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## **I. INTRODUCTION**

Plaintiff Kenneth Blake appeals the pretrial dismissal of his conversion tort claim against the City of Bonney Lake for towing multiple junk vehicles from the public right-of-way near his residence. Other claims alleged in Blake's lawsuit, related to the chronic storage of multiple junk vehicles on his property, went to trial and resulted in a defense verdict. On appeal, Blake wants to dispute the propriety of the vehicle impound, such as whether the vehicles were in the right-of-way. This misconstrues the trial court's decision: that statutory remedies in RCW 46.55.120 (see Appendix) were Blake's exclusive remedy relating to the towing. Accordingly, "propriety" arguments are misplaced both at the trial court, and now, at the appellate level.

## **II. ISSUE PRESENTED**

This issue on this appeal is straightforward: May the owner of an impounded vehicle claim tort damages in a separate civil action after failing to request a hearing under RCW 46.55.120?

The trial court duly considered this issue, and decided the answer is "No." The decision was correct and should be upheld on appeal.

## **III. STATEMENT OF THE CASE**

For decades, Kenneth Blake has maintained a revolving assortment of junk vehicles on and around his property. After multiple efforts by the City proved ineffective, or only temporarily effective, the City "tagged" vehicles in the public right-of-way and provided notice to Mr. Blake that the vehicles would be towed. CP 30. Mr. Blake promptly removed the tags. The City then obtained a survey delineating the public right-of-way and the boundary of Mr. Blake's property before towing junk vehicles on September 6, 2005. CP 44:14-18, 45. The

towing operator removed vehicles from the City's right-of-way, as noted on the company's handwritten form filled out at the time the vehicles were towed. CP 17-19.

Within 24 hours of the towing, Blake was provided notice of the impoundment, the fees for the towing and storage, information on how to retrieve the vehicles, and how he could dispute the impounds by requesting a hearing. CP 2, 4-6. The notice also stated the time limit for requesting a hearing, that the vehicles would be sold at auction if not redeemed, and that additional information, along with a hearing request form, could be obtained from the towing company. The notices were sent to Mr. Blake by both regular and certified mail. CP 2, 11-13. A few days later, on September 12, 2005, the towing company sent notices that the vehicles would be sold at auction on October 20, 2005. CP 7-10.

Mr. Blake chose not to request a hearing and failed to redeem his vehicles. One of the impounded vehicles was not even registered to Blake. CP 20. When the three vehicles were auctioned, one received no bid; and the two others sold for \$25 each. CP 2, 17-19. Mr. Blake subsequently filed a tort suit against the City claiming conversion, conspiracy, trespass, constitutional violations, malicious prosecution, and abuse of process. CP 22-23. All of Mr. Blake's claims were either summarily dismissed or tried to a defense verdict. The sole issue on this appeal is Blake's claim that he is entitled to bring a conversion claim, despite his choice *not* to seek a statutory hearing, which could have quickly afforded him complete relief.

#### IV. ARGUMENT

A. **RCW 46.55.120 Provides an Exclusive Remedy for Recovery of Costs and Damages from Vehicle Towing.**

Ch. 46.55 RCW sets out a comprehensive scheme for vehicle towing in Washington State, including registration and regulation of towing operators; public and private impoundment;

redemption and hearing requirements; “records, inspections, and enforcement;” and junk vehicle disposition.

RCW 46.55.120(1) exclusively governs redemption of impounded vehicles *and* procedures for resolving disputes about impoundment, including issues as to all costs, fees, *and damages* related to impoundment. RCW 46.55.120 begins with the statement that vehicles “that are impounded . . . may be redeemed *only* under the following circumstances.” RCW 46.55.120(1) (emphasis added). It further holds that “[*a*]ny person seeking to redeem an impounded vehicle . . . has a right to a hearing in the district or municipal court for the jurisdiction in which the vehicle was impounded to contest the validity of the impoundment.” RCW 46.55.120(2)(b) (emphasis added). By its plain language, the statute provides that a person may only redeem an impounded vehicle—and correspondingly challenge the validity of the impound—by requesting a hearing in district or municipal court.

A statute will preclude a common law tort claim if the legislature so intended. *See generally Wilmot v. Kaiser Aluminum & Chem. Corp.*, 118 Wn.2d 46, 61-62, 821 P.2d 18 (1991). “It is an ‘elemental canon’ of statutory interpretation that where a statute expressly provides a remedy, courts must be especially reluctant to provide additional remedies.” *Karahalios v. National Fed'n of Federal Employees*, 489 U.S. 527, 533 (1989).

RCW 46.55.120(3)(b) provides: “At the hearing, the person or persons requesting the hearing may produce any relevant evidence to show that the impoundment, towing, or storage fees charged were not proper.” The court “has *jurisdiction* to determine the issues involving impoundments authorized by agents of [*a*] municipality.” RCW 46.55.120(2)(b). (emphasis supplied). It has broad authority to decide issues at the hearing; and if an impoundment is found to be unauthorized, the court may order complete relief to a person aggrieved by unauthorized

acts, including award of judgment against “the person or agency authorizing the impound” for *payment of all fees, return of the filing fee, and even loss of use of the property during impoundment*. RCW 46.55.120(c) and (e) (emphasis supplied).

“A legislative body is presumed not to use nonessential words.” *State v. Beaver*, 148 Wn.2d 338, 343, 60 P.3d 586 (2002). Therefore, each word of the statute must be accorded meaning and interpreted so that no portion of the statute is rendered meaningless or superfluous. *State v. Roggenkamp*, 153 Wn.2d 614, 624, 106 P.3d 196 (2005). The statutory scheme provides for complete recovery; rapid and cost-effective resolution of disputes; and a comprehensive framework for protecting the financial interest of all involved.

According to Blake, the entire statute is superfluous because it can simply be ignored in favor of a tort lawsuit - a more expensive, less timely, and ultimately less effective remedy. The Legislature does not engage in meaningless acts. *State v. McCullum*, 98 Wn.2d 484, 493, 656 P.2d 1064 (1983). The trial court disagreed with Blake’s position, dismissing the conversion claim and stating, “specific[al]ly, all claims for loss, costs, fees, or damages recoverable under the hearing provided in RCW 46.55.120 are dismissed, with prejudice.” CP 32.

Blake argues that both statutory and tort remedies are available. The Legislature *knows* how to provide a statutory remedy *in addition to* common law causes of action. When it wants to create this outcome, it does so expressly. *See* RCW 64.40.040 (“The remedies provided by this chapter are in addition to any other remedies provided by law.”); RCW 42.17.390 (civil sanctions may be imposed by the court “in addition to any other remedies provided by law”). When language is used in one instance, “but different dissimilar language is used in another, a difference in legislative intent is presumed.” *Millay v. Cam*, 135 Wn.2d 193, 202, 955 P.2d 791

(1998). Here, there is no language reserving "other remedies" in the impound statute because no such effect was intended by the Legislature.

**B. The Exclusive Remedy Issue Has Been Raised, But Not Decided, By the State Supreme Court.**

*Potter v. Washington State Patrol*, 161 Wn.2d 335, 166 P.3d 684 (2007), like the case at bar, alleged conversion for the towing of plaintiff's vehicle by the State Patrol. The Supreme Court reversed the trial court dismissal of the suit on an immunity issue—the only issue addressed by the trial court. *For the first time on appeal*, the State Patrol argued the issue presented here: that RCW 46.55.120 was an *exclusive* remedy. *Id.* at 343 (Alexander, J. concurring). The majority opinion specifically stated that it was not addressing whether the statute was an exclusive remedy. *Id.* at 339. (“[T]he parties have raised arguments concerning the elements of conversion and the applicability of statutory sections relating to the impoundment process. Given the narrow basis of the trial court’s ruling, *we do not address or resolve these additional issues.*”)(emphasis added).

The concurring and dissenting opinions strongly suggests that, when the Court does address the issue, it is likely to hold that RCW 46.55.120 is an *exclusive* remedy. *Id.* at 343. The dissenters commented that “[b]y its plain language, the statute provides that its procedures and remedies are the only recourse for an invalid impoundment, thus precluding a common law tort claim. The language of the statute strongly supports, if not commands, the conclusion that the statutory remedies are exclusive.” *Id.* at 350, (citing *Wilmot v. Kaiser Aluminum & Chemical Corp.*, *supra*).

The Supreme Court granted a motion for reconsideration of the case March 7, 2008. 163 Wn.2d 1032.

C. **Allowing the “Conversion” Remedy Would Undermine the Legislature’s Intent in Adopting RCW 46.55.120.**

RCW 46.55 addresses all interests involved when vehicles are towed. The hearing provisions in RCW 46.55.120 insure that persons whose vehicles are impounded may readily challenge the propriety of an impoundment. Municipalities not only are able to remove vehicles that pose a hazard—or otherwise affect public welfare and safety—but also are responsible for mistakes. Towing companies are provided clear rules governing their activities and a predictable and rapid means of recovering their costs.<sup>1</sup>

In this case, Blake’s vehicles were valued at considerably less than the cost of disposing of them—and there is no record that the towing company was ever able to collect for towing and storage. The City’s action in this case provided Blake a convenient opportunity to rid himself of junk that had little or no value. He could then take a gamble at collecting damages in a subsequent lawsuit. When he decided not to request a hearing, Blake avoided the risk of an adverse hearing decision. The tort lawsuit forced the City to defend its actions in lengthy (and expensive) superior court litigation. Allowing vehicle owners to disregard the statutory remedy in favor of a tort action years later, after evidence is lost and memories have faded, encourages inefficiency and compounds expense.

The statute provides an expansive remedy, but it requires that who invoke it do so in a timely manner. The Court should decline Blake’s invitation to render the statutory scheme superfluous. Any vehicle owner could simply ignore the applicable deadlines in favor of a civil action. RCW 46.55.120 provides for complete recovery; rapid and inexpensive resolution of

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<sup>1</sup> Had Blake’s conversion claim been tried, he would presumably have black boarded damages for the towing and storage fees—whether the towing company had ever been paid or not.

disputes; and, a comprehensive framework for protecting the property and financial interests of all involved.

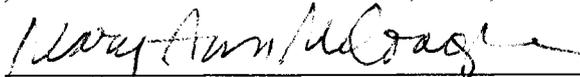
The trial judge rejected Blake's attempt to end-run the statute. There is no injustice in this ruling. Blake is simply burdened by his own legal strategy.

## VI. CONCLUSION

Persons aggrieved when a vehicle is impounded are limited to the procedures and remedies set forth in the state impound statutes. Because plaintiff failed to follow this statutory procedure, his cause of action for conversion was properly dismissed, and the trial court's decision should be upheld.

DATED this 24<sup>th</sup> day of September, 2008.

KEATING, BUCKLIN & McCORMACK, INC., P.S.



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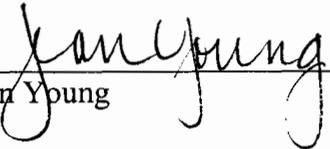
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**CERTIFICATE OF SERVICE**

I certify that I served a copy of the foregoing via hand-delivery by ABC Legal Messengers, by end of day on September 25, 2008, as follows:

Richard F. DeJean  
15224 East Main Street  
Sumner WA 98390

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

  
\_\_\_\_\_  
Jean Young

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## APPENDIX

### RCW 46.55.120

#### Redemption of vehicles — Sale of unredeemed property — Improper impoundment.

(1) Vehicles or other items of personal property registered or titled with the department that are impounded by registered tow truck operators pursuant to RCW 46.55.080, 46.55.085, 46.55.113, or 9A.88.140 may be redeemed only under the following circumstances:

(a) Only the legal owner, the registered owner, a person authorized in writing by the registered owner or the vehicle's insurer, a person who is determined and verified by the operator to have the permission of the registered owner of the vehicle or other item of personal property registered or titled with the department, or one who has purchased a vehicle or item of personal property registered or titled with the department from the registered owner who produces proof of ownership or written authorization and signs a receipt therefor, may redeem an impounded vehicle or items of personal property registered or titled with the department. In addition, a vehicle impounded because the operator is in violation of RCW 46.20.342(1)(c) shall not be released until a person eligible to redeem it under this subsection (1)(a) satisfies the requirements of (e) of this subsection, including paying all towing, removal, and storage fees, notwithstanding the fact that the hold was ordered by a government agency. If the department's records show that the operator has been convicted of a violation of RCW 46.20.342 or a similar local ordinance within the past five years, the vehicle may be held for up to thirty days at the written direction of the agency ordering the vehicle impounded. A vehicle impounded because the operator is arrested for a violation of RCW 46.20.342 may be released only pursuant to a written order from the agency that ordered the vehicle impounded or from the court having jurisdiction. An agency may issue a written order to release pursuant to a provision of an applicable state agency rule or local ordinance authorizing release on the basis of the following:

(i) Economic or personal hardship to the spouse of the operator, taking into consideration public safety factors, including the operator's criminal history and driving record; or

(ii) The owner of the vehicle was not the driver, the owner did not know that the driver's license was suspended or revoked, and the owner has not received a prior release under this subsection or RCW 46.55.113(3).

In order to avoid discriminatory application, other than for the reasons for release set forth in (a)(i) and (ii) of this subsection, an agency shall, under a provision of an applicable state agency rule or local ordinance, deny release in all other circumstances without discretion.

If a vehicle is impounded because the operator is in violation of RCW 46.20.342(1) (a) or (b), the vehicle may be held for up to thirty days at the written direction of the agency ordering the vehicle impounded. However, if the department's records show that the operator has been convicted of a violation of RCW 46.20.342(1) (a) or (b) or a similar local ordinance within the past five years, the vehicle may be held at the written direction of the agency ordering the vehicle impounded for up to sixty days, and for up to ninety days if the operator has two or more such prior offenses. If a vehicle is impounded because the operator is arrested for a violation of RCW 46.20.342, the vehicle may not be released until a person eligible to redeem it under this subsection (1)(a) satisfies the requirements of (e) of this subsection, including paying all towing, removal, and storage fees, notwithstanding the fact that the hold was ordered by a government agency.

(b) If the vehicle is directed to be held for a suspended license impound, a person who desires to redeem the vehicle at the end of the period of impound shall within five days of the impound at the request of the tow truck operator pay a security deposit to the tow truck operator of not more than one-half of the applicable impound storage rate for each day of the proposed suspended license impound. The tow truck operator shall credit this amount against the final bill for removal, towing, and storage upon redemption. The tow truck operator may accept other sufficient security in lieu of the security deposit. If the person desiring to redeem the vehicle does not pay the security deposit or provide other security acceptable to the tow truck operator, the tow truck operator may process and sell at auction the vehicle as an abandoned vehicle within the normal time limits set out in RCW 46.55.130(1). The security deposit required by this section may be paid and must be accepted at any time up to twenty-four hours before the beginning of the auction to sell the vehicle as abandoned. The registered owner is not eligible to purchase the vehicle at the auction, and the tow truck operator shall sell the vehicle to the highest bidder who is not the registered owner.

(c) Notwithstanding (b) of this subsection, a rental car business may immediately redeem a rental vehicle it owns by payment of the costs of removal, towing, and storage, whereupon the vehicle will not be held for a suspended license impound.

(d) Notwithstanding (b) of this subsection, a motor vehicle dealer or lender with a perfected security interest in the vehicle may redeem or lawfully repossess a vehicle immediately by payment of the costs of removal, towing, and storage, whereupon the vehicle will not be held for a suspended license impound. A motor vehicle dealer or lender with a perfected security interest in the vehicle may not knowingly and intentionally engage in collusion with a registered owner to repossess and then return or resell a vehicle to the registered owner in an attempt to avoid a suspended license impound. However, this provision does not preclude a vehicle dealer or a lender with a perfected security interest in the vehicle from repossessing the vehicle and then selling, leasing, or otherwise disposing of it in accordance with chapter 62A.9A RCW, including providing redemption rights to the debtor under RCW 62A.9A-623. If the debtor is the registered owner of the vehicle, the debtor's right to redeem the vehicle under chapter 62A.9A RCW is conditioned upon the debtor obtaining and providing proof from the

impounding authority or court having jurisdiction that any fines, penalties, and forfeitures owed by the registered owner, as a result of the suspended license impound, have been paid, and proof of the payment must be tendered to the vehicle dealer or lender at the time the debtor tenders all other obligations required to redeem the vehicle. Vehicle dealers or lenders are not liable for damages if they rely in good faith on an order from the impounding agency or a court in releasing a vehicle held under a suspended license impound.

(e) The vehicle or other item of personal property registered or titled with the department shall be released upon the presentation to any person having custody of the vehicle of commercially reasonable tender sufficient to cover the costs of towing, storage, or other services rendered during the course of towing, removing, impounding, or storing any such vehicle, with credit being given for the amount of any security deposit paid under (b) of this subsection. In addition, if a vehicle is impounded because the operator was arrested for a violation of RCW 46.20.342 or 46.20.345 and was being operated by the registered owner when it was impounded under local ordinance or agency rule, it must not be released to any person until the registered owner establishes with the agency that ordered the vehicle impounded or the court having jurisdiction that any penalties, fines, or forfeitures owed by him or her have been satisfied. Registered tow truck operators are not liable for damages if they rely in good faith on an order from the impounding agency or a court in releasing a vehicle held under a suspended license impound. Commercially reasonable tender shall include, without limitation, cash, major bank credit cards issued by financial institutions, or personal checks drawn on Washington state branches of financial institutions if accompanied by two pieces of valid identification, one of which may be required by the operator to have a photograph. If the towing firm cannot determine through the customer's bank or a check verification service that the presented check would be paid by the bank or guaranteed by the service, the towing firm may refuse to accept the check. Any person who stops payment on a personal check or credit card, or does not make restitution within ten days from the date a check becomes insufficient due to lack of funds, to a towing firm that has provided a service pursuant to this section or in any other manner defrauds the towing firm in connection with services rendered pursuant to this section shall be liable for damages in the amount of twice the towing and storage fees, plus costs and reasonable attorney's fees.

(2)(a) The registered tow truck operator shall give to each person who seeks to redeem an impounded vehicle, or item of personal property registered or titled with the department, written notice of the right of redemption and opportunity for a hearing, which notice shall be accompanied by a form to be used for requesting a hearing, the name of the person or agency authorizing the impound, and a copy of the towing and storage invoice. The registered tow truck operator shall maintain a record evidenced by the redeeming person's signature that such notification was provided.

(b) Any person seeking to redeem an impounded vehicle under this section has a right to a hearing in the district or municipal court for the jurisdiction in which the vehicle was impounded to contest the validity of the impoundment or the amount of towing and

storage charges. The district court has jurisdiction to determine the issues involving all impoundments including those authorized by the state or its agents. The municipal court has jurisdiction to determine the issues involving impoundments authorized by agents of the municipality. Any request for a hearing shall be made in writing on the form provided for that purpose and must be received by the appropriate court within ten days of the date the opportunity was provided for in subsection (2)(a) of this section and more than five days before the date of the auction. At the time of the filing of the hearing request, the petitioner shall pay to the court clerk a filing fee in the same amount required for the filing of a suit in district court. If the hearing request is not received by the court within the ten-day period, the right to a hearing is waived and the registered owner is liable for any towing, storage, or other impoundment charges permitted under this chapter. Upon receipt of a timely hearing request, the court shall proceed to hear and determine the validity of the impoundment.

(3)(a) The court, within five days after the request for a hearing, shall notify the registered tow truck operator, the person requesting the hearing if not the owner, the registered and legal owners of the vehicle or other item of personal property registered or titled with the department, and the person or agency authorizing the impound in writing of the hearing date and time.

(b) At the hearing, the person or persons requesting the hearing may produce any relevant evidence to show that the impoundment, towing, or storage fees charged were not proper. The court may consider a written report made under oath by the officer who authorized the impoundment in lieu of the officer's personal appearance at the hearing.

(c) At the conclusion of the hearing, the court shall determine whether the impoundment was proper, whether the towing or storage fees charged were in compliance with the posted rates, and who is responsible for payment of the fees. The court may not adjust fees or charges that are in compliance with the posted or contracted rates.

(d) If the impoundment is found proper, the impoundment, towing, and storage fees as permitted under this chapter together with court costs shall be assessed against the person or persons requesting the hearing, unless the operator did not have a signed and valid impoundment authorization from a private property owner or an authorized agent.

(e) If the impoundment is determined to be in violation of this chapter, then the registered and legal owners of the vehicle or other item of personal property registered or titled with the department shall bear no impoundment, towing, or storage fees, and any security shall be returned or discharged as appropriate, and the person or agency who authorized the impoundment shall be liable for any towing, storage, or other impoundment fees permitted under this chapter. The court shall enter judgment in favor of the registered tow truck operator against the person or agency authorizing the impound for the impoundment, towing, and storage fees paid. In addition, the court shall enter judgment in favor of the registered and legal owners of the vehicle, or other item

of personal property registered or titled with the department, for the amount of the filing fee required by law for the impound hearing petition as well as reasonable damages for loss of the use of the vehicle during the time the same was impounded against the person or agency authorizing the impound. However, if an impoundment arising from an alleged violation of RCW 46.20.342 or 46.20.345 is determined to be in violation of this chapter, then the law enforcement officer directing the impoundment and the government employing the officer are not liable for damages if the officer relied in good faith and without gross negligence on the records of the department in ascertaining that the operator of the vehicle had a suspended or revoked driver's license. If any judgment entered is not paid within fifteen days of notice in writing of its entry, the court shall award reasonable attorneys' fees and costs against the defendant in any action to enforce the judgment. Notice of entry of judgment may be made by registered or certified mail, and proof of mailing may be made by affidavit of the party mailing the notice. Notice of the entry of the judgment shall read essentially as follows:

TO: . . . . .

YOU ARE HEREBY NOTIFIED JUDGMENT was entered against you in the . . . . .  
Court located at . . . . . in the sum of \$. . . . ., in an action entitled . . . . ., Case No. . .  
. . . YOU ARE FURTHER NOTIFIED that attorneys fees and costs will be awarded  
against you under RCW . . . if the judgment is not paid within 15 days of the date of this  
notice.

DATED this . . . . day of . . . . ., (year) . . .

Signature . . . . .

Typed name and address

of party mailing notice

(4) Any impounded abandoned vehicle or item of personal property registered or titled with the department that is not redeemed within fifteen days of mailing of the notice of custody and sale as required by RCW 46.55.110(3) shall be sold at public auction in accordance with all the provisions and subject to all the conditions of RCW 46.55.130. A vehicle or item of personal property registered or titled with the department may be redeemed at any time before the start of the auction upon payment of the applicable towing and storage fees.

[2004 c 250 § 1; 2003 c 177 § 2; 2000 c 193 § 1. Prior: 1999 c 398 § 7; 1999 c 327 § 5; 1998 c 203 § 5; 1996 c 89 § 2; 1995 c 360 § 7; 1993 c 121 § 3; 1989 c 111 § 11; 1987 c 311 § 12; 1985 c 377 § 12.]