

NO. 36277-5-II

**COURT OF APPEALS  
DIVISION TWO  
THE STATE OF WASHINGTON**

07 JUN -6 PM 1:37  
STATE OF WASHINGTON  
COURT OF APPEALS  
BY \_\_\_\_\_

---

**BARBARA THOMPSON, Appellant,**  
**vs.**  
**TERRY L. WILSON, Lewis County Coroner, Respondent.**

---

**Brief of Appellant (RAP 10.3)**

---

**Royce Ferguson 5879  
Attorney for Appellant**

**Royce Ferguson  
Attorney at Law  
2931 Rockefeller Avenue  
Everett, WA 98201-4019  
Telephone 425.258.9311**

pm 6-5-07

## TABLE of CONTENTS

I.	Introduction . . . . .	p. 5
II.	Assignments of Error and Issues . . . . .	p. 6
	<i>Assignment of Error</i> No. 1 . . . . .	p. 6
	<i>Issue</i> . . . . .	p. 6
	<i>Assignment of Error</i> No. 2 . . . . .	p. 7
	<i>Issue</i> . . . . .	p. 7
	<i>Assignment of Error</i> No. 3 . . . . .	p. 7
	<i>Issues</i> . . . . .	p. 8
	<i>Assignment of Error</i> No. 4 . . . . .	p. 8
	<i>Issue</i> . . . . .	p. 9
III.	Statement of the Case . . . . .	p. 10
IV.	Summary of Argument . . . . .	p. 18
V.	Argument . . . . .	p. 21
	Summary Judgment . . . . .	p. 21
	“Special Action” . . . . .	p. 24
	<i>Laches</i> . . . . .	p. 26

	<i>Estopple</i> and Equitable Tolling . . . . .	p. 30
	History of RCW 68.50.015 . . . . .	p. 32
VI.	Conclusion . . . . .	p. 36
VII.	Appendix . . . . .	p. 37

**TABLE of AUTHORITIES**

**Table of Washington Cases**

	<i>1000 Virginia Ltd. P’Ship v. Vertecs</i> , 127 Wn.App. 899, 112 P.3d 1276 (2005) . . . . .	p. 29
	<i>Adler v. Fred Lind Manor</i> , 153 Wn.2d 331, 103 P.3d 773 (2004) . . . . .	p. 31
	<i>Buell v. City of Bremerton</i> , 80 Wn.2d 518, 522, 495 P.2d 1358 (1972) . . . . .	p. 29
	<i>Gould v. Reay</i> , 39 Wn.App. 730, 695 P.2d 126 (1984) . . . . .	pp. 34,35
	<i>Hama Ham Co. v. Shorelines Hearings Bd.</i> , 85 Wn.2d 441, 536 P.2d 157 (1975) . . . . .	p. 27
	<i>In re Per. Restraint of Carlstad</i> , 150 Wn.2d 583, 80 P.3d 587 (2003) . . . . .	p. 31
	<i>Kightlinger v. Public Utility Dist. No. 1 of Clark County</i> , 119 Wn.App. 501, 81 P.3d 876 (2003) . . . . .	p. 29

<i>Owen v. Burlington N. Santa Fe R. R.</i> , 153 Wn.2d 780, 108 P.3d 1220 (2005)	.	.	p. 22
<i>State v. Duvall</i> , 86 Wn.App. 871, 940 P.2d 671 (1997)	.	.	p. 32
<i>State ex rel. Lopez-Pacheco v. Jones</i> , 66 Wn.2d 199, 401 P.2d 841 (1965)	.	.	p. 32
<i>State ex rel Murray v. Shanks</i> , 27 Wn.App. 363, 618 P.2d 102 (1980)	.	.	p. 33
<i>State ex rel Taylor v. Reay</i> , 61 Wn.App. 141, 810 P.2d 512 (1991)	.	.	p. 35
<i>Tiffany Family Trust v. City of Kent</i> , 155 Wn.2d 225, 119 P.3d 325 (2005)	.	.	p. 21
<i>Vance v. City of Seattle</i> , 18 Wn.App. 418, 569 P.2d 1194 (1977)	.	.	p. 27
<i>Vanderpool v. Rabideau</i> , 16 Wn.App. 496, 557 P.2d 21 (1976)	.	.	p. 33
<i>Wilson v. Steinbach</i> , 98 Wn.2d 434, 656 P.2d 1030 (1982)	.	.	p. 21

#### **Table of Other Cases**

<i>Arant v. Lane</i> , 249 U.S. 367, 39 S.Ct. 293 (1919)	.	.	p. 28
---	---	---	-------

<i>Buell v. County Court</i> , 175 Ore. 402, 152 P. 578, 155 A.L.R. 1135 (1944)	p. 27
<i>Chapman v. County of Douglas</i> , 107 U.S. 348, 2 S.Ct. 62 (1883)	p. 28
<i>Duke v. Turner</i> , 204 U.S. 623, 27 S.Ct. 316 (1907)	p. 28
<i>Wurth v. Affeldt</i> , 265 Wis. 119, 60 N.W. 2d 708, 40 A.L.R. 2d (1953)	p. 27

#### Statutes

RCW 4.16.080 (5)	pp. 6,8,18,21,26
RCW 7.16.030	p. 25
RCW 7.16.040	pp. 7,8,18
RCW 7.16.150	p. 25
RCW 7.16.160	pp. 7,8,17,18, 25
RCW Ch. 7.24	pp. 7,8,18,26
RCW 7.24.050	pp. 17, 26
RCW 7.24.120	p. 26
RCW 36.24.020	p. 10

RCW Ch. 68.50 . . . . .	p. 20,22
RCW 68.50.015 . . . . .	pp. 5,7,8,9,16,18,19 20,22,23,24,25 26,32,34,35
RCW 68.50.105 . . . . .	pp. 5,9,15,20,24
1987 Laws, Ch. 263, sec. 1 (RCW 68.50.015) . . . . .	p. 24

**Rules and Regulations**

CR 56 (c) . . . . .	p. 21
---------------------	-------

**Other Authorities**

Joint House/Senate Conference Report, EHB 590 . . . . .	p. 34
---	-------

**I. Introduction**

The appellant promptly commenced an action against the Lewis County coroner for “judicial review” as allowed pursuant to RCW 68.50.015, as well as for other special writs and declaratory judgment, after the coroner finally met but then refused to discuss autopsy findings with her as required by RCW 68.50.105. The appellant had been seeking her meeting

and discussion with the coroner, who had unilaterally changed his determination of the cause of appellant's daughter's death no less than three times previously. The trial court dismissed the appellant's action by granting summary judgment, applying RCW 4.16.080 (5), the three-year statute of limitations, holding that appellant should have commenced her action within three years of the last version of death certificate.

## **II. Assignments of Error and Issues**

### ***Assignment of Error No. 1:***

The trial court erred when it granted respondent's motion for summary judgment of dismissal, erroneously concluding that the petitioner's special actions were barred by the three-year statute of limitations.

### ***Issue Pertaining to Assignment of Error No. 1:***

At summary judgment, were the facts (and all reasonable inferences therefrom) *considered* in the light most favorable to petitioner as the non-moving party; and, was the respondent *entitled* to judgment as a matter of law?

***Assignment of Error No. 2:***

The trial court erred when it concluded that there were no genuine issues of material fact, i.e., that there were no efforts, no acts nor any conduct of the parties which could justify petitioner in not commencing her special actions within three years of the date the last version of death certificate was filed by the respondent coroner.

***Issue Pertaining to Assignment of Error No. 2:***

Are the efforts, acts and conduct of the parties, relevant to such equitable principles as *laches* and *estopple*, material in determining whether proceedings brought under RCW 68.50.015 for “judicial review,” RCW 7.16.040 for “writ of certiorari,” RCW 7.16.160 for “writ of mandamus,” and under RCW Chapter 7.24 for “declaratory judgment” have been commenced “within a reasonable time?”

***Assignment of Error No. 3:***

The trial court erred when it concluded that, as a matter of law, that a petition for “judicial review” under RCW 68.50.015, for “writ of certiorari” under RCW 7.16.040, for “writ of mandamus” under RCW 7.16.160, and for “declaratory judgment” under RCW Chapter 7.24, must be commenced within three years of the last version of death certificate filed by a coroner, regardless of the subsequent efforts, conduct and acts of the parties as may be material and relevant to his determinations of manner and cause of death.

***Issues Pertaining to Assignment of Error No. 3:***

(1) Does RCW 4.16.080 (5), the three-year statute of limitations, strictly apply to an action brought pursuant to RCW 68.50.015 for “judicial review” of the accuracy of a coroner’s determination of the cause and manner of a death?

(2) Does RCW 4.16.080 (5), the three-year statute of limitations, strictly apply to actions brought pursuant to RCW 7.16.040 for issuance of “writ of certiorari” and pursuant to RCW 7.16.160 for issuance of “writ of mandamus?”

(3) Does RCW 4.16.080 (5), the three-year statute of limitations, strictly apply to a “declaratory judgment action” brought pursuant to RCW Chapter 7.24?

(4) Do such equitable principles as *laches* and *estopple* (as evidenced and proven by the efforts, acts and conduct of the parties) determine whether proceedings brought under RCW 68.50.015 for “judicial review,” RCW 7.16.040 for “writ of certiorari,” RCW 7.16.160 for “writ of mandamus,” and under RCW Chapter 7.24 for “declaratory judgment” have been commenced “within a reasonable time?”

***Assignment of Error No. 4:***

The trial court erred when it concluded that, as a matter of law, that the efforts, acts and conduct of the parties since the date of filing the latest version of death certificate— specifically, later dates when the respondent finally fulfilled his statutory duty to personally meet with appellant, accepted evidence regarding death which questioned the accuracy of his prior determinations, and then breached his duty and broke his promise to discuss the evidence and his findings with appellant pursuant to RCW 68.50.105— were not subject to judicial review under RCW 68.50.015 as relevant to, material, and part of the coroner’s determination of manner and cause of death.

***Issue Pertaining to Assignment of Error No. 4:***

Are the acts and conduct of the coroner since the date of filing the latest version of death certificate, including when he— finally fulfilled his statutory duty to personally meet with appellant to “discuss” the cause and manner of death; received additional evidence relevant to the manner and cause of death, which he promised to consider; breached his duty and broke his promise to discuss the evidence; and then confirmed his earlier determinations— material and relevant to the “accuracy” of his determinations of manner and cause of death, which is subject to judicial review pursuant to RCW 68.50.105?

### **III. Statement of the Case**

Respondent is the Lewis County Coroner. (CP 61, par. 2; CP 55, par. 2; CP 47, par. 1).

Early morning on December 16, 1998, Lewis County Communications received a 9-1-1 call from Ron Reynolds, who reported the “suicide” of his wife, Ronda Reynolds. (CP 5, CP 70). Ronda Reynolds died from a single gunshot wound to her head while at the home she shared with her husband, Ron Reynolds. (CP 47, par. 2; CP 5, CP 70).

The Lewis County Sheriff’s Office investigated the death to try to determine whether it was a suicide or a homicide. (CP 47, par. 2). Except for initial body recovery, it does not appear at any place in the record that the Lewis County Coroner conducted his own investigation as to manner of death, nor that he availed himself of such procedures as an inquest authorized under RCW 36.24.020. Rather, the coroner would change the death certificate based upon the actions of

others, primarily law enforcement. (CP 48, par. 5, e.g.). This process was observed by appellant. (CP 19, ll. 1-5, 8)

During the three and one-half years following the death, the respondent coroner issued four different determinations of death, changing the first death certificate of Ronda Reynolds from “undetermined” (December 16, 1998) to “suicide” (August 9, 1999), then back to “undetermined” (October 23, 2001), and again back to “suicide” (May 30, 2002). (CP 47, 48).<sup>1</sup>

Appellant is the natural mother of the deceased. (CP 66, par. 1). Thus, appellant is a “parent” and “family member” of

---

1. The record on appeal shows an original “Death Certificate,” dated December 16, 1998, which stated “undetermined.” The first change to “suicide” was made by “Affidavit for Correction” dated August 9, 1999, but changed the date of death to December 18, 1998. Another “Affidavit for Correction” was prepared and dated October 23, 2001, stating “undetermined,” but changed the date of death back to December 16, 1998. The third “Affidavit for Correction” states the December 16, 1998, death was “suicide” and is dated May 30, 2002. (CP 47, Declaration of Wilson, Exhibits 1 through 5, CP pp. 49-53). Apparently, the Washington State Department of Health, Vital Records, prepares and issues a corrected death certificate after receives each affidavit of correction.

the deceased. (CP 62, par 5). Appellant believes that her daughter did not commit suicide, but that Ronda Reynolds died as a result of unlawful homicide. (CP 67, par. 3). Her belief is supported by the expert analysis of firearms and ballistics expert Marty Hayes, together with the evidence, documents and other expert reports used and relied upon by Mr. Hayes to support his opinions. (CP 67, par. 4, CP 5, CP pp. 70-115).

Mr. Hayes states that it is his opinion, “based upon a reasonable degree of scientific probability, that Ronda Reynolds was killed by another person and did not commit suicide.” Further, Mr. Hayes opines that “probable cause exists that she was murdered.” (CP 42, “Conclusion”).

Significantly, the expert analysis and reports commissioned by appellant (CP 5, CP pp. 70-115) support the conclusions that (a) a pillow was between the gun and Ronda’s head when she was shot; (b) after Ronda was shot, the gun was moved to a spot between the pillow and her head; and (c) the

gun was probably placed on or near Ronda's head by a person other than Ronda. (CP 5, CP pp. 72-74). Additionally, the evidence supports the proposition that (d) Ronda did not die instantly, but was unattended and bled to death over a period of time. (CP 5, CP 80, 84).

There are other interesting facts and witness inconsistencies noted in the expert report that support the conclusion that Ronda Reynolds' death was not "suicide." For example, it is interesting to note that (a) that the husband and the deceased were in the process of separating (CP 49); (b) the husband reported that the deceased had been drinking liquor, although there was no alcohol found in her blood (CP 90); (c) the respondent fixed the time of Ronda's death at approximately 5:00 a.m., based solely upon the husband's statement as to when he last saw his wife alive as he fell asleep

(CP 49; CP 19, ll. 21-25);<sup>2</sup> and, interestingly, (d) the husband admitted to appellant that when he was going through his deceased wife's belongings on the day of her death, he found Ronda's unpaid life insurance premium notice, which he promptly paid that same day (CP 81, 3<sup>rd</sup> par.). The husband was a beneficiary of the policy and received \$50,000.00. (CP 94, 3<sup>rd</sup> par. from bottom).

These expert reports and conclusions, which challenged the accuracy of the coroner's determinations of manner and cause of death, were provided to him by appellant at her first opportunity to do so, March 24, 2006. (CP 12, ll. 9-10, ll. 25-27).

Since the date of her daughter's death, December 16, 1998, appellant had repeatedly tried to meet with the

---

2. There is controversy whether or not the gunshot killed Ronda instantly, or whether she was left unattended to bleed to death, only after which a 9-1-1 call could be made to report a certain death. (Declaration of Expert Marty Hayes, CP 5, and report summary, CP 80 and 84).

respondent to discuss the death. (CP 33, l. 27). She requested copies of official reports and she wrote letters. Appellant observed and was aware that the respondent kept changing his mind and the death certificates as he was presented with additional evidence from others, and that the process of determining the cause of death was in a continual state of uncertainty and controversy (CP 12, ll. 3-5).

Appellant believed that she had to keep asking for her meeting and discussion until the coroner responded. (CP 12, ll. 1-3). This proved to be true, because on March 18, 2006, respondent finally agreed to meet with the appellant on March 24, 2006. (CP 12, l. 18). When respondent did meet with appellant on March 24, 2006, he accepted appellant's expert reports and documentary evidence and also promised to review it and later discuss it with her, just as appellant believed was provided for and contemplated by RCW 68.50.105. (CP 12, ll. 21-27).

Then, on April 20, 2006, appellant received a perfunctory telephone call from one of respondent's agents informing her that respondent had unilaterally decided to not meet with her to discuss his findings, notwithstanding his earlier promise and statutory duty to do so, and that he was not going to change anything about his determination. (CP 13, ll. 1-4).

By letter dated May 1, 2006, appellant requested that the respondent reconsider his decision to not discuss the findings with her and, further, stated that his refusal to do so would result in appellant seeking "judicial review" pursuant to RCW 68.50.015. (CP 12, l. 28, through CP 13, l. 14; CP 15-17).

On August 18, 2006, appellant filed her "Petition for Judicial Review and Extraordinary Writs" in Lewis County Superior Court. (Petition, CP 61-65). Her petition contained several alternative forms of request for relief, including "judicial review" under RCW 68.50.015; issuance of a "writ of

certiorari” under RCW 7.16.040; and issuance of a “writ of mandamus” under RCW 7.16.160. There had been no judicial review of respondent’s actions and findings, nor of the accuracy of his determination of cause of death. (CP 20, ll. 13, 14).

Appellant’s petition also asked for “declaratory judgment” as provided for under RCW 7.24.050, on grounds that the manner and cause of Ronda Reynolds’ death is still a matter of controversy and uncertainty. (CP 64, par. 4).

Respondent answered the petition, including an affirmative defense that “plaintiffs have failed to exhaust administrative remedies” before commencing this action. (Seventh Affirmative Defense, CP 58, ll. 10-11).

Respondent coroner brought a motion for summary judgment to dismiss appellant’s entire petition (filed on August 18, 2006), arguing that because her action was filed more than three years after respondent’s latest version of the death

certificate (filed on May 30, 2002), the three-year statute of limitations set forth in RCW 4.16.080 (5) barred the action. (CP 43-46).

On May 4, 2007, the Honorable Richard D. Hicks, visiting Thurston County Superior Court Judge, entered an “Order Granting Defendant’s Motion for Summary Judgment,” which dismissed appellant’s entire petition. (Order, CP 3-4). It is from that Order appellant appeals. (Notice of Appeal, CP 1-2).

#### **IV. Summary of Argument**

**(1) Three-year statute of limitations not applicable to special proceedings.** The three-year statute of limitations, RCW 4.16.080 (5), is not applicable to such “special proceedings” as (i) “judicial review” under RCW 68.50.015, (ii) “writs of certiorari” under RCW 7.16.040, (iii) “writs of mandamus” under RCW 7.16.160, and (iv) “declaratory judgment actions” under RCW Chapter 7.24;

**(2) Immunity prevents a “liability” action.** The three-year statute of limitations, RCW 4.16.080 (5), pertains only to civil actions upon a “liability” of a coroner and is not

applicable to these “special proceedings” wherein no liability is sought; further, no such civil liability could be sought or obtained for an inaccurate determination of cause and manner of death because RCW 68.50.015 provides “immunity from civil liability” for such determinations;

**(3) Judicial review is specifically codified.** RCW 68.50.015 does, however, still provide for “judicial review,” which involves the exercise of judicial discretion;

**(4) *Laches* is the proper inquiry.** Because such “special proceedings” are not ordinary civil actions, but involve the exercise of judicial discretion, such equitable principles as *laches* and *estopple* are applicable factors to consider when determining whether or not special proceedings have been brought “within a reasonable time;”

**(5) *Laches* was not raised; still, *laches* is disputed.** Evidence of the respondent’s actions in March of 2006 (i.e., finally meeting the family pursuant to statute, refusing to discuss his findings pursuant to statute, and breaking his separate promise to meet and discuss) are material and relevant in applying the equitable principles of *laches* and *estopple* to determine whether or not appellant brought her special actions within a reasonable time;

**(6) *Laches* elements were not raised; further, elements were not supported by any facts.** For *laches* to bar petitioner’s special actions, the respondent must show that (a) appellant knew or should have known that she had to file her action within three years of the latest of several death certificates; (b) appellant *unreasonably* delayed in commencing the action; and (c) appellant caused damage to

the respondent as a result; the respondent did not allege, nor did he offer any evidence of these elements;

(7) **The coroner should be *estopped*.** Moreover, respondent should be *estopped* from using the passage of time caused by his own delay of a statutory duty as evidence that appellant “unreasonably delayed” in bringing her special actions; further, respondent should be *estopped* from asserting that appellant was being unreasonable in taking the time to (a) gather and present evidence and reports to him, (b) request a statutory meeting, and (c) await a discussion with the coroner of his findings as required by statute;

(8) **The coroner’s duty and acts were not complete merely upon filing death certificate.** RCW Chapter 68.50 provides both that (a) the coroner, if requested, “shall meet” with the family of the decedent “to discuss the findings” of the autopsy, RCW 68.50.105, and (b) the accuracy of the determinations of cause and manner of death “is subject to judicial review;” the coroner’s statutory duty to appellant is not completed merely upon the filing of a death certificate, but continues until he has met and discussed his determination with the appellant; that the coroner accepted evidence which challenged the accuracy of his determinations, and what he did with the evidence or how he considered it, is material and relevant to the “judicial review” under RCW 68.50.015.

## V. Argument

### Summary Judgment

CR 56 (c) provides in relevant part that summary judgment shall be granted if there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. All facts and all reasonable inferences from the facts must be considered in the light most favorable to the appellant as the non-moving party. *Wilson v. Steinbach*, 98 Wn.2d 434, 656 P.2d 1030 (1982). The appellate court reviews a grant or denial of summary judgment *de novo*. *Tiffany Family Trust v. City of Kent*, 155 Wn.2d 225, 119 P.3d 325 (2005).

There does not appear to be any case precedent directly on point which holds, as the respondent is arguing in the instant case, that the general three-year statute of limitations for claims based upon liability, RCW 4.16.080 (5), is applicable to equitable actions and other “special

proceedings,” including declaratory judgment actions. Rather, the cases support the petitioner’s proposition that *laches* is the appropriate inquiry regarding timeliness to be made. Further, there does not appear to be any appellate decision to date which interprets the purpose and scope of “judicial review” as provided in RCW 68.50.015, nor does RCW Chapter 68.50 contain a statute of limitations for such judicial review. Accordingly, it is argued that respondent is not *entitled* to judgment as a matter of law.

“A material fact is one that affects the outcome of the litigation.” *Owen v. Burlington N. Santa Fe R. R.*, 153 Wn.2d 780, 108 P.3d 1220 (2005). The respondent contended that summary judgment should be granted to him because he prepared his latest version of death certificate more than three years prior to petitioner’s filing her special action against him—regardless of his acts in fulfilling or breaching statutory duties, regardless of his promise made but broken to consider and

discuss evidence which challenged the “accuracy” of his findings, and regardless of his past conduct of continually accepting evidence from others and revising his determinations of manner and cause of death.

The facts are important in this case for two reasons– (1) if, as petitioner maintains, that *laches* is the appropriate inquiry as to timeliness of her special actions, then the “reasonableness” of her thoughts, efforts, conduct and acts is relevant and material to that inquiry and could not be determined on summary judgment; and (2) the facts outlining the efforts, acts and conduct of the parties in presenting, accepting and considering evidence regarding the manner and cause of death, are relevant and material to the “accuracy” of the coroner’s determinations which are subject to “judicial review” under RCW 68.50.015.

### **Petitioner's "Special Actions"**

**RCW 68.50.105** provides in relevant part that

The coroner, the medical examiner, or the attending physician *shall* upon request, *meet* with the family of the decedent to *discuss* the findings of the autopsy or post mortem. For the purposes of this section, the term "family" means the surviving spouse, or any child, *parent*, grandparent, grandchild, brother, or sister of the decedent, or any person who was guardian of the decedent at the time of death. (Emphasis added).

**RCW 68.50.015** provides in relevant part that

A county coroner or county medical examiner or persons acting in that capacity shall be *immune from civil liability* for determining the cause and manner of death. The accuracy of the determinations *is* subject to judicial review. (Emphasis added).

It is interesting to note that RCW 68.50.015 specifically provides that the coroner is immune from civil liability. Thus, it is argued that there *is no* civil liability, much less a *time limit* within which to seek a civil liability (which may not be obtained). Appellant is not seeking a "civil liability," but the exercise of court discretion through judicial review as

provided by RCW 68.50.015.

Appellant's other special actions asking the court to exercise judicial discretion are based upon the following special statutes—

**RCW 7.16.030 Certiorari defined.** The writ of certiorari may be denominated the writ of review.

**RCW 7.16.040 Grounds for granting writ.** A writ of review shall be granted by any court, except a municipal or district court, when an inferior tribunal, board or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board, or officer, or one acting illegally, or to correct any erroneous or void proceeding, or a proceeding not according to the course of the common law, and there is no appeal, nor in the judgment of the court, any plain, speedy and adequate remedy at law.

**RCW 7.16.150 Mandamus defined.** The writ of mandamus may be denominated a writ of mandate.

**RCW 7.16.160 Grounds for granting writ.** It may be issued by any court, except a district or municipal court, to any inferior tribunal, corporation, board or person, to compel the performance of any act which the law especially enjoins as a duty resulting from an office or station . . .

Additionally, appellant included in her petition another “special action” under RCW Chapter 7.24–

**RCW 7.24.050 General powers not restricted by express enumeration.** The enumeration in RCW 7.24.020 and 7.24.030 does not limit or restrict the exercise of the general powers conferred in RCW 7.24.010, in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.

**RCW 7.24.120 Construction of chapter.** This chapter is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered.

**Laches Is the “Special Action”**  
**Time Limitation Inquiry**

It should be noted that RCW 68.50.015 and RCW 68.50.105 do not prescribe a time limit within which to make the request, nor is there any stated time limit within which the meeting or discussion must be held. Nor is any reference made to RCW 4.16.080 (5). A well-established rule of statutory construction is that where two statutes appear to

conflict, the specific should take priority over the general. *Hama Ham Co. v. Shorelines Hearings Bd.*, 85 Wn.2d 441, 536 P.2d 157 (1975) (where it appears that there is a conflict between a general and a special statute, covering the subject in a more definite and minute way, the specific statute will prevail).

There is case authority in Washington that general statutes of limitations do not apply to “special proceedings.” In *Vance v. City of Seattle*, 18 Wn.App. 418, 569 P.2d 1194 (1977), the Court of Appeals considered the issue at footnote 2, page 421:

2. We have serious doubts that the limitations of RCW Chapter 4.16 apply at all to “special proceedings such as the common-law writs of certiorari, mandamus, et cetera. By resorting to these remedies, one is not pursuing a “cause of action” as that term is used in the statutes. See *Wurth v. Affeldt*, 265 Wis. 119, 60 N.W. 2d 708, 40 A.L.R. 2d (1953); *Buell v. County Court*, 175 Ore. 402, 152 P. 578, 155 A.L.R. 1135 (1944). The extraordinary writs are not issued as a matter of right; application therefore calls for the exercise of judicial discretion and consideration of equitable principles

before review will be accepted. *Buell v. County Court, supra*. We choose not to decide the instant case on that ground because the issue was not directly raised or briefed by the parties.

There are also United States Supreme Court case precedents which hold that general statutes of limitations do not apply to “special proceedings.” For example, see *Chapman v. County of Douglas*, 107 U.S. 348, 2 S.Ct. 62 (1883) (Nebraska statute; proceeding in mandamus is not embraced in the statute of limitations prescribed generally for civil actions); *Duke v. Turner*, 204 U.S. 623, 27 S.Ct. 316 (1907) (Oklahoma statute; a proceeding in mandamus is an extraordinary or supplemental remedy, not regarded as a civil action at law within the meaning of time limitations on civil actions); *Arant v. Lane*, 249 U.S. 367, 39 S.Ct. 293 (1919) (District of Columbia statute; while mandamus may be classed as a legal remedy, it is a remedial process and is generally regarded as not embraced within statutes of limitations

applicable to ordinary actions, but as subject to the equitable doctrine of *laches*).

There is no statute of limitations prescribed in RCW Chapter 7.24, the Uniform Declaratory Judgments Act. Rather, a declaratory judgment action must be brought “within a reasonable time.” *Kightlinger v. Public Utility Dist. No. 1 of Clark County*, 119 Wn.App. 501, 81 P.3d 876 (2003) (declaratory judgment action was not barred by doctrine of *laches* even though taxpayers waited several years to bring action). The *Kightlinger* decision, at page 512, states—

Laches may be established where the plaintiff (1) knows or reasonably should know of the cause of action, (2) unreasonably delays in commencing the action, and (3) causes damage to the defendant as a result. *Buell v. City of Bremerton*, 80 Wn.2d 518, 522, 495 P.2d 1358 (1972). But “[n]one of these elements alone raises the defense of laches.” *Buell*, 80 Wn.2d at 522.

See also, *1000 Virginia Ltd. P’Ship v. Vertecs*, 127 Wn.App. 899, 112 P.3d 1276 (2005) (an action may not be summarily dismissed as untimely on the equitable grounds of

*laches* if there exists a genuine issue of material fact regarding the elements).

**Estoppel / Equitable Tolling**

The respondent should be *estopped* from asserting *laches*. His course of conduct— in accepting evidence from other persons, and then changing his determinations regarding manner and cause of death— was the coroner’s official process, which was observed by appellant.

Interestingly, the coroner asserts in his answer to the petition that the appellant “failed to exhaust administrative remedies” during the period of time between the date of the last death certificate and the date she filed her action; but he also asserts that the appellant wasted that time by gathering evidence and by repeatedly requesting to meet with him to provide such evidence to him, so that she might discuss the “accuracy” of his determinations. Essentially, he asserts that appellant’s conduct was “unreasonable delay.” Then, after

the coroner finally agreed to meet as required by statute, he now argues that the meeting was of no import and that appellant should not have waited so long to meet with him, but rather, she should have filed for judicial review much earlier.

The elements of *equitable estoppel* are (1) an admission, statement or act by the defendant that is inconsistent with a later claim; (2) reliance by the appellant on the admission, statement or act; and (3) injury to the appellant if the defendant were allowed to contradict or repudiate the admission, statement or act. *Adler v. Fred Lind Manor*, 153 Wn.2d 331, 103 P.3d 773 (2004).

*Arguendo*, a somewhat related doctrine recognized in Washington is “equitable tolling.” Equitable tolling is a remedy used in civil cases that “permits a court to allow an action to proceed when justice requires it, even though a statutory time period has nominally elapsed.” *In re Per. Restraint of Carlstad* , 150 Wn.2d 583, 80 P.3d 587 (2003)

(personal restraint action by prisoner discussing “mailbox rule”), citing *State v. Duvall*, 86 Wn.App. 871, 940 P.2d 671 (1997) (time limit for restitution order). “Equitable tolling is generally used only sparingly, when the plaintiff exercises diligence and there is evidence of bad faith, deception, or false assurances by the defendant.” *Pers. Restraint of Carlstad*, *supra*.

### **History and Purpose of RCW 68.50.015**

Prior to the 1987 enactment of RCW 68.50.015, there was no specific statute providing for judicial review of a coroner’s determination of manner and cause of death. Before that enactment, aggrieved family members attempting to question the findings of a coroner generally utilized the special proceeding for issuance of a “writ of mandamus.”

For example, in *State ex rel. Lopez-Pacheco v. Jones*, 66 Wn.2d 199, 401 P.2d 841 (1965), a father sought a writ of

mandamus to compel the Spokane County coroner to call a coroner's jury to inquire into the cause of death of his son. The petition was dismissed because the coroner's exercise of discretion to not call an inquest was not "arbitrary and capricious."

In the 1976 case of *Vanderpool v. Rabideau*, 16 Wn.App. 496, 557 P.2d 21 (1976), a petition was filed for a writ of mandamus to compel the Franklin County coroner to change a death certificate from "suicide" to "accidental" or "undetermined." While the coroner's determinations were subject to judicial review, they were not found to be arbitrary and capricious.

In *State ex rel Murray v. Shanks*, 27 Wn.App. 363, 618 P.2d 102 (1980), a widow sought a writ of mandamus to compel the Spokane County coroner to change the cause of death on her deceased husband's death certificate from "suicide" to "accidental." The trial court granted summary

judgment of dismissal, but the Court of Appeals reversed and remanded because there was a factual question whether or not the coroner, in refusing to consider evidence, was acting arbitrarily and capriciously.

In *Gould v. Reay*, 39 Wn.App. 730, 695 P.2d 126 (1984), the widow sued the King County medical examiner for the *tort* of negligence, claiming that the coroner was careless and incompetent in his performance of the autopsy of her husband, and was negligent in signing the death certificate which indicated the manner of death was suicide. *She claimed she suffered severe pain and suffering as a result of the examiner's negligence.* The trial court concluded that the coroner was immune from liability. The Court of Appeals reversed the judgment, holding that determinations of the medical examiner were not shielded by sovereign immunity. The case was remanded for trial on the theory of negligent determination of the manner of death.

RCW 68.50.015 (1987 Laws, Ch. 263, sec. 1), appears to have been enacted in response to the decision in *Gould v. Reay, supra*, wherein the county medical examiner was held to not have been shielded by “sovereign immunity” in the tort action filed against him. (See Appendix, EHB 590, Joint House/Senate Conference Report; CP 119-121). The enactment of RCW 68.50.015 thenceforth provides immunity from such *claims of liability for pain and suffering* (i.e., *damages* upon a liability) resulting from the coroner’s determination of manner and cause of death. But, further, RCW 68.50.015 codified that the accuracy of the determination of the cause and manner of death is subject to judicial review.<sup>3</sup>

---

3. To be argued and determined at another time are the scope and meaning of RCW 68.50.015, to-wit, whether or not the scope and focus of review is limited to the “arbitrary and capricious” standard, or whether a judicial review of the “accuracy of the determinations” is more in the nature of a *de novo* fact-finding hearing, such as appears to have been done in *State ex rel Taylor v. Reay*, 61 Wn.App. 141, 810 P.2d 512 (1991). In *State ex rel Taylor v. Reay*, judicial review, with jury trial, was permitted as long as eight years after the medical examiner’s determination.

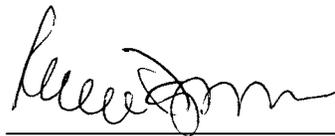
## VI. Conclusion

The appellant has not commenced a civil tort action upon any theory of liability. Rather, she seeks judicial review of the accuracy of the coroner's determinations of manner and cause of death. Her actions are "special proceedings" authorized by statute, the timeliness of which is determined by the doctrine of *laches*, which depends upon facts.

The trial court should not have granted the motion for summary judgment dismissing appellant's petition.

The order should be reversed and the cause remanded to the Superior Court for trial.

Dated this 5 day of June, 2007.



---

Royce Ferguson 5879  
Attorney for Appellant  
2931 Rockefeller  
Everett, WA 98201-4019  
425.258.9311

## **VII. APPENDIX**

EHB 590 Joint House/Senate Conference Report; CP 119-121

Filed e pen  
April 5-4-07

I certify under penalty of perjury that on this date I mailed a true copy of this document to  
Judge Hicks: Atty. Justice  
Royce Ferguson Dated: 4-27-07

SUPERIOR COURT  
LEWIS COUNTY, STATE OF WASHINGTON

BARBARA THOMPSON,  
  
Petitioner,  
  
v.  
  
TERRY WILSON, Lewis County  
Coroner,  
  
Respondent.

No. 06-2-01044-1  
Declaration of Marty Hayes

I declare under penalty of perjury under the laws of the State of Washington that on April 13, 2007, I traveled to the Washington State Capitol and, while at the State Archives building at the Washington State Capitol Campus, researched the legislative intent of RCW 68.050.015, as found in (1987 c 263 Sec. 1) of the archives.

I also declare that the attached 2-page document entitled EHB 590 is the conference committee report regarding this legislation, explaining the intent of the bill for the legislature to vote upon, as explained to me by the state archivist.

DATED and signed at Onalaska, Washington this 27<sup>th</sup> day of April, 2007.

Marty Hayes

Declaration of Marty Hayes

LAW OFFICE  
ROYCE FERGUSON  
2931 ROCKEFELLER  
EVERETT, WA 98201-4019  
(425) 258-9311  
FAX (425) 259-5129

COPY

119

BY Representatives Doty, Haugen, McLean, Cooper, Nealey, Brough, Rayburn, Kremen, Brooks, Betrozoff, Lewis, C. Smith, Winsley and May

Establishing immunity from civil liability for elected and appointed local government officials.

House Committee on Local Government

Senate Committee on Judiciary

Senate Hearing Date(s): March 30, 1987; March 31, 1987

Majority Report: Do pass as amended.

Signed by Senators Talmadge, Chairman; McCaslin, Nelson, Newhouse.

Senate Staff: Dick Armstrong (786-7460)  
March 31, 1987

AS REPORTED BY COMMITTEE ON JUDICIARY, MARCH 31, 1987

BACKGROUND:

Elected officials of special purpose districts are immune from civil liability for damage arising from action performed within the scope of their official duties or employment if their tortious actions did not benefit themselves, but liability shall remain on the special purpose districts for the tortious conduct of their officials to the extent otherwise authorized.

Appointed officials of special districts are not granted similar immunity, nor are elected or appointed officials of counties, cities, or towns.

SUMMARY:

Appointed officials of special purpose districts are afforded the same immunity from civil liability for damages arising from actions performed within the scope of their official duties that is granted to elected officials of special purpose districts.

BACKGROUND: County coroners and county medical examiners are called upon to determine the cause of death in certain statutorily prescribed situations. Based on examination of the deceased the coroner or medical examiner certifies the manner of death and that death was a result of homicide, suicide or accident.

Members of the deceased's family occasionally contest the findings of the examiner or coroner and have brought suit for negligence in determining the cause of death. This can occur when the family believes that death was by homicide or accident but the examining official certifies that suicide was the cause of death.

Some medical examiners have been sued personally and some suits have continued for more than ten years.

Presently in Washington coroners and medical examiners do not have immunity. Case law indicates that if a public official has been granted immunity, and an act of the official is a discretionary act, the governmental entity may not be held liable.

SUMMARY: A county coroner or medical examiner is immune from civil liability for determining the cause and manner of death. The findings of the cause and manner of death are subject to judicial review, but coroners and medical examiners are not liable for damages.

Fiscal Note: none requested

Senate Committee - Testified: Jim Goche, Association of County Officials; Barbara Hodley, King County Medical Examiner's office; Mike Redman, Washington Association of Prosecuting Attorneys

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

FILED  
COURT OF APPEALS  
DIVISION II

07 JUN -6 PM 1:37

STATE OF WASHINGTON  
BY [Signature]  
DEPUTY

COURT OF APPEALS  
DIVISION TWO  
STATE OF WASHINGTON

BARBARA THOMPSON,

Appellant,

v.

TERRY WILSON, Lewis County Coroner,

Respondent.

Appeal No. 36277-5-II

Declaration of Service of Appellant's  
Brief by Mail

The undersigned swears under penalty of perjury under the laws of the State of Washington that on June 5, 2007, she mailed, U.S. postage prepaid, a true and complete copy of Appellant's Brief to respondent's attorney, John E. Justice, P. O. Box 11880, Olympia, WA 98508-1880.

Dated and signed at Everett on June 5, 2007.

**ORIGINAL**

[Signature: Renee Ripley]

Declaration of Service of Appellant's Brief by Mail

LAW OFFICE  
ROYCE FERGUSON  
2931 ROCKEFELLER  
EVERETT, WA 98201-4019  
(425) 258-9311  
FAX (425) 259-5129