

**FILED**

OCT 13 2010

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

NO. 28334-8

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**COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON**

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STATE OF WASHINGTON,

Respondent,

v.

LANA T. FRAZIER-TURNER and JAMES R. LEE, JR.,

Appellants,

v.

JAMES R. LEE, SR.,

Respondent.

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**BRIEF OF RESPONDENT**

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**I. STATE’S JOINDER IN BRIEF OF RESPONDENT JAMES R. LEE, SR.**

The State of Washington, Department of Transportation (the “State”), joins, in all respects, in the brief of Respondent James R. Lee, Sr.

**II. STATEMENT OF THE CASE ON APPEAL AND THE STATE’S INVOLVEMENT**

The State was “dismissed” from the trial court proceedings by virtue of the entry of a Stipulated Judgment and Decree of Appropriation on May 15, 2009 (“Stipulated Judgment”). CP 61-66. This Stipulated Judgment was executed by all of the parties in the litigation and terminated the litigation insofar as it related to the State. *Id.*

The Stipulated Judgment stated that the State was to pay \$170,000 into the Court Registry, with the Court directing how those funds were to be disbursed. CP 63. A subsequent trial was held concerning the disbursement of the funds paid into the Court Registry by the State. After the conclusion of the trial, an Order of Disbursement was issued on August 7, 2009. See Brief of Respondent James R. Lee, Sr. pp.4-5. This proceeding did not involve the State and is the sole basis for this Appeal. CP 108.

**III. ASSIGNMENTS OF ERROR**

The Assignments of Error set forth by the Appellants Lana Frazier-Turner and James R. Lee, Jr. do not involve any proceedings prior to the

entry of the Stipulated Judgment and therefore do not involve the State. To the extent that they do, the State adopts in full, and joins in the Brief of Respondent James R. Lee, Sr.

Further, to the extent that Assignment of Error No. 14 asserts that the trial court erred in ruling that Mitzi Lee was not a party to the eminent domain proceedings, there is nothing in the record, or in the Appellants' brief, that establishes that this issue was presented to, or ruled on by, the trial court.<sup>1</sup> As a result, this Court cannot consider this alleged error and it is without merit. *State v. Mannhalt*, 33 Wn. App. 696, 704, 658 P.2d 15 (1983). RAP 2.5(a).

Nor do the Appellants have standing to assert these claims on Mitzi Lee's behalf, as neither of the Appellants are admitted to practice law in this State (or any other), nor are they duly appointed *guardian ad litem*s for Mitzi Lee. See also Brief of Respondent James R. Lee, Sr., pp.10-11. As a result, this alleged error is without merit. *State v. Mannhalt, supra*.

To the extent that the Court believes that the issue raised in Assignment of Error No. 14 was properly raised at the trial level and/or the appellants have standing to assert this claim (and the State expressly refutes such assertions), it is true that Mitzi Lee was not a party to the

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<sup>1</sup> It is difficult to ascertain the nature of what this assignment of error seeks to establish.

condemnation proceedings. CP 387-396. The State did not name Mitzi Lee as a party in its condemnation petition because she was not a record owner of the properties in question at the time of the filing of those petitions. As of June 2008, the record owners of the properties in question were Appellants James R. Lee, Jr. and Lana Frazier-Turner. CP 407-408, 412-415, 435-438.

RCW 8.04.010 provides, in pertinent part, that the condemnation petition shall set forth

. . . the name of each and every owner, encumbrancer, or other person or party interested therein, or any part thereof, insofar as can be ascertained from the public records, . . .

(emphasis added)

The condemnation petition was filed subsequent to Appellants' record ownership of the properties. Because the public records plainly evidenced that Lana Frazier-Turner and James R. Lee, Jr. were the record owners of the properties in question at that time, they were named in the condemnation petition.<sup>2</sup> Given that Mitzi Lee no longer had a recorded interest in those properties, she was not named as a party in the petitions, pursuant to the mandate set forth in RCW 8.04.010. The Appellants state in their brief that Mitzi Lee had every right to quit claim her property interests to Appellants, and by doing so Appellants became the owners of

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<sup>2</sup> Again, this issue was never presented to the trial court and there is no record or decision to appeal.

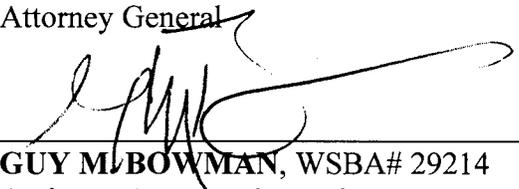
the properties in question in June of 2008. Appellants' Brief, p.12. As such, it is incongruent at best for the Appellants to argue that the trial court "erred" in determining that Mitzi Lee was not a party to the proceedings.

#### **IV. STATE'S REQUEST FOR FEES**

For the reasons set forth in the brief of Respondent James R. Lee, Sr., the State should be granted terms, costs, and attorney fees incurred in connection with responding to this Appeal.

RESPECTFULLY SUBMITTED this 11<sup>th</sup> day of October, 2010.

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