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COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY _____
DEPUTY

COURT OF APPEALS, Division II
OF THE STATE OF WASHINGTON

No. 447088

MARK DOYLE and CAROLYN DOYLE, Husband and wife,
Respondents
v.
JAMES GOUGHNOUR
Appellant

OPENING BRIEF OF APPELLANT

James Goughnour, pro se Appellant
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II. PARTIES

The appellant is James Goughnour, defendant at the trial court (hereafter “Goughnour”). The respondents are Mark Doyle and Carolyn Doyle, husband and wife, plaintiffs at the trial court (hereafter “the Doyles”).

III. RELIEF REQUESTED

The appellant requests that this court:

1. Reverse the decision and judgment entered by the trial court on Jan. 22, 2013 (CP 158-160) and direct the trial court to strike and/or void it.

Should this court find it is unable to reverse the entire Jan. 22, 2013 decision and judgment by the trial court; then alternatively:

2. Reverse the award of rent damage and direct the trial court to strike and/or void it.
3. Reverse the award of trial court attorney fees and costs, and direct the trial court to strike and/or void it.
4. Reverse the award of appellate attorney fees and costs, and direct the trial court to strike and/or void it.

IV. INTRODUCTION

a. Possibly just one narrow issue:

This appeal is basically about the trial court entering a decision and judgment long after issuance of a mandate from a previous appeal, without direction from this court, or upon subsequent facts.

The appeal arises from the decision and judgment entered on Jan. 22,

2013 (CP 158-160). The Jan. 22, 2013 judgment in the Doyles' favor awarded:

1. Rent damage and,
 2. Trial court fees and costs and,
 3. Appellate fees and costs of a previous appeal in this case,
- which were not included in the mandate.

There has been a previous appeal and mandate in this case from a decision and judgment entered on Nov. 1, 2010 (CP 93-96). The mandate which was issued on April 25, 2012 contains no award of appellate fees, trial court fees, rent damage, or any other award (CP 110). Yet the Doyles moved for entry of judgment and the trial court granted all three awards. Therefore Goughnour is forced into what is presumably the unique situation of having to appeal a second time.

If this court agrees with the first argument, Section VIII(a) of this brief, that in the decision and judgment of Jan. 22, 2013; the trial court was without power and authority to enter the decree and judgment after an appeal and mandate without specific direction from this court and not upon subsequent facts, and/or that the trial

court no longer had subject matter jurisdiction, then it may not be necessary to consider the other arguments.

b. Background:

This matter originates from an unlawful detainer action filed by the Doyles in Grays Harbor Superior Court (CP 1-18). Goughnour answered asserting that the Doyles could not terminate tenancy while he had eight (8) months advance rent on account (CP 57-92). The trial court issued an order on Nov. 1, 2010 that the Doyles were entitled to a writ of restitution, which was also issued on Nov. 1, 2010 (CP 93-96). The order did not include any other award or reservation of an award for future determination (CP 93-94). That order was appealed, affirmed, and the Doyles were awarded appellate fees. However the Doyles did not file a timely fees affidavit or cost bill. Therefore the mandate did not include an award of appellate fees and costs, nor has there been a supplemental mandate (CP 110). This court granted the Doyles motion to file an untimely fees affidavit after issuance of the mandate. Issues related to that matter remain pending before the Washington State Supreme Court. Nonetheless the Doyles proceeded at the trial court with an entry for judgment

which they filed on Jan. 14, 2013 (CP 133-141). Goughnour filed an answer to the Doyles' motion for entry for judgment on Jan. 18, 2013 (CP 142-156). Goughnour and the Doyles' attorney appeared at the hearing (RP 2-10). This appeal arises from the decision and judgment from that hearing, entered on Jan. 22, 2013 (CP 158-160).

The trial court hearing was scheduled for Jan. 22, 2013 before Judge McCauley. Grays Harbor Superior Court has only three (3) judges who rotate types of hearings on a quarterly basis and as a general rule, do not assign cases to a specific department. Judge Godfrey was presiding over civil hearings during that quarter but was not scheduled for any hearings that morning. The Doyles' attorney, Mr. Durr, began the hearing by indicating that he was surprised to learn that the matter was before Judge McCauley rather than Judge Godfrey:

"I didn't realize that the court would have this docket and Judge Godfrey heard this matter initially," (RP 2).

Judge McCauley responded,

"You know, actually I received a call from my court administrator just a few minutes before I walked out on the bench and she said that Judge Godfrey called said he is on the way and will be able to take – be here probably by 9:30 and I told him I would probably

just start the domestic docket and go until the break. So if you can wait around, he'll be here a little bit later this morning." (RP 2)

Judge Godfrey arrived later that morning and presided over the hearing (RP 4-10). In that hearing, the trial court awarded appellate fees, trial court fees, and rent damage (CP 159-160). The trial court also dismissed Goughnour's counterclaims (CP 159-160). This appeal pertains to that decision and judgment of Jan. 22, 2013.

Seven (7) days after the hearing on Jan. 29, 2013; the Doyles' attorney, Mr Durr, filed a Notice of Intent to Withdraw (CP 161-162). By Feb. 20, 2013; Mr Durr had retired and voluntarily resigned from the bar.

V. STATEMENT OF THE CASE

- a. This case began with an unlawful detainer action filed by the Doyles in Grays Harbor Superior Court, Cause No. 10-2-1361-6 (CP 1-18). In both his Answer and Counterclaims (CP 20-56) and his Answer to Show Cause (CP 57-92), Goughnour asserted that he had approximately eight (8) months of advance rent on account from which he could draw monthly rent at any time as he had done before and that the Doyles could not terminate tenancy while

simultaneously keeping those funds. The trial court ordered that the Doyles were entitled to a Writ of Restitution. No other award was granted or reserved for future determination (CP 93-94). The writ of Restitution was issued on the same day as the order, Nov. 1, 2010 (CP 95-96).

- c. Goughnour submitted a Request to Reconsider (CP 97-101) in which he asked the trial court:

“As I was not allowed to speak at all, I respectfully ask the Court to reconsider it’s (sp) order and allow me to present my side of the facts and respond to a number of representations made by the Plaintiff’s counsel which are just not correct,” (CP 98).

The trial court denied Goughnour’s request to reconsider (CP 102).

- d. Goughnour filed a timely appeal of the order and writ of restitution on Nov. 30, 2010 (CP 103-107). This court affirmed the trial court decision and awarded the Doyles appellate legal fees and costs in Case No.41538-1-II.
- e. The Doyles failed to submit a timely fees affidavit and cost bill. This court issued a mandate on April 30, 2012 without including in the mandate, an award of legal fees and costs, or an award of any kind (CP 110). This court subsequently granted the Doyles’ motion to file an untimely fees affidavit and cost bill. A motion related to that

ruling is currently pending in the Washington State Supreme Court.

An intermediate ruling by the commissioner of this court was filed with the trial court on May 29, 2012. This court did not transmit that ruling to the trial court and neither did Goughnour. The filed document contains no indication of who filed it with the trial court (CP 121-122).

f. On Jan. 14, 2013, the Doyles made a motion in the trial court for entry of judgment for:

- i. rent damage
- ii. trial court legal fees and costs
- iii. appellate legal fees and costs
- iv. dismissal of Goughnour's counterclaims

(CP 133-141)

g. Goughnour answered the Doyles' motion for entry of judgment, filing it on Jan. 18, 2013 (CP 142-156).

h. The trial court granted the judgment in its entirety on Jan. 22, 2013 (CP 158-160). Shortly thereafter the Doyles' attorney resigned from the bar and retired.

- i. Goughnour filed a timely appeal of the Jan. 22, 2013 decision and judgment of the trial court (CP 163-168). This is the appellant's opening brief in that appeal.

VI. ISSUES

- a. Did the trial court err in its post-appeal/mandate decision and judgment of Jan. 22, 2013 by acting without the necessary:
 1. power?
 2. authority?
 3. jurisdiction?
- b. Regardless of the trial court's post-appeal/mandate power, authority, and/or jurisdiction; did the trial court err through abuse of discretion by:
 1. awarding rent damage in the decision and judgment of Jan. 22, 2013;
 - A. by an untimely supplemental decision and judgment twenty-six months late?
 - B. while simultaneously dismissing without a hearing, counterclaims related to rent and termination of tenancy?
 - C. which is supported only by bald assertion?

- D. which is substantively a summary judgment unsupported by facts?
2. awarding trial court fees and costs in the decision and judgment of Jan. 22, 2013;
- A. by untimely supplemental decision and judgment twenty-six months late?
- B. by granting untimely CR 54(d) request for trial court fees and costs?
3. awarding appellate fees and costs which are not included in the mandate?

VII. SUMMARY OF ARGUMENT

The argument is segmented at the first level into two parts. First is the trial court's power, authority, and/or jurisdiction to enter the decision and judgment of Jan. 22, 2013 after an appeal/mandate and without the presence of subsequent facts. Secondly, regardless of the first question, each of the three awards granted in the decision and judgment of Jan. 22, 2013 is argued on its own merit. These three awards are:

- Rent damage

- Trial court fees and costs
- Appellate fees and costs

This results in some redundancy. Some arguments apply to more than one of the three awards. However this court may view those redundant arguments in any one of the awards differently than in the other awards. Therefore in balancing clarity at the risk of seeming tedious, the second level argument separates each of the three awards as though each were the only subject matter of the decision and judgment of Jan. 22, 2013.

VIII. ARGUMENT

a. Trial Court's Post-Appeal/Mandate Lack of Authority:

1. More Than an Additional Judgment, also an Additional Decision:

Although the trial court filing by the Doyles on Jan. 14, 2013 is titled as entry for judgment, in substance it is largely a motion for an additional decision (CP 133-141). The Doyles omitted their proposed judgment from their filing of Jan. 14, 2013. It was subsequently filed when granted by the trial court on Jan. 22, 2013 (CP 158-160). This came out of the blue and Goughnour was forced to answer and argue the elements on very

short notice (CP 146-154). Although this case was previously appealed and a mandate had been issued with no directive to the trial court to take any action (CP 110), the trial court nonetheless granted the Doyles their proposed judgment in its entirety. This included awards of rent damage, trial court fees and costs, and appellate fees and costs; along with dismissal of Goughnour's counterclaims.

2. Trial Court Acted Without Power and Authority:

On Oct. 18, 2010 the Doyles filed an unlawful detainer complaint based upon holdover and rent (CP 1-14). Their complaint requested a writ of restitution, rent damage, and attorney fees and costs (CP 1-14). Goughnour's answer asserted that he in fact had approximately eight (8) months advance rent on account (CP 57-92). On Nov. 1, 2010 the trial court held an unlawful detainer and show cause hearing in this matter. At that time the trial court issued an order for a writ of restitution with the phrase, "It is therefore ordered, adjudged, and decreed, ..." (CP 93-94). The order did not award the Doyles rent damage or attorney fees and costs (CP 93-94). The order did not reserve rent

damage or attorney fees and costs for future determination (CP 93-94). The trial court issued the writ of restitution that same day (CP 95-96).

Goughnour filed a timely appeal on Nov. 30, 2010 (CP 106-107). Only a final decision or judgment is appealable (RAP 2.2). The Doyles did not object to Goughnour's appeal as a matter of right nor did they cross-appeal. This court affirmed the trial court in that appeal. This confirmed that the trial court's Nov. 1, 2010 Order on Show Cause (CP 93-94) and Writ of Restitution (CP 95-96) represent the final decision and judgment. Further, the Doyles' failure to object to Goughnour's Nov. 30, 2010 appeal (CP 103-105) as a matter of right or to cross-appeal the absence of awards for rent damage, or trial court fees and costs; results in a waiver of objection to finality or any assertion that those claims have not been previously decided. No facts or matters related to the Doyles' claims have occurred subsequent to the trial court's Nov. 1, 2010 Order on Show Cause (CP 93-94) and Writ of Restitution (CP 95-96); or the appeal of Nov. 30, 2010 (CP 103-107) and mandate of April 25, 2012 (CP 110). All of the Doyles'

claims from the Jan. 22, 2013 decision and judgment were of record before this court in the prior appeal of Nov. 30, 2010.

The Doyles Complaint for Eviction requested rent damage in Paragraph IV(3), and attorney fees and costs in Paragraph IV(5), (CP 2-3). Yet neither the Nov. 1, 2010 Order on Show Cause (CP 93-94) nor the Writ of Restitution (CP 95-96) awards or reserves for future determination; rent damage, legal fees, or costs. Neither includes any indication whatsoever that it represents a partial decision and judgment (CP 93-96). The trial court declined to award rent damage, or legal fees and costs in this final decision and judgment of Nov. 1, 2010. This can be construed in no other reasonable way than that the trial court declined to grant the Doyles any relief upon those claims. The decision and judgment of Nov. 1, 2010 has been appealed and a mandate has been issued (CP 110). Therefore those claims had been decided in the final decision and judgment of Nov. 1, 2010 and are barred from reopening by the principle of res judicata. The trial court lacked the authority and subject matter jurisdiction to enter the additional decision and judgment of Jan. 22, 2013.

Richardson v. Sears et al, 87 Wash. 207, 151 P.504

“We have held in a long line of cases that the trial court, after an appeal and remitter, has no power to enter any other judgment or decree in the cause than that directed by the appellate court.”

Citing Pacific Drug Co. v. Hamilton, 76 Wash. 524, 136 Pac. 1144; German-American State Bank v. Sullivan, 50 Wash. 42, 96 Pac. 522; State ex rel. Jefferson County v. Hatch, 36 Wash. 164, 78 Pac. 796; State ex rel. Wolferman v. Superior Court, 8 Wash. 591, 36 Pac. 443.

Gudmundson v. Commercial Bank & Trust Co., 160 Wash. 489, 295 P. 167:

“A trial court has no authority to enter any judgment or order not in conformity with the order of the appellate court. That order is conclusive on the parties, and no judgment or order different from or in addition to that directed by it can have any effect, ...” (Emphasis added)

The mandate to the trial court of April 30, 2012 contains no direction to the trial court to make any kind of award of rent damage, trial court fees and costs, or appellate fees and costs (CP 110). Therefore the trial court erred in entering the decision and judgment of Jan. 22, 2013 (CP 158-160) without the appropriate power and authority.

3. Trial Court Acted Without Jurisdiction:

The trial court acted when it no longer had subject matter jurisdiction and/or in excess of its jurisdiction. The above-

referenced cases of Richardson and Gudmundson make it clear that the trial court was without power to enter an additional decision and judgment on its own (id). The trial court erred in acting without subject matter jurisdiction and/or in excess of its jurisdiction.

4. Subsequent Arguments on Individual Merit of Each Award:

Should this court not agree that the trial court was without power, authority, and/or jurisdiction to enter the decision and judgment of Jan. 22, 2013 in whole or in part; subsequent arguments are segmented by each of the three awards granted, and argued based upon their own merit. These arguments are presented in the following, Section (b):

- Rent damage in Section (b)(1).
- Trial court fees and costs in Section (b)(2).
- Appellate fees and costs in Section (b)(3).

b. Regardless of Trial Court's Post-Appeal/Mandate Lack of Authority:

1. Trial Court Erred in Awarding Rent Damage in the Decision and Judgment of Jan. 22, 2013:

A. Awarding Rent Damage by Supplemental Decision and Judgment Twenty-Six Months Late:

The trial court abused its discretion by issuing a supplemental decision CP(158-160) twenty-six (26) months after granting a final order (CP 93-94). There were no subsequent facts and the Doyles made no such assertion (CP 133-135). If this type of action by the trial court were allowed, litigation would never end. There would be no stability to verdicts.

The Doyles' original complaint also asked, "For judgment against Defendant for any waste which has been committed upon the premises," (CP 3). If the trial court decision and judgment of Jan. 22, 2013 were to be affirmed in this appeal, could the Doyles go back to the trial court again claiming that Goughnour damaged the property and ask for yet another judgment? What defines the end? When is it over?

B. Awarding Rent Damage while Simultaneously Dismissing

Counterclaims Related to Rent and Termination of Tenancy:

The trial court abused its discretion by awarding rent damage while simultaneously dismissing Goughnour's rent related counterclaims without a hearing on those counterclaims. Generally counterclaims are not permitted in an unlawful detainer action. However in this case the counterclaims asserted that Goughnour was in fact ahead on the rent by approximately eight (8) months (CP 20-56). Those claims pertain directly to both, rent and the Doyles termination of the tenancy while simultaneously retaining those advance rent funds. It is established that counterclaims of these characteristics must be considered by the trial court.

Munden v. Hazelrigg, 105 Wash.2d 39, 711 P.2d 295

"[5] An exception to the general rule is made when the counterclaim, affirmative equitable defense, or set-off is

'based on facts which excuse a tenant's breach.' First Union Mgt. Inc., 36 Wash.App at 854, 679 P.2d 936."

Skarperud v. Long, 40 Wash.App 548, 699 P.2d 786

"A counterclaim or setoff is permitted in only two situations: (1) the covenant to pay rent is dependent upon the covenants allegedly breached. Income Properties Inv. Corp. v. Trefethen, 155 Wash. 493, 284 P. 783 (1930); or (2)" (remainder not pertinent)

Therefore the trial court erred in awarding rent damage while simultaneously dismissing Goughnour's counterclaims which are directly related to rent and right to possession of the premises, without a hearing on those counterclaims.

C. Awarding Rent Damage Supported only by Bald Assertion:

The trial court abused its discretion by awarding rent damage in the absence of any documentary evidence or affidavit from the Doyles. The Doyles have submitted no affidavit whatsoever in this entire case. The Doyles have submitted no documentation whatsoever in support of their claim to rent damage. The Doyles' attorney misstated facts during the hearing when he stated:

"As for rent, he says it's my bald assertion that rent was due. We asserted that in our complaint. Mr. Goughnour doesn't deny that rent was not paid. He claims that rent was credited to him by his counterclaims but he -- as the Court has told Mr. Goughnour, his counterclaims are no good in this action," (RP 9).

In fact Goughnour asserted that rent was paid. Rent for the two months at issue was paid by debiting the advance rent on account as had been done previously with no objection from the Doyles (CP 57-92). Goughnour's counterclaims were not

for those funds. They were for the advance rent monies still remaining with the Doyles which came to approximately eight (8) months of rent (CP 20-56).

The fact remains that the Doyles' claim for rent damage was presented with nothing more than the bald assertion of their attorney. Their attorney's above-referenced statement in the hearing effectively self-affirms that their claim for rent is unsupported. Rather, the Doyles attempt to support their rent claim with nothing more than their own interpretation of what Goughnour has stated or not stated in his answer (RP 9).

D. Awarding Rent Damage is Substantively a Summary Judgment

Unsupported by Facts:

By awarding the Doyles rent damage in the circumstances of:

- No documentary support of the rent claim, and
- No affidavit from the Doyles, and

- **Goughnour's assertion refuting the Doyles' rent claim accompanied by his affidavit (CP 67-71) and substantial documentation (CP 72-92);**

the trial court has substantively granted the Doyles a summary judgment that is not only in the face of factual dispute, but in the absence of admission of any document by the Doyles in support of their rent claim or any affidavit regarding their rent claim or any other matter.

Draper Machine Works, Inc. v. Hagberg, 34 Wash.App 483, 663 P.2d 141:

"To grant a motion for summary judgment the trial court must find that the **pleadings and affidavits** 'show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' CR 56(c). All facts submitted and reasonable inferences from those facts must be considered in favor of the nonmoving party."

Citing *Davis v. Niagara Mach. Co.*, 90 Wash.2d 342, 348, 581 P.2d 1344 (1978)
(Emphasis added)

There is nothing more in the record supporting the Doyles' rent claim than a bald statement by their attorney asserting rent damage.

Therefore regardless of this court's ruling on Trial Court's Post-Appeal/Mandate Lack of Authority, the trial court erred in awarding rent damage.

2. Trial Court Erred in Awarding Trial Court Fees and Costs in the Decision and Judgment of Jan. 22, 2013:

A. Awarding Trial Court Fees and Costs by Supplemental Decision and Judgment Twenty-Six Months Late:

The trial court abused its discretion by issuing a supplemental decision and judgment for trial court fees and costs CP(158-160) twenty-six (26) months after granting a final order (CP 93-94). There were no subsequent facts and the Doyles made no such assertion (CP 133-135). The Doyles had asked for trial court fees and cost in their original complaint (CP 3). The trial court had ample opportunity to award trial court fees and costs at that time and declined to do so (CP 106-107).

B. Untimely CR 54(d) Request for Trial Court Fees and Costs:

The trial court abused its discretion by awarding trial court fees and costs with the Decision and Judgment of Jan.

22, 2013 (CP 158-160). This was twenty-six (26) months after the Nov. 1, 2010 Order to Show Cause (CP 93-94) and Writ of Restitution (CP 95-96), in which trial court fees and costs were not reserved for future determination. In this case, trial court fees may be awarded by statute, RCW 59.18.290(2). Similarly in *Corey v. Pierce County*, Corey was able to claim statutory attorney fees but failed to do so in a timely manner.

Corey v. Pierce County, 154 Wash.App. 752, 225 P.3d 367.
“Corey has not shown excusable neglect or reason for delay in making her request for fees. The trial court properly denied the fees as untimely under CR 54(d).”

The Doyles did not even attempt to show excusable neglect or reason for delay in their motion for Entry of Judgment (CP 133-141).

Therefore regardless of this court’s ruling on Trial Court’s Post-Appeal/Mandate Lack of Authority, the trial court erred in awarding the Doyles trial court fees and cost twenty-six (26) months after its final decision and judgment.

3. Trial Court Erred in Awarding Appellate Fees and Costs in the Decision and Judgment of Jan. 22, 2013:

The trial court awarded the Doyles appellate legal fees and costs (CP 158-160) even though there was no directive in the mandate from this court to do so (CP 110). Neither has there been a supplement from this court to the trial court. This court did award the Doyles appellate fees and costs in the opinion entered on March 30, 2012; provided that they complied with RAP 18.1. However the Doyles failed to file a timely fees affidavit and cost bill. This court subsequently accepted the Doyles fee affidavit after issuance of the mandate. Goughnour in turn asserted that that resulted in a scenario in which he was denied his procedural remedy. That matter is currently pending in the Washington State Supreme Court.

The pertinent fact is that the only mandate issued by this court is silent regarding legal fees and costs (CP110) and there has been no supplement. Therefore the trial court was without authority to award appellate legal fees and costs.

Thompson v. Lennox, 151 Wash.App 479, 212 P.3d 597 (Div. 2, 2009)

“As noted, the clerk of the appellate court ‘will include’ any award reflecting appellate expenses in the mandate, and such award ‘may be enforced’ in the trial court. RAP 18.1(h).

Notably, the mandate here did not include a fee award.

Given the mandate’s silence on the matter of appellate fees, the trial court had nothing in that regard to enforce. See Ethredge v. Diamond Drill Contracting Co., 200 Wash. 273, 276, 93 P.2d 324 (1939) (trial court has duty to comply with the mandate upon remand).” (Emphasis added)

It is absolutely clear that the Doyles had knowledge that the trial court had no authority to award appellate fees. This is demonstrated by the letter of July 31, 2012 from their attorney, Mr. Durr, to the trial court’s administrator (CP 129). He states:

“I will bring a motion to dismiss Mr. Goughnour’s counterclaims as well as entry of judgment pursuant to the Court of Appeals decision **as soon as I have received the final mandate from the Court of Appeals**” (Emphasis added) (CP 129)

Although Mr. Durr was anticipating a “final mandate,” he did not in fact wait. The Doyles instead brought the entry of judgment before the trial court without, as their attorney put it, “the final mandate from the Court of Appeals,” (CP 133-141). Rather the Doyles presented to the trial court, a commissioner’s ruling (CP

138-139). However they failed to mention in the Affidavit of Counsel in Support of Entry of Judgment that the appeal was still before the appellate court. In his affidavit to the trial court, the Doyles' attorney states,

“This was appealed by Defendant, which was denied by the Supreme Court,” (CP 134, Paragraph 4).

The Doyles' attorney inferred that the appeal went before the Supreme Court on the merits and was thusly affirmed and disposed. In fact that was regarding a procedural matter. The appeal remains before the Supreme Court. There has been no supplemental mandate or directive of any kind from this court to the trial court.

In response to Goughnour refuting the Doyles' representations of the procedural status of the matter in his Answer in Objection to Entry of Judgment (CP 142-154), the Doyles' attorney conceded in the hearing that the appeal was not concluded but offered that, “it seemed like a ripe time to enter the – the judgment,” (RP 4).

The trial court erred in granting the Doyles appellate fees and cost without specific direction from this court. The trial court justified this award with:

“In a ruling dated May 22nd the commissioner awarded fees and expenses in the amount requested. I don’t know how more explicit the Court of Appeals has to be,” (RP 10).

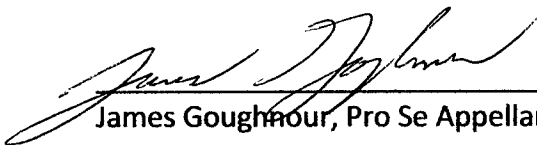
The trial court relied solely on a copy of a Court of Appeals commissioner’s ruling transmitted to the trial court not by the clerk of the Court of Appeals, but by the Doyles’ counsel who knew full well that the matter was still in the appellate process (CP 138-139). This does not represent authority of the trial court to award appellate fees and cost, as required in Thompson v. Lennox cited above. The trial court erred in awarding appellate fees and costs based solely upon a commissioner’s ruling not yet transmitted by this court, because “it seemed like a ripe time.”

Regardless of this court’s ruling on Trial Court’s Post-Appeal/Mandate Lack of Authority, the trial court was in fact without power and authority to enter a judgment of appellate fees and costs.

IX. CONCLUSION

- a. This court should rule that the trial court lacked the power, authority, and/or jurisdiction to enter the Jan. 22, 2013 decision and judgment after an appeal and mandate; and therefore reverse and direct the trial court to strike and/or void the entire decision and judgment.
- b. Regardless of this court's ruling on Trial Court's Post-Appeal/Mandate Lack of Authority; on their own merits, this court should reverse and direct the trial court to strike and/or void individually each award of:
1. Rent damage
 2. Trial court fees and costs
 3. Appellate fees and costs

Respectfully submitted,


James Goughnour, Pro Se Appellant

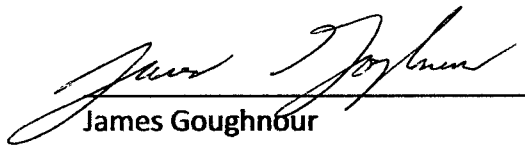
Dated: Aug. 2, 2013

Declaration of Service:

I, James Goughnour certify and declare that I served a complete copy of this Opening Brief of Appellate; on Aug. 1, 2013 by first-class mail from

Elma, Washington, postage prepaid, to Respondent's address as provided by their former counsel in his Notice of Withdrawal of Attorney, given as:

Mark Doyle and Carolyn Doyle, husband and wife
P.O. Box 866
Enterprise, UT 84725


James Goughnour

Dated: Aug. 2, 2013