FILED
COURT OF APPEALS
PM 1:30

NO. 33091-1-II
COURT OF APPEALS, DIVISION II

DAVID CARROLL, STEPHENSON, KENNETH WAYNE, and MONICA HANSEN

Appellant,

v.

PAUL TRAUSE; DAVID CAMPBELL; CHARLES R. TENPAS; JOHN L. KOSTICK; and JAMES H. HUBENTHAL,

Respondents.

APPEAL FROM THE SUPERIOR COURT FOR THURSTON COUNTY
The Honorable Gary R. Tabor, Judge
Cause No. 04-2-02359-6

BRIEF OF RESPONDENTS TENPAS, KOSTICK AND HUBENTHAL

Rene J. Remund, WSBA #2928
VANDER STOEP, REMUND & BLINKS
345 N.W. Pacific Avenue
P.O. Box 867
Chehalis, WA 98532

Of Attorneys for TenPas, Kostick and Hubenthal

PM 5-24-06

TABLE OF CONTENTS

		Page
I.	JOINDER	1
II.	STATEMENT OF ISSUES	1
III.	STATEMENT OF THE CASE	1
IV.	ARGUMENT	3
	A. APPELLANTS HAVE FAILED TO SHOW THAT THERE IS ANY GENUINE ISSUE AS TO ANY MATERIAL FACT AND THAT RESPONDENTS TENPAS, KOSTICK AND HUBENTHAL WERE ENTITLED TO JUDGMENT AS A MATTER OF LAW DISMISSING APPELLANTS' CLAIM.	3
	B. PURSUANT TO RAP 18.9, THE COURT SHOULD AWARD SANCTIONS FOR THE FILING OF A FRIVOLOUS APPEAL.	6
V.	CONCLUSION	8

TABLE OF AUTHORITIES

CASES

Delaney v. Canning, 84 Wn. App 498, 929 P.2d. 475 (1997).....8

McDonald v. Korum Ford, 80 Wn. App. 877, 912 P.2d 1052 (1996).....6

State v. Fritz, 21 Wn. App. 354, 585 P.2d. 173 (1978).....7

STATUTES AND COURT RULES

CR11.....6
CR 56.....3

RCW 19.28.101(3).....5

I. JOINDER

Respondents TenPas, Kostick and Hubenthal adopt and join in the appellate briefs of Respondent Trause and Respondent Campbell.

II. STATEMENT OF ISSUES

1. Whether summary judgment was properly granted rejecting Appellants' claims against Respondents TenPas, Kostick and Hubenthal.

III. STATEMENT OF THE CASE

Respondents TenPas, Kostick and Hubenthal are Commissioners of Public Utility District No. 1 of Lewis County (CP 603, 605, 607). None of these named Respondents participated in terminating electrical service to a meter serving Appellant Monica Hansen's property (CP 601). Termination of electrical service to the property of Monica Hansen at 79 S.W. 11th Street, Chehalis, Washington, was made by Public Utility District No. 1 of Lewis County (sometimes referred to herein as "the District) at the direction of Ron Fuller, Chief Electrical Inspector of the Washington State Department Labor and Industries (CP 602).

In October of 2004, the District received a document called an "Administrative Claim" challenging the authority of the District to

disconnect electrical service upon the request of the Department of Labor and Industries (CP 603, 605, 607).

The Commissioners of the District referred the claim to the District's legal counsel who informed Ms. Hansen by letter of October 22, 2004, that the District would terminate service to her account if so directed by the Department of Labor and Industries. The letter further advised Ms. Hansen that if she wished to prevent termination of service, she would need to take such legal action as she deemed necessary to stop the District from following the State's direction to terminate electrical service (CP 597).

Public Utility District No. 1 of Lewis County was directed to terminate electrical service to the account of Monica Hansen at 79 S.W. 11th Street, Chehalis, by Ron Fuller, the Chief Electrical Inspector of the Washington State Department of Labor and Industries (CP 602).

Without consulting the Commissioners of the District, the District terminated electrical service as requested by Mr. Fuller (CP 600-602).

Following termination, the District was contacted by David Carroll, Stephensen, who referred to himself as managing director of the Board of Trustees of Live Investments S/O Business Network, Inc., at 1673 S. Market Blvd., #190, Chehalis, claiming that the District had

breached its contract with Monica Hansen by termination of service to 79 S.W. 11th Street, Chehalis. The District's attorney responded by letter of November 15, 2004, denying breach of contract and pointing out that the District acted at the direction of the Washington State Department of Labor and Industries (CP 598).

Plaintiffs then brought suit and Defendants brought CR56 motions for summary judgment.

Kenneth Wayne, David Carroll and Monica Hansen opposed the summary judgment motion of Defendants TenPas, Kostick and Hubenthal by submitting Declarations and Amended Declarations (CP 611-613, 614-616, 617-621, 630-632, 633-635).

The trial court granted summary judgment and orders of dismissal and judgments were entered dismissing the claims against Defendants Trause and Campbell. No judgment has yet been entered regarding Defendants TenPas, Kostick and Hubenthal.

Plaintiffs have appealed.

IV. ARGUMENT

A. APPELLANTS HAVE FAILED TO SHOW THAT THERE IS ANY GENUINE ISSUE AS TO ANY MATERIAL FACT AND THAT RESPONDENTS TENPAS, KOSTICK AND HUBENTHAL WERE ENTITLED TO JUDGMENT AS A

MATTER OF LAW DISMISSING APPELLANTS' CLAIM.

As to Defendants TenPas, Kostick and Hubenthal, affirmation of the trial court's decision rests upon two simple grounds. The first ground is that the named Commissioners are not the proper parties to be sued. Plaintiffs failed to support their claims that Defendants TenPas, Kostick or Hubenthal took any action damaging Plaintiffs. The trial court recognized:

> "The parties named are not the people to be sued in the first place. Paul Trause is not the person to be sued. Perhaps Labor and Industries could be. I'm not saying what should or shouldn't have been done other than what I see before me, but Paul Trause is not the party to be sued. Likewise, the three commissioners are not the proper parties to be sued. If the issue is whether or not the Utility acted appropriately, perhaps a lawsuit could have been against someone else, but that's the first standard for my granting summary judgment."

(RP July 15, 2005, p. 28-29).

The record considered by the trial court contains the Affidavit of David Muller, Manager of the District, establishing that termination of service was an act of the District, not an act of any of the Commissioners (CP 601). Mr. Muller's Affidavit asserting that termination of service did not arise from any act by any of the District Commissioners was not controverted by the Declarations of the Plaintiffs.

The second basis of dismissal of the claims against TenPas, Kostick and Hubenthal is that the District's termination of electrical

service to the account of Monica Hansen at 79 S.W. 11th Street, Chehalis, was required under RCW 19.28.101(3) upon receipt by the District of the request of the Chief Electrical Inspector of the Washington State Department of Labor and Industries to terminate the service. Termination of electrical service was not a decision made by the District, nor was it subject to the District's administrative procedures (CP 593-599).

Rather than address RCW 19.28.101(3), Plaintiffs Declarations in opposition to the summary judgment motion of TenPas, Kostick and Hubenthal asserted that the Defendants must adhere to "the process initiated by the Plaintiffs" (See, for example, CP 615, line 5-7 and 616, line 11). Appellants chose to rely upon their self constructed legal system. Appellants are continuing to proceed in their apparent belief that "due process" entitles them to follow their own imaginary administrative and judicial system.

The record is devoid of any authority supporting Appellants' assertion that the State does not have authority under RCW 19.28.101(3) to require a Public Utility District to terminate electrical service. In the judicial system of the Plaintiffs own making, RCW 19.28.101(3) did not exist.

B. PURSUANT TO RAP 18.9, THE COURT SHOULD AWARD SANCTIONS FOR THE FILING OF A FRIVOLOUS APPEAL

Plaintiffs were advised that sanctions would be sought against each of them for violation of CR11 if they did not dismiss their claims against Defendants (CP 599).

This notice was given in accordance with *McDonald v. Korum Ford,* 80 Wn. App. 877, 912 P.2d 1052 (1996), where the Court stated at page 892: "Accordingly, it ruled that an attorney should informally notify the offending party by telephone call or letter before filing, preparing and serving a CR11 motion. *Biggs,* 124 Wn.2d at 198 n.2." Plaintiffs refused to dismiss the District Commissioners, despite having no viable basis for claims against them.

This is an appropriate case for sanctions against Appellants for having brought a frivolous appeal. Appellants have grounded their actions on non-existing administrative procedures (See, for example, CP 615, line 5-7 and 616, line 11).

While it is appropriate for the Court to protect the rights of citizens against over-reaching government regulation, there appears no reason to subject public bodies to the expense of defending against claims based on non-existent administrative procedures.

In the instant case, Monica Hansen was afforded a hearing by the City of Chehalis. It was the choice of Monica Hansen and the other Appellants to pursue administrative procedures of their own making. There is not a scintilla of viable legal justification for the failure of Plaintiff Monica Hansen to seek building and/or electrical permits.

The trial court noted that the award of sanctions was a close call. Despite having received the analysis of the trial court, Plaintiffs proceeded to rehash the same issues at the appellate level. As a result, the Defendants have been put to the expense of this appeal. It is difficult to believe that a reasonable attorney in like circumstances could believe his or her actions to be factually and legally justified. (See *McDonald,* supra, p. 884). The fact that Appellants are acting pro se does not excuse or lessen their burden for compliance with CR11. *State v. Fritz,* 21 Wn. App. 354, 585 P.2d. 173 (1978) at p. 363.

Appellants chose to pursue claims grounded in a judicial system of their own making and have persisted in pursuing an appeal after having the benefit of the trial court's analysis. There should be consequences for such frivolous action.

Respondents TenPas, Kostick and Hubenthal join in the request of Respondent Campbell for sanctions equivalent to attorneys' fees pursuant

to RAP 18.9 as reasonable inquiry as to the legal basis of their claims would have resulted in no individual claims having been brought against TenPas, Kostick and Hubenthal. There are no debatable issues upon which reasonable minds might differ. Appellants' appeal is totally devoid of merit and there is no reasonable possibility of reversal. See *Delaney v. Canning,* 84 Wn. App 498, 929 P.2d. 475 (1997) at p. 510.

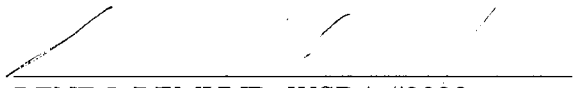
V. CONCLUSION

This case arises out of the current belief of Plaintiffs that a city cannot require a building permit and that the State of Washington cannot enforce its requirement for electrical inspections and permits. The Distict Commissioners TenPas, Kostick and Hubenthal had no part in the termination of electrical service to the account of Monica Hansen. The Appellants' positions are without legal support. In terminating electrical service, Public Utility District No. 1 of Lewis County was properly following the direction of the Chief Electrical Inspector with the Washington State Department of Labor and Industries pursuant to RCW 19.28.101(3).

Respondents TenPas, Kostick and Hubenthal respectfully request the decision of the trial court be affirmed and that Appellants be sanctioned pursuant to RAP 18.9 for filing a frivolous appeal.

DATED this 24 day of May, 2006.

VANDER STOEP, REMUND & BLINKS



RENE J. REMUND, WSBA #2928
Of Attorneys for Respondents TenPas,
Kostick and Hubenthal

CERTIFICATE OF SERVICE

I, Heather Hyatt do here by certify that on this 24th day of May, 2006, I deposited in the U.S. Mails an envelope, containing a copy of the Brief of Respondents TenPas, Kostick and Hubenthal to: Monica Hansen, 79 S.W. 11th Street, Chehalis, WA, 98532, David Carroll Stephenson, c/o Monica Hansen, 79 S.W. 11th Street, Chehalis, WA, 98532, Percy Newby, 12803 Pless Rd., SW, Rainier, WA 98576, Jeffrey Scott Myers, Law Lyman Daniel Kamerrer & Bogdanovich, P.O. Box 11880, Olympia, WA 98508-1880, Shelley M. Mortinsen, Assistant Attorney General, P.O. Box 40121, Olympia, WA 98504-0121.

HEATHER HYATT

FILED
COURT OF APPEALS
06 MAY 26 PM 1:31
STATE OF WASHINGTON
BY
DIVISION