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No. 64752-1

King County Superior Court Cause No. 09-2-17310-9 KNT

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

JERRY AND DIANA JENNINGS, Appellants,

vs.

KING COUNTY, a political subdivision of the State of Washington,
Respondent.

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BRIEF OF RESPONDENT KING COUNTY

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I. INTRODUCTION

The overwhelming majority of Appellants' property has been encumbered with a regulatory wetland for a very long time. There is no evidence in the record that the County took any actions that caused this wetland to develop. Given the presence of this wetland, the development potential of Appellants' property, beyond its current use as the Appellants' residence, is practically nonexistent. There is no evidence in the record that the County caused water from upstream or downstream of Appellants' property to enter the property. But even if Appellants had demonstrated that the County forced its water onto their property, Appellants' causes of actions were properly dismissed on Summary Judgment by the trial court. Given the restrictions on the development potential of their property at the time they bought it, Appellants could not and can not show that they would be damaged by additional water flowing onto their property. Given the absolute lack of evidence presented by Appellants on the issues of causation and damages, the trial court properly granted the County's Summary Judgment motion

II. STATEMENT OF THE ISSUES

- A. Did the Trial Court Properly Grant the County's Motion for Summary Judgment Because there are No Disputed Material Facts Regarding Whether King County Directed Storm Water onto Appellants' Property to Create and Sustain a Wetland**

B. Did the Trial Court Properly Grant the County's Motion for Summary Judgment Because there are No Disputed Material Facts Regarding Whether the Actions of the County Damaged the Appellants

III. STATEMENT OF THE CASE

A. Regulatory Framework

The Washington State legislature has enacted statutes requiring counties such as King County to adopt development regulations intended to protect critical areas such as wetlands. RCW 36.70A.060(2). Wetlands are to be delineated in accordance with State's Wetland Delineation manual. RCW 36.70A.175. King County has adopted development regulations that virtually prohibit grading and building within wetlands subject to specific exceptions. K.C.C. 21A.24.335.

B. Facts

In December of 1997, Appellants Jerry and Diane Jennings ("the Appellants") purchased property located at 30310 38th Place South, Auburn, Washington 98001 ("the Property" or "the Appellants Property") for \$95,000.00. CP 158. The Property is approximately four and one-half acres in size. CP 199. At the time the Appellants purchased the Property it was a vacant lot with no physical improvements located thereon. CP 159. Prior to purchasing the property, the Appellants did nothing to determine if the property contained any sensitive areas. Id.

After buying the Property, the Appellants applied to the King County Department of Development and Environmental Services (DDES) for a residential building permit. Id. During the course of processing Appellants' building permit application, DDES required the Appellants to perform a sensitive areas analysis of their property. Id. They hired B-twelve Associates to carry out a sensitive areas investigation of their property.

B-twelve Associates carried out a formal wetlands delineation of the Appellants' property and produced a wetland delineation report on July 31, 1998. CP 199-205. B-twelve Associates concluded that almost the entire property was a Class 2 wetland according to King County's Sensitive Area Ordinance; Class 2 wetlands have a 50' buffer measured from the wetland edge as well as a 15' building setback line from the edge of the buffer for any structure. Id. In order to build their proposed residence, the Appellants applied for, and received, a wetland buffer variance that permitted them to construct a home in the NW corner of the property. CP 159. The home was constructed in 1999.

In addition to the Class 2 wetland, the Appellants' property also has a stream running next to it. CP 234. The stream begins near Fountain Isle Lake located approximately ½ mile from the Appellants' property; Fountain Isle Lake is located on private property just west of 51st Avenue

South. Id.; CP 237-240. From Fountain Isle Lake the stream initially flows in a westerly direction through several privately owned properties as well as through King County owned property. CP 234-235; CP 237-240.

As the stream nears the Appellants' eastern property boundary line it flows through a 12 inch culvert located in an unopened King County right-of-way. CP 234. The culvert allows the stream to run under a 4 foot wide elevated footpath located just east of the Appellants' property. Id.; CP 239-240. The culvert appears to have been in place at least as far back as 1977 when the footpath is clearly visible on an aerial photograph. CP 234; CP 236. There is no evidence in the record that King County either constructed the foot path and culvert or that they approved any permits related to their construction. CP 234. After exiting the culvert under the footpath, the stream travels west along the unopened County right-of-way for several hundred feet, before turning south and running parallel between lots owned by the Appellants' neighbors the Lunds and Carringtons. Id. The stream then flows beneath a road culvert under 38th Avenue South and into Lake Dolloff. Id.; CP 239-240.

On February 15th, 2000, the Appellants filed a claim for damages with the King County Office of Risk Management pursuant to KCC 4.12. CP 160. In that claim against the County, the Appellants stated that the County had in December 1999 approved a variance to the King County

Surface Water Design Manual (SWDM) for the residential development drainage system of the Greenwood Estates plat. CP 187. The Appellants alleged that the variance allowed uplands drainage to be routed through their property. Id. While the variance did allow the developer to drain water toward the Appellants' property, it limited the peak flow of drainage, pursuant to the then applicable SWDM requirements, to the peak flow off the site prior to the new development. CP 46. The approval of the SWDM variance occurred two months after B-twelve Associates concluded that almost the entirety of Appellants Property was a Class 2 wetland according to King County's Sensitive Area Ordinance. CP 49-51.

On December 26th, 2007 the Appellants filed another claim with the County's Office of Risk Management alleging the same facts as the claim filed in 2000. CP 188. They also included a new allegation regarding the raising of portions of 38th Avenue South. Id. This road is located between the Appellants' property and Lake Dolloff. CP 239-240. In 2005, the County raised portions of 38th Avenue South by approximately 12 inches to prevent water flowing over the road during very high flow events. CP 242. The County also installed a 60 inch box culvert under the newly raised road in 2008. Id. The Appellants' 2007 claim was also denied by the County's Office of Risk Management due to a failure of the Appellants to establish liability or negligence on the part of King County. CP 217.

The Appellants filed their complaint in this action on May 1, 2009, alleging that the County's failure to replace the 12 inch culvert located in an unopened King County right-of-way near the Appellants' far eastern boundary line with a larger culvert and the County's raising of portions of 38th Avenue South have damaged their property through the introduction of additional amounts of water. CP 1-4. The Appellants did not hire or retain any expert witnesses. CP 169. The Appellants did not provide the County with any expert reports or appraisals regarding the claims in their complaint. CP 155. Finally, the Appellants have admitted that there is no damage to their home or its foundation as a result of any of the allegations contained in their complaint. CP 169.

IV. AUTHORITY

The trial court granted the County's Motion for Summary Judgment and dismissed all of Appellants' claims. Appellants are challenging the trial court's granting of the County's Motion for Summary Judgment. The standard of review of summary judgment is de novo. Young v. Key Pharmaceuticals, Inc., 112 Wn.2d 216, 226, 770 P.2d 182 (1999).

- 1. The Trial Court properly granted the County's Motion for Summary Judgment because there are No Disputed Material Facts Regarding Whether King County Directed Storm Water onto Appellants' Property to Create and Sustain a Wetland**

Appellants argue that the County created and is sustaining a wetland on their property by directing storm water onto their property. Brief of Appellant at pg. 10. There is no evidence in the record that any actions of the County created the wetland on the Appellants' property. The action of the County that Appellants' allege sustains the wetland was the County's direction of storm water onto Appellant's property. Appellants' lawsuit against the County contained a negligence claim, a nuisance claim, a trespass claim and taking or inverse condemnation claim. CP 1-4. The trial court granted summary judgment on all of Appellants' claims because Appellants failed to introduce any evidence that created a question of material fact that prevented the trial court from granting summary judgment. CP 246.

A. Negligence Claims.

Appellants argued that the County's action of raising 38th Avenue South in 2005 and its inaction of failing to replace the 12 inch culvert located in an unopened King County right-of-way upstream of their property with a larger culvert were the causes of flooding on their property. CP 2-3. The elements of a negligence cause of action are: (1) the existence of a duty to the plaintiff; (2) breach of the duty; and (3) injury to plaintiff proximately caused by the breach. Hertog v. City of Seattle, 138 Wn.2d 265, 275, 979 P.2d 400 (1999); Hansen v. Washington Natural Gas Co., 95 Wn.2d 773, 776, 632 P.2d 504 (1981); LePlante v.

State, 85 Wn.2d 154, 159, 531 P.2d 299 (1975). The determination of the existence of a duty is a question of law. Atherton Condominium Apartment-Owners Association Board of Directors v. Blume Development Co., 115 Wn. 2d 506, 528, 799 P.2d 250 (1990); Taylor v. Stevens Cy., 111 Wn.2d 159, 168, 759 P.2d 447, (1988); Smith v. City of Kelso, 112 Wn. App. 277, 281, 48 P.3^d 372 (2002), *review denied*, 148 Wn.2d 1012, 62 P.3d 890 (2003).

1. Raising of 38th Avenue South

Landowners who propose to impede or obstruct the flow of water through a natural drainway have a duty to provide adequate drainage to accommodate the flow within the drainway during times of ordinary high water. Wilber v. Western Properties, 14 Wn. App. 169, 173, 540 P.2d 470 (1975); Island County v. Mackie, 36 Wn. App. 385, 388, 675 P.2d 607 (1984); Currens v. Sleek, 138 Wn. 2d 858, 862 983 P.2d 626 (1999).

Appellants claim that the County's action of raising 38th Avenue South in 2005 blocked stream flows that used to flow over the road during high flow events. Brief of Appellant at pg. 7. As a result, Appellants claim that water backed up on the upstream side of the road and entered their property. *Id.*¹

¹ Appellants' Statement of the Case section of their brief contains many alleged factual statements. However, this section does not comply with the requirements of RAP

Appellants presented no evidence to the trial court that the County's raising of the 38th Avenue South caused water to back up onto their property. When asked during his deposition whether he did anything to determine if the raising of the 38th Avenue South put more water onto their property, Mr. Jennings limited his testimony to water on his downstream neighbor's property, rather than his own.

Mr. Lund, he had some expert come out and evaluate his property, and Mr. Lund filed a lawsuit against King County and it was settled out of court, I believe. So I believe I have the same circumstances as Mr. Lund.

CP 165.

While Mr. Jennings testified that he saw water ponding on his neighbor's property, he admitted that he had carried out no evaluation to determine whether, or in what amount, additional water ponded on his own property as a result of the County's action of raising 38th Avenue South.
Id.

In their brief, Appellants state several times that water backed up on the north side of 38th Avenue South to a point where it entered their property. Brief of Appellants at pg. 7, pg. 8, pg. 13 and pg. 14.

Appellants fail to provide citation to the record to substantiate these

10.3(a)(5) because Appellants fail to make reference to the record for any of their alleged factual statements.

claims. The only citation to the record Appellants note to support their allegation that water backed up from the north side of 38th Avenue South onto their property is a photograph they attached as exhibit 44 to their Exhibit list for trial. CP 99.

The photograph shows a field with what appears to be water in the foreground with trees in the background; Appellants state in their brief that their property starts at the tree line. Brief of Appellants at pg. 14. The photograph does not provide any evidence regarding the cause of the ponding or whether the ponding extended to the Appellants' property. Appellants have failed to cite to any evidence in the record that establishes that the County's action of raising 38th Avenue South caused storm water to back up onto their property. Accordingly, the trial court properly dismissed Appellants' negligence claim regarding the raising of 38th Avenue South.

2. Failure to replace culvert

Appellants also allege that the County was negligent by failing to increase the size of the culvert located in an unopened King County right-of-way near the Appellants' far eastern boundary line since during heavy rains the capacity of the current culvert is overwhelmed and water sheet flows onto a corner of the Appellants' property. Brief of Appellant

at pg. 10. In making this allegation, Appellants assume that the County is diverting storm water onto their property because they believe the culvert in question is a part of a storm water drainage system that the County has a duty to maintain and improve. Appellants are mistaken.

As set forth above, the first question that must be answered affirmatively in order to sustain an action for negligence is whether the Defendant owed the Plaintiff a duty. See, Hertog v. City of Seattle, 138 Wn.2d 265, 275, 979 P.2d 400 (1999). Governments have no common law duty to drain surface water. Colella v. King County, 72 Wn. 2d 386, 391, 433 P.2d 154 (1967). However, King County and other governmental entities sometimes assume the land ownership and ministerial act of maintaining residential drainage systems. Where a municipality does assume the maintenance duties and control over drainage systems, it has a duty to exercise reasonable care in the repair and maintenance of the system. Sigurdson v. City of Seattle, 48 Wn.2d 155, 159 292 P.2d 214 (1956); Pruitt v. Douglas County, 116 Wn. App. 547, 558, 66 P.3d 1111 (2003).

In Sigurdson, Plaintiff filed a negligence action against the City of Seattle when a water line burst and contributed to a landslide that damaged Plaintiff's property. Sigurdson, 48 Wn.2d at 157-158. Plaintiff had alerted the City to failure of the water line and the City worker who

responded to her complaint failed to stop the flow of water from the damaged water line. As a result, water flowed from the damaged line saturating the hillside in the area; the hillside subsequently slid and damaged the Plaintiff's home. Judgment at trial was awarded to the Plaintiff and the City appealed. The Supreme Court considered the question of law as to whether the City had a legal duty to perform an act, the nonperformance of which was alleged to have caused damage. Id at pg. 158-159. The Court adopted the rule set forth in 18 McQuillin, Municipal Corporations, § 53.118:

Municipal liability is restricted to the public sewers which the corporation controls; it does not extend to private sewers and drains which it did not construct, nor accept. * * * But if sewers, drains or culverts constructed by third persons are, in some legal manner, adopted by the municipality as a part of its sewerage or drainage system, or the municipality assumes control and management thereof, the municipality becomes liable for injuries resulting therefrom, since in such cases it is immaterial by whom the sewer, drain or culvert was constructed.

Based on the City's comprehensive control and management of the drainage system, the Court concluded that the City had a duty to maintain the drainage system in a manner to prevent injury to others. Sigurdson, 48 Wn.2d at 161.

The 12 inch culvert located on County owned property immediately east of Appellants' property is not part of an engineered drainage system designed, constructed, controlled or maintained by the County. CP 234. The County has a formal process for accepting drainage facilities and structures into the County program for maintenance and repair. CP 235. That process has not been utilized for any drainage features on the County owned property immediately to the east of Appellants' property. Id.

A stream flows from Fountain Isle Lake, through County owned and privately owned parcels before it enters a pond or depression on the County parcel located immediately east of the Appellants' property.² CP 235. The County has never assumed responsibility for the operation or maintenance of either the culvert or the pond located just east of Appellants' property. Id. On occasion, the County has responded to complaints from the Appellants and attempted to remove blockages of the upstream end of the 12 inch culvert since it is located on County property. Id. These actions can not be construed, as a matter of law, to be an assumption on the part of the County of a duty to maintain the pond and culvert. Accordingly, the County has no duty to Appellants to

² Farther upstream of Appellants' property, on County owned parcel # 2616700590, the County has accepted a drainage facility into its maintenance program and carries out

maintain or replace the existing culvert in order to ensure that stream flows do not reach the Appellants' property outside the established stream channel.

Further, even if the County did have a duty to maintain and/or replace the 12 inch culvert, Appellants have no evidence that the culvert is, under normal circumstances, too small to adequately pass stream flows. At most, Appellants can demonstrate that when the culvert inlet is plugged with debris, stream flows may bypass the culvert and sheet flow across onto their property designated as a Class 2 wetland. In those instances, the County has responded and removed the debris blocking the culvert inlet. CP 235. These gratuitous acts by the County do not make any water that flows through or around the culvert "the County's water." Upstream storm water may occasionally flow onto a corner of the Appellants' property, but Appellants can point to no evidence in the record that this water is the responsibility of the County. Accordingly, the trial court properly dismissed Appellants' negligence claim regarding the 12 inch culvert.

B. Nuisance Claim.

Nuisance is an obstruction to the free use of property, so as to essentially interfere with the comfortable enjoyment of the life and

routine maintenance on that drainage facility. CP 235.

property. RCW 7.48.010; Tiegs v. Boise Cascade Corp., 83 Wn. App. 411, 415, 922 P.2d 115 (1996), *aff'd*, 135 Wn.2d 1, 954 P.2d 877 (1998). Appellants' nuisance claim is subsumed within their negligence claim and is not properly considered as a separate basis for relief.

Appellants based their nuisance claim on the same set of facts they relied upon to support their negligence claims against the County. Separate legal theories, such as negligence and nuisance, based upon one set of facts, constitute one "claim for relief". Snyder v. State, 19 Wn. App. 631, 635, 577 P.2d 160 (1978). "In Washington a 'negligence claim presented in the garb of nuisance' need not be considered apart from the negligence claim." Atherton Condo v. Blume Dev. Co., 115 Wn.2d at 527; See also, Borden v. City of Olympia, 113 Wn. App. 359, 53 P.3d 1020 (2002), *review denied*, 149 Wn.2d 1021, 72 P.3d 761 (2003); Kaech v. Lewis County Public Utility District, 106 Wn. App. 260, 281, 23 P.3d 529 (2001), *review denied*, 145 Wn.2d 1020, 41 P.3d 485 (2002). Further, even if Appellants' nuisance claim could be heard separately, it fails for the lack of evidence supporting their theories of damage as set forth above in Section A. The trial court properly dismissed Appellants' nuisance claim.

C. Trespass Claim

Trespass can be either an intentional or a negligent intrusion onto or into the property of another. Borden v. City of Olympia, 113 Wn.App. at 373. Trespass can be accomplished by the discharge of water onto another's property. Hedlund v. White, 67 Wn. App. 409, 418 n. 12, 836 P.2d 250 (1992). Appellants alleged that the water flowing from Fountain Isle Lake is the County's water and that said water intrudes onto their property in a manner that has damaged their property. The trial court properly dismissed Appellants' trespass claim.

1. Appellants' claim for negligent trespass is subsumed within their negligence claims

Claims for negligent trespass and negligence arising from a single set of facts are analyzed as a single negligence claim. Pruitt v. Douglas County, 116 Wn. App. 547, 554, 66 P.3d 1111 (2003). As with Appellants' nuisance claim, the trial court was not required to consider Appellants' negligent trespass claim separately from their negligence claims and therefore properly dismissed their negligent trespass claim.

2. Appellants' Claim of Intentional Trespass by the County must fail

The tort of intentional trespass requires proof of four elements: "(1) an invasion of property affecting an interest in exclusive possession; (2) an intentional act; (3) reasonable foreseeability that the act would disturb the

plaintiff's possessory interest; and (4) actual and substantial damages." Wallace v. Lewis County, 134 Wn. App. 1, 15, 137 P.3^d 101 (2006); Bradley v. American Smelting and Refining Co.; 104 Wn.2d 677, 692-3, 709 P.2d 782 (1985). In tort law, intent denotes that the person acted with a desire to cause the consequences of his conduct or believes that the consequence is substantially certain to result. Bradley, 104 Wn.2d at 682-84.

The County did not intentionally trespass on the Appellants' property because the flows from upstream of their property are simply not "the County's water." As set forth above, the stream that flows from Fountain Isle Lake past their property flows in a natural drainage course. It is not a drainage system constructed, or accepted for maintenance by the County. The stream has flowed from Fountain Isle Lake past Appellants' property and eventually into Lake Dolloff for many years. Fountain Isle Lake is located on private property and the stream that carries water from this lake flows through private and County owned parcels before it eventually outfalls into Lake Dolloff. The fact that this stream passes through King County owned property, along with multiple privately owned properties, on its way to the Appellants' property does not transform this stream flow into an agent of the County.

Regarding the water that Appellants allege backs up to the north of 38th Avenue South, as set forth above, Appellants have provided no evidence that this water has ever reached their property.

D. Taking or Inverse Condemnation Claim.

The term inverse condemnation is used to describe "an action alleging a governmental taking or damaging that is brought to recover the value of property which has been appropriated in fact, but with no formal exercise of the power of eminent domain". Dickgeiser v. State of Washington, 153 Wn.2d 530, 535, 105 P.3d 26 (2005); Phillips v. King County, 136 Wn.2d 946, 957, 968 P.2d 871, (1998). A litigant alleging inverse condemnation must establish the following elements: (1) a taking or damaging; (2) of private property; (3) for public use; (4) without just compensation being paid; (5) by a governmental entity that has not instituted formal proceedings. Id. The Appellants failed to establish material facts demonstrating that any actions the County may have taken their property, an essential element of their takings claim and accordingly the trial court properly dismissed their inverse condemnation claim.

The Appellants failed to provide any evidence that their property was taken by King County for a public use. The question of public use in an inverse condemnation case is a judicial question. Dickgeiser, 153 Wn.2d at 535. Washington courts have found inverse condemnation from noise

of jet aircraft landing and taking off from a municipal airport (Highline School Dist. V. Port of Seattle, 87 Wn.2d 6 548 P.2d 1085 (1976)) and from operation of a gravel pit on land owned by a county. (Boitano v. Snohomish County, 11 Wn.2d 664, 120 P.2d 490 (1941)). In the above cases, the governmental entity was acting in its proprietary function, i.e. operating an airport or a gravel pit. The public use in these cases is clear.

In this case, Appellants argue that the County was using their property as a storm water detention facility, an arguably public use. Brief of Appellants at pg. 5. However, as set forth above, Appellants can cite to no evidence in the record to support this allegation. While the County does own 38th Avenue South, Appellants have produced no evidence that any water that used to flow toward Lake Dolloff prior to the raising of that road now backs up onto their property. Similarly, while there is evidence that stream water occasionally enters their property if the upstream 12 inch culvert is plugged with debris; there is no evidence in the record that the culvert is part of a County owned or maintained storm water drainage system. The County clearly does not intend to use Appellants' property as a stormwater detention facility, since the evidence before the trial court established that when Appellants alerted the County that the upstream 12 inch culvert was blocked, the County has come out and removed the blockage. CP 235. An occasional accidental flow of stream water onto a

corner of Appellants' property under such circumstances does not amount to a public use necessary to sustain a claim for inverse condemnation. The trial court properly dismissed Appellants' inverse condemnation claim.

E. The Trial Court properly granted the County's Motion for Summary Judgment because there is no evidence in the record that would create a Material issue of fact Regarding Whether the actions of the County damaged the Appellants

As set forth above, Appellants failed to introduce evidence sufficient to create a material issue of fact regarding whether the County's actions placed more water on the Appellants' property than it had always received. But, even if Appellants had produced evidence that demonstrated that the County's actions put more water on their property, the trial court properly granted the County's Summary Judgment Motion because Appellants failed to introduce evidence how their property would have been damaged by the introduction of additional water.

In order to prevail on any of their claims, Appellants were required demonstrate that additional water entering their property had a negative impact to the value of the property or their use of the property. To prevail on a negligence claim, the plaintiff must introduce evidence that there was an injury to plaintiff proximately caused by the breach of a duty. Hertog v. City of Seattle, 138 Wn.2d 265, 275, 979 P.2d 400 (1999). A nuisance

claim requires a showing that the action complained of obstructed the free use of property, so as to essentially interfere with the comfortable enjoyment of the life and property. RCW 7.48.010; Tiegs v. Boise Cascade Corp., 83 Wn. App. 411, 415, 922 P.2d 115 (1996), *aff'd*, 135 Wn.2d 1, 954 P.2d 877 (1998). Trespass requires an invasion of property that causes actual and substantial damages." Wallace v. Lewis County, 134 Wn. App. 1, 15, 137 P.3^d 101 (2006). An inverse condemnation claim requires a damaging of private property; the measure of damages is the difference in market value of the property before and after the damage. Anderson v. Port of Seattle, 66 Wn.2d 475, 403 P.2d 368 (1965). Without evidence of a taking or of damage to the subject property, a party can not establish an essential element of an Inverse Condemnation action. Gaines v. Pierce County, 66 Wn. App. 715, 726, 834 P.2d 631 (1992).

Appellants' failed to introduce any evidence that they would have been damaged had the County caused more water to flow onto their property.

Prior to the Appellants purchase of their property, almost the entire parcel was encumbered with a Class II regulatory wetland. CP 229. The presence of this wetland on their property greatly limited the development potential of the parcel. CP 222-223. Pursuant to the restrictions on the development of wetlands contained in the County's critical area regulations, Appellants are unable to subdivide or place structures on their

property beyond the home that they built in 1999 pursuant to a variance approved by King County. Id. Accordingly, even if Appellants had provided evidence that the County thrust additional water onto their property, which they did not, their claims were still properly dismissed since additional water entering their property would not diminish their use of the parcel or diminish its monetary value. Accordingly, the trial court properly dismissed all of Appellants' claims.

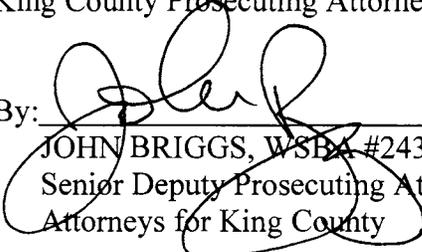
V. CONCLUSION

Appellants failed to introduce evidence sufficient to create a material issue of fact regarding causation or damages. As a result, the trial court granted the County's Summary Judgment Motion and dismissed all of Appellants' claims. For the reasons set forth above, the decision of the trial court was proper. Therefore, King County respectfully requests that this Court affirm the trial court's dismissal of Appellants' action.

DATED this 9th day of July, 2010.

Respectfully submitted,

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