

FILED

NOV 07 2012

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
BY _____

No. 307956

IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III

KEVIN GRUDZINSKI,

Plaintiff/Appellant,

v.

RANDY GRUDZINSKI,

Defendant/Appellee.

APPELLANT'S OPENING BRIEF

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I. INTRODUCTION

Defendant/Appellee Randy Grudzinski (“Randy Grudzinski”), illegally and without permission, dumped a large volume of demolition debris and hazardous substances on pasture land just outside Walla Walla owned by his mother, Elsie Grudzinski, beginning in 2007 and continuing into 2009. Mrs. Grudzinski requested that her son clean up her property, but Randy Grudzinski failed to do so. Elsie Grudzinski died in 2009.

Randy Grudzinski and his brother, Plaintiff/Appellant Kevin Grudzinski (“Kevin Grudzinski”), were the only heirs to Mrs. Grudzinski’s estate. Mrs. Grudzinski’s estate included several parcels of real estate. Instead of selling the properties, the personal representative of the estate, Thomas Sawatzki, elected to divide the parcels between the brothers. Mr. Sawatzki obtained estimates for costs to remove the materials dumped by Randy Grudzinski, but he did not actually hire anyone to clean up the property. Mr. Sawatzki distributed the contaminated parcels to Kevin Grudzinski without any offset for the estimated cleanup costs. Prior to the estate distribution, the attorney for the estate, Larry Siegel, assured Kevin Grudzinski’s counsel that Kevin Grudzinski retained claims against Randy Grudzinski for the cleanup costs, and that those claims would survive closing of the estate.

Based on the assurances from Mr. Siegel that the cleanup claims would survive the closing of the estate, Kevin Grudzinski did not oppose

the proposed estate distribution, and immediately commenced the instant litigation to recover the costs of cleaning up the properties that Randy Grudzinski used as illegal dumping sites.

The trial court dismissed Kevin Grudzinski's claims on summary judgment. The trial court erred, and should be reversed.

II. ASSIGNMENT OF ERROR

A. Assignment of Error

The trial court erred in granting summary judgment dismissing Kevin Grudzinski's claims for violations of the Model Toxics Control Act ("MTCA"), negligence, equity and quiet title.

B. Issues Pertaining to Assignment of Error

1. When viewed in the light most favorable to Kevin Grudzinski, do the facts support his claim for relief under MTCA?
2. Did the negligence claims survive the death of Elsie Grudzinski?
3. Was Kevin Grudzinski compensated in the estate for damage caused to the properties that he inherited?
4. Is it unfair to require Randy Grudzinski to cleanup properties on which he illegally dumped construction debris and hazardous material?

5. Did Randy Grudzinski's motion for summary judgment present any facts or legal authorities to warrant dismissal of Kevin Grudzinski's claim for quiet title?

6. Was Randy Grudzinski's motion for summary judgment untimely?

III. STATEMENT OF THE CASE

There are three parcels of real estate at issue in this case on which Randy Grudzinski illegally dumped. Those three parcels are depicted as Parcels 1, 3 and 4 in a map attached to the Declaration of Kevin Grudzinski, all of which were owned by Elsie Grudzinski until her death in 2009 and were distributed to Kevin Grudzinski in 2010. Clerk's Papers ("CP") 123. Parcel 1 is accessed through Bearsville Lane, which is a gravel road, and Parcels 3 and 4 are accessed through Gose Road. CP 117, lines 1-11.

A. Randy Grudzinski Dumped Hazardous Substances and Construction Debris on the Subject Properties

Randy Grudzinski owned and operated an excavation company called Randy Grudzinski, Inc. ("RGI"), which primarily performed contract excavation work. CP 146. Under Randy Grudzinski's instructions and direct supervision, RGI removed demolition and other materials from various construction sites and dumped it onto Elsie Grudzinski's property. CP 117, lines 1-11, CP 145, CP 147. Those materials included large chunks of asphalt and concrete with and without

rebar, iron pipe, cast iron manhole covers, large tree stumps and logs up to 18 feet long. CP 117, lines 17-20. Randy Grudzinski asserts that Elsie Grudzinski gave him permission to use Parcel 1 as a base of operations on which he could personally store equipment and temporarily deposit materials that would later be used on other projects. CP 148-149. Any such permission was granted to Randy Grudzinski personally, not to his company. CP 118, lines 1-4.

In 2007, RGI contracted with Apollo, Inc. to perform excavation work on the Myra Road construction project (“Myra Road Project”). CP 146. Randy Grudzinski personally facilitated negotiations between Elsie Grudzinski and Apollo, Inc. regarding the disposal of materials on her property from the Myra Road Project. CP 148, CP 151. On September 12, 2007, Elsie Grudzinski signed a letter purportedly granting Apollo, Inc. permission to dump on Parcel 4. CP 55. The letter makes clear that only “dirt and vegetation” were allowed to be dumped. CP 55. However, numerous pieces of concrete with rebar and PVC pipe are visible on Parcel 4 in the material dumped there. CP 118, lines 21-24. Dumping continued there even after Walla Walla County placed a stop work order notice on the gate from Gose Road into Parcel 3. CP 118-119.

RGI also had a contract with Baker Construction in approximately 2007 to perform grading and utility work at a project at 9th and Rose in Walla Walla. CP 143-144. From that project, RGI hauled away various

materials, including concrete, asphalt and “pit run,” a gravelly dirt mix material. CP 144. The pit run, and likely the concrete and asphalt, were dumped onto Parcel 1. CP 144. Similar materials may also have been dumped there and at other parcels from another project for Baker Construction. CP 144.

Because Kevin Grudzinski’s residence is located immediately to the south of Parcel 1 and is also accessed through Bearsville Lane, Kevin Grudzinski personally observed RGI’s trucks dumping on Parcel 1. CP 117, lines 1-11. Kevin Grudzinski also personally observed Randy Grudzinski driving trucks that dumped construction debris on Parcel 1. CP 118, lines 9-10. When RGI’s trucks travelled at high speeds and damaged the gravel road, Kevin Grudzinski called Elsie Grudzinski in 2007 to ask her to tell Randy Grudzinski to slow down his trucks, and also to let her know that Randy Grudzinski was dumping asphalt, concrete with rebar, and large trees and stumps on her pasture. CP 117, lines 1-11. Elsie Grudzinski told Kevin Grudzinski that Randy Grudzinski was only allowed to dump clean soil and brush small enough to run through a wood chipper. CP 117, lines 1-11. She also stated that she would tell Randy Grudzinski to cease dumping on the property. CP 117, lines 1-11.

Elsie Grudzinski later spoke with Randy Grudzinski and told him to cease dumping materials on her property, thus revoking the alleged permission that she had given him to use the property as a supposed base

of operations. CP 148-149. At first Randy Grudzinski complied, but approximately a week later Kevin Grudzinski observed RGI's trucks once again dumping materials on the property. CP 117, lines 12-16. Kevin Grudzinski called Elsie Grudzinski again to let her know that dumping had resumed, and she again stated that she would tell Randy Grudzinski to stop dumping. CP 117, lines 12-16. Randy Grudzinski paused his dumping again, but resumed dumping several days later. CP 117, lines 12-16. This same process repeated itself for several months. CP 117, lines 12-16.

Kevin Grudzinski had many conversations with Elsie Grudzinski in which she clearly stated to him that Randy Grudzinski did not have permission to dump anything other than "good soil" and brush small enough to run through a wood chipper on her property. CP 116, lines 19-22. From 2007-2009, Elsie Grudzinski asked Kevin Grudzinski on several occasions whether Randy Grudzinski had removed the materials that he had dumped on her property. CP 117, lines 21-25. When Kevin Grudzinski informed her that no materials had been removed, she repeatedly stated that she would speak to Randy and request that he remove the materials that he dumped. CP 117, lines 21-25. No materials dumped by Randy Grudzinski on Elsie Grudzinski's property were ever removed. CP 114-115, CP 117, lines 21-25.

B. Contaminated Waste From the Stubblefield Salvage Yard Was Dumped on the Subject Properties, and the Walla Walla County Health Department Ordered That the Illegally Dumped Construction Debris Be Removed

As part of the Myra Road Project, the road was constructed through property owned by Emory Stubblefield known as the Stubblefield Salvage Yard (the “Stubblefield site”). Iron, scrap motorized vehicles, and other unknown materials were present at the Stubblefield site. CP 150. Notably, the letter that Elsie Grudzinski signed with Apollo, Inc. expressly stated that materials from the Stubblefield site would not be allowed to be disposed of on Elsie Grudzinski’s property. CP 55. In 2006, the Department of Ecology performed a site study that confirmed the presence of unspecified petroleum products and other conventional inorganic and organic contaminants at the Stubblefield site. CP 153. Results from the site study also indicate the suspected presence of dioxin/dibenzofuran compounds, polynuclear aromatic hydrocarbons and other unspecified metals. CP 153. The Stubblefield site is currently awaiting cleanup by the Department of Ecology, which has ranked the property as a Level 1 Hazardous Site. CP 153, CP 156.

Kevin Grudzinski also personally observed RGI trucks loaded with material from the Stubblefield Salvage site in the 2007-2008 time frame. CP 118, lines 11-16. He saw the trucks travel toward Parcels 3 and 4 on Gose Road for dumping on Elsie’s property. CP 118, lines 11-16. Kevin Grudzinski observed this while driving trucks for the Walla Walla County

Roads Department, where he worked at the time. CP 118, lines 11-16. Furthermore, during the course of dumping on Parcel 1, one of RGI's end-dump loader trailers tipped over onto Parcel 1 and was left there on its side for several months, allowing it to leak hydraulic fluid onto the ground. CP 118, lines 5-8. Randy Grudzinski was fully aware that the tipped-over trailer remained on Parcel 1 during that time. CP 149.

In August 2010, the Walla Walla County Health Department investigated property that included Parcels 1, 3 and 4, determining that the presence of construction and demolition material violated local rules governing the disposal of solid waste. CP 158. After consulting with the Department of Ecology, the Walla Walla County Health Department issued a letter to Elsie Grudzinski's estate that provided recommended steps to be carried out in order to bring the property into compliance with local code. CP 158. The letter also stated that the "solid waste was apparently disposed of on the land without application for and issuance of a Solid Waste Permit by the Walla Walla County Health Department as required by law. (See RCW 70.95.030, 70.95.065 and WAC 173-350-410.) Furthermore, we are told by the Walla Walla County Community Development Department that the neighborhood zoning does not allow for solid waste disposal sites and there are no current action permits." CP 158.

C. Kevin Grudzinski Was Not Provided With Compensation for Cleanup Costs Through Probate of the Estate, and Claims for Cleanup Costs Survived Closing of the Estate

Kevin Grudzinski received no compensation whatsoever from Elsie Grudzinski's estate for cleanup costs for Parcels 1, 3 or 4. CP 119-121. Instead, the personal representative of the estate, Mr. Sawatzki, arbitrarily increased the assigned values of personal property and farm equipment allocated to Kevin Grudzinski in order to offset the supposed compensation from the estate for cleanup costs. CP 119-121. For example, the distribution plan attached to an email dated May 21, 2010 from Mr. Sawatzki to Kevin Grudzinski's counsel in the probate proceedings, Mike Hubbard, did not include any allocation for cleanup costs, and indicates that the value of personal property (excluding guns) and farm equipment in the estate totaled \$72,201.41. CP 119-120, CP 127-128. In another distribution plan dated June 17, 2012, the same personal property (excluding guns) and farm equipment were valued at \$112,669.34, and \$43,700 was allocated to cleanup costs. CP 119, lines 12-22, CP 125. Nearly all of the increased personal property and farm equipment values were allocated to Kevin Grudzinski, thereby offsetting most of the cleanup credits to Kevin Grudzinski's allocation. Confusingly, in yet another distribution plan prepared a couple of weeks later, the amount allocated to cleanup costs was reduced to \$25,000, and the value of personal property (excluding guns) and farm equipment was

reduced by just over \$25,000. CP 120, lines 12-21, CP 130-133. Despite these dramatic changes in personal property valuations, the amount of cash allocated to Kevin Grudzinski varied by only a few thousand dollars. On July 27, 2010, Mr. Hubbard received by email from Larry Siegel, the attorney representing the estate, an official valuation of the assets of the estate indicating that the personal property (excluding guns) and farm equipment was assigned a total value of \$76,969.16. CP 120-121, CP 135-138. The varying valuations of the estate's personal property and farm equipment demonstrate that Kevin Grudzinski was not compensated for cleanup costs at all.

Mr. Siegel filed a declaration of completion of the probate in July 2010. CP 112, lines 22-23. Shortly thereafter, Mr. Hubbard spoke with Mr. Siegel about the need for Kevin Grudzinski to reserve all rights and claims against Randy Grudzinski for cleanup costs for the property to be distributed to Kevin. CP 112, lines 23-25. Mr. Siegel agreed, and stated to Mr. Hubbard that any issues between Kevin and Randy Grudzinski pertaining to such cleanup costs would survive closing of the estate. CP 112-113.

D. The Trial Court Granted Summary Judgment Against Kevin Grudzinski

Kevin Grudzinski filed his Complaint for Money Damages and/or Equitable Relief and to Quiet Title on September 15, 2010. CP 001. Randy Grudzinski filed a motion for summary judgment on February 15,

2012, setting the motion for hearing on March 15, 2012. Trial was set to commence on March 26, 2012, only 11 days after the hearing date set for Randy Grudzinski's motion for summary judgment. CP 62. Kevin Grudzinski filed a motion on February 17, 2012 to strike the summary judgment motion as untimely under CR 56(c). CP 56. Randy Grudzinski filed a motion for leave to have his summary judgment heard less than 14 days before trial on February 23, 2012. CP 63. On March 15, 2012, the trial court denied Kevin Grudzinski's motion to strike and granted Randy Grudzinski's motion to hear his summary judgment motion less than 14 days before trial. CP 196-197, CP 200.

The trial court subsequently granted Randy Grudzinski's motion for summary judgment on March 16, 2012, except as to one claim relating to an easement. CP 203-204. The surviving easement claim was dismissed pursuant to a stipulation of the parties on April 18, 2012. CP 211.

IV. ARGUMENT

A. Standard of Review

The appellate court reviews summary judgment decisions de novo, engaging in the same inquiry as the trial court, to determine if the moving party is entitled to summary judgment as a matter of law and if there is any genuine issue of material fact requiring a trial. *Michak v. Transnation Title Ins. Co.*, 148 Wn.2d 788, 794-95, 64 P.3d 22 (2003). A trial court's factual findings on summary judgment are entitled to no weight, and the

appellate court reviews the record de novo. All facts, and reasonable inferences therefrom, must be viewed most favorably to the party opposing the motion. Even if the facts are undisputed, if reasonable minds could draw different conclusions, summary judgment is improper. *Chelan County Deputy Sheriffs Ass'n v. Chelan County*, 109 Wn.2d 282, 745 P.2d 1 (1987).

B. Questions of Material Fact Preclude Dismissal of MTCA Claim

Under MTCA, “a past or present property owner is liable for the cleanup and damages to the environment caused by the release of toxic substances.” *Dash Point Village Assoc. v. Exxon Corp.*, 86 Wn. App. 596, 599, 937 P.2d 1148 (1997). RCW 70.105D.080 provides that a person may bring a suit against any other liable persons to seek contribution or for declaratory relief for the recovery of remedial action costs. Liable parties include current owners as well as any person “who owned or operated the facility at the time of disposal or release of the hazardous substances” or “who accepts or accepted any hazardous substance for transport to a disposal, treatment, or other facility selected by such person from which there is a release or a threatened release for which remedial action is required.” RCW 70.105D.040(1)(b) and (d). A facility is broadly defined to include “any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored,

disposed of, or placed, or otherwise come to be located.” RCW 70.105D.020(5)(b).

Randy Grudzinski completely misconstrues the nature of Kevin Grudzinski’s claim by citing the requirements for recovery of remedial action costs under WAC 173-340-545(2)(c), which contemplates remedial actions that have already been commenced or completed. CP 20. Kevin Grudzinski has not yet begun to clean up the hazardous substances on his property. Instead, he filed the present lawsuit in order to compel Randy Grudzinski to dispose of waste for which he is responsible. RCW 70.105D.080 plainly provides that “a person may bring a private right of action, including a claim for contribution or for declaratory relief, against any other person liable under RCW 70.105D.040 for the recovery of remedial action costs.” Nothing in the statute precludes a finding of liability for future remediation costs, which is reflected in existing case law. *See e.g., Dash Point Village Associates v. Exxon Corp.*, 86 Wn. App. 596, 613, 937 P.2d 1148 (1997) (upholding a declaratory judgment that defendant Exxon was responsible for future remediation costs, stating, “Dash Point’s favorable judgment [under MTCA] will ensure that Exxon is responsible for cleaning the groundwater beneath the Dash Point property.”); *Taliesen Corp. v. Razore Land Co.*, 135 Wn. App. 106, 144 P.3d 1185 (2006) (in which a past owner of the facility shared liability for future cleanup costs).

Kevin Grudzinski clearly alleged sufficient facts to support a valid MTCA claim. Randy Grudzinski is a liable because party he accepted hazardous substances for transport, and he deposited them on the subject properties. Furthermore, Randy Grudzinski acted as an operator when he used the properties as a base of operations, and communicated with Apollo, Inc. regarding the disposal of materials on behalf of Elsie Grudzinski. Contrary to Randy Grudzinski's assertions, it was not only RGI that hauled construction debris to Elsie Grudzinski's property—Randy Grudzinski was present and personally participated when he drove trucks that dumped waste. When interpreting similar provisions of MTCA's federal counterpart, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), courts have held that corporate officers and directors cannot hide behind the corporate shield when they themselves actually participate as operators in the wrongful conduct prohibited by the Act. *See, e.g., United States v. Kayser-Roth Corp.*, 910 F.2d 24, 26-27 (1st Cir. 1990) (noting cases in which shareholders were held liable as "operators" under CERCLA); *United States v. Northeastern Pharmaceutical & Chemical Co.*, 810 F.2d 726, 743-44 (8th Cir. 1986) (holding that Congress intended CERCLA liability to attach to corporate officers). Although RGI may also be liable as an operator, Randy Grudzinski personally participated in, managed and

controlled the dumping of hazardous substances on the properties, thus rendering him personally liable.

The materials dumped on the property qualify as hazardous substances. Hazardous substances encompass a wide range of dangerous waste, including petroleum products and any substance that presents a threat to human health or the environment. RCW 70.105D.020(10); *see also City of Seattle (Seattle City Light) v. Washington State Dept. of Transp.*, 98 Wn. App. 165, 172, 989 P.2d 1164 (1999) (finding that hardened asphalt residue in a tank car was a hazardous substance under MTCA). There is no minimum level of hazardous substance required to trigger liability under MTCA. *Seattle City Light*, 98 Wn. App. at 172. Asphalt and other as-yet-unknown hazardous substances were dumped onto Elsie Grudzinski's property from various construction projects, including the Stubblefield site, which is currently awaiting cleanup by the Department of Ecology. The hydraulic fluid that leaked from RGI's trailer also qualifies as a hazardous substance.

Randy Grudzinski contends that Kevin Grudzinski must show that the deposited materials constitute hazardous substances that pose a threat or potential threat to human health or the environment. *See* RCW 70.105D.020(26). Whether or not asphalt qualifies as such a substance, any materials transferred from the Stubblefield site, including unspecified petroleum products, and the leaked hydraulic fluid, likely pose a more

serious danger. Of particular concern is the potential for high levels of polynuclear aromatic hydrocarbons, which may result in liability under MTCA. See *PacifiCorp Environmental Remediation Co. v. Washington State Dept. of Transp.*, 162 Wn. App. 627, 259 P.3d 1115 (2011) (in which deposited coal tar had some effect on polycyclic aromatic hydrocarbons levels in adjacent waterway, such that the defendant was liable for remediation costs under MTCA). In short, there is a clear question of fact as to whether the hazardous substances on Kevin Grudzinski's property pose a threat or potential threat to human health or the environment.

C. Negligence

“In an action for negligence a plaintiff must prove four basic elements: (1) the existence of a duty, (2) breach of that duty, (3) resulting injury, and (4) proximate cause.” *Degel v. Majestic Mobile Manor, Inc.*, 129 Wn.2d 43, 48, 914 P.2d 728 (1996). In an effort to show that Kevin Grudzinski has not established a prima facie case of negligence, Randy Grudzinski first argued that he did not breach any duty of care that he owed to Kevin Grudzinski, contending that RGI, and not Randy Grudzinski himself, dumped the materials with the knowledge and consent of Elsie Grudzinski. CP 21. Randy Grudzinski is wrong—he personally dumped material on Elsie Grudzinski's property without her permission. It is well established that “[u]nder certain circumstances, corporate officers may face personal liability for tortious conduct other than by

piercing the corporate veil.” *Consulting Overseas Management, Ltd. v. Shtikel*, 105 Wn. App. 80, 84, 18 P.3d 1144 (2001) (citing *Dodson v. Economy Equipment Co., Inc.*, 188 Wash. 340, 343, 62 P.2d 708 (1936)). In *Dodson*, the court determined that “[t]he liability of an officer of a corporation for his own tort committed within the scope of his official duties is the same as the liability for tort of any other agent or servant.” 188 Wash. at 343. Randy Grudzinski may be held personally liable for tortious conduct committed within the scope of his official duties as owner of his company. Furthermore, by not removing the hazardous substances that continue to contaminate the properties, Randy Grudzinski has breached a duty of care to Kevin Grudzinski as the current owner.

Randy Grudzinski also argues that Kevin Grudzinski has not been injured, first because Elsie Grudzinski provided Randy Grudzinski with permission to dump, and also contending that if she expected compensation for the benefit that he received, it was forgiven under the will. CP 21-22. Again, Randy Grudzinski never had permission to dump hazardous substances or construction debris on Elsie Grudzinski’s property—it was never a “benefit” that Elsie Grudzinski intended to confer to Randy Grudzinski.

Randy Grudzinski also argues that Kevin Grudzinski has already been compensated through the estate distribution for any injury that he suffered. CP 22. As described above, Kevin Grudzinski never received

any compensation for cleanup costs from the estate. Furthermore, Mr. Siegel, the attorney representing the estate, explicitly stated that any issues between Kevin Grudzinski and Randy Grudzinski pertaining to cleanup costs would survive closing of the estate, which is inconsistent with a belief that Kevin Grudzinski was being compensated by the estate.

Finally, although it was never argued by Randy Grudzinski below, in the trial court's oral decision to grant summary judgment as to the negligence claim (and the remaining claims that the trial court dismissed), the trial court reasoned that Kevin Grudzinski was not entitled to assert claims that accrued when Elsie Grudzinski was alive: "But I don't think that Kevin Grudzinski, has, as successive owner to the land, inherits a cause of action that belonged to Elsie." CP 36. The trial court did not reference any authority for this proposition, and the trial court was wrong. Washington's general survival statute, RCW 4.20.046(1), provides in pertinent part:

All causes of action by a person or persons against another person or persons shall survive to the personal representatives of the former and against the personal representatives of the latter, whether such actions arise on contract or otherwise, and whether or not such actions would have survived at the common law or prior to the date of enactment of this section.

In discussing Washington's survival statutes, the Supreme Court has made clear that the general survival statute, RCW 4.20.046(1), "preserves all causes of action that a decedent could have brought if he or she had

survived,” and “recovery under the general survival statute is for the benefit of, and passes through, the decedent’s estate.” *Otani ex. rel. Shigaki v. Broudy*, 151 Wn.2d 750, 755-56, 92 P.3d 192 (2004). As an heir to his mother’s estate, Kevin Grudzinski owns the claims that Elsie Grudzinski had at the time of her death. This is especially true here, where the estate representatives induced Kevin Grudzinski to withhold any protest to the estate distribution by assuring him that the claims survived the estate closing.

The actions of Randy Grudzinski, constituting a breach of a duty of care owed to Elsie Grudzinski, and now Kevin Grudzinski, have caused an ongoing injury to Kevin Grudzinski for which he has not been compensated. Kevin Grudzinski has therefore established a prima facie case of negligence.

D. Equity and Quiet Title Claims Should Not Be Dismissed Because Kevin Grudzinski Has Not Been Compensated for Cleanup Costs

Randy Grudzinski wrongly argues that it would be unfair and unjust to compel him to clean up the construction debris because Kevin Grudzinski has already been compensated for the cost of removal. CP 22. For the same reason, Randy Grudzinski argues that the cloud on title was already taken into consideration during the distribution of estate assets, and therefore the quiet title claim should be dismissed as well. CP 23. As described above, Kevin Grudzinski has not received any compensation for

cleanup costs from Elsie Grudzinski's estate. Furthermore, the attorney representing the estate specifically represented that disputes between Kevin and Randy Grudzinski regarding cleanup of the contaminated parcels would survive the closing of the estate.

It is noteworthy that in Randy Grudzinski's motion for summary judgment, no legal authorities whatsoever were cited to support dismissal of the equity or quiet title claims. CP 22-23. And the only "facts" relied upon by Randy Grudzinski were (1) Elsie Grudzinski's "wishes" to avoid litigation between her sons, (2) the supposed compensation that Kevin Grudzinski received for cleanup costs—something which is obviously in serious dispute in this case. Regardless, these "facts" do not suffice to show that Kevin Grudzinski's claims must fail, particularly when there is no legal authority to explain why they matter.

There is nothing remotely unfair or unjust in requiring Randy Grudzinski to pay for cleaning up the mess that he created.

E. The Motion for Summary Judgment Was Untimely

Randy Grudzinski's motion for summary judgment was untimely and should never have been heard by the court. As set forth above, trial was set to begin on March 26, 2012, the motion for summary judgment hearing was held on for March 15, 2012, only 11 days prior to the start of trial, in clear violation of CR 56(c), which requires that summary judgment hearings occur no later than 14 days before trial. The trial court

erred in denying Kevin Grudzinski's motion to strike the summary judgment motion as untimely.

V. CONCLUSION

Kevin Grudzinski respectfully requests that this Court reverse and remand this case to the superior court for trial.

RESPECTFULLY SUBMITTED AND DATED this 6th day of November, 2012.

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DECLARATION OF SERVICE

I, Michael D. Daudt, declare that on November 6, 2012, I caused a true and correct copy of the foregoing to be served on the following by the means indicated:

Kenneth E. Hepworth	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
LEE SMART P.S., INC.	<input type="checkbox"/>	Hand Delivered via Messenger
1800 One Convention Place	<input type="checkbox"/>	Overnight Courier
701 Pike Street	<input type="checkbox"/>	Facsimile
Seattle, Washington 98101	<input checked="" type="checkbox"/>	Electronic Mail

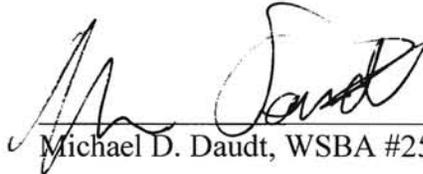
Attorneys for Defendant/Appellee

Gregory S. McElroy	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
MCÉLROY LAW FIRM, PLLC	<input type="checkbox"/>	Hand Delivered via Messenger
1808 North 42nd Street	<input type="checkbox"/>	Overnight Courier
Seattle, Washington 98103	<input type="checkbox"/>	Facsimile
	<input checked="" type="checkbox"/>	Electronic Mail

Attorneys for Defendant/Appellee

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

DATED this 6th day of November, 2012.



Michael D. Daudt, WSBA #25690