No. 323668-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

93212-3

HELENE M. RAUN,

Petitioner,

vs.

JOHN H. CAUDILL and LUCILLE J. CAUDILL, as Trustees for the CAUDILL LIVING TRUST dated November 1, 2000; WANELL J. BARTON, as Trustee for the WANELL J. BARTON FAMILY TRUST dated May 7, 1998 and any amendments; DIRK A. CAUDILL and LAUREN C. CAUDILL, as Trustees of the CAUDILL FAMILY TRUST DATED September 11, 2002; EARL L. BOETTCHER and MARY C. BOETTCHER, as Trustees for the BOETTCHER FAMILY TRUST dated May 12, 1992; BELVA M. WILLIAMS, a single woman; LARRY LOUTHERBACK and SHANNA LOUTHERBACK, as Trustees of the LOUTHERBACK LIVING TRUST dated February 9, 2001; DALE WALKER and CAROL WALKER, husband and wife; and JOHN P. GLEESING, as Successor Trustee under the Caudill Deed of Trust, JOHN AND JANE DOES 1 THROUGH 10; JOHN DOE CORPORATIONS 1 THROUGH 10 and OTHER JOHN DOE ENTITIES 1 THROUGH 10,

Respondents.

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER.

Helene M. Raun petitions this Court for review of the Court of Appeals' decision terminating review designated in Section II below.

II. COURT OF APPEALS DECISION.

Mrs. Raun seeks review of the Decision filed by Division III of the Court of Appeals on April 19, 2016, sustaining the trial court's dismissal of her Complaint. The Decision of the Court of Appeals is attached. Appendix 1-5. Review is sought only as to those Respondents identified as members of the Caudill Group.[1] No review of the Decision as it applies to Respondent John P. Gleesing is sought.

III. ISSUES PRESENTED FOR REVIEW.

Mrs. Raun requests review of the following issues:

1. Whether the Court of Appeals erred in sustaining the dismissal of Mrs. Raun's claims against the Caudill Group for: (1)

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[1] "Caudill Group" refers collectively to Respondents John H. Caudill and Lucille J. Caudill, as Trustees for the Caudill Living Trust dated November 1, 2000, Wanell J. Barton, as Trustee for the Wanell J. Barton Family Trust dated May 7, 1998 and any amendments, Earl L. Boettcher and Mary C. Boettcher, as Trustees for the Boettcher Living Trust dated May 12, 1992, Belva M. Williams, Larry Loutherback and Shanna Loutherback, as Trustees of the Loutherback Living Trust dated February 9, 2001, and Dale Walker and Carol Walker. Named Respondents Dirk A. Caudill and Lauren C. Caudill, as Trustees of the Caudill Family Trust dated December 11, 2002, were never served and are not involved in this Petition for Review.

Unlawful Eviction; (2) Violation of RCW 59.18.290; (3) Continuing Trespass; (4) Violation of RCW 4.24.630; and (5) Conversion.

2. Whether the Court of Appeals erred in sustaining dismissal of Mrs. Raun's claims against the Caudill Group for: (1) Tort of Outrage; and (2) Negligent Infliction of Emotional Distress.

IV. STATEMENT OF THE CASE.

The claims in this case involve the wrongful dispossession of Petitioner's home by the acts and omissions of the Caudill Group. The Petitioner, Helene M. Raun, is 90 years old. In 2000, Mrs. Raun and her late husband Chester E. Raun learned about the Clare House Bungalow Homes, a retirement community marketed to senior citizens 55 years and older. (CP 206). Clare House Bungalow Homes was developed by Clare House Bungalow Homes, LLC ("Clare House"). Harry A. Green was the Manager of Clare House. (CP 791, 798-799).

In purchasing their bungalow, Mr. and Mrs. Raun entered into a Resident Agreement with Clare House and paid Clare House an occupancy fee of $132,500 which constituted most of their life savings. Under the Resident Agreement, Mr. and Mrs. Raun were given non-assignable exclusive occupancy rights to unit 2506, allowing them to live in the bungalow for life or until they became unable to live independently. Additionally, if the Resident Agreement were terminated, Mr. and Mrs.

Raun would receive 80% of their occupancy fee ($106,000). The Resident Agreement became effective August 2, 2000. (CP 206-207, 214-224).

On December 20, 2001, Mr. and Mrs. Raun recorded their Resident Agreement with the Spokane County Auditor's Office. (CP 207, 214-224).

On November 24, 2004, the Caudill Group loaned $400,000 to Clare House. The loan was secured by a Deed of Trust on the property which was recorded with the Spokane County Auditor's Office. On or about April 7, 2005, the Caudill Group loaned Clare House an additional $265,000. This second loan was also secured by a Deed of Trust on the property which was also recorded. (CP 207, 228-235).

By April of 2008, Clare House had defaulted on both loans and the Caudill Group initiated foreclosure proceedings. (CP 207).

On or about May 14, 2008, Mr. and Mrs. Raun received a notice signed by Mr. Gleesing, as Trustee under the Deed of Trust, advising them that a Trustee's Sale on the property would be held on November 7, 2008. The notice also advised Mr. and Mrs. Raun that the sale would deprive them of all interest in their bungalow. (CP 207, 237-240).

On October 29, 2008, Clare House filed suit in Spokane County Superior Court, *Clare House Bungalow Homes, LLC v. Caudill, et al., et ux.*, Cause No. 08-2-04898-0 ("Clare House lawsuit") to restrain the

Trustee's Sale. On November 6, 2008, an Order was entered restraining and enjoining the Trustee's Sale until March 9, 2009. (CP 207-208).

On February 3, 2009, Mr. and Mrs. Raun, as members of the Clare House Bungalow Homes Residents Association ("Clare House Residents Association"), filed a Complaint to Quiet Title, Restrain Trustee's Sale and for Other Relief in Spokane County Superior Court, *Clare House Bungalow Homes Residents Association v. Clare House Bungalow Homes, LLC, et al., et ux.*, Cause No. 09-2-00478-6 ("Clare House Residents Association litigation"). (CP 208).

On or about July 6, 2009, Mr. and Mrs. Raun received an Amended Notice of Trustee's Sale advising them that a Trustee's Sale would be held on August 21, 2009 and that after the 20th day following the Trustee's Sale, they would be subject to summary eviction under the Unlawful Detainer Act, RCW 59.12. (CP 208, 242-246).

On August 20, 2009, Clare House filed a Chapter 11 Bankruptcy Petition in the United States Bankruptcy Court for the Eastern District of Washington, *In Re Clare House Bungalow Homes, LLC*, No. 09-04651-PCW11, and an automatic stay was issued. As a result, the Trustee's Sale was continued to October 23, 2009. (CP 208-209, 252-253).

On October 11, 2009, Chester E. Raun passed away at the age of 86. Mr. and Mrs. Raun had been married for 63 years. (CP 209).

On October 23, 2009, Mr. Gleesing continued the Trustee's Sale to December 18, 2009. (CP 209, 255-256).

On November 18, 2009, the Clare House Residents Association litigation was removed to the Bankruptcy Court as an adversary proceeding in the Clare House bankruptcy, *Clare House Bungalow Homes Residents Association v. Clare House Bungalow Homes, LLC, et al,* Adv. No. 09-80164-PCW11 ("Adversary Proceeding"). (CP 209).

On April 19, 2010, Mrs. Raun received a Second Amended Notice of Trustee's Sale advising her that a Trustee's Sale would be held on June 11, 2010 and that after the 20th day following the Trustee's Sale, she would be subject to summary eviction under the Unlawful Detainer Act, RCW 59.12. (CP 209, 258-262). On June 11, 2010, the Trustee's Sale was continued to July 16, 2010 and then to October 8, 2010. (CP 209, 264-267).

On July 1, 2010, Mrs. Raun was 84 years old and alone, having lost her husband, and felt that she had no option but to move out of her bungalow. In a letter to Mr. Green dated May 27, 2010, Mrs. Raun stated that her decision was made under the stress of what seemed to be a constant stream of threats of summary eviction by the Caudill Group and the Trustee. (CP 209-210, 269).

Lawrence S. Eastburn, MD was Mrs. Raun's primary care physician from 2004 through 2012. (CP 932). Dr. Eastburn treated Mrs. Raun for diabetes and asthma. (CP 196). In conversations with Mr. and Mrs. Raun, Dr. Eastburn learned of their situation and confirmed that the threat of losing their home and life savings understandably exerted highly unpleasant mental reactions upon them, including fright, shame, humiliation, embarrassment, anger, and worry. (CP 933-934). Mrs. Raun's medical records during this time period documented a worsening of her diabetes as reflected in her elevated A1C test results. (CP 934-935, 980-985). The medical records also documented a worsening of Mrs. Raun's asthmatic condition over the same period. (CP 936, 986-987). Dr. Eastburn was of the opinion that as a result of the threatened foreclosure and the loss of their home and life savings, Mrs. Raun suffered severe emotional distress which negatively impacted both her diabetic and asthmatic conditions. (CP 935-937).

Meanwhile, in the Adversary Proceeding, the Clare House Residents Association sought summary judgment on the issue of whether the Clare House residents, including Mrs. Raun, held rights superior to the Caudill Group. On December 14, 2010, the Bankruptcy Court issued its Order and Judgment holding that the Resident Agreement created an interest in the property for each resident and that Mrs. Raun, having

recorded her Resident Agreement, held a superior right to occupancy vis-à-vis the interest held by the Caudill Group under the Deed of Trust. (CP 210, 271-280). In its Memorandum Decision, the Bankruptcy Court determined that:

> The Caudill Group obtained a title report on the property, which revealed the two recorded Resident Agreements, but the evidence at trial did not reveal that any inquiry was made regarding the existence of other Resident Agreements or even the terms of the recorded Resident Agreements. ... The evidence at trial did not reveal that any inquiry was made regarding the occupancy of the bungalows. Mr. Blanchat knew the real property constituted a retirement community which was at "full capacity." The evidence at trial did not reveal that any further inquiry was made.
>
> [The Caudill Group] had actual notice of the occupancy of the bungalows by residents. [The Caudill Group] had **a duty to make reasonable and prudent inquiry as to the terms of that occupancy** if the [Caudill Group] desired to obtain rights greater than the occupants. By failing to make any inquiry, **[the Caudill Group] is subject to the terms of the Resident Agreement to the extent the Resident Agreement grants rights in the real property**.

(CP 210, 289-290 (emphasis added)).

On April 8, 2011, after trial in the Adversary Proceeding, the Bankruptcy Court entered an Order and Judgment holding that all Clare House residents held rights to occupancy and possession superior to those of the Caudill Group. (CP 210, 282-294). The Bankruptcy Court's Order and Judgment was appealed to the United States District Court for the Eastern District of Washington. On September 28, 2012, the District

Court issued its Order on Appeal, affirming the Order and Judgment entered by the Bankruptcy Court. (CP 210, 296-314).

The Trustee's Sale was held on September 30, 2011, and the Clare House bungalows, including Mrs. Raun's, were sold to the Caudill Group. (CP 210).

This litigation was commenced by Mrs. Raun on September 27, 2012 in Spokane County Superior Court. The Complaint asserted seven causes of action against the Caudill Group and Mr. Gleesing: (1) Unlawful Eviction; (2) Violation of RCW 59.18.290; (3) Continuing Trespass; (4) Violation of RCW 4.24.630; (5) Tort of Outrage; (6) Negligent Infliction of Emotional Distress; and (7) Conversion. (CP 4-32). Mrs. Raun demanded a jury trial on these claims. (CP 387-389).

On November 14, 2012, the Caudill Group and Mr. Gleesing filed their Motion to Dismiss for Failure to State a Claim upon which Relief may be Granted and Affirmative Defenses ("Motion to Dismiss").[2] (CP 153-156). Dismissal was sought based on: (1) the doctrine of collateral estoppel; (2) the doctrine of res judicata; and (3) failure to state a claim upon which relief may be granted under CR 12(b)(6). (CP 134-152).

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[2] At this time, Mr. Gleesing was represented by attorney John D. Munding. On February 22, 2013, attorney Patrick W. Harwood substituted in as attorney for Mr. Gleesing.

The Motion to Dismiss was heard on December 21, 2012. (CP 326-330).[3] After hearing arguments of counsel, the Court rendered an oral ruling finding that none of the causes of action were barred by either the doctrine of collateral estoppel or the doctrine of res judicata. (RP 22:14-23:11). The trial court then divided the causes of action into two groups. The first group, "property tort claims," included the claims for (1) Unlawful Eviction; (2) Violation of RCW 59.18.290; (3) Continuing Trespass; (4) Violation of RCW 4.24.630; and (5) Conversion. The second group consisted of emotional distress torts, which included claims for: (1) Tort of Outrage; and (2) Negligent Infliction of Emotional Distress. (RP 23:17-22).

With respect to the property tort claims, the trial court reasoned that while the Bankruptcy Court and the Federal District Court had determined Mrs. Raun had a right of occupancy which was superior to that of the Caudill Group, Mrs. Raun had "made the choice to leave" her bungalow on July 1, 2010. (RP 24:4-11). Accordingly, the trial court ruled that because Mrs. Raun's "choice [affected] all of the property tort claims," dismissal solely on this basis was appropriate. (RP 24:11-13; CP 326-330).

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[3] Because matters outside the pleadings were presented, the Motion to Dismiss was treated as one for summary judgment. (CP 326-330).

However, the trial court ruled the emotional distress torts would be allowed to proceed to trial, rejecting the Caudill Group's contention that all they did was to send the statutory notice, noting that, as found by the Bankruptcy Court, "[t]hey really did not do due diligence before ... serving all these notices." (RP 24:23-24; CP 210, 289-299, 326-330).

The trial court's Order Granting in Part and Denying in Part Defendants' Motion to Dismiss for Failure to State a Claim Upon Which Relief May be Granted and Affirmative Defenses was entered on February 4, 2013. (CP 326-330); Appendix 6-10.

On November 7, 2013, the Caudill Group and Mr. Gleesing filed separate Motions for Summary Judgment, seeking dismissal on similar grounds. (CP 398-401; 482-484). The motions sought dismissal of the tort of outrage claim on the ground that the conduct of pursuing foreclosure under Chapter 61.24 could not, as a matter of law, amount to outrageous conduct. (CP 475-478, 491-494). As to the negligent infliction of emotional distress claim, the Caudill Group and Mr. Gleesing contended that (1) neither of them breached any duty owed to Mrs. Raun; and (2) there was insufficient medical evidence to support the claim. (CP 468-474, 494-501). The Caudill Group also asserted the statute of

limitations as a partial bar to claims arising prior to September 27, 2009. (CP 478-479).[4]

Both motions were heard on January 10, 2014. After hearing arguments from counsel, the trial court dismissed the remaining two causes. As to the Caudill Group, the trial court found that, because the first notice received by Mrs. Raun was in May of 2008, the statute of limitations had run as of May 2011. (RP 77:18-81:22). The trial court's Order Granting: (1) the Caudill Investors' Motion for Summary Judgment; and (2) Defendant John P. Gleesing's Motion for Summary Judgment was entered on February 7, 2014 (CP 1218-1222); Appendix 11-15.

Mrs. Raun filed a Notice of Appeal on March 7, 2014, seeking review of the orders entered on February 4, 2013 and February 7, 2014 (CP 1286-1299).[5] Oral arguments were held on January 27, 2016. On April 19, 2016, the Court of Appeals issued its Decision affirming the trial court's Order of Dismissal.

V. ARGUMENT IN SUPPORT OF REVIEW.

The Court of Appeals' Decision should be reviewed for two reasons. First, the decision of the Court of Appeals is in conflict with

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[4] Mr. Gleesing subsequently joined in this argument. (CP 737-741).

[5] A second Notice of Appeal was filed on December 22, 2014 from two post-judgment orders entered on November 25, 2014 awarding CR 11 sanctions in favor of Mr. Gleesing. (CP 2033-2050). The two appeals were consolidated on February 27, 2015.

Decisions of the Supreme Court. RAP 13.4(b)(1). Second, the Petition involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b)(4).

A. Both the Trial Court and Court of Appeals Disregarded Well-Settled Principles Controlling Summary Judgment in Dismissing Mrs. Raun's Claims.

The Decision of the Court of Appeals is in conflict with prior decisions of the Supreme Court controlling motions for summary judgment. Case law is clear that summary judgment under CR 56 is to be granted only if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); Clements v. Travelers Indem. Co., 121 Wn.2d 243, 249, 850 P.2d 1298 (1993); Ellis v. City of Seattle, 142 Wn.2d 450, 458, 13 P.3d 1065 (2000). The court must consider all facts submitted and all reasonable inferences from the facts in the light most favorable to the nonmoving party. Wilson v. Steinback, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). A material fact is one upon which the outcome of the litigation depends. Greater Harbor 2000 v. City of Seattle, 132 Wn.2d 267, 279, 937 P.2d 1082 (1997). The burden of showing there is no issue of material fact falls upon the party moving for summary judgment. Id. Summary judgment is proper only if, from all the evidence,

reasonable persons could reach but one conclusion. Id.; Wilson, at 437. "[A]t the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 292, 106 S. Ct. 2505; 91 L. Ed. 2d 202 (1986).

1. Dismissal of the Property Tort Claims.

Dismissal of the property tort claims was predicated on the trial court's belief Mrs. Raun abandoned her bungalow. However, "[a]bandonment involves a **voluntary** leaving of property with no intention to return and claim or possess it." Koenig v. Hansen, 39 Wn.2d 506, 512; 236 P.2d 771 (1851) (emphasis added). Legal abandonment contemplates both an act or omission and an intent to abandon. Moore v. Northwest Fabricators, Inc., 51 Wn.2d 26, 27, 314 P.2d 941 (1957). Furthermore, abandonment must be proved by "clear, unequivocal and decisive evidence." Tuschoff v. Westover, 65 Wn.2d 69, 73, 395 P.2d 630 (1964); *see also* Olin v. Goehler, 39 Wn.App. 688, 693, 694 P.2d 1129 (1985) (there must be clear, unequivocal and decisive evidence of an intent to abandon). Mrs. Raun appealed the dismissal on the basis her decision to vacate was *not* voluntary, but a product of coercion due to the on-going threats of eviction. Evidence introduced by Mrs. Raun clearly

supported this proposition. In her May 27, 2010 letter to Mr. Green, Mrs. Raun stated:

> To Clare House Bungalow Homes –
>
> Dear Harry –
>
> This is a most difficult letter to write. The threats to make us vacate our home, that I and Chet thought would be our final home, in 20 days after the auction on June 11th was kind of the final blow after the 2 years of Law Suits.
>
> I have made plans to be out of 2506 before July 1st. Have paid $89 more than I should have on Aprils Property Taxes – I'm paying Junes full price so I hope you consider I'm paid in full.
>
> I'm sorry I have to leave, my hopes are for your future is for the best.
>
> Sincerely,
> s/ Helene M. Raun
>
> Again:
>
> I'm leaving; will be out before July 1, 2010[.] Hoping the contract we signed 85% as soon as the place is sold to the next resident or which ever is higher –
>
> Thank you for your Best Wishes

(CP 209-210, 269).

In finding that Mrs. Raun had "made the choice to leave" her bungalow on July 1, 2010, the trial court clearly made an impermissible factual determination which ignored the involuntary nature of Mrs. Raun's decision to vacate her bungalow. (RP 24:4-11).

In its Decision, the Court of Appeals compounded the trial court's error as it also impermissibly acted as a trier of fact on the issue of abandonment. Threats of eviction which forced Mrs. Raun to vacate her bungalow were contained in the various Notices of Trustee's Sale. To be clear, those provisions read as follows:

> The purchaser at the trustee's sale is entitled to possession of the property on the 20th day following the sale, as against [Clare House] under the deed of trust (the owner) and anyone having an interest junior to the deed of trust, including occupants and tenants. **After the 20th day following the sale the purchaser has the right to evict occupants and tenants by summary proceedings under the unlawful detainer act, chapter 59.12 RCW.**

(CP 208, 242-246 (emphasis added)).

The Court of Appeals recognized "[t]he perception by a nonlawyer that this language threatened eviction is not entirely unreasonable, given that this notice is fairly dense and legalistic." Raun v. Caudill, 2016 Wn.App. LEXIS 814; Appendix 3. However, the Court of Appeals concluded Mrs. Raun "should have known through her attorney that the notice did not even state the possibility that she would be evicted" and "[t]he statutory notice simply does not bear the construction [Mrs. Raun] now gives it, nor should she have given it that construction since she was involved in litigation to determine the status of her property interest." Id.

In its Decision, the Court of Appeals, like the trial court, acted as a trier of fact in determining what Mrs. Raun did know or should have known.

The logic of the Court of Appeals, first finding that Mrs. Raun's interpretation "not entirely unreasonable" but then concluding that she "should have known" that no possibility of eviction existed is of dubious validity. This reasoning highlights the fact the holding of the Court of Appeals impermissibly decided a genuine issue of material fact in derogation of CR 56 and controlling precedent established by the Supreme Court. Accordingly, the Court of Appeals erred in affirming dismissal of the property tort claims.

2. Dismissal of the Emotional Distress Claims.

The trial court, in dismissing Mrs. Raun's emotional distress claims against the Caudill Group, held the claims were time-barred by the statute of limitations. (RP 77:18-81:22). The Court of Appeals concluded this was error, yet sustained the dismissal on alternate grounds.

Dismissal of the Tort of Outrage was sustained on the basis "adherence to a statutorily prescribed process cannot be characterized as extreme and outrageous behavior." Id.

The holding of the Court of Appeals misses the point. What occurred in this case was an abuse of the Deed of Trust Act. The Court of Appeals suggests there is no question "[u]nder the explicit terms of the

[Resident Agreement], which Ms. Raun had properly recorded with the county, her occupancy rights would not be subordinate to the subsequent deed of trust." Id.. While proposition may seem a foregone conclusion to the Court of Appeals in hindsight, it was not so to Mrs. Raun who had to endure over two years of continuing litigation in the Superior and Bankruptcy Courts. It is submitted that if Mrs. Raun's rights were so obvious, the Caudill Group should have recognized their subordinate position and ceased the nonjudicial foreclosure process.

Instead, the Caudill Group continued to pursue foreclosure through the trustee. A trustee in a nonjudicial foreclosure has a duty to exercise "independent discretion as an impartial third party." Klem v. Washington Mut. Bank, 176 Wn.2d 771, 792, 295 P.3d 1179 (2013). As this Court has noted:

> A foreclosure trustee must "adequately inform" itself regarding the purported beneficiary's right to foreclose, including, at a minimum, a "'cursory investigation'" to adhere to its duty of good faith. ... A trustee does not need to summarily accept a borrower's side of the story or instantly submit to a borrower's demands. But a trustee must treat both sides equally and investigate possible issues using its independent judgment to adhere to its duty of good faith.

Lyons v. U.S. Bank, NA, 181 Wn.2d 775, 787, 336 P.3d 1142 (2014).

In both Klem and Lyons, this Court faulted the trustee for failing to investigate when confronted with information about irregularities in the

nonjudicial foreclosure process. Here, the Caudill Group, the beneficiaries under the Deed of Trust, failed to conduct a "reasonable and prudent inquiry" into Mrs. Raun's recorded occupancy rights to her bungalow and as a result, without legal basis, sought to foreclose on Mrs. Raun's interest in her bungalow. (CP 210, 289-290).

In Lyons, this Court specifically recognized "[c]onduct during foreclosure could support a claim for intentional infliction of emotional distress." Id., at 793. This is exactly what Mrs. Raun's emotional distress claims against the Caudill Group attempted to do.

The Court of Appeals likewise affirmed dismissal of Mrs. Raun's Negligent Infliction of Emotional Distress claim on the same grounds, but additionally found there was no causal link between the Caudill Group's breach of its duty to conduct a reasonable investigation and the emotional distress suffered by Mrs. Raun. This is flatly contradicted by evidence provided by Dr. Eastburn. (CP 9325-937). Again, as to this issue, the Court of Appeals impermissibly weighed the factual evidence in affirming dismissal.

B. The Petition Involves Issues of Substantial Public Interest that Should be Determined by the Supreme Court.

It is submitted that both issues involve substantial public interest and should be reviewed by the Supreme Court pursuant to RAP

13.4(b)(4). Mrs. Raun, having recorded her Resident Agreement, held a property interest in her bungalow which allowed her to reside there as long as she lived. Under RCW Chapter 61.24, a nonjudicial foreclosure pursuant to a deed of trust extinguishes all junior interests to that security. Beal Bank, SSB v. Sarich, 161 Wn.2d 544, 548, 167 P.3d 555 (2007).

However, even though the interest held by the Caudill Group was junior to the interest held by Mrs. Raun, the junior lienholder effectively foreclosed on the superior interest. This result is improper under the nonjudicial foreclosure provisions of the Deeds of Trust Act.

In the context of this case, the superior interest held by Mrs. Raun in her bungalow may be extinguished only by adverse possession. A claim of adverse possession requires the claimant to establish the possession of the claimed property was (1) for 10 years, (2) exclusive, (3) actual and uninterrupted, (4) open and notorious, and (5) hostile. Chaplin v. Sanders, 100 Wn.2d 853, 857, 676 P.2d 431 (1984), RCW 4.16.020. However, the Caudill Group did not provide any proof of the elements of adverse possession, nor did the trial court make any finding of adverse possession.

The Court of Appeals' Decision, if allowed to stand, literally invents a new method in extinguishing Mrs. Raun's recorded interest in her bungalow based upon factually determining what she should have

known for which no precedent in this jurisdiction exists. The question is a question of fact and Mrs. Raun has an inviolate right the right to have a jury resolve it, not the trial court or Court of Appeals. WASH. CONST. art. 1, § 21. ("The right of trial by jury shall remain inviolate").

These issues are likely to reoccur, and a determination on the merits would provide guidance to lower courts. *See* State v. Blilie, 132 Wn.2d 484, 488 n.1, 939 P.2d 691 (1997); Grays Harbor Paper Co. v. Grays Harbor County, 74 Wn.2d 70, 73, 442 P.2d 967 (1968).

VI. CONCLUSION.

Wherefore, it is respectfully requested that the Supreme Court grant Mrs. Raun's Petition for Review.

DATED this 19th day of May, 2016.

LAW OFFICES OF MARIS BALTINS, P.S.

MARIS BALTINS, WSBA #9107
Attorneys for Petitioner

CERTIFICATE OF SERVICE

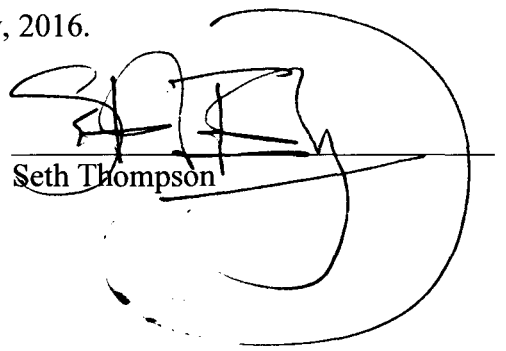
Seth Thompson hereby declares under penalties of perjury of the laws of the State of Washington that:

1. I am and at all times hereinafter mentioned was a citizen of the United States and a resident of the State of Washington, over the age of 18 years and not a party to this action.

2. On the 19th day of May, 2016, I caused to be served a true and correct copy of the foregoing document, by the method indicated below, upon the following parties:

Paul L. Kirkpatrick Patrick W. Harwood Kirkpatrick & Startzel, P.S. 1717 S. Rustle, Suite 102 Spokane, WA 99224	[ ] First Class Mail, Postage Prepaid [ ] Federal Express [x] Hand Delivery [ ] Facsimile Transmission:
John D. Munding Crumb & Munding, P.S. 1610 W. Riverside Ave. Spokane, WA. 99201	[ ] First Class Mail, Postage Prepaid [ ] Federal Express [x] Hand Delivery [ ] Facsimile Transmission:

DATED this 19th day of May, 2016.



Seth Thompson

Appendix

HELENE M. RAUN, *Appellant*, v. JOHN H. CAUDILL ET AL., *Respondents*.

No. 32366-8-III

COURT OF APPEALS OF WASHINGTON, DIVISION THREE

2016 Wash. App. LEXIS 814

January 27, 2016, Oral Argument
April 19, 2016, Filed

SUBSEQUENT HISTORY: Reported at *Raun v. Caudill, 2016 Wash. App. LEXIS 1015 (Wash. Ct. App., Apr. 19, 2016)*

PRIOR HISTORY: [*1] Appeal from Spokane Superior Court. Docket No: 12-2-03834-6. Judge signing: Honorable Kathleen M O'Connor. Judgment or order under review. Date filed: 02/07/2014.

COUNSEL: For Appellant: Maris Baltins, Law Offices of Maris Baltins, P.S., Spokane, WA.

For Respondent(s): John Degnan Munding, Attorney at Law, Spokane, WA; Paul L. Kirkpatrick, Kirkpatrick & Startzel, Spokane, WA; Patrick W Harwood, Kirkpatrick & Startzel PS, Spokane, WA.

JUDGES: Authored by Kevin M. Korsmo. Concurring: Robert E. Lawrence-Berrey, Laurel H. Siddoway.

OPINION BY: Kevin M. Korsmo

OPINION

¶1 KORSMO, J. -- Helene Raun appeals from the dismissal at summary judgment of her causes of action against the investors who purchased the property she had been living on and the court's imposition of *CR 11* sanctions for including a trustee among the defendants. We affirm.

FACTS

¶2 In 2000, Ms. Raun and her husband signed a resident agreement with Clare House Bungalows under which they obtained a lifetime, nonassignable occupancy right to a bungalow and were guaranteed a return of at least 80 percent of the purchase price when they vacated the home.[1] Their home was one of 28 single-family residences attached in a six building retirement community. Unlike most of the bungalow purchasers, [*2] the Rauns recorded their agreement with Spokane County. In 2004 and 2005, Clare House obtained a loan from John Caudill's investment group (Caudill Group) that was secured by the bungalow homes property. John Gleesing acted as a closing attorney for the Caudill Group.

> 1 It appears that this was marketed as a purchase by the occupant with a right of repurchase by Clare House. However, it effectively amounted to prepayment of a lifetime of rent plus an unsecured, zero interest loan in excess of $100,000.

¶3 Clare House defaulted on that loan in early 2008. The Caudill Group initiated a nonjudicial foreclosure and instructed Mr. Gleesing to act as the trustee on the sale. He initiated nonjudicial foreclosure proceedings and sent out a notice of trustee's sale to all interested parties in May 2008. Clare House obtained an injunction that restrained the sale until March 2009. While this injunction was in place, the residents jointly filed a complaint to quiet title.[2]

> 2 They initially sought to restrain the trustee's sale, but subsequently entered a stipulation, agreeing to allow the sale to proceed while reserving their asserted property rights.

¶4 After the injunction was lifted in March, Mr. Gleesing [*3] filed and served a new notice of trustee's sale in July. This notice contained additional language

notifying occupants and tenants with interests junior to the deed of trust that the purchaser at auction would have the right to evict them. However, prior to the sale, Clare House filed for bankruptcy in August 2009 resulting in an automatic stay on the foreclosure. Soon thereafter Mr. Raun died. The residents' action was removed to the bankruptcy court.

¶5 By April 2010, the bankruptcy court had lifted the stay on foreclosure and Mr. Gleesing sent out another notice of trustee's sale. On May 27th, Ms. Raun contacted Harry Green, one of the principals of Clare House, and asserted her desire to exercise her contractual right to vacate and receive the repayment. In reference to the most recent notice of trustee's sale, she stated that the threat of vacating her home was the final blow in what had been two years of stressful litigation. At that point Clare House was already bankrupt. Ms. Raun fully moved out of her home by July 1st, but never received the money owed to her by Clare House under the contract.

¶6 In December 2010, the bankruptcy court ruled on summary judgment that Ms. Raun and one [*4] other resident, having duly recorded their residence agreements, had occupancy rights superior to the Caudill Group. In that decision, the rights of the other residents were sent to trial on the issue of whether the Caudill Group had constructive knowledge of the unrecorded agreements. The decision also determined that the contractual right to repayment was not an interest in real property and could only be enforced against the party to the contract, Clare House. In June 2011, the bankruptcy court ruled after trial that the other residents had occupancy rights superior to the Caudill Group, but did not have ownership rights to the bungalows.

¶7 Following an unsuccessful appeal by the bungalow occupants, Ms. Raun brought the present action against the Caudill Group and Mr. Gleesing. She asserted that the Caudill Group should have known they could not foreclose her interest in the property and should not have sent her the notices of trustee's sales that threatened eviction. She asserted that those threats induced her to vacate her home and abandon her interest in the property. The trial court granted the defendants' motions for summary judgment and awarded *CR 11* sanctions to Mr. Gleesing against [*5] Ms. Raun's attorney for the frivolous emotional distress claim brought against him. Ms. Raun and her attorney then appealed to this court. The two appeals were consolidated and eventually were argued to a panel.

ANALYSIS

¶8 This appeal presents four issues that we address in the following order. First we will consider Ms. Raun's property-related arguments, followed by her emotional distress claims. We will then consider the propriety of the *CR 11* award in favor of Mr. Gleesing before turning to the respondents' joint claims that they are entitled to a fee award for responding to frivolous litigation.

¶9 Appellate review of the first two issues is governed by well-settled principles. An appellate court reviews a summary judgment de novo; the inquiry is the same as the trial court's inquiry. *Lybbert v. Grant County, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000)*. We view the facts, and all reasonable inferences to be drawn from them, in the light most favorable to the nonmoving party. *Id.* If there is no genuine issue of material fact, summary judgment will be granted if the moving party is entitled to judgment as a matter of law. *Id.; Trimble v. Wash. State Univ., 140 Wn.2d 88, 93, 993 P.2d 259 (2000)*.

Property-Related Claims

¶10 Ms. Raun contends that the defendants wrongfully evicted her from the bungalow and thereby also converted and [*6] trespassed on her property. These claims arise from the use of the statutory notice language provided in the "Deed of Trust Act" (DTA). The trial court correctly determined that the use of the statutory notice of nonjudicial foreclosure did not amount to an unlawful eviction.

¶11 In order to state a claim for unlawful eviction, a plaintiff must show that a landlord removed or excluded the tenant from the premises. *RCW 59.18.290*.[3] Ms. Raun's property claims all stem from an assertion that the Caudill Group and Mr. Gleesing should have known that she possessed a life tenancy in the bungalow and that they would have been unable to evict her following any foreclosure. Consequently, she contends that the repeated threats of eviction contained in the notices of trustee's sales caused her to vacate her home. However, her claims fall short because she was never threatened with eviction.

3 The Caudill Group did not purchase the property until two years after the notices at issue in this case were sent. They would not appear to qualify as landlords under the statute.

¶12 In July 2009 and April 20104,[4] Ms. Raun received notices of trustee's sales that included the following language:

> NOTICE TO OCCUPANTS OR TENANTS
>
> The Purchaser [*7] at the trustee's sale is entitled to possession of the property on the 20th day following the sale, as against the grantor under the deed of trust

> (the owner) and anyone having an interest junior to the deed of trust, including occupants and tenants. After the 20th day following the sale the purchaser has the right to evict occupants and tenants by summary proceedings under the unlawful detainer act, *chapter 59.12 RCW.*

Clerk's Papers (CP) at 244.

> 4 Ms. Raun asserts in her brief that the threats began with the initial notice received in 2008. However, that notice did not include the language about eviction. Clerk's Papers at 237-239.

¶13 The perception by a nonlawyer that this language threatened eviction is not entirely unreasonable, given that this notice is fairly dense and legalistic. However, the notice merely apprises occupants that the purchaser would have a right to evict them if their interest was junior to the deed of trust. By the time Ms. Raun received the first of these notices, she already was a party to an action to quiet title to the property and received the notice through counsel. One of the primary issues being litigated in that action was which party possessed the superior and subordinate rights to the property. In December 2010, the bankruptcy [*8] court ruled that Ms. Raun had an occupancy right senior to the lenders.[5] CP at 271-280. Under the explicit terms of the contract, which Ms. Raun had properly recorded with the county, her occupancy rights would not be subordinate to the subsequent deed of trust. She should have known through her attorney that the notice did not even state the possibility that she would be evicted.[6]

> 5 In the 2010 ruling, the bankruptcy court granted summary judgment in favor of Ms. Raun, finding that her occupancy interest was superior to the Caudill Group's deed of trust. However, it held that there was a question of fact as to notice on the other tenant's rights, because they had not recorded their agreements. Ms. Raun assigns substantial weight to the subsequent trial determination that the Caudill Group failed to make a reasonable inquiry into the rights of those occupants without recorded agreements, making their rights under the deed of trust subordinate to the unrecorded agreements. However, this determination is not relevant to the present issues.
>
> 6 Some of the other occupants possibly had inferior rights to the deed of trust. Consequently the notice was statutorily required in order to possibly foreclose on those [*9] rights.

¶14 The trial court correctly determined that, as a matter of law, inclusion of the statutory notice did not improperly threaten to evict Ms. Raun. The statutory notice simply does not bear the construction she now gives it, nor should she have given it that construction since she was involved in litigation to determine the status of her property interest. The property-related claims were without merit and properly dismissed by the trial judge.

Emotional Distress Claims

¶15 Ms. Raun also asserted that the statutory notice given her constituted both negligent infliction of emotional distress and outrage. While noting that the statutory notices given Ms. Raun did not arise to the level of extreme and outrageous conduct, the trial court dismissed these counts due to the statute of limitations. We reach the same conclusion for somewhat different reasons.

¶16 In order to prevail on a claim of negligent infliction of emotional distress, a party must show (1) the existence of a duty, (2) breach of that duty, (3) causation, and (4) harm. That harm must be demonstrated by evidence of emotional distress evidenced by objective symptomology. *Hunsley v. Giard, 87 Wn.2d 424, 433-436, 553 P.2d 1096 (1976).* The elements of a claim of outrage require a plaintiff to [*10] show (1) extreme and outrageous conduct, (2) intentional or reckless infliction of emotional distress, and (3) severe emotional distress. *Robel v. Roundup Corp., 148 Wn.2d 35, 51, 59 P.3d 611 (2002).*

¶17 The trial court dismissed these two causes of action against the Caudill Group due to the statute of limitations. However, Ms. Raun correctly points out that some of the allegedly tortious conduct occurred within the statute of limitations period. Consequently, the trial court erred in dismissing the entire claim on that ground. *See generally, Cox v. Oasis Physical Therapy, PLLC, 153 Wn. App. 176, 222 P.3d 119 (2009).* Nonetheless, the claims were properly dismissed.

¶18 As the trial court recognized, the statutory notice is critical to this determination. With respect to the outrage claim, we agree that the adherence to a statutorily prescribed process cannot be characterized as extreme and outrageous behavior. Accordingly, the outrage claims fail on the first element.[7]

> 7 The evidence does not appear sufficient to support the remaining elements, but we need not address them.

¶19 The negligent infliction of emotional distress claim flounders for a similar reason. This claim, too, turns on the statutory notice given by the defendants to

the bungalow occupants. Ms. Raun draws on some language out of one of the bankruptcy court decisions [*11] to the effect that the Caudill Group breached a duty to do a reasonable investigation into the occupancy agreements of those who had not recorded their agreements with the County. The failure to inquire led to the property rights of the Caudill Group being subordinated to those residents. CP at 290. However, this breach has no causal link to the alleged harm to Ms. Raun.

¶20 Ms. Raun asserts that had the Caudill Group done an investigation, they never would have sent the notices that caused Ms. Raun her distress. However, those notices were necessary if any occupant had rights junior to the deed of trust, an unresolved issue in the then ongoing litigation. And, as previously discussed, the notices did not threaten Ms. Raun with eviction. It was her misperception that caused her distress.[8] That reaction simply was not a foreseeable result of sending the statutory notice. Accordingly, we conclude summary judgment was proper because the Caudill Group did not breach any duty to Ms. Raun and her response to the notice was not foreseeable.

8 We need not address Caudill's contention that the medical evidence of emotional distress also was lacking.

¶21 The trial court properly dismissed the emotional distress related [*12] claims.

CR 11 Sanctions in Favor of Gleesing

¶22 Ms. Raun also challenges the trial court's award of *CR 11* sanctions to Mr. Gleesing for his defense of the emotional distress claims after it became apparent that his only role in the proceedings was as trustee during the nonjudicial foreclosure proceedings. The trial court did not abuse its discretion.

¶23 An attorney shall not sign or submit a pleading unless "(1) it is well grounded in fact; (2) it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) it is not interposed for any improper purpose." *CR 11(a)*. When a pleading is in violation of that rule, the trial court may, either by motion or upon its own initiative, impose an appropriate sanction on the offending attorney or party. *Id. CR 11* sanctions may only be imposed in compliance with due process of law; in this context, that means a party must be given notice and the opportunity to be heard. *Bryant v. Joseph Tree, Inc., 119 Wn.2d 210, 224, 829 P.2d 1099 (1992)*. Sanctions awarded under *CR 11* are reviewed for an abuse of discretion. *Wash. State Physicians Ins. Exch. & Ass 'n v. Fisons Corp., 122 Wn.2d 299, 338-339, 858 P.2d 1054 (1993)*. Discretion is abused when it is exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971)*.

¶24 The trial court sanctioned Ms. Raun's attorney $23,000 for bringing [*13] frivolous emotional distress claims against Mr. Gleesing. The trial court determined that Mr. Gleesing's participation as the trustee in foreclosure was limited, his duties owed were only those owed by a trustee under the DTA, and there were no allegations of any breach in those duties. The assessment ran from the date of a letter sent November 7, 2013, informing Ms. Raun's counsel that the claims were frivolous, rather than from the date of the formal *CR 11* sanction request sent December 20, 2013. Ms. Raun contends that there should have been no sanction, but that if one were permissible, it should only run for expenses after the December notice.

¶25 Appellants contend that Gleesing owed Ms. Raun a duty of care, but the only claim they raise is an obligation to ascertain the status of the bungalow's occupants. While that might be appropriate for a purchaser seeking to obtain valid title to property, it is not an obligation of a DTA trustee. The trial court found that the trustee had complied with his statutory obligations under the DTA to the property owner and the lenders. Appellants do not contend otherwise. Instead, they implicitly seek an expansion of the trustee's statutory obligations [*14] without providing any relevant authority or argument. The trial court had a very tenable basis for imposing sanctions.

¶26 Appellants also contend the award should have only applied to fees expended after the formal notice of *CR 11* sanctions was filed, pointing to the due process protections afforded to a *CR 11* sanction. Gleesing accurately notes this argument is akin to the safe harbor provision found in the Federal Rules, but not in Washington's. *See FRCP Rule 11(c)(2)*. That rule allows a party 21 days after notice has been given to correct a challenged filing, but does not establish the sanction notice or any other date as the trigger for imposing sanctions. Washington's failure to enact this provision makes it a weak reed for appellants to cling to, but a more compelling reason to reject the argument is that the appellants never sought to amend or retract the emotional distress claims against Gleesing. Never having sought the safe harbor, they are not entitled to its protections.

¶27 In any event, the date selected by the court corresponds to the first letter informing appellants that the claims were frivolous and should voluntarily be dismissed. The appellants were on notice that the claims were considered frivolous [*15] and chose to litigate rather than mitigate. Having been given the chance to correct the problem--and having declined to

act--appellants can hardly contend that they did not know that sanctions would be sought.

¶28 The trial court had a very tenable basis for imposing sanctions and for setting the award for costs expended after notice had been given. The court did not abuse its discretion.

Attorney Fees on Appeal

¶29 Both sets of respondents seek attorney fees for needing to respond to a frivolous appeal. We exercise our discretion and decline both requests.

¶30 This court is empowered by *RAP 18.9(a)*[9] to sanction a party for filing a frivolous appeal. Although without merit, we are not inclined to find this appeal frivolous; we understand respondents' concerns that this matter has been litigated long past the point where it should have ended. Ms. Raun correctly pointed to the trial court's partial error on the statute of limitations issue and her safe harbor claim, although weak, was colorable. The appeal therefore was not utterly without merit. We decline to impose further sanctions, but respondents are entitled to their costs in this court upon compliance with *RAP 14.4. RAP 14.1.*

9 The Caudill Group argues this issue as a *CR 11* matter [*16] even though the Civil Rules do not apply to the appellate courts unless expressly referenced by the Rules of Appellate Procedure. At one point *CR 11* applied to the appellate courts due to express reference in former *RAP 18.7* (1984), but that reference was removed in 1994. *See* Amendment to *RAP 18.7*, 124 Wn.2d 1101, 1141 (1994).

¶31 The judgments of the trial court are affirmed.

¶32 A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to *RCW 2.06.040.*

LAWRENCE-BERREY, A.C.J., and SIDDOWAY, J., concur.

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FILED

FEB 04 2013

THOMAS R FALLQUIST
SPOKANE COUNTY CLERK

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR SPOKANE COUNTY

HELEN M. RAUN,

Plaintiff,

v.

JOHN H. CAUDILL and LUCILLE J. CAUDILL, as Trustees for the CAUDILL LIVING TRUST dated November 1, 2000; WANELL J. BARTON, as Trustee for the WANELL J. BARTON FAMILY TRUST dated May 7, 1998 and any amendments; DIRK A. CAUDILL and LAUREN C. CAUDILL, as Trustees of the CAUDILL FAMILY TRUST dated September 11, 2002; EARL L. BOETTCHER and MARY C. BOETTCHER, as Trustees for the BOETTCHER FAMILY TRUST dated May 12, 1992; BELVA M. WILLIAMS, a single woman; LARRY LOUTHERBACK and SHANNA LOUTHERBACK, as Trustees of the LOUTHERBACK LIVING TRUST dated February 9, 2001; DALE WALKER and CAROL WALKER, husband and wife; and JOHN P. GLEESING, as Successor Trustee under the Caudill Deed of Trust, JOHN AND JANE DOES 1 THROUGH 10; JOHN DOE CORPORATIONS 1 THROUGH 10 and OTHER JOHN DOE ENTITIES 1 THROUGH 10,

Defendants.

Case No. 12-2-03834-6

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED AND AFFIRMATIVE DEFENSES

On November 14, 2012, Defendants filed their Motion to Dismiss for Failure to State a Claim upon which Relief may be Granted and Affirmative Defenses ("Motion to Dismiss") in the above-entitled matter. The Motion to Dismiss was heard on December 21, 2012 before the Honorable Judge Kathleen M. O'Connor. Present at the hearing were Plaintiff Helene M. Raun, represented by attorney Maris Baltins, of the Law Offices of Maris Baltins, P.S., and attorney John D. Munding, of Crumb & Munding, P.S., representing Defendants JOHN H. CAUDILL and LUCILLE J. CAUDILL, as Trustees for the CAUDILL LIVING TRUST dated November 1, 2000; Defendant EARL L. BOETTCHER and MARY C. BOETTCHER, as Trustees for the BOETTCHER FAMILY TRUST dated May 12, 1992; BELVA M. WILLIAMS; LARRY LOUTHERBACK and SHANNA LOUTHERBACK, as Trustees of the LOUTHERBACK LIVING TRUST dated February 9, 2001; DALE WALKER and CAROL WALKER, husband and wife (foregoing defendants collectively and hereinafter called "Defendants Caudill Group"); and JOHN P. GLEESING, as Successor Trustee under the Caudill Deed of Trustee ("Defendant Trustee") (Defendants Caudill Group and Defendant Trustee collectively and hereinafter referred to as the "Defendants").

The following pleadings have been filed by the parties in connection with the hearing:

FILED BY PLAINTIFF

- Complaint for Damages (09/27/2012);
- Plaintiff's Response to Motion to Dismiss for Failure to State a Claim upon which Relief may be Granted and Affirmative Defenses (12/10/2012);
- Declaration of Helene M. Raun (12/10/2012);
- Declaration of Lawrence S. Eastburn, MD (12/10/2012);

FILED BY DEFENDANTS

- Motion to Dismiss for Failure to State a Claim upon which Relief may be Granted and Affirmative Defenses (11/14/2012);

- Memorandum in Support of Motion to Dismiss for Failure to State a Claim upon which Relief may be Granted and Affirmative Defenses (11/14/2012);
- John D. Munding's Declaration in Support of Motion to Dismiss for Failure to State a Claim upon which Relief can be Granted and Affirmative Defenses (11/14/2012);
- Defendants' Reply to Plaintiff's Response to Motion to Dismiss for Failure to State a Claim upon which Relief may be Granted and Affirmative Defenses (12/17/2012).

Both Plaintiff and Defendants presented matters outside the pleadings which were not excluded by the Court and hence, pursuant to CR 12(b), Defendants' Motion to Dismiss was treated as one for summary judgment under CR 56. The Court, having read the pleadings and having heard and considered the arguments of counsel and having expressed its findings in open court as part of the record herein, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED , AND DECREED that:

1. Defendants' Motion to Dismiss is hereby granted with respect to the following causes of action: First Cause of Action – Unlawful Eviction; Second Cause of Action –Violation of RCW 59.18.290; Third Cause of Action –Continuing Trespass; Fourth Cause of Action –Violation of RCW 4.24.630; Seventh Cause of Action –Conversion;

2. The following causes of action are hereby dismissed with prejudice: First Cause of Action – Unlawful Eviction; Second Cause of Action –Violation of RCW 59.18.290; Third Cause of Action – Continuing Trespass; Fourth Cause of Action –Violation of RCW 4.24.630; Seventh Cause of Action –Conversion;

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3. Defendants' Motion to Dismiss is hereby denied with respect to the following causes of action: Fifth Cause of Action –Tort of Outrage; Sixth Cause of Action –Negligent Infliction of Emotional Distress.

DATED: this 4th day of February, 2013.

JUDGE

Presented by:

John D. Munding WSBA # 21734
Crumb & Munding, P.S 2290
111 S. Post St., PH 2290
Spokane, WA 99201

Approved by

Maris Baltins, WSBA # 9107
Law Offices of Maris Baltins, P.S.
7 South Howard, Suite 220
Spokane, WA 99201

3. Defendants' Motion to Dismiss is hereby denied with respect to the following causes of action: Fifth Cause of Action –Tort of Outrage; Sixth Cause of Action –Negligent Infliction of Emotional Distress.

DATED: this ____ day of January, 2013.

JUDGE

Presented by:

John D. Munding WSBA # 21734
Crumb & Munding, P.S 2290
111 S. Post St., PH 2290
Spokane, WA 99201

Approved by

Maris Baltins, WSBA # 9107
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Spokane, WA 99201

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FEB 07 2014

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR SPOKANE COUNTY

HELEN M. RAUN,

Plaintiff,

v.

JOHN H. CAUDILL and LUCILLE J. CAUDILL, as Trustees for the CAUDILL LIVING TRUST dated November 1, 2000; WANELL J. BARTON, as Trustee for the WANELL J. BARTON FAMILY TRUST dated May 7, 1998 and any amendments; DIRK A. CAUDILL and LAUREN C. CAUDILL, as Trustees of the CAUDILL FAMILY TRUST dated September 11, 2002; EARL L. BOETTCHER and MARY C. BOETTCHER, as Trustees for the BOETTCHER FAMILY TRUST dated May 12, 1992; BELVA M. WILLIAMS, a single woman; LARRY LOUTHERBACK and SHANNA LOUTHERBACK, as Trustees of the LOUTHERBACK LIVING TRUST dated February 9, 2001; DALE WALKER and CAROL WALKER, husband and wife; and JOHN P. GLEESING, as Successor Trustee under the Caudill Deed of Trust, JOHN AND JANE DOES 1 THROUGH 10; JOHN DOE CORPORATIONS 1 THROUGH 10 and OTHER JOHN DOE ENTITIES 1 THROUGH 10,

Defendants.

Case No. 12-2-03834-6

ORDER GRANTING: (1) THE CAUDILL INVESTORS' MOTION FOR SUMMARY JUDGMENT; AND (2) DEFENDANT JOHN P. GLEESING'S MOTION FOR SUMMARY JUDGMENT

On November 7, 2013, John D. Munding of Crumb & Munding, P.S. caused to be filed The Caudill Investors' Motion for Summary Judgment ("Defendants Caudill Investors' Motion for Summary Judgment") on behalf of John H. Caudill and Lucille J. Caudill, as Trustees for the Caudill Living Trust dated November 1, 2000; Earl L. Boettcher and Mary C. Boettcher, as Trustees for the Boettcher Family Trust dated May 12, 1992; Belva M. Williams; Larry Loutherback and Shanna Loutherback, as Trustee's of the Loutherback Living Trust dated February 9, 2001; Dale Walker and Carol Walker, husband and wife; and Wanell J. Barton, as Trustee for the Wanell J. Barton Family Trust dated May 7, 1998 (collectively "Defendants Caudill Investors"). On November 7, 2013, Patrick W. Harwood of Kirkpatrick & Startzel, P.S. caused to be filed on behalf of Defendant John P. Gleesing ("Defendant Gleesing") Defendant John P. Gleesing's Motion for Summary Judgment ("Defendant Gleesing's Motion for Summary Judgment"). The Plaintiff Helene M. Raun ("Plaintiff Raun") having filed a motion for continuance of hearing regarding the motions for summary judgment and the Court having granted such request, the Defendants Caudill Investors' Motion for Summary Judgment and Defendant Gleesing's Motion for Summary Judgment were heard on January 10, 2014 before the Honorable Kathleen M. O'Connor. Present at the hearing were John D. Munding of Crumb & Munding, P.S., on behalf of the Defendants Caudill Investors, Patrick W. Harwood of Kirkpatrick & Startzel, P.S. on behalf of Defendant Gleesing, and Maris Baltins of the Law Offices of Maris Baltins on behalf of Plaintiff Raun.

The following pleadings were filed by the parties and considered by the Court in connection with this hearing:

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FILED BY DEFENDANTS CAUDILL INVESTORS

- The Caudill Investors' Motion for Summary Judgment (11/07/2013);
- Memorandum in Support of the Caudill Investors' Motion for Summary Judgment (11/07/2013);
- Declaration of John D. Munding in Support of the Caudill Investors' Motion for Summary Judgment (11/07/2013);
- Note for Hearing Issue of Law (11/07/2013);
- Reply to: Plaintiff's Response to the Caudill Investors' Motion for Summary Judgment (01/06/2014);
- Declaration of John D. Munding in Support of Reply to: Plaintiff's Response to the Caudill Investors' Motion for Summary Judgment (01/06/2014);

FILED BY DEFENDANT GLEESING

- Defendant John P. Gleesing's Motion for Summary Judgment (11/07/2013);
- Defendant John P. Gleesing's Memorandum of Authorities in Support of Motion for Summary Judgment (11/07/2013);
- Declaration of John P. Gleesing in Support of Motion for Summary Judgment (11/07/2013);
- Declaration of Patrick W. Harwood in Support of Motion for Summary Judgment (11/07/2013);
- Note for Hearing – Issue of Law (11/07/2013);
- Defendant John P. Gleesing's Supplemental Memorandum of Authorities in Support of Motion for Summary Judgment (12/11/2013);
- Amended Note for Hearing – Issue of Law (12/11/2013);
- Defendant John Gleesing's Reply in Support of Motion for Summary Judgment (01/06/2014);
- Supplemental Declaration of Patrick W. Harwood in Support of Defendant Gleesing's Motion for Summary Judgment (01/06/2014);

FILED BY PLAINTIFF RAUN

- Plaintiff's Combined Response to: (1) The Caudill Investors' Motion for Summary Judgment; and (2) Defendant John P. Gleesing's Motion for Summary Judgment (12/30/2013);
- Declaration of Helene M. Raun, filed December 10, 2012;
- Declaration of Lawrence S. Eastburn, MD, filed December 10, 2012;
- Supplemental Declaration of Helene M. Raun (12/30/2013);
- Declaration of Maris Baltins (12/30/2013); and
- Supplemental Declaration of Lawrence S. Eastburn, MD (12/30/2013).

The Court, having considered the foregoing papers filed by the parties, together with the complete record in this Case, and with good cause appearing;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. Pursuant to CR 56, Defendants Caudill Investors and Defendant Gleesing have established that they are entitled to judgment as a matter of law with respect to Plaintiff Raun's cause of action for the tort of outrage. The Defendants' motions for summary judgment are GRANTED and Plaintiff Raun's cause of action for the tort of outrage is dismissed with prejudice.

2. Pursuant to CR 56, Defendants Caudill Investors and Defendant Gleesing have established that they are entitled to judgment as a matter of law with respect to Plaintiff Raun's cause of action for negligent infliction of emotional distress. The Defendants' motions for summary judgment are GRANTED and Plaintiff Raun's cause of action for negligent infliction of emotional distress is dismissed with prejudice.

DONE IN OPEN COURT this 7th day of ~~January~~ Feb., 2014.

THE HONORABLE KATHLEEN M. O'CONNOR

Presented by:

CRUMB & MUNDING, P.S.

JOHN D. MUNDING, WSBA No. 21734
Attorney for the Caudill Investors

Approved as to form /
Notice of Presentment Waived:

KIRKPATRICK & STARTZEL, P.S.

PATRICK W. HARWOOD, WSBA No. 30522
Attorney for Defendant John P. Gleesing

LAW OFFICES OF MARIS BALTINS, P.S.

Telephonic & Email Approval
By JDM for M. Baltins 2/7/24

MARIS BALTINS, WSBA No. 9107
Attorney for Plaintiff