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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

Court of Appeal Cause No. 327043

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

WESLEY B. AMES and STANLEY R. AMES, Appellants

v.

DARLEEN AMES and ARLETA J. PARR, Respondents

APPELLANTS' REPLY BRIEF

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III. INTRODUCTION

As previously shown to the Court (Br. at 1), this case concerns wrongful interference with an insurance contract by Darleen Ames and Arleta Parr. Darleen and Arleta interfered with the contract by trapping the insurance agent on the Ames Farm, and refusing to allow the insurance agent to leave. Darleen's and Arleta's trapping of the insurance agent directly resulted in non-renewal of the insurance contract and consequent need to obtain replacement insurance coverage at dramatically increased insurance premiums and with the addition of legal costs and other expenses. As an alternative, Darleen and Arleta's conduct toward the insurance agent constituted gross negligence.

In their Initial Brief, Wes Ames and Stan Ames set out the legal requirements for standing, collateral estoppel, and judicial estoppel, with numerous supporting authorities. Wes and Stan also applied the controlling law to the facts of the present case, and explained why dismissal of the respective claims for purported lack of standing, collateral estoppel, and judicial estoppel is improper. To avoid duplication, Wes and Stan do not repeat that discussion here, but rather focus on some of the falsehoods, misrepresentations, and misleading statements and arguments

presented by Respondents in their Brief, that is, on Respondents' and Mr. Montgomery's deceit directed at this Court.

Darleen's and Arleta's Brief in response ("RB") prepared and submitted by Mr. Chris Montgomery is an unbelievable construct of deceit, bridging from falsehood to misrepresentation to irrelevancy in their desperate attempt to mislead this Court.

To refocus the discussion, it is useful to look once again at the trial court errors actually at issue. Those errors at issue are:

1. The trial court erred in ruling Appellants/Plaintiffs did not have standing to bring their claim for tortious interference with Appellants' property insurance contract by Respondents, and dismissing the tortious interference with contract claim on this basis.

2. The trial court erred in ruling Appellants' claim for gross negligence was barred by collateral estoppel and dismissing Appellants' gross negligence claim on that basis.

3. The trial court erred in ruling Appellants' claim for gross negligence was barred by judicial estoppel and dismissing Appellants' gross negligence claim on that basis.

Thus, it is necessary to keep in mind the trial court dismissed specific claims based on specific bases, but did not dismiss the entire lawsuit based on any one of those bases.

Wes Ames and Stan Ames believe this Court will recognize much of Respondents' presentation in their "Statement of the Case" is irrelevant to the present case and especially irrelevant to the issues pertinent to the present appeal. Instead, Respondents largely presented a statement of a different case, a case which this Court is not called on to address. Even in presenting the different case, Respondents resorted to deceit.

IV. LAW AND ARGUMENT

A. STAN AND WES HAVE STANDING TO BRING THEIR CLAIM FOR TORTIOUS INTERFERENCE WITH CONTRACT BECAUSE THEY WERE PARTIES TO THE INSURANCE CONTRACT.

The basic analysis for intentional (tortious) interference with contract claim involves only the following elements (which may be split or combined in various ways):

1. Existence of a valid contract or economic expectancy.
2. Knowledge of the contract or economic expectancy by the defendant.
3. Intentional and improper interference with that contract or economic expectancy by a third party.
4. Damages to one or more of the parties to the contract or third party beneficiaries to the contract, resulting from the interference.

Leingang v. Pierce County Medical Bureau, Inc., 131 Wn.2d 133, 157, 930 P.2d 288 (1997).

The parties to the contract (perhaps extended to include intended third party beneficiaries) are thus the persons who have standing to bring a claim for the damages resulting from the tortious interference with contract. After these requirements are sufficiently alleged, only factual determinations are needed to determine the truth of the allegations.

As Wes Ames and Stan Ames discussed extensively in their initial Brief (AB at 7-11), because Wes and Stan were parties to the insurance contract, they definitely had standing to bring a claim for tortious interference with that same contract. Except for bare denials, Respondents have provided ^{no} basis and certainly no authority showing or suggesting parties to a contract do not have standing to bring an action for intentional interference with that contract. That is, Respondents have cited no authority showing or suggesting Wes Ames and Stan Ames do not have standing to bring the present action for Respondents' intentional interference with Wes' and Stan's insurance contract and business expectation for the renewal of the insurance contract.

The discussion in Wes' and Stan's initial Brief concerning the lack of legally protectable interest for the insurance agent, Fran Jenne, in the insurance contract was presented to show that the judge in the court below was completely incorrect in stating the claim for tortious interference with contract was personal to Fran Jenne. That is, a necessary logical

consequence of the absence of a protectable interest in the insurance contract for Fran Jenne is that there is NO possibility the present claim for tortious interference with contract was personal to Fran Jenne. Thus, the lower court was clearly incorrect in stating the claim was personal to Fran Jenne, and therefore clearly incorrect to dismiss the intentional interference with contract claim on this basis.

Despite Respondents' repeated attempts to muddy the waters, Stan and Wes clearly have standing to bring a claim for tortious interference with contract. In Respondents' Brief, Mr. Montgomery turns the law of agency on its head. Broadly speaking, standard agency law imputes words and actions of an agent acting within their agency to the principal.

Quite different from this generally accepted component of agency law, Mr. Montgomery, representing Respondents, would like for this Court to incorrectly believe that a local insurance agent is imbued with all rights and discretion of the principal, that is, all the rights and discretion of the underwriting insurance company. This has never been the law. Quite to the contrary, an agent only has authority to bind the principal (i.e., the insurance company) when acting within the scope of their agency. **No evidence or legal precedent has been presented showing a simple insurance agent has authority to commit the underwriting insurance company to litigation to vindicate the insurance company's interest in**

an insurance contract. Typically such authority is restricted to the Board, senior officers of the company, and/or individuals specifically authorized by the company to exercise such discretion. There is simply no evidence and no precedent establishing a simple insurance agent is granted that discretion and authority.

Thus, the insurance company itself, as a party to the insurance contract (just like Stan Ames and Wes Ames), did have standing to bring legal action concerning the contract. In direct contrast, Fran Jenne, because she was acting merely as a local insurance agent, did not have any such authority and did not have standing to personally bring an action concerning the contract, e.g., an interference with contract claim.

Unfortunately, in Respondents' Brief, Mr. Montgomery engages in his common practice of mischaracterizing legal precedent as he attempts to lead this Court down a legally improper path.¹ Notably, Mr. Montgomery clearly misuses *Miller v. United Pac. Cas. Ins. Co.*, 187 Wash. 629, 60 P.2d 714 (1936), arguing for a significance contrary to the

¹ Appellants believe this Court is familiar with Mr. Montgomery's practice of misrepresenting legal authority in documents he prepares and files with this Court and elsewhere.

actual holding and discussion in the opinion.² Specifically, Mr. Montgomery cites *Miller* for the proposition that “Fran Jenne had a legally protectable interest” in the insurance contract thereby giving Fran Jenne standing to bring a tortious interference with contract claim. RB at 17-18. To the contrary, the *Miller* case does not and cannot stand for the proposition Mr. Montgomery asserts, i.e., Mr. Montgomery is attempting to mislead this Court.

As clearly discussed in the *Miller* opinion, *Miller* stands for the now generally accepted rule that knowledge of an agent acting within the scope of their agency is imputed to the principal, even when that knowledge is not actually communicated to the principal. *Miller v. United Pac. Cas. Ins. Co.*, 187 Wn. at 638-639.

Nothing in *Miller* even suggests an agent will be imbued with additional authority beyond the scope of their agency or has the right to bring a lawsuit to defend the underwriting insurance company’s interest in one of the underwriting insurance company’s insurance contracts. Applied to the present case, nothing in *Miller* suggests a local insurance agent such as Fran Jenne is imbued with authority to bring a lawsuit based on the principal’s insurance contracts. Such a holding would completely

² Mr. Montgomery makes the jobs of this Court and Respondents more difficult by failing to provide any point citation while citing a very old case.

disrupt the present legally well-established understanding and the economics of insurance agency relationships.

Mr. Montgomery also raises a true red herring with the partially correct but misleading statement that “Wes and Stan do not have standing to raise claims that are personal to Fran Jenne.” RB At 17. This is a misleading red herring because Wes Ames and Stan Ames do not raise any such claim personal to Fran Jenne. As Wes Ames and Stan Ames have previously pointed out (AB at 10-11), Fran Jenne did not have a personal interest in the insurance contract. Therefore Fran Jenne did not have standing to bring an interference with contract claim, and such claim could not be personal to Fran Jenne. The court below was simply wrong to assert the interference with contract claim was personal to Fran Jenne.

In sharp contrast, Fran Jenne did have standing to bring a false imprisonment claim, and had full personal discretion to either bring or not bring such false imprisonment claim. Such claim for false imprisonment would, indeed, be personal to Fran Jenne, and Wes Ames and Stan Ames would have no standing and no right to bring a false imprisonment claim based on false imprisonment of Fran Jenne.

The fact Fran Jenne chose to not bring her false imprisonment claim in no way derogates from Wes Ames’ and Stan Ames’ standing and right to bring their intentional interference with contract claim.

To be clear, the Court should recognize there are many situations in which both parties to a two-way contract have sufficient interest in a contract such that each may bring a claim based on tortious interference with that contract by a third party. In the present case, both the Appellants, Wes Ames and Stan Ames, and the underwriting insurance company had sufficient interest in the insurance contract to bring a tortious interference with contract claim, but only Wes Ames and Stan Ames chose to do so. Further, Wes Ames and Stan Ames find no authority suggesting both parties to a contract must join in an action for tortious interference with contract. This would make no sense because the interests of the respective parties to a contract are often quite different and sometimes are actually adverse with respect to the interference with contract.

Thus, even if we were to assume, for the sake of argument, that Fran Jenne had possessed sufficient interest in the insurance contract to convey to her a protectable right to sue for interference with the insurance contract, such right would not have abrogated Wes Ames' and Stan Ames' standing and right to sue for tortious interference with the insurance contract on their own behalf. This would be essentially the same situation indicated above, where both the insurance company and Wes and Stan

Ames had standing to bring suit for tortious interference with the insurance contract.

Mr. Montgomery, for Respondents, continues his deceptive approach by bringing up other irrelevant matters. Attacking Wes' and Stan's assertion "of alleged criminal activity and false imprisonment are simply their legal conclusions" (RB at 18) is a mere distraction from the pertinent issues. As has often been stated, the facts are the facts. Respondents engaged in particular wrongful actions directed at the insurance agent, which they admitted in their declarations. Ex. G and H respectively, in CP at 383-676. Whether or not any criminal charges were filed or civil action initiated, Respondents' actions were wrongful, and appear to satisfy all criteria for false imprisonment. Therefore, Wes Ames and Stan Ames referred to Respondents' actions as false imprisonment, but it is the improper nature of Respondents' actions, not the label applied to them which matters in this case.

Mr. Montgomery also misrepresents the nature of the proceedings below when he refers to "At trial ..." RB at 17. Mr. Montgomery is fully aware there was no trial in the Spokane County Superior Court. To the contrary, the matter was decided on Defendants' Motion to Dismiss filed by Mr. Montgomery (CP at 123), and thus was not decided on the merits at all, but rather on standing and estoppel bases. CP at 123.

Mr. Montgomery is also misleading this Court by stating “False imprisonment is *precisely* the basis of their claim of tortious interference alleged in their complaint.” RB at 17 (emphasis in original). As discussed in Appellants’ Initial Brief, the tortious interference with contract claim is based on the multiple elements of such claim, one of which is improper action by the Respondents. Thus, Respondents’ trapping of the insurance agent, which appears to constitute false imprisonment, constitutes the element of improper or wrongful action which makes the interference with contract actionable as tortious (intentional) interference with contract.

To summarize, Wes and Stan were parties to the insurance contract, where the other party is the underwriting insurance company, not the local insurance agent. As parties, Wes and Stan had interest in the insurance contract sufficient to convey standing to sue for interference with that contract. Because the local insurance agent, Fran Jenne, was not a party to the contract, and not an intended third party beneficiary, the local insurance agent did not have standing to sue, either on the contract or for interference with the contract, and a claim for intentional interference with the insurance contract could not be personal to her.

Therefore, the court below was clearly incorrect, and Wes Ames and Stan Ames request this court to reverse the decision of the lower court

dismissing the tortious interference with contract claim based on purported lack of standing.

B. Collateral Estoppel Does Not Apply Because the Issue of Respondents'/Defendants' Liability for their Actions was not Considered by the Stevens County Court.

As demonstrated in Wes' and Stan's Initial brief, collateral estoppel cannot properly be applied to the gross negligence claim in this action because the requirements for collateral estoppel are not satisfied. AB at 12-18.

One additional important point which Mr. Montgomery and Respondents fail to acknowledge is the separateness of the obligations of Darleen Ames and Arleta Parr on the one hand, and Roy Ames and Rubye Ames on the other hand. Roy and Rubye Ames had an obligation to prevent misconduct by their invitees on the property over which Roy and Rubye Ames assert they had full control. This obligation by Roy and Rubye Ames is distinct and separate from the obligation of Darleen Ames and Arleta Parr to refrain from personal misconduct, both on and off the Farm.

Two analogies can illustrate the separateness of the respective obligations.

The first analogy comes from the game of soccer. Professional soccer clubs have a duty to control their players, and

failure to do so can and does result in penalties for the club. At the same time, the individual players have the obligation to refrain from violations such as harassing the referee and committing serious violations such as serious foul play and violent conduct, and commonly players are individually penalized for such violations. Punishment of the player does not preclude punishment of the club, and punishment of the club does not preclude punishment of the player, because the respective punishments result from violations of separate duties.

The second analogy comes from landlord-tenant law. A landlord operating an apartment complex has a duty to provide a reasonably safe and secure apartment facility. At the same time, tenants and their invitees have the duty to refrain from committing crimes, e.g., theft, on the apartment property. Actions by a tenant or the tenant's invitee can result in criminal and/or civil liability for that person. At the same time, the landlord may be punished for failing to provide a secure premises and ordered to correct the deficiency, e.g., failure to provide working locks or adequate lighting, if the landlord's failure contributed to the commission of the crime. Once again, punishment of the landlord does not

preclude separate punishment in a separate proceeding of the individual who committed the crime, and vice versa.

Both analogies are similar to the present case in the sense that Roy and Rubye Ames had a duty to control the conduct of their invitees on property over which Roy and Rubye Ames asserted they had control. At the same time, Darleen Ames and Arleta Parr had separate individual duties to refrain wrongful and illegal conduct, including the duty to refrain from trapping the insurance agent on the property. A court ordering Roy and Rubye Ames to ensure an insurance agent is allowed to perform their job without interference does not absolve Darleen Ames and Arleta Parr from liability for their own wrongful actions under any theory, including any estoppel theory.

Thus, Mr. Montgomery's assertion that "The issue decided in the earlier proceeding was identical to the issue presented in the later proceeding" (RB at 19) is false, for the reasons stated above as well as the reasons laid out in Appellants' Initial Brief.

Further, Mr. Montgomery's assertion "The issue was decided in the context of Wes and Stan' assertions that Defendants herein were acting as agents of Roy and Rubye Ames" (RB at 19) is highly misleading because it is inconsistent with the proper legal

bases for applying collateral estoppel. “In the context” is insufficient, because legal precedent makes clear the prior issue must be **identical** to the present issue and must have been **actually and necessarily adjudicated** before collateral estoppel can properly be applied. AB at 12-13 and cases cited therein. The issue of Darleen’s and/or Arleta’s agency and the scope of any such agency was NEVER adjudicated, and was not necessary to any decision in the Stevens County Case

Further, Mr. Montgomery blatantly lied to this Court when he stated “Wes and Stan received all remedies requested.” RB at 19. As pointed out in Appellants’ Initial Brief, Wes Ames and Stan Ames requested authorization to enter the property to effect any needed corrections, and for third parties to be excluded from all portions of the property except for the residence. AB at 26. These important remedies were refused by the Stevens County Court.

Notably, at no time did the lower court in this case or the Stevens County Superior Court actually adjudicate and determine Darleen Ames and/or Arleta Parr acted as agents of Roy and Rubye Ames when Darleen and Arleta trapped the insurance agent on the Ames Farm.

C. Judicial Estoppel Cannot Properly be Applied to the Present Action Because Appellants Had Not Previously Relied on a Clearly Inconsistent Position, There Was No Risk of Deception of the Court, there are Changed Facts, and No Unfairness to Respondents Exists.

Wes Ames and Stan Ames request this Court to keep in mind the burden of proving judicial estoppel is proper rests on Respondents Darleen Ames and Arleta Parr. Respondents have dismally failed to satisfy their burden, and Respondents' Brief clearly demonstrates Respondents' failure.

The lower court's invocation of judicial estoppel was predicated on a single item, that is, on Wes Ames' and Stan Ames' reference to Darleen Ames and Arleta Parr as agents in the Stevens County Case. CP at 124-125.

However, that mistaken reference did not form the basis for any decision by the Stevens County Superior Court in favor of Wes Ames and Stan Ames, and Wes Ames and Stan Ames subsequently discovered Darleen Ames and Arleta Parr were agents for only limited purposes, which did not include their wrongful actions toward the insurance agent, Fran Jenne. Thus, Wes Ames' and Stan Ames' reference to Darleen Ames and Arleta Parr as agents for Roy and Rubye Ames was a justifiable mistake based on Roy and Rubye Ames' assertions of full control on the

Farm and insufficient knowledge at that time by Wes Ames and Stan Ames.

Respondents' improper attempt to argue for additional purported inconsistent positions (the bullet points RB at 23-25) extends far beyond what the court below actually found and ruled.

In making such argument, Respondents also ignore, and thereby seek to have this Court ignore, the changed condition of the residence on the Ames Farm due to the actions of Randall Ames and Darleen Ames as apparently permitted by Roy and Rubye Ames. In particular, Randall Ames and Darleen Ames carried out additional modifications on the residence, so that soon thereafter and by trial (almost a year later), additional work was needed to bring the residence to a condition suitable for standard rate insurance. That additional work was not needed at the time Darleen Ames and Arleta Parr trapped the insurance agent on the Farm.

Without reference to the record, Respondents assert Wes Ames and Stan Ames alleged damages of \$47,000, \$80,000, and \$240,000 (RB at 24), but falsely ignores that fact that the \$80,000 and \$240,000 numbers concerned property which was at risk of damage, not to an actual assertion of damage by Wes and Stan

Ames. Respondents also fail to show how those damages and risk of damages are relevant in any way to the present claim of gross negligence.

In their initial Brief, Wes and Stan laid out why the bases for applying judicial estoppel are not met in this case. ~~CITE TO~~ AB at 19-30. Wes and Stan trust there is no need to restate those bases, and instead turn to the failure of Respondents to support application of judicial estoppel and other defects in Respondents' Brief.

In attempting to overcome the substantial reasons why judicial estoppel should not apply in this case, Mr. Montgomery again resorts to false and misleading statements.

1. Respondents' inconsistent position

Mr. Montgomery does not even maintain consistency within Respondents' Brief, but stated that "judicial estoppel precludes this action" (RB at 23 (emphasis added)) while earlier acknowledging judicial estoppel only applied to the gross negligence claim (RB at 1). As the record clearly shows, the court below dismissed only the gross negligence claim based on judicial estoppel, not the entire action.

2. Respondents falsely allege Randall and Darleen Ames' duty to maintain or repair assets on the Farm could only arise from an agency relationship.

Randall Ames and Darleen Ames have been residents on the Ames Farm on multiple occasions, including during multiple intervals from about 2008 to the present. Both during the times they have been resident on the Farm and at substantially all other times since 2008, they have been the users of the equipment, barns, and pastures on the Farm, to the exclusion of Roy and Rubye Ames. During their periods of residency, Randall and Darleen Ames have also been sole or co-residents in the residence. Thus, Randall's and Darleen's duty to maintain and repair the Farm assets arose from Randall's and Darleen's use of those assets, rather than from an agency relationship with Roy and Rubye Ames as alleged by Respondents. RB at 26.

This contrasts with the situation which would exist if Randall and Darleen were mere agents of Roy and Rubye. Under agency law, the duty to maintain and repair Farm assets would reside in the principals, not with agents. Thus, Respondents' assertion is both factually and logically wrong, and the Complaint in the present case is not based on and does not presuppose the agency relationship. Cf. RB at 26.

3. Unfounded and unsupported assertion the Stevens County Court relied on Wes' and Stan's reference to Darleen and Arleta as agents of Roy and Rubye Ames.

Mr. Montgomery for Respondents makes the unsupported and false assertion the Stevens County Court relied on Wes' and Stan's reference to Darleen and Arleta as agents when ordering that Wes and Stan may accompany an insurance agent onto the Farm, and, when ordering Roy and Rubye Ames to pay future insurance costs in the final order following trial. RB at 27.

There is simply no support for either assertion in the record. The order allowing Wes and Stan to accompany an insurance agent onto the Farm was merely recognition that at the time, Wes and Stan were responsible for paying insurance and therefore needed access to the Farm to ensure insurance coverage was obtained. Assignment, following trial, of the responsibility for paying insurance to Roy and Rubye Ames was merely recognition of the normal duty of life tenants to pay for insurance on the property for which they have the life tenancy. It was in no way predicated on any scope of agency by Darleen Ames and/or Arleta Parr, and Respondents have failed to demonstrate the contrary.

4. Respondents falsely assert Wes and Stan would receive duplicative remedies and false statement of Wes' and Stan's position.

In a further attempt to mislead this Court, Mr. Montgomery again lies when he asserts Wes Ames and Stan Ames will receive duplicative remedies because they recovered their damages by shifting the costs of insurance to Roy and Rubye Ames on the theory that their agents had interfered with [the] Wes and Stan's contract and failed to maintain the property." RB at 27.

Wes and Stan Ames receive NO compensatory remedy for their damages. The much later assignment, following trial, of the obligation to pay future insurance payments to Roy and Rubye Ames in no way compensated Wes and Stan for the excess insurance payments they had already been forced to pay as a result of Darleen Ames' and Arleta Parr's interference and consequent legal costs. Further, the assignment of the obligation to pay future insurance premiums to Roy and Rubye Ames was based on the usual obligations of life tenants, not on any assertion Darleen Ames and/or Arleta Parr were agents for Roy and Rubye Ames, with any scope of agency.

5. Respondents' incorrectly dismisses the importance of "mistake" in judicial estoppel analysis..

Mr. Montgomery again misrepresents the law when he states "to claim that they were mistaken as to the agency

relationship because they had relied on Roy and Rubye's assertion of full control over the property is specious." RB at 27.

As Wes and Stan have previously pointed out, legal precedent establishes that mistake is materially relevant to the question of whether judicial estoppel should or should not be applied. AB at 29.

Mr. Montgomery still further misrepresents the law when he states that "Whether the Defendants were agents of Roy and Rubye Ames in an alleged incident that occurred two years after the actions giving rise to this suit are irrelevant." RB at 27. Again, the subsequent actions of Darleen Ames and Arleta Parr inconsistent with a broad agency relationship is certainly relevant to demonstrating mistake and/or changed facts. AB at 29-30. Thus, the subsequent actions of Respondents is highly relevant to showing judicial estoppel should not be applied in this case.

**D. ADDITIONAL FALSEHOODS,
MISCHARACTERIZATIONS, AND MISLEADING
STATEMENTS BY MR. MONGOMERY ON BEHALF
OF RESPONDENTS.**

In addition to the misrepresentations and falsehoods directly incorporated into Respondents' arguments on standing, collateral estoppel, and judicial estoppel, Mr. Montgomery compounds his distortions by

making a number of completely false or misleading assertions, some of which concern matters which are irrelevant to this appeal. Those false or misleading assertions include:

1. Mr. Montgomery's false statement concerning insurance agent's visit to Ames Farm.

At an early point in Respondents' Brief, Mr. Montgomery falsely alleges "Stan ... sent an insurance agent to the farm to take pictures to evaluate the insurance on the farm ..." RB at 3. There is no evidence Stan sent the insurance agent anywhere. To the contrary, the insurance agent went to the Farm of her own volition. Stan's only role was expressing a desire to obtain coverage for the barns and possibly other buildings on the Farm, after which the agent independently initiated an on-site visit to the farm to inspect the buildings and take relevant pictures prior to submitting an application for additional coverage.

2. Mr. Montgomery's inconsistent assertions concerning damages.

Amazingly, Mr. Montgomery presents internal inconsistencies in the assertions just for the purpose of influencing this Court, even though all of this material is **irrelevant** to the present appeal. For example, in RB at 24 Mr. Montgomery asserts that Wes and Stan allege damages of \$47,000, \$80,000, and \$240,000. In contrast, in RP at 5 Mr. Montgomery quotes Wes and Stan as concluding they suffered damages of \$47,000, but

with \$80,000 in other personal property and at least \$270,000 at risk of damage. Mr. Montgomery's misrepresentations are unconscionable.

3. Mr. Montgomery uses irrelevant points to distract the Court.

As shown in Appellants' Initial Brief, Darleen Ames and Arleta Parr attempted to excuse their illegal actions in trapping the insurance agent by claiming they did not know their actions were illegal. Ex. G and H respectively in CP at 383-676; AB at 4. Of course, it is axiomatic that ignorance of the law is no excuse. In addition, it is difficult to believe Darleen and Arleta did not know it was wrong to trap the insurance agent. However, Mr. Montgomery's mention of Roy's and Rubye's understanding is completely irrelevant, and seems to have been included merely as a mechanism to make a false accusation against Stan. In fact, Stan's actions did not resemble Darleen's and Arleta's in any material manner because Stan moved his vehicle promptly, without even receiving any request or demand to do so. Simply stated, Stan's vehicle was not blocking any intended movement by anyone. Thus, Stan's actions could not have constituted false imprisonment, while Darleen's and Arleta's actions did constitute false imprisonment.

4. Mr. Montgomery's reference to unrelated lawsuits.

In one example of intentional falsehood and distortion, Mr. Montgomery asserts “Wes and Stan have initiated five (5) different lawsuits against their parents and siblings in three (3) different forums, all arising out of the same dispute and core facts – the right to title and control of the improvements and land upon which the parents live.” RB at 16.

Mr. Montgomery apparently believes he and Respondents will receive some advantage by lying to this Court. First, there are four, not five cases by Wes Ames and Stan Ames due to misdeeds by Randall Ames, Darleen Ames, Roy Ames, Rubye Ames, and Arleta Parr. Those four cases have diverse subject matters, but the common theme is theft and property destruction by the respective defendants, not “control of the improvement and land upon which their parents currently live.” *Id.*

The subject matters of the cases can be determined from publicly available sources and are:

a. Present Case: Principal subject matter is tortious interference with contract by Darleen Ames and Arleta Parr by trapping insurance agent, Fran Jenni on the Ames Farm.

b. 2:13cv0405 in US District Court for the Eastern District of Washington: Principal subject matter is Darleen and Randall Ames’ refusal to repay money loaned to them by Wesley Ames. The loan

preceded any dispute concerning the Ames Farm. The additional subject matter is for intentional infliction of emotional distress due to Randall Ames' and Darleen Ames' deliberate destruction of the relationship between Wesley Ames and his parents, Roy and Rubye Ames.

c. 2:13cv0257 in US District Court for the Eastern District of Washington: Principal subject matter is timber theft or timber waste on the Ames Farm and conversion of timber proceeds.

d. 2:13cv0261 in US District Court for the Eastern District of Washington: Principal subject matter is waste committed by Randall Ames and the other defendants through demolition of buildings on the Ames Farm, where Wes Ames and Stan Ames have a remainder interest, as well as theft of personal property belonging to Wes and Stan Ames.

The obvious implication is Mr. Montgomery is improperly attempting to influence this Court through misrepresentations.

V. ATTORNEY FEES

In the event and to the extent allowed under Washington law for attorney fees to an attorney licensed in a state other than Washington, Wesley Ames and Stanley Ames request attorney fees on appeal.

VI. CONCLUSION

As discussed above and in Appellants' Initial Brief, consistent controlling case law and the facts of this case demand reversal of the trial

court's ruling that Appellants/Plaintiffs lacked standing to bring their tortious interference with contact claim.

Further, Respondents have failed their burden to demonstrate all the requirements for applying the doctrine of collateral estoppel are satisfied in this case. To the contrary, Appellants have shown that required elements for collateral estoppel are missing in this case. As a result, applying collateral estoppel is contrary to controlling law. Therefore, the trial court's ruling collateral estoppel bars Appellants' gross negligence claim was incorrect and should be reversed.

Still further, just as with collateral estoppel, factors needed for application of judicial estoppel to the present gross negligence claim are missing. Therefore, the trial court's application of judicial estoppel should be reversed.

Lastly, Appellants renew their request the case be assigned to a different judge on remand. Whatever its motivations, the scope and nature of trial court's errors in this case and the trial court's expressed reluctance to hear this case indicate a different judge should be assigned on remand.

Submitted this 12th day of October, 2015 by



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 12th day of October, 2015, I personally served a copy of the attached Appellants' Reply on Defendants/Respondents Darleen Ames and Arleta J. Parr by delivering a copy to Chris A. Montgomery, attorney for Defendants/Respondents, via email addressed to mlf@cmlf.org.

I hereby certify under penalty of perjury under the laws of the State of Washington the foregoing is true and correct.

Signed at Valley, Washington on October 12, 2015.



Wesley B. Ames