

No. 37917-1-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

FILED  
OFFICE OF THE CLERK  
2009 JAN -5 PM 4:28

---

TERRY TILTON,

*Appellant*

v.

QUALITY FOOD CENTERS,

*Respondent.*

STATE OF WASHINGTON  
BY  DEPUTY

09 JAN -9 PM 12:20

FILED  
COURT OF APPEALS  
DIVISION II

---

BRIEF OF RESPONDENT

---

Joseph P. Lawrence, Jr., WSBA No. 19448  
James M. Owen, Jr., WSBA No. 29247  
Lawrence & Versnel PLLC  
601 Union Street, Suite 3030  
Seattle, Washington 98101  
(206) 624-0200  
Attorneys for Respondents QFC

**TABLE OF CONTENTS**

<b>I. IDENTITY OF RESPONDENT</b> .....	1
<b>II. DECISION</b> .....	1
<b>III. STATEMENT OF THE CASE</b> .....	1
<b>IV. ARGUMENT</b> .....	3
A. The Standard Of Review For Summary Judgment Is De Novo .....	3
B. The Trial Court Properly Dismissed This Lawsuit Where There Is No Evidence To Support The Elements Of Ms. Tilton’s Prima Facie Case.....	4
C. The Alleged “Circumstantial Evidence” Offered By Ms. Tilton Was Appropriately Deemed Insufficient To Defeat Summary Judgment. ....	8
D. The Authority Cited By Ms. Tilton Does Not Support Reversal Of The Order Of Dismissal. ....	10
E. Dismissal Is Equally Appropriate Where There Is No Evidence That The Floor Was Unreasonably Dangerous.....	12
<b>V. CONCLUSION</b> .....	14

## TABLE OF AUTHORITIES

### Cases

<i>Allen v. Matson Navigation Co.</i> , 255 F.2d 273 (9th Cir. 1958) . . . . .	12
<i>Allen v. State of Washington</i> , 118 Wn.2d 753, 757, 826 P.2d 200 (1992) . . . . .	3
<i>Brant v. Market Basket Stores, Inc.</i> , 72 Wash 446, 448, 433 P.2d 863 (1967) . . . . .	7, 11
<i>Clements v. Travelers Indemnity Co.</i> , 121 Wn.2d 243, 249, 850 P.2d 1298 (1993) . . . . .	3
<i>Coleman v. Ernst Home Center, Inc.</i> , 70 Wn. App. 213, 217, 853 P.2d 473 (1993) . . . . .	5, 6, 9
<i>Degel, v. Majestic Mobile Manor, Inc.</i> , 129 Wn.2d 43, 53, 914 P.2d 728 (1996) . . . . .	6
<i>Fredrickson v. Bertolino's Tacoma, Inc.</i> , 131 Wn. App. 183, 188, 127 P.3d 5 (2005) . . . . .	3
<i>Grange v. Finlay</i> , 58 Wn.2d 528, 364 P.2d 234 (1961) . . . . .	10
<i>Helman v. Sacred Heart Hosp.</i> , 62 Wn.2d 136, 148, 381 P.2d 605 (1963) . . . . .	9
<i>Iwai v. State</i> , 129 Wn.2d 84, 96, 98, 915 P.2d 1089 (1996) . . . . .	7
<i>Knopp v. Kemp &amp; Hebert</i> , 193 Wash. 160, 74 P.2d 924 (1938) . . . . .	13
<i>Lewis v. Bell</i> , 45 Wn. App. 192, 95, 724 P.2d 425 (1986) . . . . .	3

<i>Merrick v. Sears, Roebuck &amp; Co.</i> , 67 Wn.2d 426, 407 P.2d 960 (1965) . . . . .	11, 13
<i>Messina v. Rhodes Co.</i> , 67 Wn.2d 19, 406 P.2d 312 (1965) . . . . .	10, 11
<i>Mucsi v. Graoch Associates Ltd. Partnership No. 12</i> , 144 Wn.2d 847, 863, 31 P.3d 684 (2001) . . . . .	6
<i>Pimentel v. Roundup Co.</i> , 100 Wn.2d 39, 666 P.2d 888 (1983) . . . . .	5, 7
<i>Schneider v. Rowell's, Inc.</i> , 5 Wn. App. 165, 167, 487 P.2d 253 (1971) . . . . .	10
<i>Shumaker v. Charada Inv. Co.</i> , 183 Wash. 521, 49 P.2d 44 (1935) . . . . .	13
<i>Wiltse v. Albertson's Inc.</i> , 116 Wn.2d 452, 461, 805 P.2d 793 (1991) . . . . .	7
<i>Young v. Key Pharmaceuticals, Inc.</i> , 112 Wn.2d 216, 225, 770 P.2d 182 (1989) . . . . .	3

**Other Authorities**

RAP 2.2(a)(1) . . . . .	3
RAP 9.12 . . . . .	3
WPI 120.07 . . . . .	3

## I. IDENTITY OF RESPONDENT

Respondent Quality Food Centers was the defendant in a Pierce County Superior Court case, bearing Cause No. 06-2-10189-3.

## II. DECISION

Respondent requests this Court:

1. AFFIRM the trial court's Order Granting Defendant's Motion for Dismissal on Summary Judgment. CP 74-75.

## III. STATEMENT OF THE CASE

This case arises out of a garden-variety slip and fall at a Quality Food Centers, Inc. grocery store ("QFC") in Lakewood, Washington. CP 2. Ms. Tilton was assisted at the scene by the floral department manager Megan Robinson, but otherwise did not report the incident and left the store on her own accord. Three days later, she returned to the store and filled out an incident report, stating: "I took out a pot of flowers and water on my way down." CP 7. Notably, Ms. Tilton also recorded that Ms. Robinson "picked up the flowers" following the fall. *Id.*

Ms. Tilton confirmed in deposition she does not know what caused her to fall, and also agreed there was an absence of any evidence of a foreign condition on the floor:

Q. And I asked you earlier if you actually saw water on the floor before you fell. And I think you testified that you did not actually see water on the floor prior to the fall. Is that true?

A. I wasn't looking at the floor.

Q. That's fine. But is it true that you did not see water on the floor prior to the fall?

A. I didn't notice water on the floor.

Q. Okay. But it is your belief that you slipped on and due to water on the floor. Is that true?

A. It is my belief.

CP 10.

On May 30, 2008, QFC moved for summary judgment dismissal of Ms. Tilton's claims. Ms. Tilton argued in opposition that the case should go to the jury since the incident occurred in a "self-service" area of the store and as such, she is relieved of the burden to prove that QFC was on notice of the dangerous condition that caused her fall. Trans. of Proc. at 7. The trial court granted QFC's motion, reasoning that the issue of notice is not reached unless and until there is first some evidence of a condition that caused the fall. *Id.* at 11. The trial court properly held that because there is no such evidence, Ms. Tilton (and the jury) would be left to surmise as to what caused the fall, and accordingly, there is no genuine issue of material fact over whether there existed a dangerous condition at the time of the incident. *Id.* The absence of evidence in this regard rendered summary judgment appropriate. *Id.*

#### IV. ARGUMENT

##### A. The Standard Of Review For Summary Judgment Is De Novo.

Ms. Tilton brings this appeal pursuant to the authority granted in RAP 2.2(a)(1) permitting appellate review of the final judgment of any action or proceeding. As Ms. Tilton appeals from the trial court's grant of summary judgment, the appellate court may consider only evidence and documents called to the attention of the trial court prior to entry of the dismissal order. RAP 9.12; *see also, Lewis v. Bell*, 45 Wn. App. 192, 95, 724 P.2d 425 (1986).

The appellate court reviews the trial court's ruling on summary judgment de novo. *Fredrickson v. Bertolino's Tacoma, Inc.*, 131 Wn. App. 183, 127 P.3d 5 (2005); *Allen v. State of Washington*, 118 Wn.2d 753, 757, 826 P.2d 200 (1992). The appellate court, like the trial court before it, analyzes whether any genuine issues of material fact exist and whether one party is entitled to judgment as a matter of law. *Id.* The mere existence of factual questions is insufficient to warrant denial of summary judgment. *Id.* Instead, denial of summary judgment on the basis that factual issues remain is only appropriate where the factual questions are material to resolving the legal issue at stake. *Id.*; *see also, Lewis*, 45 Wn. App. at 195; *Clements v. Travelers Indemnity Co.*, 121 Wn.2d 243, 249, 850 P.2d 1298 (1993) (material fact is one upon which the outcome of the litigation depends); *see also, Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216,

225, 770 P.2d 182 (1989) (the plaintiff's failure to produce evidence essential to its case requires entry of summary judgment).

Here, upon the facts presented by Ms. Tilton, the trial court correctly held she failed to produce any evidence of a genuine issue of material fact that would preclude summary judgment and appropriately dismissed her claim as a matter of law. First, Ms. Tilton failed to produce any evidence of the existence of a substance on the floor that caused her fall at QFC as required to maintain her premises liability claim. Second, the court properly recognized that even if plaintiff were able to produce circumstantial evidence regarding the existence of a potential substance, or condition, she failed to produce any evidence whatsoever that the substance caused the floor to be unreasonably dangerous. Accordingly, the trial court appropriately dismissed Ms. Tilton's claims.

**B. The Trial Court Properly Dismissed This Lawsuit When There Is No Evidence To Support The Elements Ms. Tilton's Prima Facie Case.**

Ms. Tilton incorrectly asserts the issue below was limited to her failure to establish the existence of an unsafe condition. App. Br. at 10. To the contrary, this action was dismissed for two separate, but equally compelling reasons: first, because Ms. Tilton could not establish the cause of her fall (i.e., existence of a foreign substance, or other "condition" on the floor); and second, because, even if she could establish evidence (circumstantial or otherwise) of a foreign condition, she failed to show that the condition rendered the floor unreasonably dangerous. *See* CP 11-17;

CP 62-69; Trans. of Proc. at 11. Ms. Tilton's failure on both fronts was extensively briefed and argued before the trial court. *Id.*; and see generally, Trans. of Proc.

An owner is liable for physical harm caused to its customers by a condition on the premises if the owner:

(a) knows of the condition or fails to exercise reasonable care to discover the condition, and should realize that it involves an unreasonable risk of harm to such customers;

(b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it; and

(c) fails to exercise reasonable care to protect them against the danger.

WPI 120.07.

QFC, as owner/occupier, therefore owes Ms. Tilton the duty to exercise ordinary care to maintain in a reasonably safe condition those portions of the premises which she was expressly or impliedly invited to use, or might reasonably be expected to use. In Washington, the general rule governing liability for alleged failure to maintain business premises in a reasonably safe condition requires that the plaintiff first identify an unsafe condition and then prove (1) the unsafe condition was caused by the proprietor or its employees, or (2) the proprietor had actual or constructive knowledge of the dangerous condition. *Coleman v. Ernst Home Center, Inc.*, 70 Wn. App. 213, 217, 853 P.2d 473 (1993) citing *Pimentel v. Roundup Co.*, 100 Wn.2d 39, 49, 666 P.2d 888 (1983).

However, QFC is not a guarantor of its customers' safety, but owes Ms. Tilton a duty as an invitee to exercise reasonable care to maintain the common areas in a safe condition. *Mucsi v. Graoch Associates Ltd. Partnership No. 12*, 144 Wn.2d 847, 863, 31 P.3d 684, (2001), *citing Degel, v. Majestic Mobile Manor, Inc.*, 129 Wn.2d 43, 53, 914 P.2d 728 (1996). There is no evidence to the contrary in the instant case, as there is no evidence of any foreign substance on the floor *prior* to the fall. Ms. Tilton testified unequivocally in deposition that she "didn't notice water on the floor" (or any other foreign substance for that matter) prior to her fall. CP 10. The fact that there was water on the floor *after* the fall is irrelevant, as Ms. Tilton explained just three days afterward that she "took out a pot of flowers and water" as she went down. CP 7. Equally inconsequential is the manner in which plaintiff fell, as it also does not establish the existence of a dangerous condition.

As argued at the trial level and reiterated below, this lawsuit is thus squarely in line with numerous Washington decisions mandating dismissal as a matter of law where there is no evidence of a dangerous condition. Critically, all authority cited by Ms. Tilton both in opposition to summary judgment, and on appeal, concerns decisions where there was a known, undisputed condition on the floor prior to the fall. This is not the case here, and dismissal was appropriate.

*Coleman v. Ernst Home Center, Inc.*, 70 Wn. App. 213, 853 P.2d 473 (1993), sets forth the general rule for liability for failure to maintain business premises in a reasonably safe condition, which requires that

plaintiff prove: (1) the unsafe condition was caused by the proprietor or its employees, or (2) the proprietor had actual or constructive notice of the dangerous condition. *Id.* at 217. A narrow exception applies to the notice requirement, adopted by the Washington Supreme Court in *Pimentel v. Roundup Co.*, 100 Wn.2d 39, 666 P.2d 888 (1983). Commonly known as the “*Pimentel* rule”, if the operating procedures of a particular area of the store are such that unreasonably dangerous conditions are reasonably foreseeable, then it is not necessary for the complainant to prove the length of time that the dangerous condition existed. *Iwai v. State*, 129 Wn.2d 84, 96, 98, 915 P.2d 1089 (1996); *Wiltse v. Albertson’s Inc.*, 116 Wn.2d 452, 461, 805 P.2d 793 (1991).

However, a plaintiff must first establish the existence of a dangerous condition, before the self-service exception can apply. *Brant v. Market Basket Stores, Inc.*, 72 Wash 446, 448, 433 P.2d 863 (1967) (emphasis added). Here, because there is a complete lack of evidence of a “condition” causing Ms. Tilton to fall, let alone a condition rendering the floor unreasonably dangerous, the notice issue is not reached. By her own testimony in deposition, Ms. Tilton was unable to produce any credible evidence in this regard, and as such, the law required dismissal of her claims.

**C. The Alleged “Circumstantial Evidence” Offered By Ms. Tilton Was Appropriately Deemed Insufficient To Defeat Summary Judgment.**

Attempting to direct the court’s attention from the fact there is a complete lack of evidence to support her claim, Ms. Tilton contends dismissal was inappropriate due to circumstantial evidence concerning her fall, specifically: (1) the manner in which she fell; (2) that she was “covered” in water following the fall; and (3) the fact that the floral manager was aware of the potential of water in her department. CP at 14. Ms. Tilton’s argument is without merit.

First, Ms. Tilton does not argue on appeal that there was anything unusual concerning the manner in which she fell, let alone that she fell in such a way that would suggest the existence of a condition on the floor as the cause of her fall. This argument is thus a red herring that should be disregarded.

Second, as argued *infra.*, that Ms. Tilton was wet following her fall is easily explained by the fact that she recorded, when she reported the incident just three days after the fall (in her own words and in her own handwriting) that she “took out a pot of flowers” on her way down. Further, two years after the incident, Ms. Tilton testified in her deposition that, “I don’t know where all the water came from” and that she “didn’t notice water on the floor” prior to her fall. That QFC floral department manager Megan Robinson, the only other person in the vicinity at the time of the incident, also had no knowledge as to “whether there was some sort of liquid under [Ms. Tilton’s] feet at the time she fell” underscores the

point—there is a complete lack of evidence of the existence of water, or any substance for that matter, that could constitute a hazard, or “dangerous condition” to explain the fall.

Third, Ms. Tilton’s refers to the fact that Ms. Robinson kept an eye out for water in her department as circumstantial evidence of the cause of her fall. The fact that QFC employs a conscientious employee in Ms. Robinson does not equate to an inference that water was the cause of the incident. Notably, Ms. Robinson also testified that she made it her practice to look at the floor to keep up the appearance of her department. CP 45/9. Ms. Robinson’s testimony offers nothing to suggest there was a condition on the floor that caused Ms. Tilton to fall, any more so than had the fall occurred due to Ms. Tilton tripping over her own feet. Finally, Ms. Tilton’s commentary that water “accumulated on the floor” is neither true nor supported by the record, and should be summarily disregarded by this Court. Summary judgment dismissal was appropriate.

The trial court properly dismissed this action because allowing plaintiff’s claims to go forward would have resulted in impermissibly leaving the jury to speculate as to the cause of the fall. “Where circumstantial evidence leads only to speculation, a verdict cannot be based on inferences drawn from the evidence.” *Coleman*, 70 Wn. App. at 220, citing *Helman v. Sacred Heart Hosp.*, 62 Wn.2d 136, 148, 381 P.2d 605 (1963). The jury would be left to guess as to what caused the fall (water, versus any other substance), the quantity and quality of the substance, and ultimately, whether that substance in turn rendered the floor

unreasonably dangerous. Of course the jury could equally speculate that Ms. Tilton fell due to her own miss-step. Critically, “If there is nothing more substantial to proceed upon than two or more conjectural theories, under one or more of which a defendant would be liable, and under one or more of which there would be no liability, a jury is not permitted to speculate on how the accident occurred.” *Schneider v. Rowell’s, Inc.*, 5 Wn. App. 165, 167, 487 P.2d 253 (1971) *citing* *Grange v. Finlay*, 58 Wn.2d 528, 364 P.2d 234 (1961) (emphasis added). The absence of evidence in this regard rendered dismissal appropriate.

**D. The Authority Cited By Ms. Tilton Does Not Support Reversal Of The Order Of Dismissal.**

Ms. Tilton cites the 43-year old decision in *Messina v. Rhodes Co.*, 67 Wn.2d 19, 406 P.2d 312 (1965), for the proposition that circumstantial evidence, in certain circumstances, can render dismissal as a matter of law inappropriate. *Messina* is factually distinguishable and has no bearing on this appeal.

There, the issue was whether the “jury could reasonably find that respondents were negligent in permitting the floor of the store to become covered with an unusual amount of a foreign substance, to wit, dirt, sand, and water which was brought in by other shoppers on a very rainy day.” *Messina*, 67 Wn.2d at 21. Unlike here however, the condition was known, as it was not disputed that mud, puddles of water and dirt (that had been tracked in by customers due to rain) was on the floor where the plaintiff fell. *Id.* Additional circumstantial evidence existed in the form of another

customer on the scene who testified she saw black marks and dirt on the floor, and almost slipped herself, as she traversed the area prior to plaintiff's fall. *Id.* at 24. Accordingly, unlike the instant case, there was a known condition on the floor in *Messina*, thereby providing ample circumstantial evidence upon which to allow the matter to go to the jury. There exists no such evidence here, circumstantial or otherwise, of the cause of Ms. Tilton's fall.

The Washington Supreme Court distinguished the narrow holding in *Messina* in a subsequent decision (*Brant v. Market Basket Stores, Inc.*, 72 Wn.2d 446, 433 P.2d 863 (1967)), noting the importance of establishing at least some credible evidence of a condition that caused the fall. Referencing another slip and fall case appropriately dismissed for lack of evidence, the *Brant* Court reasoned as follows:

In *Merrick, supra*, we followed *Shumaker* and distinguished *Messina*, saying that the sand, water and mud which created the dangerous condition in that case had existed for a sufficient time and under such conditions as to permit the jury to find actual and chargeable knowledge thereof in the store where the accident took place. We classify *Messina* with the foreign-substance cases in footnote 2, and not as a case involving only water on the floor. It was the sand and, particularly, the mud tracked in with the water that created what a jury might find to be a dangerous situation.

*Brant*, 72 Wn.2d at 451. Unlike *Messina*, there is simply no evidence, circumstantial or otherwise, of a condition that could have led to Ms. Tilton's fall, and dismissal was appropriate.

The other case cited by Ms. Tilton, *Allen v. Matson Navigation Co.*, 255 F.2d 273 (9th Cir. 1958), a 41-year old maritime decision out of California, is equally inapplicable. There, plaintiff slipped and fell on a steamship stairway landing known to the plaintiff and other passengers to be a highly slippery surface. *Id.* at 274-75. Plaintiff even testified that on prior occasions she would exercise caution and alter her gait when she traversed the landing. *Id.* Further, several witnesses testified concerning the condition of the surface, describing it as, “‘high and shiny’, ‘highly glossy’, ‘shiny high glossed as anything could be’, ‘quite slippery’, ‘I would more or less slip’, ‘it was awfully slippery.’” *Id.* at 280. There is no such evidence here. To the contrary, Ms. Tilton offers no evidence regarding the condition of the floor at QFC, nor does she offer any evidence to suggest there was a foreign substance upon it that caused or contributed to her fall. There was ample circumstantial evidence in *Messina* and *Allen* for the court to disallow judgment as a matter of law; a complete absence of such evidence here requires the trial court’s dismissal be affirmed.

**E. Dismissal Is Equally Appropriate Where There Is No Evidence That The Floor Was “Unreasonably Dangerous.”**

Even had Ms. Tilton produced evidence of the existence of a condition on the floor which could have led to her fall, she makes no showing to support her allegation that the mysterious condition or substance caused the floor to be unreasonably slippery, nor can she

produce any evidence to support her claim that QFC was somehow negligent in maintaining it. Perhaps understandably, in citing from the *Allen* opinion to this Court, Ms. Tilton does not provide the entire quote, which reads as follows: “We are forced to the conclusion that there was sufficient evidence before the jury to permit a finding of fact on their part that the floor in question was sufficiently slippery to make it unsafe and that its maintenance in that condition constituted negligence on the part of the defendant.” *Allen*, 255 F.2d at 281 (emphasis added).

Washington courts unequivocally agree that the mere presence of water on a floor where a plaintiff slips is not enough to prove negligence on the part of the owner or occupier of the building. *See, e.g., Brant v. Market Basket Stores*, 72 Wn.2d 446, 433 P.2d 863 (1967); *Merrick v. Sears, Roebuck & Co.*, 67 Wn.2d 426, 407 P.2d 960 (1965). To prove negligence, the plaintiff must prove that water makes the floor dangerously slippery and that the owner knew or should have known both that water would make the floor slippery and that there was water on the floor at the time the plaintiff slipped. *See Brant*, 72 Wn.2d at 451-52, 433 P.2d at 866-67. As the Washington Supreme Court held in *Merrick*:

Negligence cannot be inferred from the fall alone, nor from mere dampness or wetness where it is to be expected in some degree under conditions showing the exercise of ordinary care in the design, construction and maintenance of the floor. *Knopp v. Kemp & Hebert*, 193 Wash. 160, 74 P.2d 924 (1938); *Shumaker v. Charada Inv. Co.*, 183 Wash. 521, 49 P.2d 44 (1935).

*Merrick*, 67 Wn.2d at 429 (emphasis added).

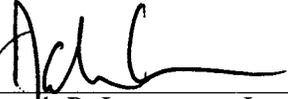
*Merrick* involved a slip and fall in a bathroom. The Court affirmed summary judgment for defendant, even where there was known water on the bathroom floor prior to the fall, but, as here, no evidence that the water rendered the floor unreasonably dangerous: “There being no evidence then of negligence in the construction, maintenance, or inspection of the washroom floor, fixtures or equipment, the trial court properly dismissed the action at the close of plaintiffs’ evidence.” *Merrick*, 67 Wn.2d at 429. Here, there is no evidence of water on the floor prior to Ms. Tilton’s fall. Even if the Court was inclined to find circumstantial evidence of water (or other substance) on the floor prior to the fall, and that the circumstantial evidence may lead to a jury question, there remains no evidence whatsoever that the substance rendered the floor dangerously slippery. Dismissal of this action should therefore be affirmed.

#### V. CONCLUSION

The trial court properly dismissed this matter on summary judgment, where there is no credible evidence, circumstantial or otherwise, of a condition that led to Ms. Tilton’s fall at QFC. Further, even if Ms. Tilton has produced such evidence, there is equally no showing that the condition rendered the floor unreasonably dangerous. Allowing Ms. Tilton to maintain her claims would cause the jury to inappropriately speculate as to the cause of the incident, and the trial court’s dismissal should be affirmed.

Respectfully submitted this 5th day of January, 2009.

LAWRENCE & VERSNEL PLLC

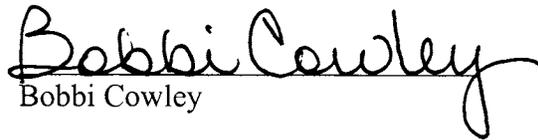
By:   
\_\_\_\_\_  
Joseph P. Lawrence, Jr.  
WSEA No. 19448  
James M. Owen, Jr.  
WSBA No. 29247  
Of Attorneys for Respondent QFC

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington, that on the below date, I sent via facsimile and Legal Messenger, a true copy of this document addressed as follows:

Teri L. Rideout  
Rumbaugh, Rideout, Barnett & Adkins  
820 A. Street, Ste. 220  
Tacoma, WA 98401

DATED this 5<sup>th</sup> day of January, 2009, at Seattle, Washington.

  
Bobbi Cowley

FILED  
STATE OF WASHINGTON  
2009 JAN -5 PM 4: 28

FILED  
COURT OF APPEALS  
DIVISION II  
09 JAN -9 PM 12: 20  
STATE OF WASHINGTON  
BY  DEPUTY