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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 327043

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

WESLEY B. AMES and STANELY R. AMES,

Appellants

vs.

DARLEEN AMES and ARLETA PARR,

Respondents.

RESPONDENTS' BRIEF

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ASSIGNMENTS OF ERROR

Respondents do not assign error to the decision of the Spokane County Superior Court and request that the judgment below be affirmed. Respondents also request attorney fees and costs on appeal.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. The Trial Court properly ruled that Appellants/Plaintiffs did not have standing to bring the action for tortious interference with Appellants' property insurance contract based on the alleged false imprisonment of the insurance agent.

2. The Trial Court properly ruled that Appellants' claim for gross negligence was barred by collateral estoppel.

3. The Trial Court properly ruled that Appellants' claim for gross negligence was barred by judicial estoppel.

STATEMENT OF THE CASE

Roy A. Ames and Rubye M. Ames (Roy or Rubye), husband and wife, reside on farm property, purchased in 1966 and located in Valley, Stevens County, Washington. They have lived continuously thereon since 1976. The Ameses have five (5) children: Stanley R. Ames (Stan), Wesley B. Ames (Wes), and Merita L. Dysart (Merita) are the three (3) oldest children. Arleta J. Parr (Arleta) and Randall S. Ames (Randy) are the two (2) youngest, born substantially later than their three older siblings. Darleen Ames is Randy's wife (CP 18).

On July 15, 2011, Roy Ames filed a Complaint to Establish Breach of Resulting Trust and/or Constructive Trust, or in the alternative a Life Estate in Stevens County Superior Court Case No. 2011-2-00373-4 (Rubye later joined with Roy) after a bitter dispute arose with Wes Ames, Stan Ames and Merita Dysart (an elder daughter) on the one side versus their parents, and the younger siblings, Arleta Parr and Randy Ames, on the other side (CP 18). This case is the original litigation in Stevens County from which the current suit filed in Spokane County stemmed.

At the commencement of trial, Roy and Rubye dismissed their request for a Life Estate, and sought return of full fee title, with an equitable lien to be filed in Stan's and Wes's favor securing all of the monies advanced by Stan and Wes for the property. By way of

counterclaim, after commencement of trial, Appellants Wes and Stan Ames requested the court to “exercise its *equitable* powers under the resulting trust doctrine and impose a life estate in favor of Roy and Rubye on the real property at issue in this suit. The terms of that life estate to be determined at trial.” (Declaration of Chris A. Montgomery Authenticating Documents, Ex. “A,” Stevens County Docket No. 326, CP 19 & 395).

On August 23, 2011, Roy Ames obtained a Preliminary Injunction enjoining Wes Ames, Ames Development Corp., Stan R. Ames, and Merita Dysart, among other things, from having any interactions with Roy, from entering the Farm property and from accessing or attempting to access bank accounts belonging to Roy (Declaration of Chris A. Montgomery Authenticating Documents, Ex. “B,” Stevens County Docket No. 55, CP 401).

Despite the injunction, on September 15, 2011, Stan, without informing Roy or Rubye in advance, sent an insurance agent to the property to take pictures to evaluate the insurance on the Farm, as well as to assess *additional* coverage on the sheds, barns and equipment. The alleged interference by Arleta Parr and Darleen Ames, the subject of the current appeal, occurred on this day.

Stan and Merita filed a motion for injunctive relief due to the alleged incident with the insurance agent (Declaration of Chris A.

Montgomery Authenticating Documents, Ex. “C,” Docket No. 62, CP 408), and in their Memorandum of October 10, 2011 supporting the equitable action, stated that “[a]s a result of the direct actions of Roy Ames and/or the agents of Roy Ames the property is at risk of irreparable injury due to the partially uninsured state[.]” (Declaration of Chris A. Montgomery Authenticating Documents, Ex. “D” at p. 6, Stevens County Docket No. 63, CP 411.) Accompanying this was a “Statement of Stan R. Ames and Wesley B. Ames Concerning Damage and Risks of Loss to Their Property Due to Randall Ames, Darleen Ames and Arleta Parr.” In it, they describe:

[t]he immediate risk of significant losses to our assets on our farm, the existing losses we have already suffered due to the actions of Randall Ames, Darleen Ames, and Roy Ames, and the circumstances which have resulted in both the existing damages and the immediate risk of further damage.

The immediate risk of major losses is the direct result of actions by Randall Ames, Darleen Ames, and Arleta Parr, together with the actions and inactions of Roy Ames, which have rendered our farm and farm assets uninsurable.

(Declaration of Chris A. Montgomery Authenticating Documents, Ex. “E,” 10/10/2011 Statement of Stan and Wes Ames at p.1, Stevens County Docket Nos. 64 & 70, CP 419; underscore in original). Wes and Stan described the Fran Jenne incident on September 15, 2011 (the subject of the present appeal), they attached an email from Fran Jenne describing the incident. They alleged that “*Roy Ames permitted Darleen Ames and*

Arleta Parr, apparently in coordination with Randall Ames to act in a hostile and threatening manner toward the insurance agent, Ms. Fran Jenne, taking no steps to prevent or control the situation despite him being present the entire time” (*Id.* at 2-4; italics added). Wes and Stan provided tables describing assets belonging to them and the existing damage to the assets “caused by Randall Ames, Darleen Ames and Roy Ames.” (*Id.* at 5-7). As to damages, Wes and Stan concluded that they had:

already suffered approximately \$47,000 in damage due to the misdeeds and negligence of Randall and Darleen Ames, with Roy Ames taking no steps to prevent or even minimize those damages. Instead, Roy Ames is complicit by allowing Randall Ames and Darleen Ames to continue to farm on the property while himself taking no effective action, placing an additional \$80,000 in Stan’s and Wes’ personal property at risk, along with at least \$270,000 in their farm assets....

(*Id.* at 8). At no time did they request damages for their alleged injuries.

By Declaration filed October 14, 2011 (Declaration of Chris A. Montgomery Authenticating Documents, Ex. “F,” Stevens County Docket No. 86, CP 456), Roy and Rubye described their version of Fran Jenne’s visit, noting that Rubye had asked if Fran was there for Stan, to which Fran replied she was there for the insurance company (Fran had been Roy and Rubye’s agent for many years). After Rubye and Roy were told that Fran Jenne was taking pictures of *all* the property and buildings, not just the house actually insured with Fran’s company, Arleta and Darleen

intervened, asking Fran to wait while they located the Restraining Order. Rubye and Roy described the conversation as polite. (*Id.* at 5-6). And, Roy and Rubye stated they did not understand that blocking the car was inappropriate because Stan had done the same to them on an earlier visit around July 6, 2011 (*Id.* at 7). *See also* Declaration of Darleen Ames (Declaration of Chris A. Montgomery Authenticating Documents, Ex. “G,” Stevens County Docket No. 84, CP 479), Declaration of Arleta Parr filed Oct 14, 2011 (Declaration of Chris A. Montgomery Authenticating Documents, Ex. “H,” Stevens County Docket No. 83, CP 486), and Declaration of Randall Ames (Declaration of Chris A. Montgomery Authenticating Documents, Ex. “I,” Stevens County Docket No. 85, CP 490), all filed on October 14, 2011.

On October 18, 2011, the parties appeared before the court regarding insurance and alleged interference on the property. The court ruled, in part, that

Wes and Stan will be allowed on the property with an insurance agent in order to do an inventory and take pictures for insurance purposes. Roy and Rubye will do what’s needed to get the house insured – They need to accommodate whichever agent comes out and they must not let Randy interfere. Court will treat house separate from the premises/buildings for insurance, but both must be insured/protected. Proof must be shown by October 28, 2011 that the house/premises has been insured.

* * *

As far as payment for insurance – Wes and Stan will pay for any *additional* insurance they want.

(10/18/11 Hearing Minutes, Declaration of Chris A. Montgomery Authenticating Documents, Ex. “J,” Stevens County Docket No. 88, CP 493).

Attempts by Wes, Stan and Merita to assert control continued. Within a month Stan and Merita sought to enjoin Roy and Rubye from allowing any third party [Randy’s family] to move on the property and from allowing any additions or remodeling of the property (Declaration of Chris A. Montgomery Authenticating Documents, Ex. “K,” Stevens County Docket No. 127, CP 496). In an accompanying declaration, *Wes and Stan asserted their insurance had been terminated due to Randy and Darleen’s alleged misconduct and that significant repairs were required in order to obtain the more reasonably priced insurance they already had. They also alleged that their previous insurance agent would not even return to the farm while Randy and Darleen had a presence there* (Declaration of Chris A. Montgomery Authenticating Documents, Ex. “L,” at p. 2; Stevens County Docket No. 128, CP 499; italics added). Yet, Stan, in a separate declaration in support of show cause, expressly stated, *“As the court can see, there were no repairs necessary to insure the home”* (Declaration of Chris A. Montgomery Authenticating Documents, Ex.

“M,” Stevens County Docket No. 131 at p.1, CP 518; italics added). At no time did Wes or Stan ask the Court for damages. In a November 21, 2011, Declaration of Roy and Rubye Ames and Randy and Darleen Ames Regarding Motion to Prevent Randall and Darleen From Moving Into “Our” House, the four individuals stated their continued efforts and willingness to work on the house to make it insurable. Nonetheless, they asserted Stan’s interference had stalled their work to finish the improvements as ordered on October 18, 2011 (Declaration of Chris A. Montgomery Authenticating Documents, Ex. “N,” at pp. 6-7, Stevens County Docket No. 147, CP 535).

Stan filed a Reply Declaration on November 22, 2011 (Declaration of Chris A. Montgomery Authenticating Documents, Ex. “O,” at pp. 1-2, Stevens County Docket No. 148, CP 547) stating that, based on his personal inspection with an insurance agent on October 26, 2011, the house would be in a “high risk” pool because certain corrections to the improvements had not been completed. He attached a letter from Fred Lee outlining the needed corrections (exterior maintenance of the house, thermostatically controlled heating, inspection of the wood stove, repairs and improvements to two barns, cleanup of dilapidated equipment and debris). Stan also asserted that Randall Ames had interfered with his inspection visit with the insurance agent and that Roy and Rubye Ames

allowed that interference (Randall Ames was not named a defendant in the Spokane County case under review by this court).

On January 13, 2012, Roy and Rubye sought the court's permission to sign for building permits to complete the addition to their home that had been started by Wes and Stan without proper permits. (Declaration of Chris A. Montgomery Authenticating Documents, Ex. "P," Stevens County Docket No. 186, CP 560). Stan opposed this by Declaration (Declaration of Chris A. Montgomery Authenticating Documents, Ex. "Q," at Attach. 4, p. 2, Item No. 2, Stevens County Docket No. 221, 565) stating that "**No construction work, completion of the addition, or any other modifications requiring any permits was or is necessary to obtain "preferred" insurance.**" The interference of Wes and Stan, the issue of home improvements, the withholding of farm payments, building permit requirements, and the "Stop Work" order, were addressed in the February 6, 2012 Declaration/Response of Roy A. Ames and Rubye M. Ames Re: Defendants' Opposition to Wes and Stan's Motion for Order Allowing Wes and Stan to Sign For Property Building Permits And Finish Addition To Home (2/6/12 Declaration/Response, Declaration of Chris A. Montgomery Authenticating Documents, Ex. "R," Stevens County Docket No. 227, CP 592).

A six (6)-day trial began on September 5, 2012 in Stevens County Superior Court. Despite knowing all of the foregoing alleged activities and alleged damages, at no time did Wes or Stan amend their pleadings to join Randy and Darleen Ames, nor Arleta Parr. Nor did they seek monetary damages from Roy and Rubye or Randy and Darleen Ames or Arleta Parr. The Superior Court for Stevens County ruled that Roy and Rubye had a life estate in the property with *“full possession of the real property, improvements, timber and farm equipment and full management and control.”* Wes and Stan were awarded fee title and the remainder estate. In its September 12, 2012 bench ruling, the court ordered that taxes be paid by Wes and Stan, and that Roy and Rubye pay the insurance. On that date, *counsel for Stan (Wes, a California attorney, was pro se) raised the concern that the property was in a “high risk” category, going from \$800.00 a year to \$2,800.00 per year, due the unfinished construction of a house on the property, and he argued that the insurance be the responsibility of Roy and Rubye.* The court so ruled and ordered that Stan and Wes repay the sums they had withheld for insurance under a previous court order. (9/11/2012 Tr. at p. 20, Declaration of Chris A. Montgomery Authenticating Documents, Ex. “S,” Stevens County Docket No. 345, CP 607). The parties came before the court for the presentment of the Trial Findings of Fact, Conclusions of Law and Order

on November 6, 2012. Again, the Superior Court reiterated that Roy and Rubye would pay for the insurance, and they would get the permits to complete construction on the home according to County regulations. No issue regarding the actions of Darleen Ames or Arleta Parr was raised (11/6/2012 Tr. at p. 6).

On November 20, 2012, the parties were back before the court for Entry of Trial Findings and Ruling. This time Stan's counsel (Wes, a California attorney, was pro se) asserted that:

[d]ue to the actions of - of Randy and Arleta, the insurance went up so he just withheld the difference in insurance which would have been \$1,853.66. So certainly Stan and Wes are willing to tender that to Roy and Rubye and will be doing that.

* * *

Obviously, um, the whole point was Stan paid \$1,000.00 of insurance out of his own pocket, because he said they were going to keep paying, and *then there is this increase, again due to the fact that insurance agents couldn't get up there, and so he withheld that because he attributed that to Roy and Rubye through Randy and Arleta*, and I'm not going to pay for their negligence and so I'm going to withhold \$1,853, which is what he did.

(11/20/12 Tr, at 11-12.)

The Superior Court directed counsel for parties to work out the amount. The parties did so, by Stan Ames tendering to counsel for Roy and Rubye a check for \$1,853.66 (11/27/12 Presentment Hearing, Declaration of Chris A. Montgomery Authenticating Documents, Ex. "T,"

Stevens County Docket No. 357, CP 630) and removing the provision in the proposed findings concerning whether the insurance was paid already from the court registry (Declaration of Chris A. Montgomery Authenticating Documents, Ex. "U," 12/18/2012 Stevens County Docket No. 369, CP 632).

Stan also prepared, under the heading "Ames Development Corp. and Wes Ames, dated November 21, 2012 a "Schedule to Help Mr. Montgomery Understand Amounts Paid for Insurance Costs Resulting From Actions of Plaintiffs' [Roy and Ruby's] Agents." Under the category of Funds Sent To Roy And Ruby Ames From Corporate Checking (Reconciliation to Escrow Account" [sic.], there was an entry dated 11/3/2013 for \$1,853.66 with the notation, "Check sent to Roy & Ruby Ames to Pay *Excess Insurance Costs From Actions of Plaintiffs' agents, ARLETA PARR, DARLEEN AMES, and RANDY AMES*" (Declaration of Chris A. Montgomery Authenticating Documents, Ex. V, CP 634; emphasis in the original; italics added).

As ordered by the Stevens County Court (Declaration of Chris A. Montgomery Authenticating Documents, Ex. "S," at pp. 19, Stevens County Docket No. 345, CP 607), Roy and Rubye Ames bound the property for insurance coverage with Morgan Insurance, in Moses Lake, Washington, effective December 1, 2012. However, Stan Ames, clearly in

violation of the Court's direction, caused that insurance coverage to be cancelled by attempting to insure the property himself through his own insurance agent (Declaration of Chris A. Montgomery Authenticating Documents, Ex. "Z," Stevens County Docket No. 367, CP 667).

Trial, Findings of Fact, Conclusions of Law and Rulings were entered on December 4, 2012 (Declaration of Chris A. Montgomery Authenticating Documents, Ex. "W," Stevens County Docket No. 359 at p. 11, CP 637). On December 4, 2012, the trial court entered a judgment conveying the property to the two sons and granting the plaintiffs a life estate in the property, including a limited right to harvest timber. The Superior Court ordered "Wesley B. Ames and Stanley R. Ames shall obtain a building permit to allow Roy A. Ames and Rubye M. Ames to complete new construction on the property." As to the insurance, the Court ruled "Roy A. Ames and Rubye M. Ames shall pay for full insurance coverage of all insurable property. Any recoveries shall first go to rebuilding; if not they shall be shared in proportion to the respective life estate, remainder values." On April 11, 2013, the trial court granted reconsideration in part in which it increased the share of the net proceeds from logging to which Wes and Stan were entitled; and, on June 14, 2013, ordered forfeiture of a portion of a bond posted by the Wes and Stan that the court had required as a condition for granting a stay of logging

operations on the property pending the outcome of the motion for reconsideration.

Wes and Stan appealed the Stevens County Superior Court decision, and the Court of Appeals affirmed. *Ames v. Ames*, 184 Wn. App. 827; 340 P.3d 232 (2014). On July 8, 2015, the Washington Supreme Court denied Wes and Stan's Motion to Accept Delayed Filing and Motion for Leave to File Amended and Corrected Petition for Review is denied. (No. 91511-3; 352 P.3d 187; 2015 Wash. LEXIS 719, July 8, 2015). On July 23, 2015 the Court of Appeals, Division III, issued its mandate sending the case back to the Stevens County Superior Court.

Wes and Stan filed a Complaint for Tortious Interference With Contract, Conspiracy, and Gross Negligence against Darleen Ames and Arleta Parr (Respondents herein) on June 25, 2013 in Spokane County (CP 1-9). Trial was held on May 25, 2014 and on June 25, 2015, the Spokane County Superior Court dismissed Wes and Stan's complaint with prejudice (CP120-127; 372-374). This appeal followed (CP 375-380).

ARGUMENT

The core facts in this case are:

- 1) Wes and Stan assert Darleen and Arleta interfered with a visit to their property by their insurance agent;

- 2) Wes and Stan raised this issue in the Trial Court proceedings in Stevens County;
- 3) Wes and Stan asked the Stevens County Trial Court to enjoin interference, alleging that Roy Ames had allowed Darleen and Arleta to interfere with the insurance agent's visit and they described damages they had allegedly suffered at the hands of Randall and Darleen Ames, with Roy Ames taking no steps to prevent such alleged damage. (Declaration of Chris A. Montgomery Authenticating Documents, Ex. "C," Stevens County Docket No. 62 & Ex. "D," Stevens County Docket No. 63; Ex. "E," Stevens County Docket Nos. 64 & 70);
- 4) Wes and Stan asserted they incurred increased insurance costs due to the actions of Roy Ames and his agents; they chose not to seek damages (Id.);
- 5) The Trial Court issued an order prohibiting interference with the insurance agent's inspection (10/18/11 Hearing Minutes, Declaration of Chris A. Montgomery Authenticating Documents, Ex. "J," Stevens County Docket No. 88);
- 6) The Trial Court ordered Roy and Rubye Ames to pay for the insurance on the property; and

- 7) Any increase insurance costs were attributable to the unfinished improvements on the house. (Letter from Fred Lee, Account Executive of HUB International, Attachment “A”).
- 8) Wes and Stan appealed select portions of the Trial Court’s final decision to the Court Of Appeals. They did not appeal any portion of the Trial Court decision pertaining to the costs for insurance, allocation thereof, or access to the property.

As additional information, no criminal charges were ever filed, nor any civil court action instigated, by Fran Jenne, the insurance agent. Wes and Stan’s claims of alleged criminal activity and false imprisonment are simply their legal conclusions for which they have no right to seek redress. Fran Jenne is not a party to this lawsuit. Moreover, Wes and Stan have never filed any complaint regarding the Judge’s Neilson’s alleged bias or misconduct, but instead simply repeat these unfounded allegations in whatever forum they believe will benefit them. 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 their parents currently live.

I. The Trial Court Correctly ruled that the Appellants lacked standing to bring a tortious interference claim.

On appeal, Wes and Stan assert that the trial court “may have believed the claim was, instead, for false imprisonment.” (Appellant’s Brief at 8.) False imprisonment is *precisely* the basis of their claim of tortious interference alleged in their complaint:

28. Defendants Arleta Parr and Darleen Ames jointly and deliberately acted in concert according to a common plan to criminally subject the insurance agent, Ms. Fran Jenne, to *false imprisonment*, with full knowledge of the insurance contract, and with intent to interfere with the agent’s performance of her professional functions. By so doing, the Defendants deliberately interfered with the contractual relationship between Plaintiffs, the agent and the insurance company.

29. The criminal actions of Arleta Parr and Darleen Ames in subjecting the insurance agent to *false imprisonment* constituted gross and willful misconduct.

At trial, Wes and Stan premised their argument regarding standing on the fact that Fran Jenne was not a party to the contract and therefore she had no legally protectable interest in the insurance contract. The Findings of Fact and Conclusions of Law state that Wes and Stan do not have standing to raise claims that are personal to Fran Jenne. Their assertion that Fran Jenne had no legally protectable interest because she was not a party to the insurance contract completely ignores that she was an agent acting on behalf of the insurance company. Fran Jenne had a

legally protectable interest. *See Miller v. United Pac. Cas. Ins. Co.*, 187 Wash. 629, 60 P.2d 714 (1936).

Fran Jenne was an agent of the insurance company. Roy and Rubye had a contractual relationship with Fran and that insurance company. Wes and Stan had been enjoined from entering Roy and Rubye's property. Fran Jenne represented she entered the property on behalf of the insurance company. When she began taking pictures beyond the scope of the existing insurance contract, Darleen and Arleta rightfully sought to prevent any trespass by Fran Jenne on behalf of Wes and Stan. No criminal charges were ever filed, nor any civil court action instigated, by Fran Jenne, the insurance agent. Wes and Stan's claims of alleged criminal activity and false imprisonment are simply their legal conclusions for which they have no right to seek redress. Fran Jenne is not a party to this lawsuit.

Not only did Wes and Stan not establish their standing, but they failed to establish any negligent or willful misconduct by Darleen and Arleta when the two women, on behalf of their parents, sought to prevent Fran Jenne's wrongful conduct.

II. Plaintiff's Claims For Tortious Interference With Contract, Conspiracy And Gross Negligence Are Barred By Collateral Estoppel and Judicial Estoppel.

Collateral estoppel, also known as issue preclusion, "is intended to prevent retrial of one or more of the crucial issues or determinative facts determined in previous litigation." *Christensen v. Grant Cnty. Hosp. Dist. No. 1*, 152 Wash.2d 299, 306 (2004) (quotation and citation omitted). The elements exist in this case. The party asserting collateral estoppel must establish that

- The issue decided in the earlier proceeding was identical to the issue presented in the later proceeding. The issue regarding the agency relationship was decided when the Stevens County Superior Court gave Wes and Stan their requested relief enjoining interference with their, and their insurance agent's ability to enter the property to inspect and take pictures for insurance purposes. The issue was decided in the context of Wes and Stan' assertions that Defendants herein were acting as agents of Roy and Rubye Ames.
- The earlier proceeding ended in a judgment on the merits. Wes and Stan received all remedies requested: An injunction against interference with their ability to enter

the property with their insurance agent, and the shifting of insurance costs due to the increased costs resulting from the actions of the Darleen and Arleta on behalf of Roy and Rubye.

- The party against whom collateral estoppel is asserted was a party to, or *in privity with a party to*, the earlier proceeding. As noted above, Wes and Stan took the position that Darleen and Arleta were acting as agents of Roy and Rubye Ames.
- The application of collateral estoppel does not work an injustice on the party against whom it is applied. *Id* at 307. Again, the conduct of the Darleen and Arleta, the injury as a result of their conduct, their agency status and the remedies for such conduct were fully addressed by the trial court. No injustice will occur if Wes and Stan are prevented from relitigating the same issues and attempting to recover damages or remedies in addition to, and duplicative of, those already achieved in Stevens County.

The assertion that an injustice will occur due to the alleged bias of Judge Neilson, the trial court judge in the Stevens County case, is also

without merit. Wes and Stan offer nothing more than their bare assertion that they had “observed courtroom employees shaking their heads in disbelief at some of Judge Neilson’s rulings” against them. They offered no affidavit nor declaration from such personnel, nor do they explain how they knew what the employees were actually thinking. That offer of observation is irrelevant. Likewise, affidavits from their federal court case in which Wes and Stan’s friends assert that Judge Neilson was biased are simply nothing more than that: opinions of their friends, they are offered to unfairly prejudice this Court, and they are irrelevant to the issues herein. ER 401, 402 & 403. Interestingly, they revive the same complaint about the Spokane County Superior Court Judge in this action as well, requesting a new judge be appointed should the case be remanded (Appellants’ Brief at 31).

The Trial Court properly ruled that the Wes and Stan are collaterally estopped from relitigating issues addressed by the Stevens County Court.

It is clear that before and during the Superior Court Trial in Stevens County Wes and Stan knew about the alleged interference with the insurance agent, Fran Jenne, they specifically raised that issue and the court resolved the issue. The increased cost of insurance was also an issue directly addressed in the previous trial. Specifically, Wes and Stan

claimed that 1) Randy Ames, Darleen Ames and Arleta Parr interfered with the ability of their insurance agent to inspect the property; 2) Randy Ames, Darleen Ames and Arleta Parr were agents of Roy and Rubye Ames; 3) increased insurance costs were due to the failure to complete certain improvements to the property; and 4) increased insurance costs were due to the fact that insurance agents could not enter the property due to interference by Randy Ames, Darleen Ames and Arleta Parr.

A nonparty to prior adjudication may invoke collateral estoppel defensively against a party to the earlier action so long as it does not work an injustice. *See Simpson Timber Co. v. Aetna Cas. & Sur. Co.*, 19 Wn. App. 535, 576 P.2d 437 (1978). Wes and Stan's current case is the epitome of the kind of litigation the doctrine of collateral estoppel is intended to preclude. Wes and Stan have filed an appeal of the Stevens County decision, as well as at least five (5) different suits, forum shopping in at least three (3) new jurisdictions outside Stevens County (this case in Spokane and two cases in federal court) where the original action was litigated. Wes and Stan appealed the Stevens County Superior Court decision, and the Court of Appeals affirmed. *Ames v. Ames*, 184 Wn. App. 827; 340 P.3d 232 (2014). On July 8, 2015, the Washington Supreme Court denied Wes and Stan's Motion to Accept Delayed Filing and Motion for Leave to File Amended and Corrected Petition for Review

is denied. (No. 91511-3; 352 P.3d 187; 2015 Wash. LEXIS 719, July 8, 2015). On July 23, 2015 the Court of Appeals, Division III, issued its mandate sending the case back to the Stevens County Superior Court. The claims presented herein involve issues identical to the issues decided by the Stevens County Superior Court in the proceedings below, regarding the rights of the parties and the activities of their agents. No injustice has resulted from the Spokane County Superior Court's dismissal of this suit.

III. Plaintiff's Claims For Tortious Interference With Contract, Conspiracy And Gross Negligence Are Barred By Judicial Estoppel.

Whether or not Wes and Stan have standing to bring a tortious interference claim, this Court correctly ruled that judicial estoppel precludes this action because Wes and Stan herein maintained an inconsistent position in the Stevens County Case and achieved their requested remedy. Specifically:

- Wes and Stan alleged that Randy and Darleen Ames, and Arleta Parr, were agents of Roy and Rubye Ames.
- Wes and Stan claimed that the alleged interference with the insurance agent by Randy and Darleen Ames, and Arleta Parr caused their property to be uninsurable and that they suffered immediate major losses.

- Wes and Stan chose a remedy of injunction, even though they alleged damages of \$47,000, \$80,000 and \$240,000 to their property; at no time did Wes or Stan ask the Court for damages.
- Wes and Stan asserted to the Stevens County Court that “there were no repairs necessary to insure the home” (Declaration of Chris A. Montgomery Authenticating Documents, Ex. “M,” Stevens County Docket No. 131 at p.1). Stan Ames also asserted that “No construction work, completion of the addition, or any other modifications requiring any permits was or is necessary to obtain “preferred” insurance.” (Declaration of Chris A. Montgomery Authenticating Documents, Ex. “Q,” at Attach. 4, p. 2, Item No. 2, Stevens County Docket No. 221)
- Wes and Stan obtained an injunction, including an order that “Wes and Stan will be allowed on the property with an insurance agent in order to do an inventory and take pictures for insurance purposes.” This injunction expressly addressed and resolved access to the property by the Wes, Stan and the insurance agent for the purposes of pursuing their insurance contract.
- Wes and Stan, *at trial*, asserted that the property was in a “high risk” category, with insurance premiums going from \$800.00 a year to \$2,800.00 per year, due the unfinished construction of a

house on the property, argued that the insurance be the responsibility of Roy and Rubye. Wes and Stan obtained that result.

- Trial, Findings of Fact, Conclusions of Law and Rulings were entered on December 4, 2012 (Declaration of Chris A. Montgomery Authenticating Documents, Ex. “W,” Stevens County Docket No. 359 at p. 11). The Superior Court ordered “Wesley B. Ames and Stanley R. Ames shall obtain a building permit to allow Roy A. Ames and Rubye M. Ames to complete new construction on the property.” As to the insurance, the Court ruled “Roy A. Ames and Rubye M. Ames shall pay for full insurance coverage of all insurable property. Any recoveries shall first go to rebuilding; if not they shall be shared in proportion to the respective life estate, remainder values.”

Contrary to Wes and Stan’s assertions, the Spokane County Superior Court properly ruled that the present suit is barred by judicial estoppel. The first requirement, demonstrating inconsistent positions has been met. Wes and Stan now seek to undo their claim of agency in the Stevens County Court proceedings by asserting that Arleta Parr was merely an agent for limited purposes of financial management, and therefore the facts are different because that means neither Darleen or

Arleta were agents of Roy and Rubye Ames. They omit that they made the assertions of the three Defendants' agency relationship *in the context of the alleged interference with the insurance agent, and occupation or control over the property.*

In Paragraph 23 of their Complaint (CP 1-9), Wes and Stan allege that "as a direct result of the deliberate interference with the business functions of the insurance agent, and of Randall Ames' and Darleen Ames' complete failure to maintain or repair buildings, equipment and/or fences on the Farm, Randall Ames, Darleen Ames, and Arleta Parr have interfered with the insurance contract resulting in non-renewal of the insurance coverage." This claim presupposes a duty on the part of the Defendants to repair the property. This duty only arises as a result of their agency relationship with Roy and Rubye Ames. Thus, even on the face of their pleadings, Wes and Stan presuppose the agency relationship, just as they had asserted in the Stevens County case.

Second, the Stevens County Court did rely on Wes and Stan's position when it issued its order granting an injunction and when it issued its final order shifting all costs of insurance from Wes and Stan Ames to Roy and Rubye Ames, *at their request.* And, as stated above, the Stevens County Court specifically provided Wes and Stan with injunctive relief in its order that "Wes and Stan will be allowed on the property with an

insurance agent in order to do an inventory and take pictures for insurance purposes.” This remedy was obtained by them *before* the trial court had ruled on the respective interests in the property. Thus, that Roy and Rubye ultimately ended up with a life estate is irrelevant. Wes and Stan obtained their remedy, injunction and the shift of insurance costs because they claimed the costs increased due to the actions of the Defendants in interfering with the insurance agent and in failing to maintain the property.

Finally, Wes and Stan will obtain an unfair advantage by their inconsistent claims in this case. Specifically, they will obtain duplicative remedies, having recovered their damages by shifting the cost 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. They obtained their requested remedies from the Defendants’ principals. And, 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. 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. The actions, responses, remedies sought and judgment were all obtained before the alleged incident in 2013.

Judicial estoppel prevents a party from asserting one position in a judicial proceeding and later taking an inconsistent position to gain an advantage. *Arkison v. Ethan Allen, Inc.*, 160 Wn.2d 535, 538, 160 P.3d 13 (2007). The core factors are whether the later position is clearly inconsistent with the earlier position, whether judicial acceptance of the second position would create a perception that either the first or second court was misled by the party's position, and whether the party asserting the inconsistent position would obtain an unfair advantage or imposes an unfair detriment on the opposing party if not estopped. *Id.* at 538-39. These factors are not an "exhaustive formula," *id.* at 539, but help guide a court's decision. *Ashmore v. Estate of Duff*, 165 Wn.2d 948, 951-52; 205 P.3d 111 (2009); *See Kellar v. Estate of Kellar*, 172 Wn. App. 562, 291 P.3d 906 (2012). The position taken by Wes and Stan in the Stevens County Court regarding the alleged damages resulting from the alleged actions of Darleen and Arleta and the claims made herein are completely inconsistent. Wes and Stan achieved their desired remedy in Stevens County and therefore were judicially estopped from asserting a different position in Spokane County in order to achieve additional damages.

ATTORNEY FEES

Pursuant to RCW 4.84.250, 4.84.270 and 4.84.290, RAP 14.1 and 18.1, Respondents Darleen Ames and Arleta Parr hereby request that they be awarded attorney fees. *Mackey v. American Fashion Inst. Corp.*, 60 Wn. App. 426, 804 P.2d 642 (1991); *Lowery v. Nelson*, 43 Wn. App. 747, 719 P.2d 594 (1986). At trial, Wes and Stan sought "damages of at least \$7,500."

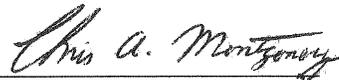
Because Respondents are the prevailing party on appeal, they are entitled to reasonable attorneys' fees and costs incurred on appeal.

CONCLUSION

In view of the foregoing facts and authorities, Defendants Darleen Ames and Arleta Parr respectfully request this Court to dismiss Wes Ames' and Stan Ames' appeal and that they be awarded attorney fees and costs for this appeal.

DATED August 14, 2015.

Respectfully submitted,



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