RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Dec 18, 2015, 3:25 pm
BY RONALD R. CARPENTER
CLERK

No. 92546-1

SUPREME COURT
OF THE STATE OF WASHINGTON

RECEIVED BY E-MAIL

CHRISTIAN W.C. RYSER,

Petitioner,

v.

JOHN E. ERNEST and MARGARET F. ERNEST, husband and wife, and their marital community; *et al.*,

Respondents.

JOHN AND MARGARET ERNESTS' ANSWER TO PETITION FOR REVIEW

Emmelyn M. Hart, WSBA #28820
Heather Jensen, WSBA #29635
LEWIS BRISBOIS BISGAARD & SMITH LLP
1111 Third Ave., Suite 2700
Seattle, WA 98101
(206) 436-2020
Attorneys for Respondents
John and Margaret Ernest

TABLE OF CONTENTS

		Page
TABLE OF AUTHORITIES		2, 3
I.	INTRODUCTION	4
II.	RESTATEMENT OF THE ISSUES PRESENTED FOR REVIEW	5
III.	COUNTERSTATEMENT OF THE CASE	5
IV.	ARGUMENT WHY REVIEW SHOULD BE DENIED	8
	A. The Court Of Appeals' Decision Does Not Conflict With Long-Standing Washington Precedent	9
	B. The Court Of Appeals' Decision Does Not Threaten A Substantial Public Interest	15
	C. The Court Of Appeals Decision Applies The Proper Standard Of Review And Then Reconciles The Jury's Verdict Accordingly	16
V.	CONCLUSION	19
APPENDIX		21

TABLE OF AUTHORITIES

Page

TABLE OF CASES

WASHINGTON CASES

Bickelhaupt v. Inland Motor Freight,
191 Wash. 467, 71 P.2d 403 (1937) 19

Bunch v. King County Department of Youth Services,
155 Wn.2d 165, 116 P.3d 381 (2005) 17, 18

Cameron v. Stack-Gibbs Lumber Co.,
68 Wash. 539, 123 P. 1001 (1912) 19

Cyrus v. Martin,
64 Wn.2d 810,394 P.2d 369 (1964)..... 9, 10, 11, 13

Davis v. Early Construction Co.,
63 Wn.2d 252, 386 P.2d 958 (1963) 13

Dupea v. Seattle,
20 Wn.2d 285, 147 P.2d 272 (1944) 14

Haft v. Northern Pacific Railway Co.,
64 Wn.2d 957, 395 P.2d 482 (1964) 18

Herriman v. May,
142 Wn. App. 226, 174 P.3d 156 (2007)..... 14, 17

Krivanek v. Fibreboard Corp.,
72 Wn. App. 632, 865 P.2d 527 (1993)..... 9, 11, 13

Lundquist v. Coca Cola Bottling,
42 Wn.2d 170, 254 P.2d 488 (1953) 18

Palmer v. Jensen,
132 Wn.2d 193, 937 P.2d 597 (1997) 9, 10, 13, 17

RWR Management, Inc. v. Citizens Realty Co.,
133 Wn. App. 265, 135 P.3d 955 (2006) 17

Ryser v. Ernest,
2015 Wash. App. LEXIS 2512
(Wash. Ct. App. Oct. 19, 2015) 4

Sorenson v. City of Bellingham,
80 Wn.2d 547, 496 P.2d 512 (1972) 15

State ex rel. Upper v. Hanna,
87 Wash. 29, 151 P. 83 (1915) 19

STATUTORY AUTHORITIES

RCW 4.76.030 18

STATE RULES AND REGULATIONS

RAP 13.4 8

RAP 13.4(b) 4, 17, 19

RAP 13.4(b)(1) 8, 9, 14

RAP 13.4(b)(2) 8, 9, 14

RAP 13.4(b)(3) 8

RAP 13.4(b)(4) 8, 16

I. INTRODUCTION

This case arises out of a long-standing property dispute between former neighbors Christian Ryser and John and Margaret Ernest.[1] Disappointed with the jury's verdict following a lengthy trial, Ryser moved for an additur or, alternatively, a new trial on the issue of damages on his trespass claim only. According to Ryser, the jury's verdict was inadequate, lacking in evidence, and the result of passion or prejudice. The trial court disagreed and denied the motion. Ryser appealed. The Court of Appeals, Division I affirmed in an unpublished opinion *Ryser v. Ernest*, 2015 Wash. App. LEXIS 2512 (Wash. Ct. App. Oct. 19, 2015).

In a last-ditch attempt to recover attorney fees and costs under the trespass statute, Ryser now petitions this Court for further review. But he offers nothing concrete to suggest the Court of Appeals incorrectly decided his appeal. His attempt to concoct an argument that satisfies even one provision of RAP 13.4(b) falls far short. Review is not warranted.

---

[1] A map of the parties' properties can be found at CP 330 and 332. Copies are included in the Appendix for the Court's convenience. The Ernest properties are labeled Parcel A and Parcel B.

II. RESTATEMENT OF THE ISSUES PRESENTED FOR REVIEW

The Ernests acknowledge the issues that Ryser presents for review, but believe those issues are more appropriately formulated as follows:

> (1) Should this Court deny discretionary review of a decision affirming a trial court order denying the petitioner's alternative motions for additur or new trial where he fails to identify any conflict between decisions of this Court or another Court of Appeals considering the questions raised below?
>
> (2) Should this Court deny discretionary review of a decision affirming a trial court order denying the petitioner's alternative motions for additur or new trial where he fails to identify an issue of substantial public interest meriting such review?
>
> (3) Should this Court deny discretionary review of a decision affirming a trial court order denying the petitioner's alternative motions for additur or new trial where the decision applies the proper standard of review and reconciles the jury's verdict accordingly?

III. COUNTERSTATEMENT OF THE CASE

The Court of Appeals' decision provides the proper factual overview of this case, which the Ernests incorporate by reference. They offer the following additional facts to offset Ryser's one-sided presentation.

For example, Ryser asserts that he was unable to sell his property because of a lack of access that he attributes to the

Ernests' activities after the 2010 landslide and that he lost the property in a foreclosure sale at the end of 2011 as a result. Pet. at 3. But he neglects to mention three critical points. First, he marketed his property for sale for years without success. He initially listed it in July 2008, but received no written offers for it. CP 374. *See also,* RP I:285-86, 429.[2] He significantly reduced the listing price and actually removed and then relisted the property for sale over the course of more than a year. CP 366, 374, 421. Second, Ryser intentionally stopped paying his mortgage in February 2009 and was nearly $25,000 in arrears by September 2009. CP 436-39. He was also significantly over-leveraged on the remodel. CP 366-67; RP I:295, 402-07, 505. Third, he filed for bankruptcy protection in December 2009.[3] CP 443-54; RP I:40. At the time, Ryser valued the property at $590,000 and confirmed it carried a secured claim of $498,419. RP I:33-34, 50, 403. He submitted an amended property schedule in April 2010 listing the value of the property at $375,000. RP I:41, 50. He moved out of the property the same month his debts were discharged. CP 467;

---

[2] "RP I" refers to the consecutively paginated partial verbatim report of proceedings designated by Ryser in his second amended statement of arrangements. That partial transcript includes pages 1-953.

[3] The bankruptcy court appointed a Trustee to liquidate Ryser's assets, including his home. CP 448. The bankruptcy court discharged Ryser's debts in December 2010 and ownership of the home reverted to Ryser. CP 421, 453.

RP 319-20. By September 2011, however, he was in arrears on his mortgage for more than $87,000. CP 474; RP I:399 The Trustee filed an amended notice of sale and eventually sold the property at public auction in November 2011. CP 473-76, 478-79.

Ryser also continues to complain about the derelict truck that the Ernests' son, Tom Ernest, parked at the bottom of the switchback road in 2010. Pet. at 3. Tom parked the truck on the southwest portion of Parcel B because the Ernest family was concerned that potential buyers of Ryser's property would think they were buying the parking area and beachfront of Parcel B, which belong to the Ernests. CP 333, 414, 486. Tom parked the truck *entirely* within the boundary of Parcel B, leaving enough space for another car to pass. CP 413, 481-85, 487; RP II:39.[4]

Finally, Ryser makes only a passing reference to the December 2010 landslide that blocked the switchback road on the curve that included his property. Pet at 3. The landslide remained where it was for *eight months*, making Ryser's property inaccessible. Ryser did not list the property for sale or make any effort to regain access to it during that time. Tellingly, he had already stopped using the property as his primary residence.

[4] "RP II" refers to the partial verbatim report of proceedings designated by the Ernests, which is consecutively numbered 1-112.

IV. ARGUMENT WHY REVIEW SHOULD BE DENIED

This Court's review of an intermediate appellate court's decision terminating review is discretionary. RAP 13.4. The Court will grant a petition for review only if the decision of the Court of Appeals is in conflict with a decision from this Court or with a decision from another Court of Appeals or if the petition involves an issue of substantial public interest that should be determined by this Court.[5] RAP 13.4(b)(1)(2), (4). None of those situations exist here.

Ryser's attempt to create a conflict where none exists is unavailing. Pet. at 8-9. Far from being in conflict with prior decisions from this Court or from another division of the Court of Appeals, the Court of Appeals' decision in this case is consistent with Washington precedent. Nor can Ryser fairly claim this case represents an issue of substantial public interest that should be determined by the Court. The case is fact-specific and inapplicable to the general citizenry of Washington based on the language used in the special interrogatories presented to the jury. Ryser's tortured interpretation of the jury's answers to those interrogatories and its resulting verdict do not merit review.

---

[5] Ryser does not assert grounds for review RAP 13.4(b)(3), which involves review of significant constitutional questions. Pet. at 5-12.

A. The Court Of Appeals' Decision Does Not Conflict With Long-Standing Washington Precedent

Ryser claims review is warranted under RAP 13.4(b)(1) and (2) because the Court of Appeals' decision is allegedly inconsistent with decisions from this Court and from other Courts of Appeals. Pet. at 8-9. He manufactures a conflict where none exists. The Court of Appeals' decision is consistent with Washington precedent addressing review of jury verdicts, additur, and new trials.

Ryser argues, with little analysis, that the Court of Appeals decision conflicts with this Court's decisions in *Palmer v. Jensen*, 132 Wn.2d 193, 937 P.2d 597 (1997) and *Cyrus v. Martin*, 64 Wn.2d 810,394 P.2d 369 (1964). Pet. at 8-9. He also argues, again with little analysis, that the Court of Appeals decision conflicts with *Krivanek v. Fibreboard Corp.*, 72 Wn. App. 632, 865 P.2d 527 (1993). Pet. at 9-10. He reads these cases far too broadly, paying more attention to the specific outcomes than to the reasoning behind them.

In *Palmer, a* mother and son were injured in a car accident. 132 Wn.2d at 195-96. At the conclusion of trial, the jury awarded Palmer and her son $8,414.89 and $34 respectively in special damages and no general damages. Palmer moved for a new trial, which the trial court denied. The Court of Appeals, Division II

affirmed. On further review, this Court noted that "[a]lthough there is no *per se* rule that general damages must be awarded to every plaintiff who sustains an injury, a plaintiff who substantiates her pain and suffering with evidence is entitled to general damages." *Id.* at 201. With regard to Palmer's son, the Court concluded that because his injuries were minimal and required little medical attention, the jury could reasonably conclude that he was not entitled to general damages for pain and suffering. With regard to Palmer, however, the Court reached the opposite conclusion because Palmer substantiated her claim of pain and suffering with uncontested evidence of continued pain more than two years after the accident. The Court found that she was entitled to a new trial on damages only and reversed.

In *Cyrus*, Cyrus was injured when his pickup truck was struck from behind by an automobile driven by Martin. 64 Wn.2d at 811. The jury returned a verdict for Cyrus, which the trial court found to be inadequate. According to the court, substantial justice had not been done because the jury must have failed to take into account certain evidence concerning Cyrus's lost earnings. The court reasoned that, since the jury awarded only $500 in general damages and there was no dispute that the accident aggravated

Cyrus's pre-existing back condition, the award obviously did not include any substantial amount for lost earnings. The trial court observed that Martin did not contest Cyrus's claim that he had lost earnings as a consequence of his injuries and thus ordered a new trial on damages only. Martin appealed, arguing in part that the jury was entitled to reject the uncontradicted testimony of Cyrus and his witnesses.

On appeal, this Court reiterated the principle that the granting of a motion for a new trial is within the sound discretion of the trial court. *Id.* at 812. Finding that the verdict was not within the range of undisputed testimony concerning Cyrus's lost earnings, the Court affirmed. *Id.*

In *Krivanek,*, Krivanek died of an asbestos exposure related illness. 72 Wn. App. at 633. His widow sued Owens-Corning Fiberglas ("OCF"). The jury awarded Krivanek's estate $90,000 on the product liability claims and $30,000 to his widow and $30,000 to their children together for their wrongful death and survival claims. The court offset the verdict by the total amount of the settlements paid to the widow prior to trial. The trial court denied the widow's motion for a new trial. The widow appealed, contending the award was inadequate because it was outside the range of evidence.

OCF assigned error to the court's failure to give certain proposed jury instructions.

The Court of Appeals, Division I affirmed the product liability award and the wrongful death and survival award to the children. But it agreed that the wrongful death and survival award to the widow was inadequate. While the jury was not bound by the testimony of the widow's expert, it was bound by the unrebutted, uncontradicted evidence which formed the basis for those opinions and calculations: the evidence of the lost pensions and wages. Division I found that the trial court abused its discretion by unreasonably finding the damage award to be within the range of the evidence where the jury's award nowhere nearly approximated Krivanek's uncontroverted pension and wage losses. The court remanded for a retrial on the widow's damages only. *Id.* at 637.

The critical detail that Ryser overlooks in his analysis is that *Palmer* and *Cyrus assumed* there was liability where the plaintiffs were injured in rear-end collisions. The whole point of those cases was whether the damages awarded were adequate in view of the *undisputed liability* of the defendants. Equally as important, the plaintiffs' damages were uncontroverted in *Palmer*, *Cyrus*, and *Krivanek.* That is certainly not the case here.

This is not a situation where the jury refused to believe testimony about uncontradicted or undisputed damages as occurred in *Palmer*, *Cyrus*, or *Krivanek*. *Palmer*, 132 Wn.2d at 200 (noting defendant did not introduce any evidence disputing plaintiff's damages); *Cyrus*, 64 Wn.2d at 811 (noting defendant did not contradict plaintiff's evidence of lost earnings); *Krivanek,* 72 Wn. App. at 637 (noting jury's award of $30,000 on wrongful death claim was not within the range of uncontroverted evidence of pension and wage losses of nearly $300,000). Rather, the Ernests disputed *every* element of Ryser's trespass action.[6]

For example, the Ernests presented evidence that Ryser carried a significant mortgage on the property and challenged the values he assigned to it before, during, and after his bankruptcy proceedings. They also presented evidence that Ryser had abandoned the property at least a month before the landslide occurred and that he had no intention of returning to the property in anytime thereafter. Furthermore, Ryser's own testimony called his credibility into question and militated against a finding that he was actually damaged by the Ernests' activities after the landslide.

[6] It is axiomatic that the Court is bound to the rule that in considering the issues raised by a motion for new trial, the evidence of the nonmoving party must be accepted as true and, together with all reasonable inferences that may be drawn therefrom, be interpreted in a light most favorable to that party. *Davis v. Early Constr. Co.*, 63 Wn.2d 252, 386 P.2d 958 (1963).

Ryser *admitted* that his property was already blocked by the landslide, that he had not cleared the landslide in more than eight months and had no immediate plans to do so, and that he was not living at the property at the time of the Ernests' post-slide activities.

Based on the jury instructions and the conflicting evidence presented, the jury was entitled to decide that no damages were awardable. The jury's verdict was within the range of that evidence; accordingly, the trial court had no discretion to disturb it. *Herriman v. May*, 142 Wn. App. 226, 232, 174 P.3d 156 (2007). Any inconsistencies in the evidence were matters affecting weight and credibility and, as such, were matters within the exclusive province of the jury. *Dupea v. Seattle*, 20 Wn.2d 285, 290, 147 P.2d 272 (1944).

Despite Ryser's best efforts to create a conflict justifying further review under RAP 13.4(b)(1) and (2), none exist. The Court of Appeals' analyzed the controlling decisions addressing jury verdicts, additur, and new trials and issued an opinion consistent with that precedent. Review is not warranted.

B. The Court Of Appeals' Decision Does Not Threaten A Substantial Public Interest

Ryser also asserts, with little analysis, that a substantial public interest will be served if this Court accepts review because the Court of Appeals' decision impacts fundamental property rights. Pet. at 5-7. He is mistaken. The decision of the Court of Appeals does not implicate a "public interest," much less a "substantial public interest," warranting this Court's review.

Criteria for determining the presence of a requisite degree of public interest include the public or private nature of the question, the desirability of an authoritative determination for future guidance of public officers, and the likelihood of future recurrence of the question. *See, e.g., Sorenson v. City of Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972). Rather than address those criteria, however, Ryser ignores them. Regardless, none of them apply.

The questions involved in this litigation arise in the context of a private dispute, between private parties owning then-adjoining private properties. One can hardly imagine a dispute less involved with the general welfare of the public or in which the public as a whole has a stake than this one. This case links the interests of private parties only, interests in which the public has no stake whatsoever. Moreover, the real merits of the controversy are

settled; namely, the reverence to be paid to the jury's verdict when the parties have presented the jury with substantial and conflicting evidence on both sides of the issues being litigated. Finally, there is little likelihood the questions raised here will reoccur because they were generated by the specific special interrogatories the parties employed in this case rather than by jury instructions or case law equally applicable to the general citizenry. Ryser has no basis to seek review.

Ryser's plea for review under RAP 13.4(b)(4) should fall on deaf ears. The Court will not subvert a substantial public interest if it permits the decision of the Court of Appeals, which involves a matter of private interest between the parties, to stand without review. Review is not warranted.

C. The Court Of Appeals Decision Applies The Proper Standard Of Review And Then Reconciles The Jury's Verdict Accordingly

Finally, Ryser maintains further review is appropriate because the Court of Appeals decision "ignores the jury's factual findings in conflict with this Court's decisions and construes the verdict contrary to the jury's factual findings." Pet. at 10. He argues review is warranted to both clarify the applicable standard of review and the extent to which courts can reconcile a verdict or opine what

the jury was thinking when arriving at its verdict. Pet. at 10, 12. Even assuming *arguendo* that the Court did as Ryser suggests, his argument does not provide any basis for review under RAP 13.4(b). More to the point, the Court of Appeals applied the correct standard of review and then reconciled the jury's verdict accordingly. Further review is not warranted here.

The Court of Appeals reviews the denial of a motion for new trial or for additur for an abuse of discretion. *Palmer*, 132 Wn.2d at 197-98. Juries have considerable latitude in assessing damages; consequently, a jury verdict will not be lightly overturned. *Herriman*, 142 Wn. App. at 232. The Court of Appeals will not disturb a jury award unless it is outside the range of substantial evidence, shocks the conscience of the Court, or was the result of passion or prejudice. *RWR Mgmt., Inc. v. Citizens Realty Co.*, 133 Wn. App. 265, 274, 135 P.3d 955 (2006); *Bunch v. King County Dep't of Youth Servs.*, 155 Wn.2d 165, 179, 116 P.3d 381 (2005). *See also, Herriman*, 142 Wn. App. at 232 ("A trial court has no discretion to disturb a verdict within the range of evidence.").

To determine whether the trial court has abused its discretion, the Court of Appeals reviews the trial record. *Palmer*, 132 Wn.2d at 197. If sufficient evidence supports the verdict, the

trial court abuses its discretion by ordering a new trial. *Id.* at 198. Evidence is sufficient to support the verdict where it is substantial. *Haft v. N. Pac. Ry. Co.*, 64 Wn.2d 957, 960, 395 P.2d 482 (1964). The Court of Appeals reviews the evidence and all reasonable inferences that the evidence allows in favor of the non-moving party. *Id.*

Ryser fails to recognize these fundamental principles and conflates the presumptions at issue as a consequence. Although he argues his claims were "presumptively proven" and "the damage award was inconsistent with the rest of the verdict," he is mistaken. Pet. at 11. As the Court of Appeals properly recognized, the jury's verdict is presumptively correct. RCW 4.76.030; *Bunch*, 155 Wn.2d at 179. *See also, Lundquist v. Coca Cola Bottling*, 42 Wn.2d 170, 173, 254 P.2d 488, 490 (1953) (indulging the presumption granted to the respondent by the statute that the verdict of the jury was correct and restoring the verdict). Working from that presumption and within the appropriate legal framework, the Court of Appeals proceeded to ascertain the jury's intent and reconcile the answers to the special interrogatories. Slip op. at 17-23. In doing so, it construed the jury instructions and the special interrogatories in a way that avoided rendering any one of interrogatories meaningless

or superfluous. *See, e.g., State ex rel. Upper v. Hanna*, 87 Wash. 29, 151 P. 83, 1087 (1915) (noting answers to special interrogatories should, if possible, be read harmoniously to support a judgment).

Ryser fails to articulate any basis for review. The Court of Appeals did exactly as this Court instructed long ago. *See, e.g., Cameron v. Stack-Gibbs Lumber Co.*, 68 Wash. 539, 544, 123 P. 1001 (1912) (noting the first objective when construing a jury's verdict is to learn the jury's intent, which is to be arrived at by regarding the verdict liberally)*; accord Bickelhaupt v. Inland Motor Freight*, 191 Wash. 467, 469, 71 P.2d 403 (1937) (observing verdicts are to be construed liberally, and, if the intention of the jury can be reasonably ascertained therefrom, effect should be given to that intention). The Court should deny review.

V. CONCLUSION

Ryser fails to offer any basis under RAP 13.4(b) for review by this Court. The Court of Appeals decision in this case is correct and conforms to well-established Washington precedent. This Court should decline to revisit that decision. Review should be denied.

DATED this 18th day of November, 2015.

Respectfully submitted,

/s/ Emmelyn Hart

Emmelyn M. Hart, WSBA #28820
Heather Jensen, WSBA #29635
LEWIS BRISBOIS BISGAARD & SMITH LLP
1111 Third Ave., Suite 2700
Seattle, WA 98101
(206) 436-2020
Attorneys for Respondents
John and Margaret Ernest

APPENDIX

LEGAL DESCRIPTION

PARCEL A

THAT PORTION OF GOVERNMENT LOT 1 OF SECTION 25, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M., IN KING COUNTY, WASHINGTON, LYING BETWEEN THE EAST LINE OF A STRIP OF LAND DEEDED TO STATE OF WASHINGTON FOR VASHON ISLAND HIGHWAY BY INSTRUMENT RECORDED UNDER AUDITOR'S FILE NO. 2707734, AND THE WEST LINE OF THE EAST 10.20 ACRES OF SAID GOVERNMENT LOT; EXCEPT THE NORTH 1050.00 FEET IN WIDTH THEREOF AND EXCEPT THAT PORTION THEREOF DEEDED TO KING COUNTY FOR C.L. PILLSBURY ROAD BY DEED RECORDED UNDER AUDITOR'S FILE NO. 2763591;

PARCEL B

THAT PORTION OF GOVERNMENT LOT 1 OF SECTION 25, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

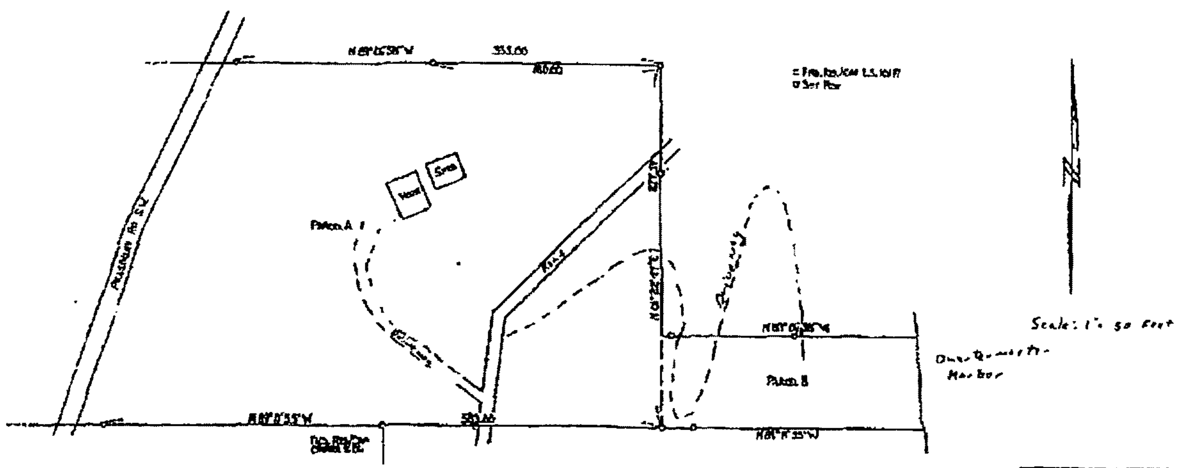
BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M., IN KING COUNTY, WASHINGTON; THENCE RUNNING SOUTH PARALLEL TO THE NORTH AND SOUTH LINES OF SAID SECTION TO THE SOUTH BOUNDARY LINE OF LOT 1 IN SECTION 25, SAID TOWNSHIP AND RANGE; THENCE RUNNING WEST ALONG THE SOUTH BOUNDARY LINE OF LOT 1 TO THE EAST BOUNDARY THEREOF; THENCE RUNNING NORTHERLY AND NORTHEASTERLY ALONG THE EAST BOUNDARY OF SAID LOT 1 TO THE NORTH BOUNDARY OF SAID LOT 1; THENCE RUNNING WEST ALONG SAID NORTH BOUNDARY OF SAID LOT 1 TO THE POINT OF BEGINNING; EXCEPT THE NORTH 1200.00 FEET THEREOF.

SURVEYOR'S CERTIFICATE

This map correctly represents retracement of surveys recorded in Volume 16 of Surveys on page 192. Records of King County, Washington.

JEROLD D. O'HARE
Professional Land Surveyor
Certificate No. 1546
August 25, 2000

Instrument - Uda Set 3. Total Station
Control survey:
Basis for bearing: Assumed



Government Lot 1
Section 25, Twp. 22 North, Rge. 2 East, W.M.
King County, Washington

Survey for: John Ernest

JEROLD D. O'HARE

LEGAL DESCRIPTION

PARCEL A

THAT PORTION OF GOVERNMENT LOT 1 OF SECTION 28, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M., IN KING COUNTY, WASHINGTON, LYING BETWEEN THE EAST LINE OF A STRIP OF LAND DEEDED TO STATE OF WASHINGTON FOR WATSON [illegible] AND HIGHWAY BY INSTRUMENT RECORDED UNDER AUDITOR'S FILE NO. 2307174, AND THE WEST LINE OF THE EAST 10.20 ACRES OF SAID GOVERNMENT LOT1 EXCEPT THE NORTH 1320.00 FEET IN WIDTH THEREOF AND EXCEPT THAT PORTION THEREOF DEEDED TO KING COUNTY FOR C.A. PELLEGRINI ROAD BY DEED RECORDED UNDER AUDITOR'S FILE NO. 2783911

PARCEL B

THAT PORTION OF GOVERNMENT LOT 1 OF SECTION 28, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M., IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

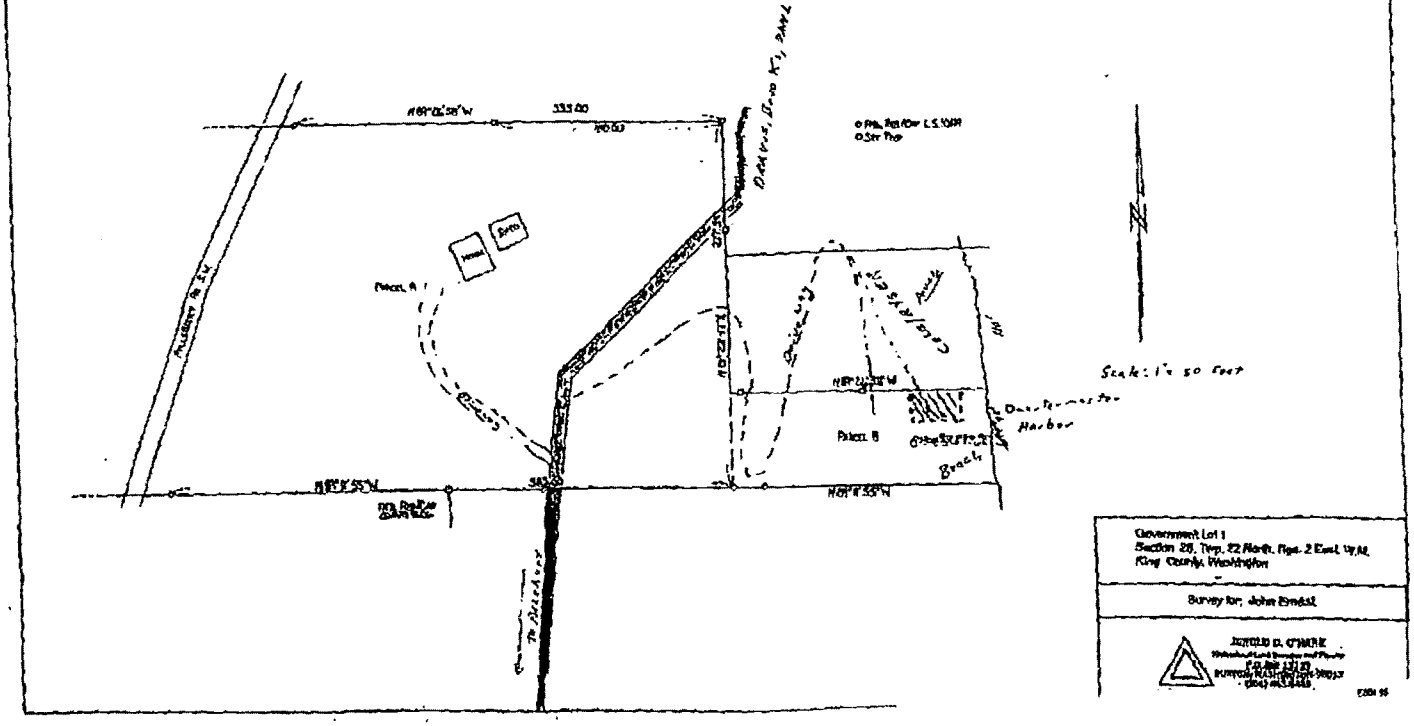
BEGINNING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M., IN KING COUNTY, WASHINGTON; THENCE RUNNING SOUTH PARALLEL TO THE NORTH AND SOUTH LINES OF SAID SECTION TO THE SOUTH BOUNDARY LINE OF LOT 1 IN SECTION 28; SAID TOWNSHIP AND RANGE; THENCE RUNNING EAST ALONG THE SOUTH BOUNDARY LINE OF LOT 1 TO THE EAST BOUNDARY THEREOF; THENCE RUNNING NORTHERLY AND CONTINUOUSLY ALONG THE EAST BOUNDARY OF SAID LOT 1 TO THE NORTH BOUNDARY OF SAID LOT 1; THENCE RUNNING WEST ALONG SAID NORTH BOUNDARY OF SAID LOT 1 TO THE POINT OF BEGINNING; EXCEPT THE NORTH 1320.00 FEET THEREOF.

SURVEYOR'S CERTIFICATE

This map correctly represents a retracement of surveys recorded in Volume 18 of Surveys on page 182, Records of King County, Washington.

HAROLD D. O'HARE
Professional Land Surveyor
Certificate No. 9806
August 25, 2000

Instrument: Wild Set 3, Total Station
Control survey
Basis for bearing: Assumed



DECLARATION OF SERVICE

The undersigned declares and states that on the date listed below I deposited with the U.S. Postal Service, postage prepaid, a true and accurate copy of the **Answer of Respondents John and Margaret Ernest to Petition for Review** for service on the following parties:

Jerry J. Moberg 124 3rd Ave. S.W. Ephrata, WA 98823 jmoberg@jmlawps.com	☐via Electronic Service ☐via Legal Messenger ☑via U.S. Mail ☑via Electronic Mail (courtesy copy) ☐via Facsimile
Barbara J. Rhoads-Weaver, Sustainable Law, PLLC PO Box 47 Vashon, WA 98070 barb@sustainablelawpllc.com	☐via Electronic Service ☐via Legal Messenger ☑via U.S. Mail ☑via Electronic Mail (courtesy copy) ☐via Facsimile
Frank Siderius 500 Union Street, Suite 847 Seattle, WA 98101-2394 franks@sidlon.com	☐via Electronic Service ☐via Legal Messenger ☑via U.S. Mail ☑via Electronic Mail (courtesy copy) ☐via Facsimile

Original e-filed with:
Supreme Court Clerk
Washington Supreme Court
PO Box 40929
Olympia, WA 98504-0929

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed this 18th day of December, 2015 at Seattle, Washington.

/s/ Julie Johnson
Julie Johnson

OFFICE RECEPTIONIST, CLERK

To: Johnson, Julie
Cc: 'jmoberg@jmlawps.com'; 'barb@sustainablelawpllc.com'; 'franks@sidlon.com'; Hart, Emmelyn
Subject: RE: Ryser v. J. E. Ernest & M. F. Ernest, Supreme Court No: 92546-1

Sensitivity: Confidential

Received on 12-18-2015

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Johnson, Julie [mailto:Julie.Johnson@lewisbrisbois.com]
Sent: Friday, December 18, 2015 3:22 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: 'jmoberg@jmlawps.com' <jmoberg@jmlawps.com>; 'barb@sustainablelawpllc.com' <barb@sustainablelawpllc.com>; 'franks@sidlon.com' <franks@sidlon.com>; Hart, Emmelyn <Emmelyn.Hart@lewisbrisbois.com>
Subject: Ryser v. J. E. Ernest & M. F. Ernest, Supreme Court No: 92546-1
Sensitivity: Confidential

Good Afternoon,

Attached for filing in the above referenced case, please find the following:

John and Margaret Ernest's Answer to Petition for Review.

Attorneys for Respondents John E. and Margaret F. Ernest.

LEWIS BRISBOIS BISGAARD

LewisBrisbois.com

Regards,
Julie J. Johnson
Legal Secretary to Emmelyn Hart, Justin R. Boland, Laura Hawes Young and Joshua Hartmann
Julie.Johnson@lewisbrisbois.com

LEWIS BRISBOIS BISGAARD & SMITH, LLP
1111 Third Avenue, Suite 2700
Seattle, WA 98101
Direct Telephone: 206-455-7405
Main: 206-436-2020

Facsimile: 206-436-2030

Representing clients from coast to coast. View our nationwide locations.