

**FILED**

**JAN 18 2012**

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

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Washington State Court of Appeals  
Division III

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Docket No. 299708

Spokane Cy. Sup. Ct. Cause No. 10-2-04835-3

**CHERRYANN COBALLES, et al.,**

*Plaintiffs-Petitioners,*

-against-

**SPOKANE COUNTY, et al.,**

*Defendants-Respondents.*

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**APPELLANT'S SUPPLEMENTAL BRIEF**

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## SUPPLEMENTAL BRIEF

On Dec. 27, 2011, the Court requested supplemental briefing. Ms. Coballes responds to each point below:

1. **Is there a statutory right to appeal the County Board of Commissioners' decision in this matter to superior court pursuant to RCW 36.32.330?**

**Short Answer: Uncertain.** SCC 5.04.032(e) provides, "An appeal of an order affirming the hearing officer(s) recommendation may be made in the manner provided under the general laws of the state." RCW 36.32.330 is part of those general laws and "applies in situations where the Board is acting on its ordinary and usual duties. However, when it is acting distinct from those duties, under special statute, it does not apply." *Sterling v. Spokane Cy.*, 31 Wash.App. 467, 469-70 (III, 1982).

In *Cathcart-Maltby-Clearview Comm. Council v. Snohomish Cy.*, 96 Wn.2d 201, 205-206 (1981), the Supreme Court held that RCW 36.32.330 did not apply to land use decisions, adding that the statute causing the decision appealed from imposed duties upon the county commissioners "distinct from their ordinary and usual duties and is a special statute for a special purpose[.]" *Id.* (quoting *State ex rel. Lyon v. Board of County Commissioners*, 31 Wn.2d 366, 370-71 (1948)). Resultantly, it held that the writ of review method applied to review the board's rezone approval.

Unlike *Sterling*, the Board rendering a decision against Ms. Coballes was not acting in an appellate capacity but factfinder in an evidentiary hearing. It appears to have acted pursuant to a special purpose statute, SCC 5.04.032. That this statute expressly provides for a right of appeal, ostensibly via RCW 36.32.330, engenders confusion. While SCC 5.04.032 appears to be a special statute for a special purpose, it also explicitly provides a right of appeal – though without designating the avenue or procedure.

In *Lyon*, our Supreme Court referenced *Lawry v. Board of Commissioners of Snohomish Cy.*, 12 Wash. 446, where Judge Anders said that the decision to remove a county seat was not appealable under RCW 36.32.330, stating:

By the statute relating to the removal of county seats, duties are cast upon the board of county commissioners which are separate and distinct from their ordinary and usual duties. In discharging them, it acts as the representative or agent of the legislature, by virtue of a special statute enacted for the sole purpose of clothing it with special powers, and which provides for no appeal. We think the general appeal act refers only to the usual proceedings of the board, and not to special proceedings under a special statute for a special purpose.

*Id.*, at 369 (quoting *Lawry*). A year later, *Lyon* recognized that the Supreme Court determined that no appeal would lie from decisions made by the board sitting as a board of equalization, noting that “it could make

no difference whether the decision in question was made by the board of county commissioners acting as a board of equalization, or by a separate board.” Unless the specific act enrobing the board with equalization powers therein provided a right of appeal, no appeal would lie. *Id.*, at 369-70 (quoting *Olympia Water Works v. Thurston Cy.*, 14 Wash. 268, 272). With similar outcome, the Supreme Court ruled in *Adams Cy. v. Scott*, 117 Wash. 85 (accord) and *State ex rel. Klaas v. Board of Commissioners of Okanogan Cy.*, 140 Wash. 43 (no right of appeal from action granting franchise for toll bridge).

In conclusion, if the court finds that SCC 5.04.032’s providing a general right of appeal amounts to the county’s incorporation by reference of RCW 36.32.330, regardless of the fact that SCC 5.04.032 is a special statute, then the answer to this question is yes. Otherwise, no.

- 2. If there is such a right, was that the substance of the proceeding in superior court, or was the substance of the proceeding the resolution of petitions for statutory and/or constitutional writs of certiorari? Depending on your response: On what basis was the writ procedure appropriate, if Ms. Coballes had a right of appeal to superior court?**

**Short Answer: Uncertain.** Whether the superior court decided Ms. Coballes’s petition for review as a statutory appeal instead of a writ of review makes no difference since the applicable procedures are identical. RCW 36.32.330 states, “The practice regulating appeals from and writs of

certiorari to justice's courts shall, insofar as applicable, govern in matters of appeal from a decision or order of the board of county commissioners." Hence, in reviewing an appeal under RCW 36.32.330, the court must employ now-repealed/superseded Justice Court Rules<sup>1</sup> or, presumably, the latter RALJ ("appeals from ... justice's courts") and/or writ of certiorari standards, notwithstanding that one does not obtain a writ of certiorari to a district court.

Under the RALJ or by writ, the same *de novo*/substantial evidence scope of appellate review applies.

**3. Whatever your position on the nature of the superior court proceedings, is Ms. Coballes presently entitled to review as a matter of right under RAP 2.2, or is this court's acceptance of review discretionary under RAP 2.3?**

**Short Answer: As of Right.** RAP 2.2(a)(1) straightforwardly applies to any final judgment in superior court. RCW 7.16.350 provides that appellate review may be sought by this court "[f]rom a final judgment in the superior court, in any [certiorari] proceeding." Indeed, this was the precise procedural posture from which Divisions I and II granted review in other dangerous dog cases. *See Mansour v. King Cy.*, 131 Wash.App. 255

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<sup>1</sup> The 2009 amendment to RCW 36.32.330 merely added the words "or her" to ensure gender neutrality but did not otherwise alter the language since the last 1963 amendment. The RALJ was not even effective until 1981.

(I, 2006)(granting review as of right from writ of review issued by superior court in evaluating King County Board of Appeal's decision deeming dog vicious and ordering removal); *see also Downey v. Pierce Cy.*, --- P.3d ---, 2011 WL 5931911 (II, 2011)(granting review as of right from writ of review issued by superior court in evaluating Pierce County Hearing Examiner's decision deeming dog dangerous). In both cases, the appeals courts reviewed factual findings for substantial evidence and whether the findings supported the conclusions of law *de novo*.

Even if this court finds that Ms. Coballes had a statutory right to appellate review by the superior court, this would not in any way negate her entitlement to review as of right under RAP 2.2(a)(1), since Judge Leveque's decision retained its character of finality. Note that RAP 2.2(c) does not apply here since the Spokane County Board of Commissioners is not a "court of limited jurisdiction."

### **CONCLUSION**

Ms. Coballes is entitled to review as a matter of right.

Dated this Jan. 10, 2012

ANIMAL LAW OFFICES

Digitally signed by Adam P. Karp  
Location: Bellingham, WA  
Date: 2012.01.10 17:36:58 -08'00



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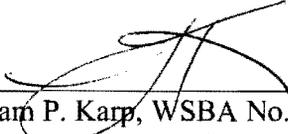
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on Jan. 11, 2012, I caused a true and correct copy of the foregoing APPELLANT'S SUPPLEMENTAL BRIEF, to be served upon the following person(s) in the following manner:

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