

No. 39900-8- II

IN THE COURT OF APPEALS OF THE
STATE OF WASHINGTON
DIVISION II

TRACY F. JONASSEN,
Appellant,

v.

MARILYN I. ROBBINS,
Respondent.

APPEAL FROM THE SUPERIOR COURT FOR PIERCE COUNTY
STATE OF WASHINGTON
THE HONORABLE KATHRYN NELSON

BRIEF OF RESPONDENT

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COMES NOW Respondent MARILYN ROBBINS (“Marilyn Robbins”), by and through her attorneys of record, MAHER AHRENS FOSTER SHILLITO, PLLC, and Chad E. Ahrens and Jordan K. Foster, and submits Respondent’s brief as follows:

I. INTRODUCTION

The principal question before this Court is whether the trial court abused its discretion in finding Mr. Jonassen in violation of the 2006 Judgment and Decree (hereinafter the “Judgment”), entering an order of contempt for such violation, and awarding reasonable attorney’s fees and costs to Ms. Robbins pursuant to RCW 7.21.030 and/or its inherent contempt powers. The trial court’s decision was consistent with Washington state law and was amply justified by Mr. Jonassen’s conduct in this matter.

II. STATEMENT OF ISSUE

The issue before the Court is: Did the trial court abuse its discretion in finding Mr. Jonassen in contempt of the Judgment and awarding reasonable attorney’s fees and costs to Ms. Robbins pursuant to RCW 7.21.030 and/or its inherent contempt powers in light of Mr. Jonassen’s conduct? The answer is no.

III. STATEMENT OF THE CASE

The Parties and their Properties

Marilyn Robbins is a sixty-nine year old, single woman who has continuously owned and made her home at 6123 Madrona Drive N.E., Tacoma, Pierce County, Washington since 1990. CP 8-9; CP 37. Records of survey show that Ms. Robbins’ home and her garage have stood in the

same location to the south of Mr. Jonassen's property since at least 1949. CP 52; CP 59. Ms. Robbins' driveway runs west from her garage, and along the northern edge of Mr. Jonassen's property to Madrona Drive, the adjacent street. CP 36. For at least ten (10) years, Ms. Robbins has used "the north 2 feet of the Jonassen property...for passengers and guests to enter or exit or go around vehicles parked in Robbins (sic) driveway along with the wheeling of garbage cans to the street." CP 60.

Mr. Jonassen is a single man who inherited the then vacant and unimproved land adjacent to Ms. Robbins residence in 1994. CP 37; CP 52; CP 58. At the time of trial in the underlying cause, Mr. Jonassen's property address was 6128 Hawthorne Terrance, Tacoma, WA, and it remained vacant and unimproved. CP 71; CP 156. From the time Mr. Jonassen filed his Complaint for Quiet Title to the present, he has never continuously resided on the neighboring property. CP 37. Sometime after entry of the Judgment for a prescriptive easement, Mr. Jonassen constructed a house on his property. CP 156.

As part of this construction, Mr. Jonassen installed an approximately four (4) foot high retaining wall and several bales of hay inside the boundary of Ms. Robbins' prescriptive easement. CP 82; CP 160. Later, pending hearing set for August 21, 2009, on Ms. Robbins'

motion for contempt, Mr. Jonassen elected to replace the bales of hay with an eight (8) inch high curb. CP 139; CP 188.

The Background of the Case

This appeal arises from Mr. Jonassen's spiteful actions concerning Ms. Robbins' rights under a prescriptive easement recognized by a Judgment, Mr. Jonassen's present action is nothing more than a misguided attempt to modify or expand that Judgment entered over four (4) years ago.

After nearly a year and a half of litigation, and following a trial on this matter, the trial court entered the Judgment on January 23, 2006. CP 64-67. The Judgment recognized Ms. Robbins' prescriptive easement over certain portions of Mr. Jonassen's property. More particularly, the Judgment established Ms. Robbins' right to an easement over:

"...the small right triangle of property in the northwest corner of the Jonassen property generally shown on the Riipinen Record of Survey recorded on June 1, 2004, under Auditor's file Number 200406015003.... The north/south side of that triangle is 2.2 feet long. The east/west side of that triangle is 12 feet long...." (Judgment at Page 2 Lines 12-19); and

"...so much of the north two feet of the Jonassen property from the Robbins garage to a point twelve feet east of the Madrona Drive N.E. right-of-way and so much of the two feet lying south the hypotenuse of the triangle identified [above] as is required to enter or exit or go around cars parked on the Robbins' driveway and for the movement of garbage cans...." (Judgment at Page 3, Lines 3.-8).

CP 64-67. (Emphasis added.) The Judgment also provided a very specific and limited right to Mr. Jonassen, which allowed him to erect a “ground level curb” – not a raised curb or any other structure raised above ground level. CP 65-66. The Judgment specifically reads as follows:

“Jonassen has the right to separate his property from Robbins property by erecting a ***ground level curb or other ground level barrier*** immediately inside his north property line.... The barrier ***must be low enough for a person to step over and may not impede the opening doors of cars parked on the driveway and may not create a hazard for users of the driveway.***”

CP 65-66 (Emphasis Added).

In April/May 2008, Mr. Jonassen began constructing a retaining wall and placing bales of hay along the property line, which were well above ground level and in violation of the Judgment. CP 82; CP 156. Not only were these improvements *above* “ground level”; but they also “impede[d] the opening of doors of cars...” and prohibited Ms. Robbins’ removal of trash receptacles. CP 65-66; CP 82 (*See* photographs of bales of hay).

Through counsel, Ms. Robbins communicated her objection to the above-referenced improvements via letter dated May 16, 2008. CP 83. Ms. Robbins’ letter specifically requested Mr. Jonassen to “cease and desist” the following activity:

1. ***Construction of any curb, barrier, or other improvement(s) inside the “north two feet of the Jonassen property...” line running***

“from the Robbins garage to a point twelve feet east of the Madrona Drive N.E. right-of-way...” *which is above "ground level" as more fully set forth in Paragraphs 3 and 4 of the Judgment;*

2. *Construction of any trench or other improvement within the easement boundary which would impede or eliminate Ms. Robbins use* as more fully set forth in Paragraph 4 of the Judgment;
3. *Construction of any retaining wall in greater size or in different location than the existing retaining wall* as more fully set forth in Paragraph 5 of the Judgment; and
4. Any and all activity which would otherwise constitute a violation of Judgment.

CP 109 (Emphasis Added.)

Despite acknowledging receipt of Ms. Robbins’ letter and the objections therein, Mr. Jonassen took absolutely no action to remedy his violations of the Judgment. CP 157-158. In fact, he never so much as responded to Ms. Robbins’ letter. CP 157. Mr. Jonassen argued to the trial court and now to this Court that these improvements were merely temporary and he moved them without any prompting. CP 158. However, the straightforward facts show that Mr. Jonassen removed these structures as the result of Ms. Robbins’ counsel notice that he was to remove them. CP 69-79. Mr. Jonassen acknowledges that he received communication from his former attorney that he was to cease and desist from constructing

any structure; instead, he chose not to respond to this request. CP 158-159.¹

After repeated attempts to have Mr. Jonassen voluntarily remove the retaining wall failed, Ms. Robbins' counsel filed a Motion and Declaration for Enforcement of Decree and Order for Contempt. CP 69-79. A hearing on the matter was noted for August 14, 2009. CP 68. This hearing date was eventually continued, as Mr. Jonassen obtained new counsel, and Ms. Robbins agreed to provide additional time for Mr. Jonassen's response and see whether Mr. Jonassen would comply with the Judgment.

Mr. Jonassen did eventually remove the retaining wall and hay bales, but then decided it was within his rights to construct an approximate eight inch tall curb running alongside the property line on or about August 22, 2009. CP 188. Yet, as noted, the Judgment provided only a "ground

¹ It is noteworthy that, even prior to the underlying suit, Mr. Jonassen refused to discuss a possible "neighborly resolution" of the boundary line issue. CP 10. Indeed, rather than discuss possible resolution with Ms. Robbins, Mr. Jonassen chose to construct a "wooden and wire" fence in Ms. Robbins' driveway. CP 10 and CP 38. Much like the present issue of an eight-inch curb in the easement area, the construction of this fence precluded Ms. Robbins' use of her driveway. CP 38. After the fence was removed in June 2004, Mr. Jonassen began construction of another fence and had placed "metal 't-bars'" in Ms. Robbins' driveway. CP 38. In hindsight, such conduct by Mr. Jonassen is eerily similar to the present issue – Mr. Jonassen's replacement of one obstructive improvement for another, i.e. replacing the bales of hay with an eight-inch curb. CP 82 -83 and 187-188. Just as in 2004, Mr. Jonassen refused to communicate about possible resolution prior to taking such action. CP 72 and CP 83 (May 16, 2008 letter to Mr. Jonassen).

level curb.” CP 65-66. A fact that was well known to Mr. Jonassen, who provides in his own words as follows:

“According to the Judgement [*sic*] and Decree **I have the right to separate my property from Robbins by erecting a ground level CURB or other ground level barrier...**”

CP 156, ¶ 8. Despite the plain language of the Judgment and Mr. Jonassen’s understanding of this Judgment, he proceeded to erect the eight inch curb that was clearly not at ground level. CP 293; Photograph from Arne Riipinen.

IV. STANDARD OF REVIEW

“Whether contempt is warranted in a particular case is a matter within the sound discretion of the trial court; unless that discretion is abused, it should not be disturbed on appeal.” *In re King*, 110 Wn.2d 793, 798, 756 P.2d 1303 (1988). “An abuse of discretion is present only if there is a clear showing that the exercise of discretion was manifestly unreasonable, based on untenable grounds, or based on untenable reasons.” *State ex rel. Carroll v. Junker*, 798 Wn.2d 12, 26, 482 P.2d 775 (1971); *Coggle v. Snow*, 56 Wn. App. 499, 506-07, 784 P.2d 554 (1990). The appellant bears the burden of demonstrating that the trial court abused its discretion. See, e.g., *Lewis v. Simpson Timber Co.*, 145 Wn. App. 302, 328, 189 P.3d 178, 193 (2008); *In re Marriage of Knight*, 75 Wn. App. 721, 729, 880 P.2d 71, 76 (1994).

V. ARGUMENT

1. **The Trial Court Did Not Abuse Its Discretion In Finding Mr. Jonassen In Contempt, Because Mr. Jonassen Blatantly Disobeyed The Plain Language In The Judgment.**

The court's contempt power is both statutory and inherent. *Graves v. Duerden*, 51 Wn. App. 642, 754 P.2d 1027 (1988). A court may exercise its civil contempt powers pursuant to RCW 7.20.010 *et seq.* or pursuant to "the long-exercised power of constitutional courts..." *Id.*, citing *Keller v. Keller*, 52 Wn.2d 84, 86, 323 P.2d 231 (1958). On appeal, a court will uphold a contempt order if any proper basis can be found. *State v. Boatman*, 104 Wn.2d 44, 46, 700 P.2d 1152 (1985).

After lengthy litigation, which began in 2004, the trial court came to a decision and provided oral dicta on how the ruling should be memorialized in a written judgment. VRP (January 2006). Following the oral decision, the parties through their respective prior counsel, presented a final Judgment that was entered on January 23, 2006. CP 64-67. The Judgment provided that Ms. Robbins' had a prescriptive easement over a portion of Mr. Jonassen's property subject Mr. Jonassen's right to install a "ground level curb" for the purpose of separating or demarcating his property. CP 65-66. Furthermore, to ensure that Mr. Jonassen's curb did not interfere with Ms. Robbins' established uses of the easement, the

Judgment expressly provided that Mr. Jonassen's curb was not to impede the opening of car doors or create any hazard for the driveway users. *Id.*

In spite of the Judgment and plain language therein stating a "ground level curb," Mr. Jonassen constructed a curb measuring over eight inches in height (eight inches above ground level). CP 188; CP 217. Now on appeal, Mr. Jonassen attempts to argue that the trial court actually permitted a higher curb than "ground level," because there was oral discussion and "contemplation" regarding a curb that could be as high as nine inches. This oral discussion is not binding on the trial court because it was not integrated into the final Judgment. Furthermore, Mr. Jonassen's prior attorney participated in negotiating and drafting the Judgment; thus, any contemplation was thereby waived by entry of the final Judgment.

An oral decision given from the bench is not a final order and is not binding on the court. *Lasell v. Beck*, 34 Wn.2d 211, 208 P.2d 139 (1949). "Although, in many instances, the trial court will render an oral decision prior to the entry of a written decision, i.e., findings of fact, conclusions of law, or written order, the rule is that a trial judge's oral decision is no more than a verbal expression of his informal opinion at that time." *In re Marriage of Harshman*, 18 Wn. App. 116, 120, 567 P.2d 667 (1977), overruled on other grounds by *In re Marriage of Elam*, 97 Wn.2d 811, 650 P.2d 213 (1982). The oral decision "is necessarily subject to

further study and consideration, and may be altered, modified, or completely abandoned.” *Id.* “[A judge’s oral decision] has no **final or binding effect, unless formally incorporated into the findings, conclusions, and judgment.**” *Id.*, (Emphasis added).

The fact that there may have been contemplation and discussions of a heightened curb has no affect upon this case, as it was not binding and not part of the final decision. Any discussion of a raised height curb protruding from ground level was clearly abandoned by the final Judgment and Decree entered on January 23, 2006. The Judgment clearly indicated a “ground level curb” and Mr. Jonassen’s installation of an eight inch curb violates the written Judgment.

It should not be forgotten, that the Judgment was crafted and agreed to by Mr. Jonassen through his previous attorney. If Mr. Jonassen had issue with the specific limitations of the Judgment he should have raised objections at the time of drafting the Judgment. This Court should not assist in rewriting Mr. Jonassen’s own failures. “It is the duty of the court to declare the meaning of what is written, and not what was intended to be written.” *Berg v. Hudesman*, 115 Wn.2d 657, 669, 801 P.2d 222, 230 (1990). Mr. Jonassen clearly recognized this concept and the fault of his prior attorney when he stated, “I think most of this could have been

avoided if the attorneys had more specific in writing the judgement [sic].”
CP 164, ¶ 23.

Unfortunately for Mr. Jonassen, as he clearly acknowledges, the Judgment did not specify an eight inch curb or an industry standard sized curb, but merely a “ground level curb.” CP 64-67. Thus, it is disingenuous, or an utter lack of common sense, to suggest that trial court abused its discretion in finding that Mr. Jonassen in contempt of the Judgment. Both common sense and a “strict construction” of the term “ground level curb” can only have one meaning; that being, a curb that is level or equal with the ground.

Lastly, Washington courts have recognized that where the contempt determination is made by a judge other than the judge who entered the original decree, the reviewing court should examine more carefully the original decree. *Johnston v. Beneficial Management Corp.*, 26 Wn. App 671, 614 P.2d 661 (1980), *rev'd on other grounds*, 96 Wn.2d 708, 638 P.2d 1201 (1982). However, that standard is not applicable here where the Honorable Kathryn Nelson presided over the trial proceedings; entered the Findings of Fact and Conclusions of Law; entered to the Judgment; granted an Order of Contempt against Mr. Jonassen; and, ultimately, denied Mr. Jonassen’s Motion for Reconsideration. CP 58-63 (Findings of Fact and Conclusions of Law); CP 64-67 (Judgment and

Decree); CP 250-253 (Order of Enforcement of Decree and Order of Contempt); CP 306-307 (Order on Motion for Reconsideration and/or Clarification of Decree). Given the foregoing, Judge Nelson, as trier of fact, was undoubtedly in the best position to determine whether or not Mr. Jonassen's conduct constituted contempt. Indeed, Judge Nelson not only found Mr. Jonassen to be in contempt; she found his "timing of the placement of the curb and the height of the curb to be spiteful." VRP, p. 24 (September 18, 2009). Judge Nelson further determined that any curb installed by Mr. Jonassen should be "[o]ne that is not hazardous and one that allows the transport of garbage cans and does not interfere with her guests exiting and entering cars." *Id.* Judge Nelson's almost verbatim cite to the language of the Findings of Fact and Conclusions of Law and the Judgment is indicative that the trial court determined the Judgment was clear and that Mr. Jonassen's conduct constituted contempt.

2. The Trial Court's Ruling On Prescriptive Easement Was Entered On January 23, 2006, And Is Not Timely For Appeal.

Rules of Appellate Procedure 5.2(a) provides in relevant part that: "a notice of appeal must be filed in the trial court within... 30 days after the entry of the decision of the trial court which the party filing wants reviewed..." While the Rules provide some exceptions to the above, those

exceptions do not apply to Mr. Jonassen's appeal in the instant case. *See* RAP 3.2(e) and RAP 5.2(d)-(f).

While Mr. Jonassen's appeal of the Order of Contempt may be timely, any attempt to raise an appeal issue with the Judgment clearly is not. Thus, Mr. Jonassen's appeal from an order on a post-judgment motion not listed in RAP 2.4(f) does not bring the Judgment itself up for review. Thus, the Judgment itself is not subject to review. *Jones v. Canyon Ranch Assocs.*, 19 Wn. App. 271, 574 P.2d 1216 (1978).

In his appeal brief, Mr. Jonassen argues that the trial court's Order regarding prescriptive easements was based upon a flawed legal standard. The fact of the matter is that the trial court's decision on a prescriptive easement was entered back on January 23, 2006. Argument on the grant of prescriptive easement is longer an appealable issue, having surpassed the right to appeal at the expiration of 30 days.

Mr. Jonassen claims that the 1 ½ inch curb height and distinguishing color requirement is somehow tied to the prior Judgment of 2006 and create an increased burden on him. These requirements were not incorporated or contemplated in the Judgment. As repeatedly shown, the 2006 Judgment stated any curb or barrier created by Mr. Jonassen were to be at "ground level" and not to pose any hazard to Ms. Robbins or the driveway users. The Judgment did not mention a curb height or

distinguishing color; these requirements only came about when Mr. Jonassen's recently requested clarification and reconsideration following the trial court's Order Enforcing the Judgment.

If anything, the 1 ½ inch curb height, is an increase to the prior height level. As to the distinguishing color requirement, this resulted from Ms. Robbins paving her driveway. VRP p. 11-13. The distinguishing color requirement is for the benefit of Mr. Jonassen, because it is to serve as a reminder to Ms. Robbins and her guests that it is separate property. *Id.* The 2006 Judgment did not have a distinguishing color requirement. CP 64-67.

3. There Was Ample And Overwhelming Evidence To Support A Finding Of Contempt Against Mr. Jonassen Not Eight Inches Above Ground, And Not In Interference With Ms. Robbins' Adjudicated Right To The Easement

A trial court's conclusions of law are reviewed de novo giving great significance to the court's conclusions of law. *State v. Collins*, 121 Wn.2d 168, 174, 847 P.2d 919 (1993). The appellate court will usually affirm a trial court decision if there is any basis in the record for sustaining its decision, regardless of whether the trial court relied on that basis. See, e.g., *Gross v. City of Lynnwood*, 90 Wn.2d 395, 401, 583 P.2d 1197 (1978); *State v. Gimarelli*, 105 Wn. App. 370, 376, 20 P.3d 430, review denied, 144 Wn.2d 1014 (2001) ("[T]he appellate court may affirm the

trial court on any ground.").

In this instance, the Judgment clearly provided only for a “ground level curb.” CP 65-66. This fact was clearly acknowledged by Mr. Jonassen who himself paraphrased the Judgment stating that he had **“the right to separate my property from Robbins by erecting a ground level CURB or other ground level barrier...”** CP 156, ¶ 8. Yet, instead of a “ground level curb” Mr. Jonassen constructed an eight-inch tall barrier that defies the plain logical reasoning of “ground level.”

As cited in Mr. Jonassen’s appellate brief:

“the scope of prescriptive easements is determined by the nature of use during the prescriptive period. 17 William B. Stoebuck, *Washington Prac., Real Estate and Property Law* sec. 2.9, at 110 (1995), *citing Mahon v. Hass*, 2 Wn. App. 560, 563, 468 P.2d 713 (1970). ***The extent of the rights acquired through prescriptive use is determined by the uses through which the right originated.*** *810 Properties v. Jump*, 141 Wn. App. 688, 703, 170 P.3d 1209 (2007), *citing Northwest Cities Gas Co. v. Western Fuel Co.*, 17 Wn.2d 482, 486, 135 P.2d 867 (1943); *Restatement of Property* § 477, at 2992 (1944)”.

Appellant’s Brief at 28 (Emphasis Added.)

Here, the trial court entered the Judgment based upon its finding that Ms. Robbins used the subject portion of Mr. Jonassen’s property “in such a way to allow for passengers and guest to enter or exit or go around vehicles parked in the Robbins (sic) driveway along with the wheeling of garbage cans to the street”. CP 60.

Perhaps the old adage that ‘they simply do things bigger in Texas’ coupled with Mr. Jonassen’s part-time residence there contributed to Mr. Jonassen’s construction of a curb beyond the scope expressly permitted in the Judgment i.e. “ground level”. However, there is no dispute that the curb measured eight inches in height and protruded well above ground level. Even more, a picture is worth a thousand words and provides ample evidence in this matter that the curb was well beyond ground level. CP 293; Photograph from Arne Riipinen.

4. Mr. Jonassen’s Appeal Should Be Limited To Those Issues He Preserved At The Trial Court Level

Mr. Jonassen should be estopped from raising any issues he waived at the trial court level because he took up the position that he did not disagree with the trial court’s decision in a finding of contempt. CP 258 at Lines 7-12; CP 261 at Lines 8-13; VRP p. 4:21-22.² A party may not be permitted to claim error “where it can be shown that a party has consciously refrained, for tactical reasons, from claiming error in the trial court.” See, e.g., *State v. Donohoe*, 39 Wn. App. 778, 781-82, 695 P.2d

² Indeed, quoting the relevant portions of Mr. Jonassen’s “Motion and Memorandum for Reconsideration and/or Clarification of 1/23/06 Decree,” Mr. Jonassen professed: “Plaintiff is requesting the Court reconsider only that portion of its contempt ruling which requires the contempt be remedied by removal of the curb...” and that “...plaintiff understand the Court found the currently existing curb to be in contempt of the 2006 Decree...[and] merely would like the Court to reconsider a remedy besides removal and reconstruction...” CP 258 at Lines 7-12; CP 261 at Lines 8-13. Further, on oral argument for reconsideration, Mr. Jonassen’s counsel stated: “He’s not contesting the substance of your order or your finding of contempt.” VRP p. 4:21-22.

150, review denied, 103 Wn.2d 1032 (1985) (defendant waived his right to argue that certain evidence was improperly admitted where defense counsel admitted at oral argument that he had consciously foregone that argument at trial for tactical reasons); *State v. Valladares*, 99 Wn.2d 663, 671-72, 664 P.2d 508 (1983) (affirmative withdrawal of motion to suppress evidence).

In this matter, Mr. Jonassen accepted the trial court's finding of contempt. CP 258 at Lines 7-12; CP 261 at Lines 8-13; VRP p. 4:21-22. In filing a pseudo motion for reconsideration (which was entitled a motion for clarification), Mr. Jonassen proclaimed no error on the trial court's basis for finding contempt and ordering \$2,500.00 in sanctions. *Id.* In proceeding with his motion, Mr. Jonassen claimed he merely wanted clarification and requested that the trial court grant him an opportunity to create a heightened curb above ground level. *Id.* The trial court granted this request ordering that Mr. Jonassen could construct an 1 ½ inch curb. CP 306-307. Accordingly, this Court's review of Mr. Jonassen's appeal should be denied because Mr. Jonassen waived his right to claim error (or appeal) on the issues presently raised in his appeal.

5. The Award Of Fees And Costs Was Appropriate And Not An Abuse of Discretion.

For the reasons set forth herein, the trial court's finding of contempt should be affirmed and the award of attorney's fees and costs below should be upheld. In addition, Ms. Robbins should be awarded attorney's fees and costs "incurred... in defending an appeal of a contempt order." *Graves v. Duerden*, 51 Wn.App. 642, 754 P.2d 1027 (1988), citing *Johnston v. Beneficial Management Corp.*, 26 Wn. App 671, 614 P.2d 661 (1980), *rev'd on other grounds*, 96 Wn.2d 708, 638 P.2d 1201 (1982).

As indicated in the preceding section, Mr. Jonassen's request for a return of the \$2,500.00 paid to Ms. Robbins as part of the contempt order should be denied. Mr. Jonassen clearly took the position that he did not claim error with this portion of the order; and, therefore, he should be barred from now taking an opposite position and fees and costs should be awarded on appeal.

VI. CONCLUSION

When it comes down to it, this appeal is really an attempt to appeal a Judgment entered four years ago, which is not an appealable issue at this date. The Judgment clearly provides that any curb or barrier Mr. Jonassen was to erect could be no higher than "ground level" and pose no

obstruction to Ms. Robbins. Mr. Jonassen's present issue with the Judgment can be best summarized in his own words, "I think most of this could have been avoided if the attorneys had more specific in writing the judgement (sic)." CP 164, ¶ 23. Despite the assertions of Mr. Jonassen, there is no ambiguity in the term "ground level" and, where Mr. Jonassen had an objection to this term, or any other portion of the Judgment, he was required to timely seek review of that issue. Any appeal of the Judgment is now time barred. As indicated above, the Judgment is final, and Mr. Jonassen cannot now amend the Judgment by his conduct, i.e. installing a curb which defeats the purpose of Ms. Robbins' easement. The trial court exercised sound discretion in finding Mr. Jonassen in contempt of the Judgment, and, accordingly, such finding of the trial court should be affirmed.

DATED this 10 day of March, 2010.

MAHER AHRENS FOSTER SHILLITO, PLLC



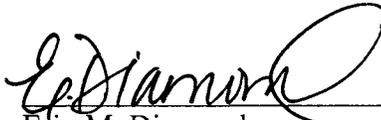
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Attorneys for Marilyn Robbins

CERTIFICATION OF SERVICE

Under penalty of perjury of the laws of the State of Washington, I hereby certify that I served the above Respondent's Brief to counsel of record as follows:

Talis M. Abolins, Campbell, Dille, Barnett, Smith & Wiley, PLLC 317 South Meridian P.O. Box 488 Puyallup, WA 98371 Ph: (253) 848-3513 <i>Attorney for Appellant</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Delivered by Legal Messenger <input type="checkbox"/> Overnight Mail via Federal Express <input type="checkbox"/> Facsimile Transmission <input checked="" type="checkbox"/> E-mail Transmission
--	--

DATED this 10th day of March, 2010.


Erin M. Diamond

FILED
COURT OF APPEALS
DIVISION II

10 MAR 10 PM 5:06

STATE OF WASHINGTON

BY [Signature]
DEPUTY

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

TRACY JONASSEN, a single man,

Appellant,

vs.

MARILYN ROBBINS, a single woman,

Respondent.

NO. 39900-8-II

AFFIDAVIT OF MAILING

STATE OF WASHINGTON)

COUNTY OF PIERCE)

I, the undersigned, being first duly sworn upon oath, depose and say:

1. That I am over the age of 18 years and am competent to testify to the matters stated herein.

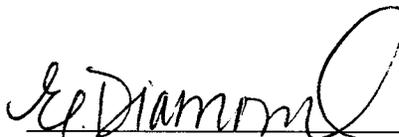
2. That on the 10th day of March, 2010, I sent a copy of the Brief of Respondent in the above-captioned case to via first class certified mail, postage prepaid, to the following names and addresses:

Talis Abolins
Campbell Dille Barnett Smith & Wiley
PO Box 488
Puyallup, WA 98371-0164

1 Talis Abolins
2 Campbell Dille Barnett Smith & Wiley
3 317 S Meridian
4 Puyallup, WA 98371-5913

5 **FURTHER YOUR AFFIANT SAITH NOT.**

6 **DATED** this 10th day of March 2010.

7
8 

9 Erin M. Diamond
10 Paralegal

11 **SUBSCRIBED and SWORN** to before me this 10th day of March 2010.



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Printed name: Lisa N. Potucek
Notary Public in and for the state of
Washington, residing at: Fox Island
My commission expires: September 17, 2012.