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COURT OF APPEALS
DIVISION ONE

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COURT OF APPEALS
DIVISION ONE

**COURT OF APPEALS DIVISION 1
STATE OF WASHINGTON**

**DISCOVER BANK, ISSUER OF THE DISCOVER CARD
Plaintiff,**

v.

**LESA M. BUTLER AND DOE I, and their marital community
composed**

Appellant(s) / Defendants

**Appeal from the Superior Court of Island County
The Honorable Vickie I. Churchill
Island County Superior Court Cause**

Supplemental Brief of Appellant

**By Danny L. Watts/Lesa Butler
Appellants/ Defendants
Pro-Se
P.O. Box 58
Greenbank, WA
60-222-3164**

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2. Did the trial court err when it granted the plaintiffs motion for objection and ordered Defendants to pay \$750.00 in attorneys' fees to plaintiff when Plaintiff had clearly failed to timely serve notice of objection.	
3. Did the trial court err in not reconsidering the argument by the defendants that the plaintiff's attorney's had failed to timely serve notice of objection due to failure of delivery service in due diligence in delivering notice to house.	
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A. INTRODUCTION

The Court realizes that this is an appeal of an “Oral Pronouncement” of a ruling denying reconsideration. The Appellate Court has ruled in its own right that it will hear this appeal as an addendum to the original Appellate Case NO. 65069-6.

B. ASSIGNMENT OF ERRORS AND ISSUES PERTAINING

THERE TO:

1. Did the trial court err when it granted plaintiff’s motion for a hearing regarding objection to Narrative Report objection to Narrative Report when Plaintiff clearly did not timely serve notice of objection to Defendant and found that failure of delivery of notice was the fault of defendant due to a zip tied mailbox when delivery service is prohibited by law from delivering to a mailbox and must deliver directly to the house.
2. Did the trial court err when it granted the plaintiffs motion for objection and ordered Defendants to pay \$750.00 in attorneys’ fees to plaintiff when Plaintiff had clearly failed to timely serve notice of objection.
3. Did the trial court err in not reconsidering the argument by the defendants that the plaintiff’s attorney’s had failed to timely serve

notice of objection due to failure of delivery service in due diligence in delivering notice to house.

4. Did the trial court err in not reconsidering defendant's argument that the failure to deliver timely notice was based on delivery service's failure to deliver the notice to the house at the street address and had nothing to do with whether Defendants had a post office box since the private delivery service cannot deliver to a PO box or mailbox but only to the street address, in accordance with US Postal Service 508 Recipient Services 3.1.3 Use for Mail.

C. STATEMENT OF THE CASE

1. FACTS:

Defendants prepared a Narrative Report for Appellate Case NO. 65069-6 Court of Appeals Division 1 based on their best interpretation of Rules 9.2 and 9.3. and submitted it to the Superior Court and the Plaintiffs on June 18, 2010.

Defendants were aware that there was a ten-day period under Rule 9.5 in which the Plaintiff's could object the Narrative Report. Monday the 28th came and went and it was assumed there was no objection.

On Thursday July 1, 2010, Mr. Watts recieved a phone message from a person named Jackie who works for Bishop, White and Marshall. Mr. Watts was about to call her back when she called again and he answered.

Jackie stated that her firm had attempted to deliver some documents to the Defendants' mailbox but the delivery server had told them the mailbox was sealed shut. Mr. Watts explained that he thought on Whidbey Island when a person uses a PO Box the outside mailboxes are sealed..

On July 2, 2010, Defendants received copies of the Plaintiff's Motion for Objection to the Narrative Report, when it should have been served no later than June 28, 2010. By Island County Court Rules Defendants had to respond to the Plaintiff's Objections no later than six days prior to the hearing of July 12, 2010 scheduled by the Plaintiffs, which meant that the Defendants had only 3 and ½ days to reply by July 6th. Although Defendants replied there was not reasonable time for research or evidence to respond to Plaintiff's allegation that their failure to deliver was the fault of the Defendant for not having providing them a correct mailing address.

On July 12, 2010, a hearing was held and arguments were heard by both sides. The court was extremely busy on this day and the case was continued to the next week.

The hearing was continued on July 19, 2010, and arguments were continued.

Judge Vickie Churchill made a ruling for the Plaintiff's Objection to a Narrative Report of Proceedings submitted by the Defendants and

ordered that payments and costs for the verbatim report and attorneys fees be paid by the Defendant.

Mr. Watts filed for reconsideration on July 29, 2010 and set a hearing for August 23, 2010. The hearing was held on August 23, 2010 and Judge Churchill upheld her original ruling. This ruling was done by "Oral Pronouncement" according to the Clerks filing.

D. ARGUMENT

1. The trial court erred in the first and second hearings, when it granted plaintiff's motion for a hearing regarding objection to Narrative Report when Plaintiff clearly did not timely serve notice of objection to Defendant and found that failure of delivery of notice was the fault of defendant due to a zip tied mailbox when delivery service is prohibited by law from delivering to a mailbox and must deliver directly to the house.

Defendants were in a "Catch 22" scenario in which they were not timely served and not having time to research and gather evidence they were not allowed to present evidence found after their timely (yet with foreshortened preparation time) Response.

In both earlier hearings and the hearing for reconsideration Mr. Watts argued it had been shown by the Plaintiff's Declaration of Mailing and Mr. Watts' Statement of Facts that the Defendants were not timely served and did not receive copy of service until the 14th day following the filing of the Narrative Report with the Superior Court. This late service did

not comply with either of the RAP rules, 9.2 and 9.5. 2nd Vol CP 37 and 2nd Vol CP 38

Plaintiffs argued that service had been timely citing RAP 9.5 (c) by serving and filing within ten days of receipt of the Narrative Report. 2nd Vol CP 31 They also claimed to have complied with CR5 (b) (1) by mailing their objection to the last known address. 2nd Vol CP 12

RULE 5
SERVICE AND FILING OF PLEADINGS
AND OTHER PAPERS

b) Service: How Made.

(1) On Attorney or Party. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, filing with the clerk of the court an affidavit of attempt to serve. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service on an attorney is subject to the restrictions in subsections (b) (4) and (5) of this rule and in rule 71, Withdrawal by Attorneys.

Mr, Watts argued to the court that these documents had not been mailed but sent by a delivery service. 2nd Vol CP 19 Defendants had been served both by FED EX and the US Mail by Bishop, White and Marshall and documents were delivered timely in the past. The Greenbank Post Office when receiving an addressed item simply places it in the PO Box. However, the plaintiffs attempted to deliver directly to the home of Defendants through a delivery service..

In the Reconsideration 2nd Vol CP 19 hearing Mr, Watts presented:

4. Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial;

**Us Postal Service
508 Recipient Services
3.1.3 Use for Mail**

Except under 3.2.11, **Newspaper Receptacle**, the receptacles described in 3.1.1 may be used only for matter bearing postage. Other than as permitted by 3.2.10, **Delivery of Unstamped Newspapers**, or 3.2.11, no part of a mail receptacle may be used to deliver any matter not bearing postage, including items or matter placed upon, supported by, attached to, hung from, or inserted into a mail receptacle. Any mailable matter not bearing postage and found as described above is subject to the same postage as would be paid if it were carried by mail.

The defendants street address was the only legal address for a delivery service to use. Construing that the Defendants are at fault in the delivery driver's failure to deliver because of an inaccurate address simply defies logic.

The address provided was the only valid one that the driver could deliver to in a door to door delivery. This was a case of bad judgment on the driver's part, which cannot be associated in any way as the responsibility of the Defendants. However, it is the Plaintiffs responsibility to ensure timely service no matter what the means. The "zip tied mailbox" is a false argument since the driver could not have delivered to the mailbox. The driver had merely to drive down the driveway and deliver to the door as every other driver has in delivering numerous documents from the Plaintiffs. 2nd Vol CP 13

2.The trial court erred when it granted the plaintiffs motion for objection and ordered Defendants to pay \$750.00 in attorneys' fees to plaintiff when Plaintiff had clearly failed to timely serve notice of objection.

However, Defendants did not object to a mutual agreement for the Verbatim Report being used and paid for by the defendants since the Plaintiffs had already ordered it and received an electronic copy (though not paid for as of July 2, 2010) and sent a copy to the Defendants. 2nd Vol CP 26. Also, it appears that the rule freely allows any party to order a Verbatim Report and that if it is ordered that is what will be used.

Mr. Watts recieved a courtesy call from Karen Shipley, the Court Reporter on July 2nd advising that a Verbatim copy had been ordered by a party and letting him know the cost if he wished to order

one. She stated she was waiting for payment before she sent out the hard copy of the document.

It appeared to Defendants that Plaintiffs were forestalling payment in the belief that the Defendants would be ordered to pay the costs. 2nd Vol CP 94

As the Plaintiffs point out under RAP 9.3 (c,) "The court may direct a party...to pay for the expense." This is obviously at the courts discretion. However, as the Defendants also pointed out that RAP 9.3 (c) establishes that a party must "serve and file objections to...within ten days after receipt of the report of proceedings. It does not seem legally coherent to order payment of the expense when service was clearly not made timely in accordance Rule 9.5

E. CONCLUSION

As stated before Defendants did not protest use of the Verbatim Report since it had already been ordered and their seems to be no provision but to comply with uses of the Verbatim Report. 2nd Vol CP 50 But Defendants maintain that Plaintiff's have no right to punitive fees since they did not timely serve the Defendants. Defendants also believe objections to the form of the report can only be heard by the Appellate Court as shown in RAP 9.5 (c).

Defendants should not be charged with the cost of the Verbatim Report because they were not timely served.

Defendants also would like to point out that while \$750.00 likely means nothing to a well established legal firm engaged in debt collection, but this does represent an exorbitant amount to the Defendants. Mr. Watts has been unemployed for one year and while still receiving unemployment benefits this is less than 50% of his former take home wages. It is for this reason that that the defendants are Pro Se and chose the option of a Narrative Report rather than a Verbatim Report. The court erred in its discretion that these were "reasonable" attorney's fees.

A reconsideration of the judgment was appropriate and necessary because the Defendants were untimely served with the Plaintiff's Objection to the Narrative report, yet still given only two and ½ days (one of which was federal holiday) to respond with the local court rules' time frame of filing and serving a response within six days of the hearing which the Plaintiffs had requested for July 12, 2010. 2nd Vol CP 37 and 2nd Vol CP 39

The plaintiffs failed to serve timely notice to the Defendants of the intention to object to the Narrative Report of proceedings. They had no legal right to the consideration of the court regarding this matter due to that failure. That they had already ordered the Verbatim Report is moot since they did so prior to the hearing. The RAP rule apparently lets anyone order such a report with or without cause. Mr. Watts could not object to the ordering of the report itself, since once a report is ordered

that is the document that the appellate court uses. The defendants have no choice but to agree to its use.

Defendants should not have to pay the costs of the Verbatim Report when the Plaintiff did not timely serve the defendants. The accuracy of the report is also technically moot, since again, the Plaintiffs did not timely serve the Objection. Construing that the Defendants are at fault in the delivery driver's failure to deliver because of an inaccurate address simply defies logic. The address provided is the only valid one that the driver could deliver to in a door to door delivery. This was a case of bad judgment on the driver's part, which cannot be associated in any way as the responsibility of the Defendants.

F. Prayer for Relief

Appellant prays for relief of the following issues,

- 1. Overturn the trial courts' order of payment of \$750.00 of attorneys fees 7/19/2010.**
- 2. Overturn the trial courts order denying defendants Motion for Reconsideration of 8/23/210.**

**RESPECTFULLY submitted this 11th day of
April, 2011.**


Danny L. Watts
Appellant Pro Se


Lesa Butler
Appellant Pro Se

CERTIFICATE OF SERVICE

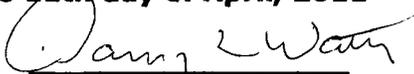
I, DANNY L. WATTS, certify under penalty of perjury Under the laws of the State of Washington that I served (1.)A corrected Supplemental Appellate Brief, (2) A corrected Prayer for Relief, (3.) A Certificate of Service by the method shown, on April 11th, 2011, and on each attorney (s) and or person identified below as indicated.

Attorneys for respondent

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One Union Square
Seattle, WA 98101-1176**

Dated this 11th day of April, 2011



**Danny L. Watts
Appellant Pro-se**