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**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

JOHN K. DAHL, Executor of the Estate of Lillian Hagen

Plaintiff/Respondent,

vs.

LEO GILLESPIE

Defendant/Appellant.

BRIEF OF RESPONDENT

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RULES

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A. ISSUES RAISED

Issue No. 1: Following the death of the owner, does the occupant of a house continue as a tenant when there is a written lease naming him as a tenant, and where he has paid rent subsequent to the death of the owner?

Issue No 2: Does a nonintervention Executor have the right to demand rent from an occupant of a house during the pendency of probate, even if the occupant claims that the testator should have devised the house to the occupant?

B. STATEMENT OF THE CASE

Lillian Hagen died on May 22, 2011, leaving an estate subject to probate. CR 23. Ms. Hagen owned a house located in Shoreline, Washington, which was rented to Leo Gillespie. Ms. Hagen and Mr. Gillespie had entered into a written lease which provided for a monthly rent of \$500, and which also required Mr. Gillespie to pay the property taxes for the property. CR 47.

In his Answer, Mr. Gillespie admitted that “previously, he was a residential tenant” and acknowledged that he was behind in paying the rent in the amount of \$6,000 at the time of Ms. Hagen’s death. CR 19 & 23.

John K. Dahl was appointed as Executor of Ms. Hagen's estate, and was granted nonintervention powers. Following Mr. Dahl's appointment as executor, Mr. Gillespie paid the June rent of \$500 to Mr. Dahl. Thereafter, Mr. Gillespie failed to pay the July rent, and was served with a written Notice to Pay Rent or Vacate on July 19, 2011. CR 202. When Mr. Gillespie failed to pay the rent or vacate the property then this unlawful detainer ensued. The Notice recited that he owed past due rent of \$6,500 (\$6,000 from prior to Ms. Hagen's death and \$500 for July). CR 202.

Mr. Gillespie actively defended the unlawful detainer on the basis of his allegation that he was no longer a tenant because of a provision in the lease that required Ms. Hagen to devise the rental house to him.

A show cause hearing was held before Commissioner James Marshall, and the court specifically found that Mr. Gillespie was a tenant and that the lease provided for a monthly rent of \$500. The court also found that Mr. Gillespie owed rent for July and subsequent months, but the court declined to rule on whether rent was owed for the months prior to Ms. Hagen's death. The court ruled that the issues of prior rent and of Mr. Gillespie's claim for ownership were "reserved for ruling outside this unlawful detainer,

including Defendant's Verified Petition for Declaratory Judgment Determining Title to Real Property." CR 202.

Commissioner Marshall recognized that Mr. Gillespie had the right, pursuant to RCW 59.12.170 and 59.12.410, to reinstate his tenancy, and thus ordered that Mr. Gillespie could do so by paying \$1,000 (the rent for July and August) into the registry of the court, and thereafter pay the sum of \$500 per month into the registry of the court each month. CR 203.

C. ARGUMENT

1. THE APPELLANT HAS FAILED TO COMPLY WITH RAP 9.2 (c).

Appellant filed with the court a NOTICE OF NOT FILING A VERBATIM REPORT OF PROCEEDINGS in which it was stated that a verbatim report of proceedings has not been ordered and will not be filed with the court.

RAP 9.2 (c) requires that if a party "arranges for less than all of the verbatim report of proceedings, the party should include in the statement of arrangements a statement of the issues the party intends to present on review." The appellant failed to include such a statement of issues.

2. THE TRIAL COURT'S FINDINGS OF FACT ARE VERITIES ON APPEAL.

The trial court made several findings of fact, none of which are challenged on appeal. The trial court's findings of fact are thus verities on appeal. RAP 10.3(g); Robel v. Roundup Corp., 148 Wn.2nd 35, 42, 59 P.3rd 611, 615 (2002); Moreman v. Butcher, 126 Wash.2nd 36, 39; 891 P.2nd 725, 727 (1995).

3. THE TRIAL COURT CORRECTLY DECIDED THE ISSUE OF POSSESSION.

Mr. Gillespie argues on appeal that the trial court should not have decided the unlawful detainer case so long as Mr. Gillespie's claim to title was unresolved. Mr. Gillespie describes his claim to title "as a viable legal and equitable theory." (Appellant's brief at page 13).

Mr. Gillespie fails to understand the fundamental aspect of an unlawful detainer action. This fundamental aspect is stated as follows:

Unlawful detainer actions are statutorily created summary proceedings, primarily designed for the purpose of hastening recovery of possession of real property. (cites omitted). The principal subject matter of the action is the possession of real property. (cite omitted). In such

proceedings the superior court sits as a special statutory tribunal, limited to deciding the primary issue of right to possession together with the statutorily designated incidents thereto, i.e., restitution and rent or damages. It does not sit as a court of general civil jurisdiction.

MacRae v. Way, 64 Wash.2nd 544, 546; 392 P.2nd 827 (1964).

The unlawful detainer chapter RCW 59.12, provides a summary proceeding for obtaining possession of real property, and gives the proceeding priority over other civil cases. The court's jurisdiction in unlawful detainer proceedings is limited to the right to possession of real property and a few related issues such as damages and rent due. **Unlawful detainer actions offer a plaintiff the advantage of speedy relief, but do not provide a forum for litigating claims to title.**

Puget Sound Investment Group, Inc. v. Bridges, 92 Wash.App. 523, 526; 963 p.2ND 944, 948 (1998).

In the unlawful detainer case of **Decker v. Verloop**, 73 Wash. 10, 131 P. 190 (1913), the defendant was the daughter of the plaintiff. The plaintiff sought to evict the defendant for nonpayment of rent. Apparently the defendant's mother (who was also the plaintiff's wife) died prior to the events of the case, and had deeded the property (which was community property) to the plaintiff. The defendant defended the unlawful detainer on the basis that the deed given the plaintiff was void. The trial court refused to even consider the question, and was upheld on appeal: "This court has frequently

held that title to real property cannot be tried out in an action of this kind.” 73 Wash. At 12.

The trial court in the present case found that Mr. Gillespie was a tenant since he occupied the premises under a lease, and he had paid rent for one month following the death of Ms. Hagen. The trial court also found that Mr. Dahl had complied with the notice requirements of RCW 59.12.030(3), and that Mr. Gillespie continued to occupy the premises. On those facts Mr. Dahl was entitled to possession.

4. THERE IS NO RULE THAT CLAIMS TO TITLE MUST BE RESOLVED BEFORE AN UNLAWFUL DETAINER CAN PROCEED.

Mr. Gillespie argues that the case was improperly decided because there is a rule that prohibits an unlawful detainer from proceeding when a tenant presents a claim of title. There is no such rule.

Mr. Gillespie cites RCW Chapter 59.12 for this proposition, but there is no provision in that chapter which supports his position. Mr. Gillespie also cites the case of **Puget Sound Investment Group, Inc. v. Bridges, supra**, as support for his position.

In **Puget Sound** the plaintiff had purchased the premises at a federal tax lien foreclosure sale. The home had previously been

owned by the defendant in the unlawful detainer action, and the defendant continued to occupy the home following the sale and the issuance of a deed by the Internal Revenue Service.

It is not completely clear from the appellate decision, but it appears that the plaintiff in **Puget Sound** commenced an unlawful detainer based on the allegation that the occupant was a trespasser who had gained occupancy without the permission of the owner or color of title. An unlawful detainer under that basis is allowed for by RCW 59.12.030(6).

The trial court in **Puget Sound** ruled against the plaintiff, and the plaintiff appealed seeking “a ruling that will permit it to proceed under the unlawful detainer statute to evict a person who continues to occupy a residence after it has been purchased at a tax foreclosure sale.” 92 Wn. App. at 527.

The Court of Appeals pointed out that there is no statutory authority that permits a purchaser at an IRS sale to bring an unlawful detainer based on the fact of the sale alone. There are, however, statutory provisions which allow a purchaser at a deed of trust foreclosure sale or at a sale in lieu of foreclosure on a real estate contract to bring an unlawful detainer following the sale. The

plaintiff in **Puget Sound**, therefore, had to base the unlawful detainer on one of the grounds set forth in RCW 59.12.030.

The issue in **Puget Sound** was whether the defendant's occupancy came under the auspices of RCW 59.12.030(6). The plaintiff had to prove that the defendant "entered on the land 'without the permission of the owner and without having color of title thereto.'" At 528.

Obviously the defendant in **Puget Sound** had entered the property with the permission of the owner since he was the owner at the time he took possession. It was also obvious that the defendant had color of title when he entered the property since, as the Court of Appeals pointed out, he had a statutory warranty deed which conveyed the property to him at that time. In cases under RCW 59.12.030(6) the focus is on the status of the defendant at the time he takes possession, not on his status at the time the unlawful detainer is commenced.

The issue of "color of title" arises in unlawful detainer actions only under RCW 59.12.030(6). The present case was brought for nonpayment of rent under RCW 59.12.030(3), and thus Mr. Gillespie's reliance on **Puget Sound** is misplaced.

As pointed out above, Mr. Gillespie describes his claim to ownership “as a viable legal and equitable theory.” It is only a theory at this point, and his status is that of a tenant until his claim is adjudicated in another forum. The Court of Appeals should not consider the merits of Mr. Gillespie’s theory in deciding the present case.

5. THE PENDENCY OF PROBATE TRUMPS MR. GILLESPIE’S CLAIM TO POSSESSION.

The probate of Lillian Hagen’s estate is proceeding in King County Superior Court. John K. Dahl has been appointed by the court as Executor of the estate, and he possesses nonintervention powers. Mr. Dahl has very broad powers to do what he feels is necessary for the successful administration of the estate. RCW 11.68.090.

The executor is in control of the estate assets. He is allowed to make those business decisions (including sale, mortgage or lease of estate assets) which he feels are appropriate in managing the estate. If the executor feels that it is desirable for the estate to collect rent from the occupant of a house belonging to the estate then the executor can take those actions necessary to collect the rent. This is so even if the occupant is a person to whom the testator has left the

house. The executor can choose to make any estate asset as productive as possible for the estate, and the person who may eventually receive an asset upon distribution of the estate possesses no right to prevent the Executor from doing so during the pendency of probate.

Thus, even if Mr. Gillespie is completely correct that he is entitled to the house upon distribution of the estate, he cannot prevent the Executor from taking the actions that are now the subject of this appellate review.

**6. THE RESOLUTION OF THIS CASE HAS NO RES
JUDICATA APPLICATION TO MR. GILLESPIE'S CLAIM
OF OWNERSHIP.**

It is obvious that the resolution of this case will have no res judicata application to Mr. Gillespie's claim regarding a devise to him by Ms. Hagen.

D. CONCLUSION

An experienced court commissioner and an experienced judge have ruled in favor of the plaintiff. It is clear that the status of Mr. Gillespie is that of a tenant.

Even if it was clear beyond doubt that the house is to be distributed to him out of the estate at the conclusion of the probate, it is still the case that the Executor of the estate can demand rent of Mr. Gillespie for so long as he occupies the house during the pendency of the probate.

Mr. Dahl respectfully asks that the trial court be affirmed and that the court award him his reasonable attorney's fees as allowed for by RCW 59.12.410.

Respectfully submitted this 30th day of March, 2012.



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