

92339.6

IN THE STATE OF WASHINGTON SUPREME COURT

Court of Appeals Division One No. 71894-1

FRANKLIN R. LACY
Plaintiff-Appellant

v.

RICHARD RASMUSSEN, BETTY J. RASMUSSEN, RASMUSSEN WIRE
ROPE & RIGGING, CO., RASMUSSEN EQUIPMENT CO., BILL JOOST,
LANDMANN WIRE PRODUCTS, WEISNER, INC., WEISNER STEEL
PRODUCTS, INC.

Defendants-Respondents.

On Appeal from San Juan Superior Court, Cause No. 10-2-05171-7

RESPONDENTS RICHARD RASMUSSEN, BETTY J. RASMUSSEN,
RASMUSSEN WIRE ROPE & RIGGING, CO., RASMUSSEN EQUIPMENT
CO. AND BILL JOOST'S ANSWER TO PETITION FOR REVIEW

Donald K. McLean, WSBA No. 24158
Attorneys for Rasmussen Defendants Respondents
BAUER MOYNIHAN & JOHNSON LLP
2101 Fourth Avenue - 24th Floor
Seattle, Washington 98121-2320
Telephone 206-443-3400
Facsimile 206-448-9076

Received
Washington State Supreme Court

OCT 14 2015
E
Ronald R. Carpenter
Clerk

ORIGINAL

TABLE OF CONTENTS

INTRODUCTION 2

ARGUMENT 3

 A. Lacy has failed to justify review pursuant to Rule of Appellate
 Procedure 13.4(b) 3

 B. The Civil Rules of Civil Procedure are not unconstitutional 4

 C. The legal issue being appealed is not of sufficient public interest to
 justify review 7

 D. Lacy is not disabled within the meaning of RCW §4.16.190 7

 E. Rasmussen Defendants are entitled to their attorneys' fees in
 opposing the petition 8

 Both the Trial Court and the Court of Appeals held that the Rasmussen
 Defendants are entitled to their attorneys' fees in this matter. The
 Rasmussen Defendants hereby request that the Court award them the
 attorneys fees in opposing the petition. RAP 18.1(j) 8

CONCLUSION 8

Table of Authorities

Cases

<u>Anderson v. Liberty Lobby, Inc.</u> , 477 U.S. 242 (1986).....	3
<u>Haines v. Kerner</u> , 404 U.S. 519 (1972).....	5
<u>In re Marriage of Olson</u> , 69 Wash. App. 621, 626, 850 P.2d 527, 530 (1993).....	4
<u>King v. King</u> , 162 Wash. 2d 378, 393, 174 P.3d 659, 667 (2007)	5
<u>Landon v. Plasencia</u> , 459 U.S. 21 (1982).....	4
<u>Puckett v. Cox</u> , 456 F.2d 233, 235 (6th Cir. 1972).....	5
<u>Trimble v. Washington State Univ.</u> , 140 Wash. 2d 88, 93, 993 P.2d 259, 261 (2000).....	3

Statutes

RCW § 11.88.010	7
RCW § 4.16.080(b).....	1, 2
RCW § 4.16.180	7
RCW § 4.16.190	7
RCW § 4.16.250	7
RCW § 4.16.260	7
RCW § 62A.2-725 (1).....	1, 2
RCW §7.72.010(4).....	1, 2

Rules

Wash. R. App. P. 13.4.....	2, 3
Wash. R. App. P. 18.1(j).....	8
Wash. Super. Ct. Civ. R. 56.....	5, 6

INTRODUCTION

This case involves an individual, Franklin Lacy ("Lacy"), who purchased stainless steel shackles to be used in his patented dock system. Although Lacy designed the system in 1992 and built it in 1996 and never earned a dime on the systems. Nonetheless, he has sued a number of individuals related to Rasmussen Wire Rope & Rigging for \$20 million.

The Trial Court dismissed all claims prior to 2008 because they were not filed within the three year time frame for torts provided by RCW § 4.16.080(b) and §7.72.010(4), or the four year time frame provided under the Uniform Commercial Code, RCW § 62A.2-725 (1). Lacy's claims for lost profits were dismissed because he failed to present any evidence to support his claim. The Court also dismissed the tort claims arising after 2008 under the independent duty doctrine. The Court dismissed the 2008 consequential damage claims for lost profits because consequential damages are not allowed under the contract and because Lacy failed to present any admissible evidence of consequential damages.

After the Court dismissed these claims, Lacy moved to have the balance of his claims dismissed with prejudice. The Rasmussen Defendants were subsequently awarded their attorneys' fees pursuant to the contract between the parties. Final judgment was entered on December 19, 2014.

The Court of Appeals affirmed the trial court's decision.

Lacy petitions the Supreme Court of Washington to review the decision of the Court of Appeals. Lacy is arguing that because he is acting

pro se in this matter and did not understand the Court Rules, he should have another opportunity to argue his case to the Trial Court and Court of Appeals. Lacy also argues that the application of the Civil Rules denied him due process in this case. Finally, Lacy argues that the selling of defective shackles is a matter of public interest which justifies a review of the case.

Lacy, however, misses the fundamental issue in this case. In 2003, Lacy was aware both that the shackles were failing and that he suffered damage from the shackle failure. Under RCW § 4.16.080(b) and §7.72.010(4), tort based claims are barred three years from the damage. Likewise, under RCW § 62A.2-725 (1), claims for breach of contract are barred four years after the sale of the goods. Because Lacy did not file his claim until 2010, his claims are time barred. There is nothing unique or unusual about his claim.

ARGUMENT

A. Lacy has failed to justify review pursuant to Rule of Appellate Procedure 13.4(b).

Under the Rule of Appellate Procedure 13.4(b), a party seeking review must establish one of the following basis for review:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

- (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Wash. R. App. P. 13.4

In the present case there is no conflict between the decision of the Court of Appeals and another decision of the Court of Appeals or the Supreme Court. The only reason to justify review by this Court is if the case involves a constitutional issue or an issue of substantial public interest. Because Lacy can establish neither basis the Court should not entertain his review.

B. The Civil Rules of Civil Procedure are not unconstitutional.

Lacy argues that application of CR 56 to him denied him due process. The United States Supreme Court, however, has specifically approved of the summary judgment standard applied by the trial court. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986). Likewise, the summary judgment standard has been approved by this Court. Trimble v. Washington State Univ., 140 Wash. 2d 88, 93, 993 P.2d 259, 261 (2000). The availability of summary judgment, therefore, is not unconstitutional.

Nonetheless, Lacy argues that it is unconstitutional as applied to him because he is pro se. However, the law does not distinguish between persons who are represented by attorneys and those that proceed pro se. In re Marriage of Olson, 69 Wash. App. 621, 626, 850 P.2d 527, 530 (1993)(quoting In re Marriage of Wherley, 34 Wash.App. 344, 349, 661 P.2d 155, review denied, 100 Wash.2d 1013 (1983)). There is simply no

basis to hold that Civil Rules are unconstitutional because Lacy is acting pro se.

The cases cited by Lacy to justify the unconstitutionality of the civil rules are inapposite. Lacy chose to proceed pro se. Lacy was given time to present his position, the Court simply held that his claims were barred by the applicable statute of limitations and that he failed to present any evidence of consequential damages.

Landon v. Plasencia, 459 U.S. 21 (1982) held that certain immigrants have the right to fairly present their case before being deported. The case did not determine what was necessary for a fair hearing. The case does not stand for the proposition that the notice provisions in the Civil Rules are unconstitutional.

Evitts v. Lucey, 469 U.S. 387 (1985) held that an attorney must be provided for criminal cases on appeal. However, there is no right to counsel in a civil case. King v. King, 162 Wash. 2d 378, 393, 174 P.3d 659, 667 (2007). Furthermore, Lacy is not indigent and simply chose to proceed without an attorney.

Haines v. Kerner, 404 U.S. 519 (1972) and Puckett v. Cox, 456 F.2d 233, 235 (6th Cir. 1972) held that a pro se petitioner was entitled to present evidence and not have his complaint dismissed on a Rule 12(b)(6) motion. In contrast, Lacy was given ample opportunity to present evidence to support his case during the summary judgment process.

Lacy is arguing that he was not given the opportunity to present evidence because he was unaware that evidence was required at summary judgment. This ignores the clear language of CR 56 (c) which provides:

The motion and any supporting affidavits, memoranda of law, or other documentation shall be filed and served not later than 28 calendar days before the hearing. **The adverse party may file and serve opposing affidavits, memoranda of law or other documentation not later than 11 calendar days before the hearing.** The moving party may file and serve any rebuttal documents not later than 5 calendar days prior to the hearing. If the date for filing either the response or rebuttal falls on a Saturday, Sunday, or legal holiday, then it shall be filed and served not later than the next day nearer the hearing which is neither a Saturday, Sunday, or legal holiday. Summary judgment motions shall be heard more than 14 calendar days before the date set for trial unless leave of court is granted to allow otherwise. Confirmation of the hearing may be required by local rules. **The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, 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.** A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

Wash. Super. Ct. Civ. R. 56 (**emphasis added**).

It must also be pointed out that the expert witness evidence that Lacy subsequently obtained actually undercuts his primary argument. Lacy's basic argument was that he could not have discovered that the shackles were defective prior to 2008. However, Lacy was aware that the shackles were failing in 2003. If Lacy had taken the shackles to his expert witnesses at that time, he would have discovered the unsuitability of the shackles for the use to which he was putting them.

Finally, the sole issue on which the Court found that Lacy provided no admissible evidence was the loss of profits. Despite attempting to supplement the record on appeal, he has still presented no evidence to justify his claim. There is simply no basis to review this decision.

C. The legal issue being appealed is not of sufficient public interest to justify review.

Lacy argues that there is an issue of substantial public interest to justify review by the Washington State Supreme Court. The Rasmussen defendants disagree. The case involves the straightforward application of the statute of limitations to a dispute over an alleged defective product and the requirement that injured parties use due diligence to discover the cause of their injuries. There is no unique legal issue that impacts the public interest.

D. Lacy is not disabled within the meaning of RCW §4.16.190.

Lacy argues that the Trial Court and Court of Appeals erred because the statute of limitations was tolled because he suffers multiple right leg disabilities. This argument is based on a misunderstanding of the applicable law.

Lacy argues that the statute of limitations is tolled pursuant to RCW §§ 4.16.180, 4.16.190, 4.16.250 and 4.16.260. Lacy, however, fails to realize that the disability referred to in these sections is a mental disability which prevents him from "understand[ing] the nature of the proceedings, such incompetency or disability as determined according to

chapter 11.88.RCW" §4.16.190(1) Section 11.88.010(1) then lists the various mental impairments that render a party disabled.

Lacy alleges numerous orthopedic injuries. Lacy, however, does not identify any disability within the meaning of RCW §11.88.010(1) that justify tolling the statute of limitations.

E. Rasmussen Defendants are entitled to their attorneys' fees in opposing the petition.

Both the Trial Court and the Court of Appeals held that the Rasmussen Defendants are entitled to their attorneys' fees in this matter. The Rasmussen Defendants hereby request that the Court award them the attorneys' fees in opposing the petition. RAP 18.1(j)

CONCLUSION

This should have been a fairly straightforward case where the majority of claims were barred by the statute of limitations. Lacy, however, has made it significantly more complex by arguing issues unrelated to the case. In his petition for review, Lacy argues that the Washington State Rules of Civil Procedure are unconstitutional as applied to him acting pro se. Lacy, however, does not offer a rational explanation of how he was prevented from presenting his case or was otherwise denied due process. The Court should deny the petition for review.

DATED: October 13, 2015.

BAUER MOYNIHAN & JOHNSON LLP

A handwritten signature in black ink, appearing to read "Donald K. McLean". The signature is fluid and cursive, with a large initial "D" and "M".

Donald K. McLean, WSBA No. 24158

Attorneys for Richard Rasmussen, Betty J.
Rasmussen, Rasmussen Wire Rope & Rigging, Co.,
Rasmussen Equipment Co. and Bill Joost

CERTIFICATE OF SERVICE

I declare under penalty of perjury of the laws of the state of Washington that on October 13, 2015, I caused to be served in the manner indicated a true and accurate copy of the foregoing document upon the following:

Washington State Supreme Court
415 12th ST W
Olympia, WA 98504

By US Mail
 By Messenger
 By Facsimile
 By E-mail

Pro Se Plaintiff:

Franklin R. Lacy
1083 N. Collier Blvd., #402
Marco Island, FL 34145
northernexp@centurytel.net

By US Mail
 By Messenger
 By Facsimile
 By E-mail

AND

297 Lonesome Cove Road
Friday Harbor, WA 98250

Kathleen M. Thompson
Gardner Trabolsi & Associates PLLC
2200 6th Ave. Suite 600
Seattle, WA 98121
KThompson@gandtlawfirm.com

By US Mail
 By Messenger
 By Facsimile
 By E-mail

Elaine Edralin Pascua
Law Office of William J. O'Brien
800 Fifth Avenue, Suite 3810
Seattle, WA 98104
elaine.edralin.pascua@zurichna.com

By US Mail
 By Messenger
 By Facsimile
 By E-mail

Charles A. Willmes
Merrick, Hofstedt & Lindsey, P.S.
3101 Western Avenue, Suite 200
Seattle, WA 98121
cwillmes@mhlseattle.com

By US Mail
 By Messenger
 By Facsimile
 By E-mail

BAUER MOYNIHAN & JOHNSON LLP



By: Iulia Andritch