FILED
Court of Appeals
Division II
State of Washington
4/8/2019 3:58 PM

Court of Appeals No. 50997-1-II
Kitsap County Superior Court No. 17-2-00146-7

97057-2

COURT OF APPEALS
OF THE STATE OF WASHINGTON, DIVISION TWO

JOHN SCANNELL, *petitioner*

v.

GIORGIY BULKHAK, *respondent*

ON APPEAL FROM KITSAP COUNTY SUPERIOR COURT
STATE OF WASHINGTON

PETITION FOR REVIEW

John Scannell

TABLE OF CONTENTS

1. Identity of Petitioner	3
2. Citation to Court of Appeals Decision	3
3. Issues under Review	3
4. Statement of Case	3
5. Argument	5
6. Conclusion	19
7. Appendix	20

TABLE OF AUTHORITIES

Cases

Glaubach v. Regence Blue Shield 149 Wn.2d 827, 833, 74 P.3d 115 (2003)...... 16
Stowers v. Huntington Development & Gas Co., 72 F.2d 969, 98 ALR 536 (C.C.A. 4th Cir. 1934) 16
61.24 RCW 12
Albice v. Premier Mortg. Servs. of Wash., Inc., 174 Wn.2d 560, 568, 276 P.3d 1277 (2012).......... 12
Albice, 174 Wn.2d at 563-66 12
Bar K Land Co. v. Webb, 72 Wash. App. 380, 864 P.2d 435 (Wa.App. 12/09/1993).......... 7
Brown v. Dep 't of Commerce, 184 Wn.2d 509, 515, 359 P.3d 771 (2015)......... 12
Coy v Raabe, 69 Wash.2d 346, 418 P.2d 728 (9/22/1966).......... 9
Fed. Nat'l Mortg. Ass'n v. Ndiaye, 188 Wn. App. 376, 382, 353 P.3d 644 (2015). 11
Grahamv. *Raabe*, 62 Wa.2d753, 384 P.2d 629(1963) 9
Honan v. Ristorante Italia, Inc., 66 Wash. App. 262, 269, 832 P.2d 89, review denied, 120 Wash. 2d 1009 (1992) 7
Kimball v. Lincoln, 72 Haw. 117, 809 P.2d 1130 (1991) 7, 16
Lake v. Woodcreek Homeowners Ass'n, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010).......... 17
Lewis v. Pleasant Country, Ltd., 173 Ariz. 186, 840 P.2d 1051 (Ct. App. Div. 1 (1992).......... 16
Manary v. Anderson. 176 Wn.2d 342, 352, 292 P.3d 96 (2013) 17
McGraw v. Lamb 31 Wash. 485, 72 P. 100 8
Phillips v. Hardwick, 29 Wash. App. 382, 386, 628 P.2d 506 (1981).......... 6
Proctor v. Forsythe 4 Wn. App 238, 480 P.2d 511. 7
RCW 59.16 8
RCW 61.24.060(1).......... 12
River Stone Holdings, 199 Wn. App. at 92.......... 11
Seattle Housing Authority v. Silva, 94 Wn.App. 731, 952(1999) 6
Stratton v. Hanning, 139 Cal. App. 2d 723, 294 P.2d66, 57 ALR 2d 344 (4th Dist. 1956) 16
Stritzel v. Smith, 20 Wa.App.218, 579 P.2d 404(05/26/1978).......... 9

Statutes

RCW 59.12.030 13
RCW 59.12.032 12

RCW 59.12.040 14
RCW 59.16.030 8
RCW 59.16.10 17
RCW 59.18 .... 6, 7
RCW 59.18.130 15
RCW 61.24.030, .031, and .040 12
RCW 61.24.040 and .060 12
RCW 7.28 9
RCW 84.64 13
RCW 84.64.080 9

Other Authorities

28 C.J.S. Ejectment § 1, at 848 (1941) 7
CJS Landlord and Tenant §1361 at 122 .... 7, 16

Rules

RAP 13.4(b): 17

PETITION FOR DISCRETIONARY REVIEW

1. Identity of Petitioner: The Petitioner is John Scannell

2. Citation to Court of Appeals Decision: The unpublished opinion entered on January 15, 2019, and the Order Denying Motion for Reconsideration dated March 8, 2019.

3. Issues under Review.

1. Did the trial court err in issuing a writ of restitution during an unlawful detainer proceeding, when the plaintiff was out of possession of the building, had not cleared title and had not established a landord tenant relationship with the appellant defendant and the appellant defendant denied the plaintiff was the landlord in his answer.?

4. Statement of Case

1. On December 28, 1999, a lease with option to purchase was signed with John Scannell (Scannell) grantee and Paul King (King) grantor for part of the property located at 543 6th St. This was recorded on June 16, 2003. (CP 96-98)

2. Georgiy Bulkhak (Bulkhak) claims to have purchased the property at 543 6th St, Bremerton WA., property (CP 8) at a tax sale. However, both Scannell and King have contested this sale in this and in other actions, disputing the tax sale transferred ownership. (CP 96)

3. In Kitsap County case #15-2-00910-1, the plaintiff brought a motion for show cause that sought the same remedy he seeks here. That is, he attempted with an unlawful detainer, to evict Scannell. He was told by a superior court judge that unlawful detainer was not a remedy and that he needed to bring an ejectment action. (CP 95)

4. He subsequently brought an ejectment action in Case #15-2-01303-5 but never served it. Instead, he amended it by taking the owner out of the action.(CP 95)

5. On January 25, 2017, Bulkhak brought the case at bar, again trying to evict John Scannell using an unlawful detainer action.(CP 1-13)

6. There is nothing in the record that demonstrates that Bulkhak notified the court that he had brought the same motion for order to show cause to the attention of the court. (CP 14-15, 18-19)

7. John Scannell filed a notice of appearance on 2-6-2017. (CP 21-22).

8. Bulkhak's counsel brought a motion for order to show cause on 2-8-2017. There is no record that he notified Scannell he was seeking an order nor did he notify the court he had already been denied a show cause order by a different judge. (CP 31-33)

9. Scannell filed his answer 2-15-2017. (CP 34-36)

10. The court denied the writ on 2-17-2017 for failure to serve a timely show cause order. (CP 42).

11. On May 23, 2017, Bulkhak again moved for a show cause order, again neglecting to notify the court he had already been denied the remedy he was seeking or notifying Scannell.. (CP 43-45,47)

12. Scannell filed an amended answer on 7-5-2017, and a response on 7-5-2017, giving his substantive response as well as an objection that he had not been given notice of the show cause order.(CP 68-70, 91-97)

13. The court issued a writ of restitution turning the building over to Bulkhak (CP 78-81).

5. Argument

A. Introduction

This case involves an unlawful detainer action where Bulkhak, an alleged owner who has never been in possession of the disputed property claims to be a landlord simply by demanding rent. He has never cleared title with the owner in possession. According to the division 2 panel, this is enough to establish a landlord tenant relationship and the tenant cannot assert title as a defense.

The court of appeals has never been able to articulate how the court obtained subject matter jurisdiction other than refer to another statute that has no basis in this proceeding. Their interpretation is at odds with

well established precedent in this state and others that an alleged owner cannot obtain possession from another owner, by evicting one of his tenants without including the owner in the action. Their reasoning violates elementary statutory construction by choosing an interpretation that leads to strained and absurd results. They have ignored statutes that forbid the very type of reasoning used in this case. If carried to its logical conclusion, it would deny an owner possession of his property without due process of law. For this reason, the court should accept review and reverse.

B. The court lacked subject matter jurisdiction as stated in the answer.

The motion is an attempt to bring a summary eviction under the unlawful detainer statute. Unlawful detainer statues are in derogation of the common law and thus construed in favor of tenants. *Seattle Housing Authority v. Silva,* 94 Wn.App. 731, 952(1999). Unlawful detainer actions under RCW 59.18 are special statutory proceedings with the limited purpose of hastening recovery of possession of rental property. Unlawful detainer is limited to cases involving landlords and tenants when the only questions are possession and rent. The superior court's jurisdiction in such actions is limited to the primary issue of possession and incidental issues such as restitution and rent, or damages. *Phillips v. Hardwick*, 29 Wash. App. 382, 386, 628 P.2d 506 (1981).

It is well settled that additional claims cannot be joined in an unlawful detainer action. *Honan v. Ristorante Italia, Inc.*, 66 Wash. App. 262, 269, 832 P.2d 89, review denied, 120 Wash. 2d 1009 (1992). Any issue not incident to the right of possession within the specific terms of RCW 59.18 must be raised in an ordinary civil action. *Bar K Land Co. v. Webb*, 72 Wash. App. 380, 864 P.2d 435 (Wa.App. 12/09/1993).

Ejectment is the remedy for one who, claiming a paramount title, is out of possession. Ejectment is a mixed action, and damages for the ouster or wrong can be simultaneously recovered. 28 C.J.S. Ejectment § 1, at 848 (1941). *Bar K Land Co. v. Webb*, 72 Wash. App. 380, 864 P.2d 435 (Wa.App. 12/09/1993). Where the form of the summons and complaint only invoked the unlawful detainer statute, the court cannot rule on the issue of title. *Proctor v. Forsythe* 4 Wn. App 238, 480 P.2d 511.

When the plaintiff contends that a landlord tenant relationship exists, then an admitted relationship of landlord and tenant is required. Summary possession only lies where there is or has been an admitted relationship of landlord and tenant. It does not lie where the relationship of landlord and tenant is in dispute. CJS Landlord and Tenant §1361 at 122, citing *Kimball v. Lincoln*, 72 Haw. 117, 809 P.2d 1130 (1991).

The court of appeals cited RCW 59.12 as the basis for their jurisdiction. (Dec. at 5). However, the panel ignores that this chapter

requires that the owner must actually be in possession for the procedure to be utilized. It has long been held in Washington that it is not sufficient for a complaint to allege the plaintiff is owner in fee simple, as it is does not show possession required for RCW 59.12. *McGraw v. Lamb* 31 Wash. 485, 72 P. 100.

The panel also ignored that RCW 59.16 requires that in an unlawful detainer action be treated like an ejectment if the tenant denies the landlord is an owner in his answer. In RCW 59.16.030, it is made clear that if the alleged owner is not in possession, the summary procedure may not be utilized if the defendant alleges facts that dispute who the landlord is:

> It shall not be necessary for the plaintiff, in proceedings under this chapter, to allege or prove that the said lands were, at any time, actually occupied prior to the defendant's entry thereupon, but it shall be sufficient to allege that he or she is the legal owner and entitled to the immediate possession thereof: PROVIDED, That if the defendant shall, by his or her answer, deny such ownership and shall state facts showing that he or she has a lawful claim to the possession thereof, the cause shall thereupon be entered for trial upon the docket of the court in all respects as if the action were brought under the provisions of *chapter XLVI of the code of eighteen hundred and eighty-one. Reviser's note: "chapter XLVI of the code of eighteen hundred and eighty-one" is codified as RCW 7.28.010, 7.28.110 through 7.28.150, and 7.28.190 through 7.28.270

In his answer, Scannell alleged that Bulkhak was not the landlord or owner, that Scannell has been in continuous possession long before Bulkhak was alleged to have purchased the property and that the title Bulkhak obtained was void because it was not acquired through a legal auction. Under these facts, Bulkhak had no choice, if he wanted to prove he had superior title, but to note the action as an ordinary civil action of ejectment (RCW 7.28),

From his pleadings, it is clear that Bulkhak is claiming superior title to both King and Scannell. Since this lease was filed, the plaintiffs have constructive notice of the lease. As a holder of a valid option to purchase, and lease, his option to purchase and lease survive any tax sale, because as a tenant and the holder of an option, he is not responsible for the taxes. *Coy v Raabe*, 69 Wash.2d 346, 418 P.2d 728 (9/22/1966) and Grahamv. *Raabe*, 62 Wa.2d753, 384 P.2d 629(1963)

Both King and Scannell are claiming superior title because the county sold without notice to them and without a public posting as required by statute and caselaw. (See RCW 84.64.080, *Stritzel v. Smith*, 20 Wa.App.218, 579 P.2d 404(05/26/1978), the notice requirements of RCW 84.64.080 were held to be jurisdictional.)

C. The defendant has posted invalid notices which do not list which tenants he is trying to evict from which part of the premises. This

building is an office and a duplex, with the duplex having two different addresses. There are several tenants and/or guests that occupy the building yet the landlord wants to evict them all without giving any except John Scannell any kind of notice. These other occupants are not under the control of John Scannell as they are located in parts of the building that are not included in his tenancy. The plaintiff has cited to no authority which allows him to evict various occupants without giving them notice or a description of which part of the premises he is trying to attempt an eviction. Any notices he has posted list only 543 6th St. Bremerton Washington, ignoring the fact that the building has two addresses, 543 and 545. In addition, much of 543 is not under the control of John Scannell, it is under the control of the owner. This includes an area of the premises that includes thousands of legal files from hundreds of clients from the offices of Paul H. King, all of whom belong to the clients. There are at least two other occupants that are in the section of the building that are not part of the defendant's tenancy.

D. The panel's decision leads to strained and absurd results.

It is clear that this action is an abuse of process where the plaintiff seek an order to "restore" possession to him when he never had possession. Even if he could somehow evict John Scannell, he would not be entitled to possession because he has not cleared title with the owner,

who is currently in possession. Neither the plaintiff nor his counsel, nor the trial court nor the appellant panel have explained (nor can they explain) how they can take possession from the owners without any kind of notice or by making them part of the suit.

There is no authority in Washington for a person to seize possession from an owner in possession without first bringing a clear title or ejectment action. There is no authority in Washington, where an alleged owner can clear title and seek possession from the owner and all tenants/guests/occupants, by giving notice to only one tenant and listing unnamed "others" especially since they are aware of the name of one of the others, namely the owner. This is why this action is frivolous and should therefore be dismissed.

On page four of the decision the court lifted the two following principles out of context in unrelated unlawful detainer actions to claim that the plaintiff could not raise title in this action.

> "[i]ssues unrelated to possession are not properly part of an unlawful detainer action" and must be resolved in a separate action. *River Stone Holdings*, 199 Wn. App. at 92. Unlawful detainer actions do not provide a forum for litigating claims to title. *Fed. Nat'l Mortg. Ass'n v. Ndiaye*, 188 Wn. App. 376, 382, 353 P.3d 644 (2015).

River Stone Holdings supra and *Fed. Nat'l Mortg. Ass'n v. Ndiaye*, *supra*, were both clearly unlawful detainer actions that took place pursuant to the Deeds of Trust Act (DTA), chapter 61.24 RCW:

> The DTA provides an alternative to judicial foreclosure by allowing for the private sale of foreclosed property. *Brown v. Dep 't of Commerce*, 184 Wn.2d 509, 515, 359 P.3d 771 (2015). The underlying deed of trust creates a three-party transaction in which a lender loans money to a borrower, the borrower deeds the property to a trustee, and the trustee holds the deed as security for the lender. Id. If the borrower breaches the obligations owed to the lender, the trustee may foreclose on the property in a trustee's sale. Id. at 516.
>
> The DTA provides detailed procedures under RCW 61.24.030, .031, and .040 for foreclosing a deed of trust and conducting a trustee's sale. A trustee's failure to strictly comply with the DTA divests the trustee of statutory authority to conduct a trustee's sale and renders any such sale invalid. *Albice v. Premier Mortg. Servs. of Wash., Inc*., 174 Wn.2d 560, 568, 276 P.3d 1277 (2012). However, under RCW 61.24.040(7), a recitation in the deed executed to a purchaser that the sale was conducted in compliance with all DTA requirements is prima facie evidence of compliance and conclusive evidence of compliance for a bona fide purchaser.
>
> RCW 61.24.060(1) provides that after the trustee's sale takes place, the purchaser is entitled to possession of the property after 20 days as against the borrower if the purchaser provided proper notices under the DTA. That statute also allows the purchaser to utilize an unlawful detainer action under chapter 59.12 RCW to secure possession of the property. See *Albice*, 174 Wn.2d at 563-66. RCW 59.12.032 requires a purchaser who commences an unlawful detainer action to comply with the notice and substantive requirements of RCW 61.24.040 and .060.

The tax sale that is of issue here was conducted pursuant to RCW 84.64, which contains no authorization for the owner to commence an action under RCW 59.12. Thus, any authority to use RCW 59 must come from within the statute itself.

The court in its decision, simply concludes that the action was brought under RCW 59.12 instead of 59.16. (Decision at 9) but offers no authority or argument has to how 59.12 could possibly apply. RCW 59.12.030 defines what an unlawful detainer is:

> A tenant of real property for a term less than life is guilty of unlawful detainer either:
>
> (1) When he or she holds over or continues in possession, in person or by subtenant, of the property or any part thereof after the expiration of the term for which it is let to him or her. When real property is leased for a specified term or period by express or implied contract, whether written or oral, the tenancy shall be terminated without notice at the expiration of the specified term or period;
>
> (2) When he or she, having leased property for an indefinite time with monthly or other periodic rent reserved, continues in possession thereof, in person or by subtenant, after the end of any such month or period, when the landlord, more than twenty days prior to the end of such month or period, has served notice (in manner in RCW 59.12.040 provided) requiring him or her to quit the premises at the expiration of such month or period;
>
> (3) When he or she continues in possession in person or by subtenant after a default in the payment of rent, and after notice in writing requiring in the alternative the payment of the rent or the surrender of the detained

premises, served (in manner in RCW 59.12.040 provided) in behalf of the person entitled to the rent upon the person owing it, has remained uncomplied with for the period of three days after service thereof. The notice may be served at any time after the rent becomes due;

(4) When he or she continues in possession in person or by subtenant after a neglect or failure to keep or perform any other condition or covenant of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than one for the payment of rent, and after notice in writing requiring in the alternative the performance of such condition or covenant or the surrender of the property, served (in manner in RCW 59.12.040 provided) upon him or her, and if there is a subtenant in actual possession of the premises, also upon such subtenant, shall remain uncomplied with for ten days after service thereof. Within ten days after the service of such notice the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform such condition or covenant and thereby save the lease from such forfeiture;

(5) When he or she commits or permits waste upon the demised premises, or when he or she sets up or carries on thereon any unlawful business, or when he or she erects, suffers, permits, or maintains on or about the premises any nuisance, and remains in possession after the service (in manner in RCW 59.12.040 provided) upon him or her of three days' notice to quit;

(6) A person who, without the permission of the owner and without having color of title thereto, enters upon land of another and who fails or refuses to remove therefrom after three days' notice, in writing and served upon him or her in the manner provided in RCW 59.12.040. Such person may also be subject to the criminal provisions of chapter 9A.52 RCW; or

> (7) When he or she commits or permits any gang-related activity at the premises as prohibited by RCW 59.18.130.

The court does not give any argument as to how any of these sections could apply. Section 1 does not apply because Scannell's lease had not expired. Section 2 does not apply because he was not on an indefinite month to month agreement. Section 3 does not apply because Scannell was current in his rent to Mr. King. Bulhak attempts to argue that he can somehow create a tenancy at sufferance, by demanding rent to a tenant who is current in his rent to the landlord who is in possession but provides no authority for this proposition other than providing cases where there were no other alleged owners in possession. This interpretation would lead to strained and absurd results. If Bulkhak were correct, then anyone could come along, claim to be an owner, demand rent from Scannell, and then evict Scannell because Scannell didn't pay him the rent. It would make no difference whether the person was an owner or not, because, according to Bulkhak and the panel, Scannell could not raise title as a defense.[1] Washington courts avoid readings of statutes that would

---

[1] Another absurd result could occur because under Bulkhak's reasoning, a purported landlord out of possession gets possession of the premises by demanding rent and then evicting only one tenant of a building by including the words "and others" in the complaint, even though the "others" get no notice or summons. Thus one could obtain possession of

lead to strained or absurd results. *Glaubach v. Regence Blue Shield* 149 Wn.2d 827, 833, 74 P.3d 115 (2003).

According to the panel's decision, Scannell could not raise the lack of landlord tenant contractual relationship as a defense either. Contrary to the panel's decision, Scannell provided numerous authorities that assert when a landlord tenant relationship is in dispute, then it cannot be determined by the summary procedure given in an unlawful detainer action:

> When the plaintiff contends that a landlord tenant relationship exists, then an admitted relationship of landlord and tenant is required. Summary possession only lies where there is or has been an admitted relationship of landlord and tenant. It does not lie where the relationship of landlord and tenant is in dispute. CJS Landlord and Tenant §1361 at 122, citing *Kimball v. Lincoln*, 72 Haw. 117, 809 P.2d 1130 (1991).
>
> The estoppel rule barring a tenant from denying the landlord's title is not applicable when there is no landlord-tenant relationship. *Lewis v. Pleasant Country, Ltd.*, 173 Ariz. 186, 840 P.2d 1051 (Ct. App. Div. 1 (1992). Consequently, possession under a lease is essential to give rise to an estoppel of the lessee to deny the lessor's title in an action involving title or possession. *Stowers v. Huntington Development & Gas Co.*, 72 F.2d 969, 98 ALR 536 (C.C.A. 4th Cir. 1934); *Stratton v. Hanning*, 139 Cal. App. 2d 723, 294 P.2d66, 57 ALR 2d 344 (4th Dist. 1956). (Opening brief p 9-10)

---

an entire skyscraper, by demanding rent from only one tenant by claiming to be the owner and no one would have a defense.

The panel presumes that title never has any application in an eviction, but cites only two cases involving the Deeds of Trust Act, which is not involved in this case. If this were true, then RCW 59.16 would have no meaning, because under the reasoning of the court, since the deed of trust act forbids it, it must be forbidden in other statutes.

Sections 4, 5, and 7 involve misconduct on the part of the tenant, which is not at issue here. Section 6 involves “entry” by someone who did not have color of title and for all practical purposes, is identical to RCW 59.16.10. The panel concludes that 59.16 is somehow different then 59.12 in this respect but provides no authority why that is true. "Statutory interpretation begins with a statute's plain meaning." *Manary v. Anderson*. 176 Wn.2d 342, 352, 292 P.3d 96 (2013). Washington courts determine the plain meaning of a statute "from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010).

Under RAP 13.4(b):

> Considerations Governing Acceptance of Review. A petition for review will be accepted by the Supreme Court only:
>
> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or

> (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
>
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
>
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Here all four considerations apply. The court of appeals has cited to no valid authority for the basis of its decision to award a writ of restitution under the unlawful detainer statute for an owner out of possession following a tax sale. They have ignored numerous Supreme Court and Court of Appeals decisions as outlined in this petition. The decision denies an owner in possession of his property rights under due process of law. The petition involves an issue of substantial pubic interest because it upends centuries of established precedent and subjects every tenant in this state to extortion demands by anyone who claims to be an owner by simply demanding rent and the tenant would not be able to claim title as a defense. Their reasoning leads to strained and absurd results. For this reason the supreme court should accept review.

6. Conclusion

For the reasons given in this brief, the petitioner respectfully request that this court reverse the decision of the trial court to issue a writ of restitution in this case and award attorney fees to the petitioner.

Dated this 8th day of April, 2019,

S/ John Scannell
John Scannell

Declaration

Undersigned, on the basis of personal knowledge declares as follows:

I certify that I delivered this petition to opposing party by uploading into the appellant court ECF system..

Dated this 8th day of April, 2019 at Bremerton, WA.,

S/ John Scannell
John Scannell

7. Appendix

Filed
Washington State
Court of Appeals
Division Two

January 15, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

GEORGIY BULKHAK, Respondent, v. JOHN SCANNELL, et al, Appellant.	No. 50997-1-II UNPUBLISHED OPINION

WORSWICK, J. — Georgiy Bulkhak purchased Paul King's commercial property at a tax foreclosure sale.[1] King's tenant, John Scannell, failed to vacate the property. Bulkhak filed an unlawful detainer action, seeking a writ of restitution. The superior court entered an order directing issuance of a writ of restitution.

Scannell appeals, arguing that the superior court erred in issuing the writ of restitution because (1) the superior court lacked subject matter jurisdiction, (2) the unlawful detainer action had procedural errors, (3) the tax sale was invalid and therefore Bulkhak's title is defective, and (4) Bulkhak is not Scannell's landlord. We affirm the superior court's order for a writ of restitution.

FACTS

Scannell had an agreement with Paul King to lease one unit in a commercial building in Bremerton. The lease provided Scannell an option to purchase the unit. Scannell never exercised his option to purchase.

---

[1] King is not a party to this action.

After King failed to pay property taxes for several years, Kitsap County began proceedings to foreclose on tax liens. Kitsap County sold the property to Bulkhak at a public foreclosure sale. Bulkhak posted a notice to vacate the property and mailed Scannell a notice. Scannell has not paid rent to Bulkhak.

Bulkhak filed an eviction summons, a complaint for unlawful detainer, and a motion for an order to show cause in Kitsap County Superior Court. At the show cause hearing, Judge Hemstreet denied Bulkhak's request for a writ of restitution because the eviction summons was not posted nine days before the return date, as required by statute.

Bulkhak then filed an amended eviction summons, complaint, and motion for an order to show cause. At the second show cause hearing, Judge Hemstreet ruled that unlawful detainer was appropriate, and entered an order directing issuance of the writ of restitution. Judge Hemstreet did not award a money judgment. On Scannell's motions, the superior court stayed Scannell's eviction pending appeal.

Scannell filed a motion for reconsideration of the superior court's decision to issue a writ of restitution. The superior court denied Scannell's motion for reconsideration. Scannell appeals.[2]

---

[2] In his notice of appeal, Scannell sought review of the superior court's order issuing writ of restitution, "Order Denying Set Aside and Order Granting Stay," and order denying Scannell's motion for reconsideration. Clerk's Papers (CP) at 82; *see* CP at 118. Scannell does not assign error to or offer argument regarding either the "Order Denying Set Aside and Order Granting Stay," or order denying his motion for reconsideration. Accordingly, we do not address either order.

ANALYSIS

Scannell claims that the superior court erred in issuing the writ of restitution, and makes several arguments regarding the superior court's order. Specifically, Scannell contends that (1) the superior court did not have subject matter jurisdiction over the unlawful detainer action, (2) the unlawful detainer action had a variety of procedural errors, (3) the tax sale of the property had various errors and therefore Bulkhak does not have title to the property, and (4) the landlord-tenant relationship is disputed.[3] We disagree.

Scannell has provided a limited record on appeal and has not provided verbatim reports of the superior court proceedings. An appellant must provide "argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record." RAP 10.3(a)(6). The appellant must also provide a record sufficient to review the issues raised on appeal. RAP 9.2(b); *Stiles v. Kearney*, 168 Wn. App. 250, 259, 277 P.3d 9 (2012). The failure to do so precludes appellate review. *Stiles*, 168 Wn. App. at 259.

With few exceptions, Scannell has failed to comply with the requirements. Scannell's argument contains limited citations to the record and few references to relevant authority. Accordingly, we address Scannell's claims to the extent possible given the limits of the record and the legal analysis provided.

---

[3] Scannell also makes several references to other actions in Kitsap County Superior Court. He has not, however, included those other actions in the record. Scannell has the burden to provide an adequate record for our review. RAP 9.2(b); *Stiles v. Kearney*, 168 Wn. App. 250, 259, 277 P.3d 9 (2012). We do not consider issues related to matters not included in the record.

I. UNLAWFUL DETAINER

An unlawful detainer action is statutorily created and provides an accelerated proceeding to resolve the right to possession of property. *Christensen v. Ellsworth*, 162 Wn.2d 365, 370-71, 173 P.3d 228 (2007). The unlawful detainer statutes were created as an alternative to a common law ejectment action. *River Stone Holdings NW, LLC v. Lopez*, 199 Wn. App. 87, 92, 395 P.3d 1071 (2017). An unlawful detainer action is a summary proceeding designed to resolve competing claims to possession of real property. *River Stone Holdings*, 199 Wn. App. at 92. Because of its summary nature, unlawful detainer proceedings are narrow and are limited to resolving questions of possession and "related issues like restitution of the premises." *River Stone Holdings*, 199 Wn. App. at 92. As a result, "[i]ssues unrelated to possession are not properly part of an unlawful detainer action" and must be resolved in a separate action. *River Stone Holdings*, 199 Wn. App. at 92. Unlawful detainer actions do not provide a forum for litigating claims to title. *Fed. Nat'l Mortg. Ass'n v. Ndiaye*, 188 Wn. App. 376, 382, 353 P.3d 644 (2015).

A. *Subject Matter Jurisdiction*

Scannell contends that the superior court lacked subject matter jurisdiction. Scannell argues that the court did not have *authority*, but he does not offer argument or authority explaining why the superior court did not have *subject matter jurisdiction*. We hold that the superior court had subject matter jurisdiction.

"The superior court of the county in which the property or some part of it is situated shall have jurisdiction of proceedings under this chapter." RCW 59.12.050. The property is located in Kitsap County. Bulkhak brought the action in Kitsap County. Accordingly, the Kitsap County Superior Court had jurisdiction.

Scannell references his answer to Bulkhak's complaint. There, he stated that the superior court lacked jurisdiction to award damages. To the extent that he argues that the superior court lacked jurisdiction to award damages, that claim fails because the superior court did not award damages.

To the extent that Scannell argues that the superior court lacked subject matter jurisdiction based on alleged defects in title, his argument fails. Claims regarding alleged defects in title do not concern the superior court's jurisdiction. *MHM&F, LLC v. Pryor*, 168 Wn. App. 451, 460, 277 P.3d 62 (2012).

B. *Procedural Errors*

Scannell makes several claims related to alleged procedural errors. Specifically, he argues that he received insufficient notice of proceedings below and of the remedies that Bulkhak seeks on appeal; and that Bulkhak has engaged in "judge shopping" by bringing the same motion twice before different judges. Br. of Appellant at 8. These arguments fail.

1. *Notice*

Scannell argues that Bulkhak's eviction notices were invalid, and that he did not receive sufficient notice "for the remedy Bul[k]hak seeks in this action." Reply Br. of Appellant at 11 (emphasis omitted). We disagree.

Scannell contends that Bulkhak brought a second motion to show cause "without notifying the court or the defendant in violation of court rules." Br. of Appellant at 8. His argument is unclear and he does not provide citation to the record or to relevant authority. To the extent that Scannell claims that he did not receive notice of the second show cause hearing, that claim fails because the record contains a declaration of mailing for the order to show cause.

a. *Eviction Notices*

Scannell contends that Bulkhak's eviction notices are invalid because they do not name the other occupants of the property and because they did not place other occupants or King on notice of the proceedings. Scannell's claims appear to raise issues concerning other parties. Issues concerning other parties are not properly before us. Scannell appeared pro se, and is the only named defendant. A pro se litigant may represent only his own interests. *Hagan & Van Camp, P.S. v. Kassler Escrow, Inc.*, 96 Wn.2d 443, 450, 635 P.2d 730 (1981); *State v. Hunt*, 75 Wn. App. 795, 805, 880 P.2d 96, *review denied*, 125 Wn.2d 1009 (1994); *see* RCW 2.48.170. Furthermore, Scannell fails to offer citation to the record or to relevant authority to support his claim. In the absence of citation to the record or to relevant authority, we do not consider the claim. Failure to provide argument and citation to authority in support of an assignment of error precludes appellate consideration. RAP 10.3(a)(6); *Am. Legion Post No. 32 v. City of Walla Walla*, 116 Wn.2d 1, 7, 802 P.2d 784 (1991) ("In the absence of argument and citation to authority, an issue raised on appeal will not be considered.").

b. *Notice of Appellate Remedies*

Scannell claims that he did not receive sufficient notice for the remedy Bulkhak seeks on appeal. Generally, a respondent is not required to give an appellant advance notice of its appellate arguments. Further, a respondent is not required to give an appellant notice that it plans to request costs and fees on appeal. Scannell does not provide meaningful argument explaining his claim, or provide citation to authority. In the absence of meaningful argument or citation to authority, we do not consider the issue. RAP 10.3(a)(6); *Am. Legion*, 116 Wn.2d at 7.

2. *Judge shopping*

Scannell alleges that Bulkhak engaged in "judge shopping" by bringing a motion to show cause twice. Br. of Appellant at 8. We disagree. The limited record provided by Scannell indicates that Judge Hemstreet presided over both hearings. Furthermore, Scannell does not offer citation to the record or to authority. In the absence of meaningful argument or citation to authority, we do not consider the issue. RAP 10.3(a)(6); *Am. Legion*, 116 Wn.2d at 7.

C. *Title*

Scannell makes various arguments concerning title to the property. In short, Scannell claims that the superior court erred by issuing the writ of restitution because of alleged defects in Bulkhak's title and because unlawful detainer is the incorrect proceeding to determine title to property. We hold that Scannell's arguments fail.

Unlawful detainer actions do not provide a forum for litigating claims to title. *Ndiaye*, 188 Wn. App. at 382. And an unlawful detainer defendant generally cannot raise defective title as a defense to possession. *River Stone Holdings*, 199 Wn. App. at 96. Issues unrelated to

possession are not properly included in an unlawful detainer action and must be resolved in a separate action.[4] *River Stone Holdings*, 199 Wn. App. at 92.

Scannell claims "superior title" to Bulkhak because of procedural errors in the foreclosure sale.[5] Scannell cannot defend against Bulkhak's unlawful detainer action by asserting that the tax sale was invalid and that Bulkhak's title is void. *See River Stone*, 199 Wn. App. at 96. Therefore, Scannell cannot demonstrate that the superior court erred in issuing its writ of restitution order on this basis.

Scannell also appears to argue that an unlawful detainer action is the improper procedure, and that Bulkhak should have brought a quiet title action to eject him.[6] A quiet title action is used to determine competing claims of property ownership. *Byrd v. Pierce County*, 5 Wn. App. 2d 249, 425 P.3d 948, 956 (2018).

---

[4] Scannell attempted to resolve his title claims in a separate action. Before the foreclosure sale, Scannell filed a notice of appearance, claiming an interest in the property. The superior court gave Scannell an opportunity to prove his ownership interest in the property and pay the required taxes. The superior court entered an order authorizing the foreclosure sale, finding that "Scannell had demonstrated no valid defense" to the foreclosure sale. *Kitsap County v. Scannell*, No. 77734-3-I, slip op at 3 (Wash. Ct. App. April 30, 2018) (unpublished), http://www.courts.wa.gov/opinions/pdf/777343.pdf. Scannell did not pay the taxes owed. Almost one year after the foreclosure sale, Scannell and King brought a motion to set aside the order authorizing the sale and the sale itself. The superior court denied the motion. Division One of this court affirmed.

[5] Scannell argues that he and King claim superior title to Bulkhak because of defects in the tax sale. King is not a party to this action, and issues concerning nonparties are not properly before us.

[6] Scannell references "ejectment," but does not make arguments related to ejection. Br. of Appellant at 9.

Scannell essentially argues that unlawful detainer is inappropriate because his unexercised purchase option survived the tax sale, which results in a defect in Bulkhak's title. Scannell has not offered any authority supporting the proposition that an unexercised purchase option survives a tax sale. Generally, a purchaser at a tax foreclosure sale takes title free and clear of all encumbrances. *Lake Arrowhead Cmty. Club, Inc. v. Looney*, 112 Wn.2d 288, 291, 770 P.2d 1046 (1989); *City of Olympia v. Palzer*, 107 Wn.2d 225, 228, 728 P.2d 135 (1986) ("The provisions of RCW 84.64 provide for the creation of a new title free and clear of all encumbrances on sale of property at a tax foreclosure."). RCW 84.64.

For the first time in his reply brief, Scannell claims that Bulkhak's action was improper under RCW 59.16.030. RCW 59.16 is titled "Unlawful Entry and Detainer." Bulkhak brought his claim under RCW 59.12. An issue raised for the first time in a reply brief is too late to warrant consideration. Co*wiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). Moreover, Scannell does not demonstrate that RCW 59.16 is applicable here.

Scannell contends that Bulkhak cannot use the unlawful detainer proceedings to seek a determination that Bulkhak has superior title. But there is no indication that Bulkhak seeks a determination that he has superior title. Scannell makes conclusory allegations, without support, that Bulkhak's title is disputed but fails to support his claim with citation to the record, relevant authority, or meaningful argument. In the absence of meaningful argument or citation to authority, we do not consider the issue. RAP 10.3(a)(6); *Am. Legion*, 116 Wn.2d at 7.

D. *Landlord-Tenant Relationship*

Scannell claims that the landlord-tenant relationship is disputed. His argument regarding a landlord-tenant relationship is not clear.

Scannell acknowledges that he was a tenant of the property. He had a lease with the former owner and he occupied the property. To the extent that Scannell argues that he is not a tenant because he does not have a contractual relationship with Bulkhak, that argument fails. Scannell does not provide authority supporting his claim that a contractual relationship between the owner and tenant is required. We do not consider the issue in the absence of meaningful argument or citation to authority. RAP 10.3(a)(6); *Am. Legion*, 116 Wn.2d at 7.

II. Attorney Fees

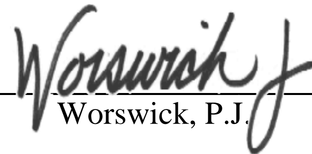
Scannell argues that the superior court erred by not awarding fees for a frivolous action. Scannell does not provide citation to the record or provide meaningful argument regarding his claim. Failure to provide argument and citation to authority in support of an assignment of error precludes appellate consideration. RAP 10.3(a)(6); *Cowiche Canyon*, 118 Wn.2d at 809; *Am. Legion*, 116 Wn.2d at 7. Moreover, Bulkhak prevails and therefore his action was not frivolous.

Scannell requests attorney fees on appeal. For a party to be awarded attorney fees on appeal, it must provide more than a bald request for attorney fees. RAP 18.1(b); *Hudson v. Hapner*, 170 Wn.2d 22, 33, 239 P.3d 579 (2010). Scannell does not offer meaningful argument explaining why he is entitled to attorney fees. Accordingly, does not demonstrate that he is entitled to fees on appeal.

Bulkhak requests reasonable appellate attorney fees under RAP 18.9 and RCW 4.84.185, characterizing this appeal as frivolous. His request is based solely on the alleged frivolous nature of the appeal. We deny his request. RAP 18.9(a) allows this court to award sanctions, such as a grant of attorney fees and costs to an opposing party, when a party brings a frivolous appeal. "An appeal is frivolous if, considering the whole record, this court is convinced there are no debatable issues on which reasonable minds may differ and it is totally devoid of merit." *In re Recall of Boldt*, 187 Wn.2d 542, 556, 386 P.3d 1104 (2017). Scannell's appeal does not appear totally devoid of merit.

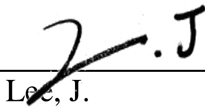
We affirm the superior court's order issuing writ of restitution.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.



Worswick, P.J.

We concur:



Lee, J.

Sutton, J.

Filed
Washington State
Court of Appeals
Division Two

March 8, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

GEORGIY BULKHAK, Respondent, JOHN SCANNELL, et al., Appellant.	No. 50997-1-II ORDER DENYING MOTION FOR RECONSIDERATION

Appellant filed a motion for reconsideration of the opinion filed January 15, 2019 in the above entitled matter. After consideration the Court denies appellant's motion. Additionally, Appellant's motion states, "[W]ith the filing of this reconsideration, [Appellant] notifies all the parties that he now exercises his option to purchase and he now holds the building as a tenant in common with the other owner, which the court will have to determine in a clear title action." The Court takes no action on these statements purporting to notify the parties of his attempt to exercise his option to purchase. Accordingly, it is

SO ORDERED.

PANEL: Jj. Worswick, Sutton, Lee

FOR THE COURT:

PRESIDING JUDGE

JOHN SCANNELL - FILING PRO SE

April 08, 2019 - 3:58 PM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	50997-1
Appellate Court Case Title:	John Scannell, Appellant v. Georgiy Bulkhak, Respondent
Superior Court Case Number:	17-2-00146-7

The following documents have been uploaded:

- 509971_Petition_for_Review_20190408155722D2266325_6302.pdf
  This File Contains:
  Petition for Review
  The Original File Name was Petition for Review.pdf

A copy of the uploaded files will be sent to:

- donna@richardpatricklaw.com
- richard@richardpatricklaw.com

Comments:

Sender Name: John Scannell - Email: zamboni_john@hotmail.com
Address:
543 6th St
Bremerton, WA, 98337
Phone: (206) 223-0030

Note: The Filing Id is 20190408155722D2266325