The commissioners are therefore entitled to judgment in their favor.<sup>6</sup>

Division III stated, “[w]hen elected officials make legislative decisions as a governing body, their decisions are immune from

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<sup>5</sup> CP 1047-49, 1062-65.

<sup>6</sup> *Opinion*, pg. 2.

civil liability,”<sup>7</sup> noting “there is no authority for the claim that a legislative official, such as a county commissioner, can be sued personally for official legislative actions.”<sup>8</sup>

On April 27, 2022, Mr. Rasmussen appealed to this Court.

#### IV. GROUNDS FOR RELIEF AND ARGUMENT

Pursuant to Washington State statute and case law, a prosecutor has no authority to maintain a civil action on behalf of a county without the authorization of the county board of commissioners. RCW 36.32.120(6) confirms that *the board* “shall have the care of the county property and the management of the county funds and business and *in the name of the county prosecute and defend all actions for and against the county*, and such other powers as are or may be conferred by law.”<sup>9</sup>

Washington law has long been resolved about the authority of a county prosecutor to act on behalf of the county without the authorization of the board of commissioners. In *Prentice v.*

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<sup>7</sup> *Opinion*, pg. 8.

<sup>8</sup> *Opinion*, pg. 9.

<sup>9</sup> Emphasis added.

*Franklin County*,<sup>10</sup> decided in 1909, the county prosecutor attempted to pursue an appeal without the authorization of the board of commissioners. In its opinion, this Court noted identical statutory language to that currently contained in RCW 36.32.120(6) and indicated that where Franklin County is the real party in interest, the lawsuit was subject to the control of the board of county commissioners, noting that “[a]lthough the prosecuting attorney is the legal advisor of the county, he is not authorized to prosecute this appeal in opposition to the orders of the board of county commissioners.”<sup>11</sup>

## V. CONCLUSION

Without the authorization of the Stevens County Board of Commissioners, Mr. Rasmussen had no authority to proceed with this appeal or with this lawsuit; therefore, the Officers respectfully request that Mr. Rasmussen’s Petition for Review be dismissed.

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<sup>10</sup> *Prentice v. Franklin County*, 54 Wn. 587 (1909).

<sup>11</sup> *Id.*



The undersigned certifies that the foregoing brief contains 727 words not including the appendices, title sheet, table of contents, table of authorities, certificate of service, signature blocks, and this certification of compliance.

Respectfully submitted this 26th day of May, 2022,

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I certify that on May 26, 2022, I arranged for delivery of a copy of the foregoing *Respondents' Motion to Dismiss* to:

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**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 100,881-3  
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**Comments:**

Respondents' Answer to Petition for Review and Respondents' Motion to Dismiss

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