

FILED  
COURT OF APPEALS  
DIVISION II

No. 34729-6-II

06 JUL 26 PM 4:50

STATE OF WASHINGTON

DIVISION II OF THE COURT OF APPEALS

BY   
DEPUTY

FOR THE STATE OF WASHINGTON

RANGER INSURANCE COMPANY,

Appellant,

vs.

PIERCE COUNTY, PIERCE COUNTY SUPERIOR  
COURT CLERK, "JOHN DOE" and "JANE DOE",  
and the STATE OF WASHINGTON,

Respondents.

APPEAL FROM THE SUPERIOR COURT  
OF WASHINGTON FOR PIERCE COUNTY

Cause No. 02-2-04147-2

BRIEF OF APPELLANT

Brett A. Purtzer  
WSB #17283

LAW OFFICES OF MONTE E.  
HESTER, INC., P.S.  
Attorneys for Appellant  
1008 South Yakima Avenue  
Suite 302  
Tacoma, Washington 98405  
(253) 272-2157

TABLE OF CONTENTS

<u>TABLE OF AUTHORITIES</u> . . . . .	ii
<u>ASSIGNMENTS OF ERROR</u> . . . . .	1
<u>ISSUES PERTAINING TO ASSIGNMENTS OF ERROR</u> . .	2
<u>STATEMENT OF THE CASE</u> . . . . .	3
A. <u>Procedural History</u> . . . . .	3
B. <u>Facts</u> . . . . .	3
<u>ARGUMENT</u> . . . . .	4
A. STANDARD OF REVIEW . . . . .	4
B. SUMMARY JUDGMENT . . . . .	5
C. THE MCALLISTER DECLARATION DOES NOT RESOLVE THE ISSUES OF MATERIAL FACT PRESENTED IN THIS CASE . . . . .	7
<u>CONCLUSION</u> . . . . .	10

TABLE OF AUTHORITIES

	<u>Page</u>
<u>STATE CASES:</u>	
<u>Allstate Ins. Co. v. Raynor</u> , 143 Wn.2d 469, 21 P.3d 707 (2001) . . . . .	4
<u>Hollis v. Garwell, Inc.</u> , 137 Wn.2d 683, 974 P.2d 836 (1999) . . . . .	5
<u>Kenney v. Read</u> , 100 Wn.App. 467, 997 P.2d 455 (2000) . . . . .	5
<u>Michigan Nat'l Bank v. Olson</u> , 44 Wn.App. 898, 723 P.2d 438 (1986) . . . . .	5
<u>Ruff v. County of King</u> , 125 Wn.2d 697 887 P.2d 886 (1995) . . . . .	5
<u>SAS America, Inc. v. Inada</u> , 71 Wn.App. 261, 857 P.2d 1047 (1993) . . . . .	5
 <u>REGULATIONS AND RULES:</u>	
CR 56 . . . . .	5

ASSIGNMENTS OF ERROR

1. Whether the trial court erred by granting defendant Pierce County's motion for summary judgment.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the trial court err when it granted summary judgment when disputes of material fact exist as to whether defendant Pierce County was negligent in releasing funds belonging to Ranger Insurance to another entity when the Pierce County Clerk failed to follow directives set forth in a bail bond and accompanying power of attorney?

## STATEMENT OF THE CASE

### A. Procedural History

On January 16, 2002, Ranger Insurance Company filed a complaint for damages against Pierce County for the Pierce County Clerk's Office's negligent administration of bail funds. CP 1-4. The Court of Appeals, in an unpublished opinion, reversed the trial court's granting of Pierce County's summary judgment motion. CP 54-72. On February 16, 2006, Pierce County filed another summary judgment motion. CP 81-87. The Honorable Chris Wickham granted said motion on March 17, 2006 which order was filed in Pierce County Superior Court on March 22, 2006. CP 144-146. Plaintiff Ranger Insurance filed a timely notice of appeal. CP 147-152.

### B. Facts

The facts giving rise to this case are set forth in the Court of Appeals' unpublished opinion in Ranger Ins. Co. v. Pierce County, 122 Wn.App. 1077 (2004). CP 54-72. After that decision was returned, Pierce County filed a summary judgment motion based upon language in this Court's unpublished opinion regarding the proper procedure

for court clerks in receiving bail money. CP 81-87. In support of its motion, Pierce County relied upon a declaration of Joel McAllister, Finance Manager for King County, who opined that defendant Pierce County acted appropriately in allocating Ranger's funds to cover Granite's forfeiture expenses and by releasing funds to Signature, as opposed to Ranger. After Ranger responded, CP 88-104, the trial court granted Pierce County's motion on the strength of the McAllister declaration. CP 144-46. Ranger appeals the order of dismissal as to Pierce County only as material issues of fact still exist. CP 147-152.

#### ARGUMENT

##### A. STANDARD OF REVIEW.

This court must review de novo the trial court's order granting summary judgment. Allstate Ins. Co. v. Raynor, 143 Wn.2d 469, 475, 21 P.3d 707 (2001). Thus, this court must engage in the same inquiry as the trial court. Allstate, 143 Wn.2d at 475.

\*\*

\*\*

B. SUMMARY JUDGMENT

"Summary judgment is appropriate when the pleadings, depositions, admissions, and affidavits, if any, show that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law." Kenney v. Read, 100 Wn.App. 467, 471, 997 P.2d 455 (2000) (citing Hollis v. Garwell, Inc., 137 Wn.2d 683, 690, 974 P.2d 836 (1999)); CR 56(c). "The facts and all reasonable inferences are considered in the light most favorable to the nonmoving party". Kenney, 100 Wn.App. at 471; Hollis, 137 Wn.2d at 690. The moving party has the burden of establishing the absence of an issue of material fact. Kenney, at 471; SAS America, Inc. v. Inada, 71 Wn.App. 261, 263, 857 P.2d 1047 (1993). If the material facts are particularly within the knowledge of the moving party, courts are especially reluctant to grant summary judgment. Michigan Nat'l Bank v. Olson, 44 Wn.App. 898, 905, 723 P.2d 438 (1986). "The issue of negligence and proximate cause are generally not susceptible to summary judgment." Ruff v. County of King, 125 Wn.2d 697, 703, 887 P.2d 886 (1995).

Previously, this Court reviewed the objective manifestations Ranger made to the Pierce County Clerk's Office regarding Signature's authority to deal with bail bond issues:

Ranger's objective manifestations to the Pierce County Superior Court Clerk's office regarding Signature's authority are contained in the bail bonds and related powers of attorney filed with the court. See French, 88 Wn.App. at 596. These documents informed the clerk's office that Signature was Ranger's agent as to the bonds posted for Rogers, cause No. 97-1-05295-7 and cause No. 98-1-03952-5. In addition, the corresponding powers of attorney informed the clerk's office that Signature did not have authority to use its powers 'in combination with powers from any other surety company.' CP at 138, 140. Thus, the clerk's office was aware of the cases in which Ranger was a surety and those in which Granite was a surety. The office was also on notice that Signature's authority from Ranger applied only to bonds written on Ranger paper.

CP 62.

Here, Ranger expressly directed the application of \$20,000 to cause no. 98-1-03952-7, a case in which bail had never been forfeited. There was no action or manifestation by Ranger Insurance that could have led the Pierce County Clerk's Office to believe that Signature had the authority to freely transfer bond guarantees other

than as set forth by the aforementioned document, and the clerk's office was expected to follow the directives of these documents.

C. THE MCALLISTER DECLARATION  
DOES NOT RESOLVE THE ISSUES OF  
MATERIAL FACT PRESENTED IN  
THIS CASE.

Defendant Pierce County seeks to overturn this court's previous decision by offering the opinion of Joel McAllister, Manager of Finance and Information Services for King County. CP 73-80. The trial court granted Pierce County's motion on the strength of that declaration. CP 144-46.

Respectfully, Mr. McAllister's declaration should not, and does not, address the issue previously decided by this court. Importantly, this court previously ruled on the salient issue at pages 9-10 of that opinion.

Here, based upon the clerk's entries in the court journal, there appears to be no question that the court clerk subjectively believed that Barbieri had authority to allocate Ranger's \$35,000 as he directed. **However, a genuine issue of material fact exists as to whether the clerk reasonably believed that Barbieri had apparent authority, and all of the facts necessary to determine this issue have not been presented to this court.** First, there were facts that may have led a person of ordinary prudence to make further inquiry regarding Barbieri's authority to bind Ranger. **As**

noted, the clerk's office had previously received the Ranger bonds posted for Rogers and the accompanying powers of attorney, indicating which bonds Ranger was insuring. In addition, the check Ranger submitted referenced the 1998 Rogers case, cause no. 98-1-03952-5; it did not refer to either the 1997 Rogers case or any cases involving Sims.

CP 62-63.

Pierce County's argument is based upon this court's comment that "It is unclear whether a reasonably prudent clerk would have reviewed all of the documents pertaining to Ranger's bail moneys prior to allocating Ranger's check as Barbieri instructed." Ranger Insurance Company v. Pierce County, supra. CP 64.

Clearly, Ranger's directives to the Pierce County Clerk's Office are contained in the bail bonds and related powers of attorney filed with the court. The McAllister declaration suggests that such directives are immaterial as to how the clerk's office operates when he opines as follows:

*As is shown by the chart on page 2 of the opinion, the \$15,000 bond in the Rogers case was Ranger's; the other three were Granite State's. The clerk's office would not have known that, however, without pulling the court files and reviewing the bond documents themselves. Even if for some reason a clerk noticed that there were two different sureties involved, I would*

*expect the clerk's reaction to be, in effect, "So what?". . . .*

CP 76.

Mr. McAllister continues with his opinion, to justify this callousness, as follows:

If clerks are required to second-guess the relationship between insurance companies and the authority of bond agents, this would increase our work load, our service lines would be longer than they are, and we would likely have to build in a buffer to give us time for such reviews.

CP 77.

What Mr. McAllister suggests is that regardless of what a filed bail bond or power of attorney states, a clerk will act as the clerk deems fit and ignore proper, here Ranger's, directives. Mr. McAllister suggests that in some fashion, following the directives on a power of attorney would cause them to "second guess" a relationship. Such suggestion lacks credulity and ignores the reason why powers of attorney are filed with the court, to wit: to place specific guidelines on how bail bonds are to be applied. The reason Ranger filed the power of attorney was to avoid the "second guessing." All Ranger expected in return was that the Clerk would follow

its directives after being put on notice. Pierce County, simply stated, failed to follow Ranger's directives.

Here, the clerk's office ignored the dictates of Ranger's bail bond and power of attorney as related to the Rogers 1998 case. Being ignorant or simply not caring about what is dictated by a court document cannot equate to following the standard of care of a reasonably prudent clerk.

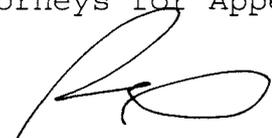
Accordingly, the trial court erred when it granted Pierce County's summary judgment motion.

CONCLUSION

Based upon the aforementioned, Ranger Insurance respectfully requests that this court reverse the trial court's order granting Pierce County's summary judgment motion and remand this case for trial.

RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of July, 2006.

LAW OFFICES OF MONTE E.  
HESTER, INC. P.S.  
Attorneys for Appellant

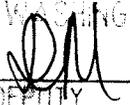
By: 

\_\_\_\_\_  
Brett A. Purtzer  
WSB #17283

06 JUL 26 PM 4:50

CERTIFICATE OF SERVICE

STATE OF WASHINGTON

BY  DEPUTY

Kathy Herbstler, hereby certifies under penalty of perjury under the laws of the State of Washington, that on the day set out below, I delivered true and correct copies of brief of appellant to which this certificate is attached, by United States Mail or ABC-Legal Messengers, Inc., to the following:

Douglas W. Vanscoy  
Deputy Prosecuting Attorney  
955 Tacoma Ave. S. Suite 301  
Tacoma, WA 98402-2160

Ray Perez  
Ranger Insurance  
10777 Westheimer Road, #500  
Houston, TX 77042

Signed at Tacoma, Washington this 26<sup>th</sup> day of July, 2006.

  
Kathy Herbstler