

FILED
COURT OF APPEALS

CAUSE NO. 34454-8-11
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STAT. WASHINGTON
BY
CITY

IN THE WASHINGTON STATE COURT
OF APPEALS DIVISION II

Victor Bonagofski,
APPELLANT

Vs.

LEWIS COUNTY,
RESPONDENT

APPELLANT'S OPENING BRIEF

On appeal from a ruling of the Lewis County Superior
Court For the State of Washington, Judge Hunt presiding

Victor Bonagofski
1303 Reynolds Ave.
Centralia, Washington

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16 JURISDICTIONAL STATEMENT

17
 18 The Lewis County Superior Court had jurisdiction over
 19
 20 plaintiff's original action under RCW 4.12.

21
 22 The Court of Appeals has jurisdiction to review final action
 23
 24 of the Superior Court under RCW 2.08.02, upon the
 25
 26 appellant's having filed a timely Notice of Appeal on
 27
 28 February, 24, 2006

29
 30 The appeal is from orders granting respondent's motion
 31
 32 for summary judgment on their claims and denying
 33

1 appellant relevant discovery material.
2
3
4
5
6

7 REPORT OF PROCEEDINGS
8
9

10 This case was originally filed on July, 20, 2004
11
12 Defendant filed a public disclosure request on July, 15,
13
14 2004 for documents which were never produced.
15

16 On November, 1, 2004, plaintiff was compelled into a
17
18 contract though duress.
19

20
21 On November, 1, 2005, plaintiff moved for summary
22
23 judgment without ever answering appellant's public
24
25 disclosure request for documents.
26

27 On November, 28, 2005, hearing was reset for January,
28
29 27, 2006.
30

31 On January, 27, 2006 the court entered a final order

1
2 granting plaintiff's motion for summary judgment.
3

4 On February, 24, 2006 the appellant filed a timely notice
5
6 of appeal.
7

8 ASSIGNMENT OF ERROR

9
10 ERROR I

11
12 THE COURT ERRED IN FINDING A PERMIT
13
14 VIOLATION TO CONSTITUTE A PUBLIC NUISANCE
15
16 WHEN NO EVIDENCE OF ANY INTERFERENCE
17
18 WITH OTHER'S USE OR ENJOYMENT OF THEIR
19
20 PROPERTY WAS DEMONSTRATED.
21

22
23
24
25 ERROR II

26
27 THE COURT ERRED IN FAILING TO REQUIRE
28
29 THE PLAINTIFF TO COMPLY WITH RELEVANT
30
31 DISCOVERY REQUESTS NECESSARY FOR

1 APPELLANT TO PRESENT HIS DEFENSE.

2
3 ERROR III

4 THE COURT ERRED IN ENTERING AN ORDER
5 GRANTING AN OVERLY BROAD SEARCH AND
6 SEIZURE POWERS WHEN WARRANTS ARE
7 REQUIRED TO BE SPECIFIC IN THEIR TERMS.
8
9
10
11
12

13 STATEMENT OF THE CASE
14

15
16
17 This case concerns an action filed by Plaintiff Lewis
18 County to abate an alleged nuisance caused by defendant's
19 failure to comply with technical permit/contract
20 requirements. (CP at p. 34-43)
21
22

23 Defendant filed Public Disclosure Request to the Lewis
24 County Community Development Department, on July, 14,
25 2004, to produce documents that gave the Department
26 power to compel anyone into a permit/contract agreement
27
28
29
30
31

1 without his consent. (CP at p. 11-13)

2
3 On July, 20, 2004 plaintiff Lewis County filed
4
5 complaint alleging that defendant Bonagofski's property
6
7 was a public nuisance and should be abated. (CP at p. 34-
8
9 43)

10
11 Failure to obtain a permit/contract does not constitute a
12
13 nuisance as defined in R.C.W. 7.16

14
15 Despite plaintiff's representations, the plaintiff was not
16
17 able to produce documents as required by RCW 42.17.260
18
19 and RCW 42.17.250 that they had a policy and procedure
20
21 manual or rules posted in their office for the public to
22
23 inspect (CP at p. 14). The plaintiff was not able to
24
25 demonstrate that there was any interference with anyone's
26
27 use of or enjoyment of their property caused by defendant
28
29 that would constitute a Public Nuisance under R.C.W.
30
31 7.48.010 and 7.48.140.

1 Defendant requested that plaintiff provide relevant
2 documents concerning the adoption of the ordinances in
3 question, records related to permit enforcement
4 proceedings (RP page 5 lines 4-7), and evidence of harm
5 caused by defendant. In fact, in the defendants request for
6 Public Disclosure, defendant did cite R.C.W.42.17.250 and
7 R.C.W. 42.17.260.
8

9 The plaintiff contends that the defendant is required to
10 obtain a permit/contract with the county to use his own
11 property to sustain his life because the county is using
12 police powers (RP page 3-lines 20-23).
13

14 On November, 1, 2005, plaintiff filed a so called
15 voluntary corrections agreement signed by the appellant as
16 proof that appellant agreed that there were violations on the
17 property.
18

19 This was not a voluntary agreement at all. Plaintiff used
20

1 threats that they would come on the property and take all the
2
3 items they wanted to as they had in the past. (CP at page 6
4
5 lines 16-20, and p. 9 lines 12-14)

6
7 Deputy Prosecutor Doug Ruth came on the property in
8
9 August of 2004 and had a hulk hauler, haul my 1986
10
11 Firebird away. Saying it was on his list. If you look at the
12
13 list (CP at p. 1-4), you will find that the Firebird is not on
14
15 the list. But by taking my Firebird he was telling me, the
16
17 County would take whatever they wanted if I did not sign
18
19 the agreement. A contract signed under duress is null and
20
21 void.

22
23 On January, 27, 2006 the court failed to require plaintiff
24
25 to comply with any relevant discovery requests whatsoever
26
27 (CP 45 page 3).

28
29
30 The court granted summary judgment to the plaintiff
31

1 finding defendant's property to be a public nuisance and
2
3 ordering abatement.
4

5 The Court's order was based entirely on plaintiff's
6
7 unsupported allegations of harm and was entered without
8
9 evidence from defendant's neighbors attesting to any harm
10
11 caused by the defendants property.
12

13 The court entered an order finding appellant to have
14
15 violated county ordinances requiring permits to recycle
16
17 materials on his property without the county being required
18
19 to show that the county ordinance was adopted lawfully
20
21 and that they were abiding by the restrictions imposed on
22
23 county agencies by the State Legislature through the
24
25 RCW's (CP at p.11-14)
26
27
28
29
30
31

SUMMARY OF ARGUMENT

1 The Court erred in granting Lewis County's claims
2
3 against defendant for a nuisance when the over whelming
4
5 weight of precedent establishes that simple technical permit
6
7 violations do not constitute a nuisance.

8
9 On January, 27, 2006 the Court entered an order
10
11 containing the following findings of fact and conclusions
12
13 of law.

14
15 1. The defendants have been illegally storing collecting,
16
17 transporting, utilizing, processing and disposing of solid
18
19 waste on the property at 1303 Reynolds Road, Lewis
20
21 County, Washington, which is described as tax parcel
22
23 023619001004 and as,

24
25 The West 248.31 feet of the following described
26 property: Beginning

27 At the North line of Reynolds avenue, 20 feet North
28 of the Southwest Quarter of the Southwest Quarter of
29 Section 32, Township 15 North,

30 Range 2 West, W.M., in Lewis County, Washington;
31 thence North 354feet; thence West 615 feet; thence East

1 along said North line 615 to the point of beginning.
2 SUBJECT TO easement for water pipe across the above
3 described property, as conveyed in instrument recorded
4 November 11, 1910, under Auditor's File no. 58259, the
5 Exact location of the easement is not disclosed by said
6 instrument.

7
8 2. That the Defendants have never obtained a valid
9
10 permit for the storage, collection, transportation, utilization,
11
12 processing and disposal of said solid waste from Lewis
13
14 County or the State of Washington.

15
16 3. That the Defendants are storing on their property
17
18 vehicle hulks, as defined in LCC 8.05. That are open to
19
20 view and for which they do not have a license to store.

21
22 4. That the storage of such solid waste and vehicle
23
24 hulks creates a hazard to public health and safety and
25
26 constitute a public nuisance under LCC 1.22.

27
28 5. That no genuine issue of material fact exists on any
29
30 of Plaintiff's claims for relief, and that Plaintiffs are
31

1 entitled to judgment as a matter of law.

2
3 IT IS HEREBY ORDERED that Lewis County's motion
4 for summary judgment is granted. Based on the above IT
5
6 IS ORDERED, ADJUDGED AND DECREED THAT;
7

8
9 1. The defendants are maintaining a public nuisance,
10 under RCW 7.48.120 and LCC 1.22.020, at 1303 Reynolds
11 Road, Lewis County which is identified as 023619001004.
12

13
14 2. Defendants are in violation of LCC 8.45.060, and
15 LCC8.15.040 by failing to store solid waste accumulated
16 on their property in a responsible, safe, and sanitary
17 manner, by operating a disposal site without a permit, and
18 by permitting the dumping of or disposing of solid waste
19 onto ground outside a designated or exempt disposal site.
20
21

22
23 3. The defendants remove from the property to a legal
24 disposal site all solid waste, as defined by LCC 8.45.040
25 that poses a health risk and all hazardous waste on the
26
27
28
29
30
31

1 property within (10) days of entry of this order.

2
3 4. The defendants submit proof of legal disposal of
4
5 all solid waste, in the form of receipts from a licensed
6
7 landfill or recycling facility, to Lewis County within (15)
8
9 days of entry of this order.

10
11 5. If Defendants do not abate the nuisances by the
12
13 deadlines established in this order, the Clerk of the
14
15 Superior Court shall issue a warrant of abatement to Lewis
16
17 County, without further court order, authority under
18
19 RCW 7.48.260 and RCW 36.32.120(10) to enter upon the
20
21 property and to abate and remove the nuisances,
22
23 recognizing the expense of abating the nuisance, and
24
25 requiring the defendants or their agents, estate, or assigns
26
27 to pay to Lewis County the costs of abating and removing
28
29 the nuisance.

30
31 6. The Lewis County Sheriff is ordered to assist the

1 Plaintiff in conducting inspections and abating the
2
3 violations by taking action necessary to prevent individuals
4
5 from interfering with the Plaintiff's actions in carrying out
6
7 this order, up to and including arrest and/or defending the
8
9 Plaintiff and its agents and employees and property from
10
11 interference.

12
13 7. If Lewis County abates the nuisance and
14
15 Defendants do not reimburse Plaintiff's abatement costs
16
17 within thirty days of billing, Lewis County is authorized,
18
19 pursuant to RCW 36.32.120(10), to levy a special
20
21 assessment on the land or premises on which the nuisance
22
23 is situated to reimburse the county for the cost of
24
25 abatement. The amount of the assessment shall be
26
27 collected at the same time, and in the same manner, and
28
29 with the same interest rates as property taxes are collected
30
31 as provided in RCW 84.56 and shall be subject to the same

1 penalties and procedure and sale in case of delinquency as
2 provided for property taxes. The assessment shall
3 constitute a lien against the property that shall be of equal
4 rank with state, county, and municipal taxes.
5
6

7
8
9 8. The defendants to pay Lewis County \$125.00 in
10 statutory attorney fees.
11

12
13 9. Interest shall accrue on the principal amount of this
14 judgment at a rate of 12% per annum from the date of the
15 entry of this order.
16
17

18
19 10. The Defendants pay to the Lewis County Superior
20 Court a \$1,000,00 fine pursuant to RCW 7.48.250 for
21 causing or contriving a public nuisance.
22
23

24
25 11. Pursuant to RCW 7.48.280, the Plaintiff may bring
26 this matter back before the Court for such additional relief
27 as the Court deems just and proper, including obtaining
28 judgment for costs incurred in abating the violations.
29
30
31

1 12. That the Defendants, their officers, agents,
2
3 servants, employees, and attorneys are hereby enjoined
4
5 from bringing on the property any solid waste, as defined
6
7 in LCC 8.45.060(104), and from using the property for the
8
9 unpermitted handling, storage, collection, transportation,
10
11 utilization, processing and disposal of solid waste,
12
13 including scrap cardboard, aluminum cans, and plastic and
14
15 glass bottles.

16
17 13. That the Defendants, their officers, agents,
18
19 servants, employees, and attorneys are hereby enjoined
20
21 from bringing on to the property hulk vehicles, as defined
22
23 in LCC 8.05.030, and from using the property for the
24
25 disposal, storage, collection, and processing of vehicle
26
27 hulks.

28
29
30 The appellant objects to each of these findings and
31

1 conclusions and alleges that the court erred in making such
2 findings as follows.
3

4
5 The codes adopted by Lewis County are superseded by
6 State law which exempts owners of property from the
7 requirement of obtaining permits.
8
9

10
11 The plaintiff failed to demonstrate any actual harm
12 caused by defendant to justify abatement of his property as
13 a nuisance.
14
15

16
17 The order authorizes unlawfully broad unreasonable
18 searches and seizures of appellant's property.
19
20

21 A review of the facts of this case and the precedent
22 concerning nuisances and abatement reveals that there was
23 no reasonable basis for the court's findings.
24
25

26 RCW 7.48.010 defines actionable nuisances, and RCW
27 7.48.140 enumerates specific public nuisances.
28
29 Significantly, no portion of these definitions can be applied
30
31

1 to defendant's property. Therefore, no statutory cause of
2
3 action exists or could be maintained by Lewis County.

4
5 It is clearly established in Washington law that "to
6
7 prove nuisance, a claimant must show an unreasonable
8
9 interference with the use and enjoyment of property.

10
11 Borden v. City of Olympia, 53 P. 2d 1020 (Div. II
12
13 2002).

14
15 A party alleging a nuisance must establish it by clear
16
17 and convincing proof, particularly where there has been no
18
19 trial on the existence of a nuisance at law. 66 C.J.S.

20
21 Nuisances @ 117, Page 685

22
23 Since the plaintiff has presented absolutely no evidence
24
25 of any actual nuisance, their request for relief should
26
27 have been denied.

28
29 As the appellant's declarations demonstrated, there was
30
31 absolutely no evidence produced by the plaintiff of

1 pollution of/or interference with the defendant's neighbors'
2
3 use of their property. Absent a showing of such
4
5 interference, there can be no lawful adjudication of an
6
7 existing nuisance subject to abatement. As the
8
9 Washington Court of Appeals has ruled....

10
11 When a statute or a local ordinance declares conduct
12
13 illegal, without...label (ing it) as a nuisance, it will be
14
15 considered a nuisance as a matter of law only if that
16
17 conduct interferes with others lands...Tiegs v. Boise
18
19 Cascade Corp. 83 Wn. App. 411 922 P.2d 115,
20
21 (1996), citing Thomas on Real property, Thomas Edition @
22
23 67.03 (a) (1), at 94 -5.

24
25 An actionable nuisance must either injure the property
26
27 or unreasonable interfere with the enjoyment of the
28
29 property. Tiegs v. Watts, 135 Wn. 2d
30
31 1, 954 P.2d 877, (1998), citing Hardin v. Olympic

1 Portland Cement Co 89 Was. 320, 154 P. 450 (1916)

2
3 A final reason why this court cannot grant the relief
4
5 requested by Lewis County is that adjudication of the
6
7 presence of a nuisance is not a matter subject to summary
8
9 judgment, even in the presence of evidence. As the
10
11 Supreme Court has long held.

12
13 The question of whether a nuisance exists is one for the
14
15 jury. Tiegs v. Watts, citing Weller v. Snoqualmie falls
16
17 Lumber Co. 155 Wash. 526, 285 P. 446 (1930).

18
19 Another reason that plaintiff's "evidence" is not
20
21 sufficient is that to the extent that agents of Lewis County
22
23 have any personal knowledge of Defendant's activities on
24
25 his property, this evidence was illegally acquired and
26
27 should be properly suppressed. As the Court of Appeals
28
29 ruled in Rental Owners v. Thurston County, 85 Wn. App.
30
31 171, 931 P. 2d. 208 (1997), citing Camara v. Municipal

1 Court of San Francisco, 387 U. S. 523, 87 S. Ct. 1727,
2 18 L. Ed. 2d 930 (1967).

3 Inspections for health, safety, and other violations of
4 municipal codes must be conducted pursuant to a warrant or
5 fall within one of the narrowly drawn exceptions to the
6 warrant requirement.

7
8 ARGUMENT ISSUE II

9 The Court's failure to require Plaintiff, Lewis County
10 to respond to relevant discovery is another reason that the
11 Superior Court's orders should be vacated.

12 The Lewis County Community Development Department
13 is required to adhere to the directives of RCW
14 42.17.25(1)&(2).

15 On January, 27, 2006 the Court entered an order denying
16 defendant's requests for discovery without even a cursory

1 examination to determine if they were relevant. As
2 Washington Case law clearly establishes, Cr 26 and 36 are
3 to be liberally construed to allow for discovery of all
4 relevant evidence. Senear v. Daily Journal, 27 Wash.
5 App. 454, 618 P. 2d 536 (1980). The court erred in
6 denying Defendant's relevant discovery and in then granting
7 plaintiff's motion for summary judgment in the absence of
8 such relevant evidence.

9 In addition, since Lewis County failed to answer
10 defendant's discovery requests, it must be presumed that the
11 information withheld would not be favorable to them.
12 Bengston v. Shain, 255 P. 2d. 892, 42 Wash. 2d
13 404, (1953). Based on upon Lewis County's' failure to
14 support their motion with competent evidence, Lilly v.
15 Lynch, 88 Wash App. 306, 945 P.2d 1103, (1994).

1 ARGUMENT ISSUE III

2
3
4 The court erred in entering an order granting Lewis
5 County virtually unrestricted and overly broad rights to
6 enter , search , and seize appellant's property when it is
7 clearly established that all search warrants must be specific
8 in their terms, to prohibit unreasonable searches and
9 seizures

10
11 The prohibitions of the Fourth Amendment against
12 unreasonable searches and seizures are binding upon the
13 States and their subdivisions, such as Lewis County.
14 9McNear v. Rhay, 398 P. 2d 732, 65 Wash. 2d
15 530 (1965)

1 Clearly, the Superior Court erred in making the orders in
2 this case. Not only did it make a finding of a nuisance
3 where none existed, it entered relief beyond the scope of its
4 constitutional authority.

5 Where substantial evidence supports a finding that the
6 plaintiff did not suffer any actual damage by operation of
7 the alleged nuisance, there is no entitlement to an order
8 enjoining operation of the alleged nuisance. 66 C.J.S.
9 Nuisances @ 117, Page 686.

10 Since plaintiff has no evidence demonstrating any
11 damage, and especially since the plaintiff refused to
12 produce relevant evidence necessary for defendant to argue
13 his case, the nuisance claims should be dismissed.

14 Further, since the State law regarding permits specifically
15 excludes private landowners working on their own property,
16 and Lewis County could not or would not answer

1 appellant's request to show its authority to compel this
2 appellant into a permit/contract agreement, the permit
3 violation claims are deficient.

4 The order of the Superior Court should be vacated and
5 this case dismissed.

6 Done November,6, 2006.

7 I certify the foregoing to be true.

8 
9 Victor Bonagofski
Victor Bonagofski

10 1303 W. Reynolds Road
11 Centralia. Washington

12 CERTIFICATE OF SERVICE

13
14
15
16
FILED
COUNTY APPEALS
05 NOV -6 PM 4:49
STATE OF WASHINGTON
BY _____
IDENTITY 

13 I Victor Bonagofski, certify that on November, 6, 2006,
14 I served respondent Lewis County with two copies of
15 appellant's opening brief by personally delivering said
16 copies to the address of respondent's counsel of record,

1
2
3
4
5
6

Doug Ruth, at 360 NW North St Chehalis , Washington
98532. Done November, 6, 2006. I certify the foregoing to
be true and correct.

Victor Bonagofski
Victor Bonagofski.