

NO. 42917-9-II

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

JAMES BYRON HOLCOMB, individually and as personal representative
of the Estate of Karen R. Holcomb

Appellants

v.

ASSIGNED JUDGE FOR THE KITSAP COUNTY DISTRICT COURT
IN No. I00203333; DIRECTOR, KITSAP COUNTY HEALTH
DISTRICT; and, PROSECUTING ATTORNEY KITSAP COUNTY

Respondents

RESPONDENTS' OPENING BRIEF

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I. INTRODUCTION

Respondents Kitsap County Health District (Health District),¹ Kitsap County District Court (District Court), and Kitsap County Prosecuting Attorney's Office (Prosecuting Attorney's Office), by and through their attorney, Lisa J. Nickel, hereby submit Respondents' Opening Brief in opposition to Appellants' Opening Brief, filed with this Court on July 6, 2012 by Mr. J. Byron Holcomb. For the following reasons, the appeal must be denied and the decision of the Kitsap County Superior Court upheld.

II. RESTATEMENT OF THE ISSUE

Whether the superior court appropriately denied Mr. Holcomb's request for a Writ of Prohibition to prevent the Health District and the Prosecuting Attorney's Office from requiring an Operation and Maintenance Agreement.²

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¹ The Kitsap County Health District is now known as Kitsap Public Health District. For consistency, Respondents will continue to use the former name in effect when the case below was initiated.

² Mr. Holcomb does not appear to assign an error to the Superior Court's denial of the Petitions for Writ of Mandamus and Writ of Prohibition under "Count I" and "Count II" as identified in the Petition to the district court (CP 3 and CP 10 respectively). Accordingly, Respondents will not specifically address those writs unless requested by this Court; however, the analysis in Section IV(C) would apply to those writs as well.

III. RESTATEMENT OF THE CASE

A. Health District Requirements

This case began as a relatively simple infraction case before the Kitsap County District Court filed by the Health District against Mr. Holcomb for violating Section 13 of Kitsap County Health District Ordinance 2008-1 (Ordinance 2008-1). CP 106-108. This section sets forth the requirements for the use, monitoring and maintenance of onsite sewage systems in order to “protect public health, ensure proper functionality of the system and prevent system failure.” CP 116 (Ordinance 2008-1, §13(A)(2)).

As part of the maintenance requirements, Section 13(B) states in part, “The owner shall be responsible for the use, monitoring, and maintenance of the onsite sewage system in conformance with these regulations.” CP 117 (Ordinance 2008-1, §13(B)(1)). It also states, “Only the owner of a single-family residence, or contractors certified by the Health Officer for installing or monitoring and maintaining onsite sewage systems, respectively, shall modify, expand, repair, replace, enhance, rejuvenate, or treat the onsite sewage system....” *Id.*

As to the specifics of the owners’ maintenance responsibilities, one of the requirements states that the owner must:

Ensure a complete evaluation of the system components and/or property to determine functionality, maintenance

needs, and compliance with applicable regulations or permits, and report this information to the Health Officer, on forms or by means designated by the Health Officer as follows:

- a) Standard systems: At least once every three (3) years; and
- b) Alternative systems: At least once every year and in accordance with the Kitsap County Health District's "*Onsite Sewage Systems Use, Monitoring and Maintenance Field Manual*", contained in Appendix B

CP 119 (Ordinance 2008-1, §15). Mr. Holcomb installed a Glendon Mounds biofiltration system in 2001 after being ordered to repair his failing system by the Kitsap County Superior Court in *Bremerton-Kitsap County Health District v. James Byron Holcomb and Karen R. Holcomb*, Cause No. 98-2-01984-2.³ CP 56, CP 140-141. After installing this system, Mr. Holcomb signed a Notice to Title acknowledging that this was an alternative system requiring special monitoring and maintenance. CP 49.

Consistent with this Notice, and pursuant to the understanding that alternative systems tend to be more complicated and have proprietary parts that require special training to work on, Section 17(a) of Ordinance 2008-1 requires owners of alternative systems "obtain and maintain a valid monitoring and maintenance service contract with a monitoring and maintenance service provider certified by the Health Officer...." CP 119.

³ The Bremerton-Kitsap County Health District became the Kitsap County Health District.

Mr. Holcomb obtained such a contract (O&M contract) for the first year after installation of his alternative system, i.e., from October 1, 2001 to October 1, 2002. CP 56. However, Mr. Holcomb failed and admittedly continues to fail to renew this contract or obtain a new one. CP 43, 44.

As Mr. Holcomb should have known from having entered into such a contract initially and as was made clear to him in a letter in 2011,⁴ while a certified provider is required, the choice of who to hire and how much to pay is left to the discretion of the homeowner. CP 47. Nowhere in the record, or anywhere in Health District regulations, does the Health District demand specific contractors or contract amounts.

B. The Infraction

For Mr. Holcomb's admitted failure to provide for the effective maintenance of his alternative sewage system, the Health District cited him with an infraction in June 2011. CP 106. A hearing was set before the Kitsap County District Court in accordance with RCW 7.80.010 and the Infraction Rules for Courts of Limited Jurisdiction (IRLJ). CP 25. At the September 7, 2011 hearing, Mr. Holcomb demanded that his previously filed Motion to Dismiss be granted because the Health District did not file a

⁴ This letter is in response to Mr. Holcomb's request for a new permit in 2011. The permit application filed with the Health District indicates it was to rebuild a garage, CP 58, but the Petition filed in Kitsap County Superior Court stated that it was to tear down and replace

response. No briefing is required for infractions hearings under IRLJ 3.1, so the Health District merely came to the hearing prepared with its attorney and a fact witness to testify. The District Court declined to rule on Mr. Holcomb's motion, and instead established a briefing schedule for both parties and set a new hearing date of February 1, 2012. CP 52-53. This hearing was eventually rescheduled and the matter heard on June 27, 2012. In a letter opinion dated July 24, 2012, the district court denied Mr. Holcomb's motions and found the infraction committed. Exhibit A.⁵

C. Petitions for Writs of Mandamus and Prohibition

While the briefing schedule was proceeding, Mr. Holcomb sought intermediate relief by filing with the Kitsap County Superior Court Petitions for a Writ of Mandamus and two Writs of Prohibition. CP 1-17. The requested Writ of Mandamus was directed to the district court demanding that it grant Mr. Holcomb's motion to dismiss the infraction. CP 6. The first Writ of Prohibition was an alternative to the Writ of Mandamus and demanded that the superior court take jurisdiction away from the district court and rule on the infraction itself. CP 10-11. The second Writ of Prohibition was directed to both the Health District and the Prosecuting Attorney's office,

the existing home. CP 13.

⁵ Respondents request that the court take judicial notice of this decision as allowed by ER 201 and as was similarly allowed by this court in *DeLong v. Parmelee*, 164 Wn. App. 781,

as the Health District's attorney, to forever prohibit any contact with Mr. Holcomb regarding the requirement for an Operation and Maintenance Agreement. CP 12. It appears to be the latter Writ of Prohibition that is challenged here.

The Superior Court denied all three writs in its oral ruling on October 31, 2012, and in writing on November 10, 2012. CP 180-181. Mr. Holcomb's Motion for Reconsideration was also denied. CP 204-205. Mr. Holcomb then appealed to this Court.

IV. ARGUMENT

A. Introduction

According to the Assignments of Error, Mr. Holcomb appeals the superior court's denial of his second request for a Writ of Prohibition against the Health District and the Prosecutor's Office.⁶ Appellant's Opening Brief at 2 (Errata). Specifically, he claims the superior court erred by not ruling on the constitutional issue raised in this request, found in Count III of his Petition. *Id.* Mr. Holcomb also claims that the court of appeals has

785 fn. 4, 267 P.3d 410 (2011).

⁶ Nowhere in Appellant's Opening Brief does Mr. Holcomb raise any issue with respect to the Prosecuting Attorney's Office. *See generally*, Appellant's Opening Brief. The request for a Writ of Prohibition against the Prosecutor's Office has thus not been advanced on appeal and should be considered abandoned under *State v. Wood*, 89 Wn.2d 97, 569 P.2d 1148 (1977)(A party abandons an issue by failing to pursue it on appeal by failing to brief the issue) and *Talps v. Arreola*, 83 Wn.2d 655, 521 P.2d 206 (1974)(the appellant had abandoned a claim on appeal because she failed to include argument or cites to authority on

independent jurisdiction to decide the constitutionality of the Health District's regulations. Neither claim can be sustained in this case. Further, the stated issue is inappropriate as it does not follow from the appeal. Mr. Holcomb's appeal must be denied and the superior court's decision upheld.

B. The Constitutional Issue

1. *This issue is not properly before the Court.*

In general, new issues may not be raised for the first time on appeal.⁷ One of the narrow exceptions is when there is a “*manifest* constitutional error.”⁸ Manifest means that there is actual prejudice, which requires the appellant to make a plausible showing that the asserted error had practical and identifiable consequences in the lower court.⁹ Manifest also means that the record from the trial court is sufficient to demonstrate the merits of the constitutional claim.¹⁰ Without a sufficient record, the error cannot be manifest and the issue cannot be considered.¹¹ With the “manifest” requirement, clearly not all constitutional claims may be first raised on appeal.

the issue).

⁷ RAP 2.5; *Parrell-Sisters MHC, LLC v. Spokane County*, 147 Wn. App. 356, 363-364, 195 P.3d 573 (2008).

⁸ RAP 2.5(a)(3)(emphasis added).

⁹ *State v. Kirkman*, 159 Wn.2d 918, 935, 155 P.3d 125 (2007); *State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995).

¹⁰ *Parrell-Sisters*, 147 Wn. App. at 364.

¹¹ *Id.*

Here, Mr. Holcomb has not met his burden to show that his newly raised constitutional claim should be considered. Most significantly, the record below is devoid of any meaningful discussion of constitutional issues or of sufficient facts to support a determination. *See e.g.*, CP 6-8, 15, 150-152, 171-172, 194-195. At best, Mr. Holcomb’s arguments below are nothing more than mere “naked castings into the constitutional sea [that] are not sufficient to command judicial consideration and discussion.”¹² Furthermore as aptly noted by the superior court in the Order Denying Motion for Reconsideration, “Petitioner has not invoked the jurisdiction of this Court to decide such issues.” CP 205.

Additionally, Mr. Holcomb provides no evidence of actual prejudice. As will be shown in Section IV(C) below, the questions before the superior court were solely whether writs of mandamus and prohibition were warranted. CP 1-17. These writs may only be granted if there is either a clear duty to act (for a writ of mandamus) or a clear duty not to act (for a writ of prohibition), and only if there is no other remedy at law. Where an appeal is provided, there is a remedy and a writ may not issue. Here, neither writ could have been issued because there was, and still remains at this time, an

¹² *Mudarri v. State*, 147 Wn. App. 590, 616, 196 P.3d 153 (2008)(quoting *United States v. Phillips*, 433 F.2d 1364, 1366 (8th Cir. 1970), *cert. denied*, 401 U.S. 917, 91 S.Ct. 900, 27 L.Ed.2d 819 (1971)).

opportunity to appeal from the district court. Accordingly, regardless of whether the Health District's action was based on a constitutional or unconstitutional law, the writs could not have been issued. The refusal for the superior court to consider any constitutional issue thus did not prejudice Mr. Holcomb; the outcome would have been the same. The newly raised error is not "manifest" and cannot be considered here.

2. *Mr. Holcomb has failed to prove the ordinance is unconstitutional.*

Even if this court gratuitously considers the constitutional issue, Mr. Holcomb has failed to demonstrate the unconstitutionality of Ordinance 2008-1. His appeal must be denied.

All duly adopted regulations are presumed constitutional.¹³ The burden is on the challenger to prove a regulation's unconstitutionality, and it is a heavy one that requires proof beyond a reasonable doubt.¹⁴ Every presumption will be indulged in favor of constitutionality.¹⁵

It appears that Mr. Holcomb challenges Ordinance 2008-1, in particular Section 13(C)(17), on the grounds that requiring an O&M

¹³ *Inland Foundry Co., Inc. v. Department of Labor and Industries*, 106 Wn. App. 333, 339, 24 P.3d 424 (2001).

¹⁴ *Id.* See also, *City of Pasco v. Shaw*, 161 Wn.2d 450, 458, 166 P.3d 1157 (2007), *Belas v. Kiga*, 135 Wn.2d 913, 920, 959 P.2d 1037 (1998).

¹⁵ *J & B Development Co., Inc. v. King County*, 29 Wn. App. 942, 946, 631 P.2d 1002 (1981).

agreement is a taking of life, liberty or property without due process under the Fourteenth Amendment of the U.S. Constitution. His statements also appear to suggest that he is claiming that the ability to contract is a liberty right that cannot be impinged upon. However, not one of his cases involve a situation like the one at bar. For example, Mr. Holcomb cites *Calder v. Bull*, but there the court ruled only on the issue of whether the challenged legislative act was an ex post facto law.¹⁶ And, when referring to a contract in dicta, it merely mentioned the impairment of an existing one.¹⁷ Similarly, Mr. Holcomb cites *Vanhorne's Lessee v. Dorrance*, but there the court ruled only on whether the act was an ex post facto law or an impairment of an existing contract.¹⁸ The issue of future contracts was never mentioned. The cases of *Trustees of Dartmouth College v. Woodward*, *Allied Structural Steel Co. v. Spannus* and *Eastern Enterprises v. Apfel* are the same: impairment of an existing contract was the issue, never the ability to require one in the first instance.¹⁹ Accordingly, Mr. Holcomb has not established any legal authority for his claim of unconstitutionality.

Mr. Holcomb also asserts facts that are either erroneous or are

¹⁶ Appellant's Opening Brief at 12; *Calder v. Bull*, 3 U.S. 386, 387 (1800).

¹⁷ *Calder*, 3 U.S. at 388.

¹⁸ Appellant's Opening Brief at 13; *Vanhorne's Lessee v. Dorrance*, 2 U.S. 304, 319 (1795).

¹⁹ *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518, 595-96 (1819); *Allied Structural Steel Co. v. Spannus*, 438 U.S. 234, 244-45, 98 S.Ct. 2716 (1978); *Eastern Enterprises v. Apfel*, 524 U.S. 498, 533-536, 118 S.Ct. 2131 (1998).

speculative. For example, Mr. Holcomb asserts that the Health District has the manpower to perform inspections itself.²⁰ There is, however, not one shred of evidence of this in the record nor does he cite to any. Mr. Holcomb also asserts that the terms of the required contract are set by the Health District and that the property owner is unable to choose who to contract with.²¹ To the contrary, in the 2011 letter to Mr. Holcomb regarding his request for a new permit to rebuild his house, the Health District provides him with a list of contractors from which to choose. CP 47. The only requirement is that the contractor be licensed. Additionally, Mr. Holcomb cites to no regulation, letter or other authority for the claim that cost or terms are set by the Health District. In reality, those are negotiated directly between the contractor and the property owner. Finally, Mr. Holcomb complains that the chosen contractor has an inherent conflict and will be corrupt. Again, there is no evidence of this anywhere in the record. Even a quick skim of the documents referenced reveals no indication of such allegations.²² CP 50, 51.

With no legal authority and no facts in support, Mr. Holcomb's claim that Ordinance 2008-1 is unconstitutional lacks merit and must be rejected.

²⁰ Appellant's Opening Brief at 14.

²¹ *Id.* at 15.

²² Additionally, courts cannot presume that a party will violate the law without evidence in support. *Armour & Co. v. Jesmer*, 76 Wash. 475, 479, 136 P. 689 (1913).

C. Denial of the Writ of Prohibition

On the issue properly before the court – that is the decision of the superior court denying the writ of prohibition – this appeal cannot stand. On appeal, decisions regarding writs of prohibition are reviewed for abuse of discretion with an eye toward “the character and function of the writ of prohibition together with all the facts and circumstances shown by the record.”²³ An abuse of discretion occurs when the trial court makes a decision that is manifestly unreasonable or is based on untenable reasons.²⁴ A decision is manifestly unreasonable if it takes a view that no reasonable person would take, and it rests on untenable reasons if it is the result of an incorrect standard or facts that do not meet the correct standard.²⁵

Writs of prohibition are governed by Chapter 7.16 RCW. This chapter gives the superior court authority to issue such a writ in order to “arrest[] the proceedings of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person.”²⁶ Writs of prohibition are allowed only when “(1) a state actor is about to act in excess of its jurisdiction and (2) the

²³ *City of Olympia v. Thurston County Bd. of Com'rs*, 131 Wn. App. 85, 91, 125 P.3d 997 (2005).

²⁴ *Yousoufian v. Office of Ron Sims*, 168 Wn.2d 444, 471-472, 229 P.3d 735 (2010).

²⁵ *Id.*; *In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997).

²⁶ RCW 7.16.290.

petitioner does not have a plain, speedy, and adequate legal remedy.”²⁷ It must be clear and inarguable that the body to which a writ of prohibition is directed entirely lacks jurisdiction.²⁸ Further, if either one of these factors is absent the court cannot issue the writ.²⁹ As the U.S. Supreme Court has confirmed, writs are drastic remedies that may only be issued in extraordinary situations.³⁰

1. *The Health District was not outside of its jurisdiction*

As just mentioned, a writ of prohibition is allowed only in those special cases where the actor is acting “in excess” of its jurisdiction. The writ of prohibition challenged here requested that the superior court stop the Health District from “further contact of any kind with Holcomb with regard to his alleged ‘requirement’ that Holcomb obtain a Maintenance and Operation Agreement (‘O&M’) with a private contractor to ‘inspect’ his on-site septic tank system....” CP 12.

In the court below, Mr. Holcomb failed to prove that the Health District was acting in excess of its jurisdiction when it issued the citation or required the O&M agreement. First, Mr. Holcomb appeared to claim that

²⁷ *Brower v. Charles*, 82 Wn. App. 53, 57, 914 P.2d 1202 (1996).

²⁸ *Barnes v. Thomas*, 96 Wn.2d 316, 318, 635 P.2d 135 (1981).

²⁹ *Brower*, 82 Wn. App. at 57-58.

³⁰ *Kerr v. U.S. District Court for Northern District of California*, 426 U.S. 394, 402, 96 S.Ct. 2119 (1976); *Brower v. Charles*, 82 Wn. App. at 57.

because the Health District conducted a site visit in response to Mr. Holcomb's request for a new permit, that the Health District had discharged its duties and could not require more. In support, Mr. Holcomb refers to the Health District's 2011 letter, CP 47; however, this letter does not show that the Health District performed any inspection of the alternative sewage system, much less found it adequate.

Furthermore, a site visit performed upon a permit application is wholly different than the detailed inspection necessary to confirm the functioning of an alternative septic system. The successful operation of any sewage system, including the performance of all maintenance and repairs, is the obligation of the property owner. Thus the property owner, not the Health District, must do what is required for its functionality. Mr. Holcomb chose to install the complicated Glendon system and thus chose the situation of needing someone with specialized knowledge to monitor, maintain and repair it. This is no different than Mr. Holcomb being required to hire a contractor to repair a failing system, except that with an alternative system the obligation to contract is in advance of any failure rather than after. The superior court properly rejected this argument.

Second, Mr. Holcomb claimed that the Health District had a duty to inspect and determine compliance, and that such was non-delegable.

However, after citing one case for the general rule, there was no showing that any alleged delegation fell within the rule and was thus prohibited. Without legal or factual support for a conclusory statement, the superior court properly rejected this argument as well.

Finally, Mr. Holcomb claimed in a summary statement that there was no authority for requiring a property owner to “contract for anything.” CP 15. Such broad assertions, without any evidence or authority in support, are insufficient to satisfy any burden of proof, especially one as demanding as that required for an extraordinary writ of prohibition. The superior court did not err in rejecting this argument either.

In sum, the superior court did not abuse its discretion in rejecting Mr. Holcomb’s unfounded claims that the Health District exceeded its jurisdiction in requiring an O&M agreement or in issuing a citation therefor. The superior court’s decision was not manifestly unreasonable nor based on untenable grounds. It should be upheld.

2. *There is a plain, speedy and adequate remedy*

A writ of prohibition also cannot be issued because another remedy exists. Under RCW 7.16.300, a writ of prohibition is appropriate only when “there is not a plain, speedy, and adequate remedy in the ordinary course of law.” As this court held in *City of Olympia v. Thurston County Board of*

Commissioners,

What constitutes a plain, speedy, and adequate remedy depends on the facts of the case and rests within the sound discretion of the court in which the writ is sought. A remedy may be adequate even if attended with delay, expense, annoyance, or some hardship. There must be something in the nature of the action that makes it apparent that the rights of the litigants will not be protected or full redress afforded without issuance of the writ.³¹

When an aggrieved party has an opportunity to appeal, courts have consistently found that a plain, speedy and adequate remedy is available and have denied writs.³² Courts have also determined that any delays and annoyances incident to an appeal do not affect the adequacy thereof.³³

Mr. Holcomb already has an adequate remedy through the district court action that is currently pending. He was afforded a full and fair hearing in that tribunal, complete with the opportunity to provide written briefs, introduce evidence and make oral arguments. The record is fully developed there. In addition, Mr. Holcomb has asked for reconsideration and will also have the ability to appeal in accordance with RCW 7.80.100(5), IRLJ 5.1, and the Rules for Appeal of Decisions of Courts in Limited Jurisdiction (RALJ). Thus, even though the district court lacks jurisdiction to determine

³¹ *City of Olympia*, 131 Wn. App. at 96.

³² *State ex rel. Burkhard v. Superior Court for Clark County*, 11 Wn.2d 600, 602, 120 P.2d 477 (1941).

³³ *Id.*

constitutional issues, that issue, if properly raised and preserved, can be addressed on an appeal to the superior court.

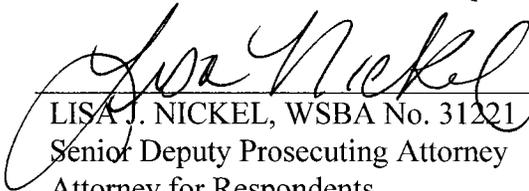
Accordingly, Mr. Holcomb has an adequate remedy by waiting for a final order and appealing that judgment to superior court. At that time, the issue of the constitutionality of the ordinance, along with the record of the infraction, could be properly before the court. The delay of waiting for a final order does not render the remedy inadequate or not speedy. A writ of prohibition was thus not appropriate and was properly denied.

IV. CONCLUSION

In consideration of the foregoing, the Respondents respectfully request that the Court deny Mr. Holcomb's appeal and affirm the decision of the superior court.

Respectfully submitted this 6th day of August, 2012.

RUSSELL D. HAUGE
Kitsap County Prosecuting Attorney



LISA J. NICKEL, WSBA No. 31221
Senior Deputy Prosecuting Attorney
Attorney for Respondents

CERTIFICATE OF SERVICE

I, Tracy L. Osbourne, certify under penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On August 6, 2012, I caused to be served in the manner noted a copy of the foregoing document upon the following:

James Byron Holcomb P.O. Box 10069 Bainbridge Island, WA 98110
<input checked="" type="checkbox"/> Via U.S. Mail
<input type="checkbox"/> Via Fax:
<input type="checkbox"/> Via E-mail:
<input type="checkbox"/> Via Hand Delivery

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

DATED August 6, 2012, at Port Orchard, Washington.


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EXHIBIT A

District Court Letter Memorandum in
Kitsap County Health District v. J. Bryon Holcomb, Kitsap County District Court Cause No100203333

FILED

JUL 24 2012

KITSAP COUNTY DISTRICT COURT
KITSAP COUNTY DISTRICT COURT

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July 24, 2012

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Re: *Kitsap County Health District v. J. Bryon Holcomb*, Cause No 100203333

Gentlemen:

This letter will serve as the written decision in the above-entitled case.

On June 5, 2011, the defendant was cited for not having a valid monitoring and maintenance contract for his alternative septic system. The defendant made a motion to dismiss on numerous grounds, including, lack of subject matter jurisdiction, failure to comply with court rules, failure to name proper parties, statutes of limitations, laches, criminal conduct on the part of the health district officials, government misconduct, and waiver of claim. However, defendant provided no legal authority for any of these motions. Therefore, these motions to dismiss are denied.

The Kitsap County Board of Health Ordinance 2008-01 regulates septic systems. Section 13C.17.a of this ordinance requires property owners to obtain and maintain a valid monitoring and maintenance service contract with a monitoring and maintenance service provider certified by the Health Officer if the onsite sewage system is an alternative system.

It is undisputed that the defendant's Glendon Biofilter septic system is an alternative system. It is also undisputed that the defendant does not currently have a maintenance and monitoring contract for his alternative septic system. The only time he had such a contract was for the year 2001.

Defendant contends that he is not required to have a maintenance and monitoring contract. He argues that this fact was decided in prior litigation when he was ordered to install the Glendon Biofilter system. However, defendant has not provided any proof to the Court that he is exempt

July 24, 2012

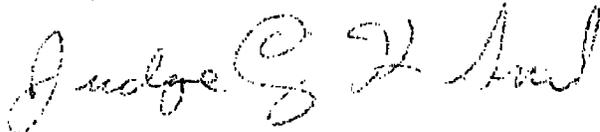
Page 2 of 2

from the requirement of obtaining a maintenance and monitoring contract for his septic system.

Based upon the evidence presented, the Court finds that the Health District has proven by a preponderance of the evidence that the defendant did not have a maintenance and monitoring agreement for his alternative septic system on May 18, 2011. Therefore, the Court finds that the infraction was committed and imposes a fine of \$524.00.

Should the prosecuting attorney wish to present findings of fact, conclusions of law, and a proposed order, he may prepare them and note a court date, before me, for entry of this document.

Sincerely,

A handwritten signature in cursive script, appearing to read "Judge Cindy K. Smith".

Judge Cindy K. Smith

Judge Pro Tem, Kitsap County District Court

KITSAP COUNTY PROSECUTOR

August 06, 2012 - 10:49 AM

Transmittal Letter

Document Uploaded: 429179-Respondent's Brief.pdf

Case Name: James Byron Holcomb v. Assigned Judge

Court of Appeals Case Number: 42917-9

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

- Designation of Clerk's Papers Supplemental Designation of Clerk's Papers
- Statement of Arrangements
- Motion: _____
- Answer/Reply to Motion: _____
- Brief: Respondent's
- Statement of Additional Authorities
- Cost Bill
- Objection to Cost Bill
- Affidavit
- Letter
- Copy of Verbatim Report of Proceedings - No. of Volumes: _____
Hearing Date(s): _____
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- Other: _____

Comments:

No Comments were entered.

Sender Name: Tracy L Osbourne - Email: tosbourn@co.kitsap.wa.us