No. 78707-7

SUPREME COURT OF THE STATE OF WASHINGTON

DAVID L. HORNBACK, et ux,

Appellant,

v.

KEN WENTWORTH, et ux,

Respondent.

RESPONDENTS' SUPPLEMENTAL BRIEF

LARRY W. LARSON
WSBA# 06522
MITCHELL J. HEAPS
WSBA #35457

Attorneys for Respondents
Ken and Diane Wentworth

LARSON FOWLES, PLLC
821 E. Broadway Ave. Ste. 8
Moses Lake, WA 98837-2458
Telephone: (509) 765-6700
Facsimile No.: (509) 765-6710

TABLE OF CONTENTS

I. ARGUMENT 1

A. RCW 58.17 AND THE LOCAL ZONING ORDINANCE DO NOT APPLY TO THESE FACTS 1

B. THE WENTWORTHS WERE NOT REQUIRED TO GET A SHORT-PLAT APPROVED BEFORE UNDERTAKING TO SELL THE LOT TO HORNBACKS 3

II. CONCLUSION 5

TABLE OF AUTHORITIES

Cases

Valley Quality Homes v. Bodie, 52 Wn. App. 743, 763 P.2d 840 (1988) 3
H&H P'ship v. State, 115 Wn. App. 164, 62 P.3d 510 (2003) 5

Statutes

RCW 58.17 .....1, 3, 4, 5

Other Authority

Grant County Zoning Ordinance 1, 2, 4

I. ARGUMENT

A. RCW 58.17 and the local zoning ordinance do not apply to these facts. Hornbacks are not entitled to recover damages or their attorney's fees from Wentworths because neither RCW 58.17 nor the local ordinance Petitioners rely on apply to these facts. Chapter 58.17 RCW applies to "subdivisions," defined as a division or redivision of land into five (or at local option, up to ten) or more lots. *See* RCW 58.17.020(1); RCW 58.17.020(6).

The statute distinguishes subdivisions from "short-subdivisions," in which land is reconfigured into fewer lots, i.e, four (or at local option, up to nine) or less, and the regulation of which is handled at the local level. *See* RCW 58.17.020(6); RCW 58.17.030; RCW 58.17.060.

In this case, Grant County adopted zoning ordinances in 1976 relative to the short subdivision of property, which remained in effect at the time the Hornbacks and Wentworths entered into their real estate contract. CP 39-40, CL 11, 12; CP 142-43, Ex. 21. The ordinances provide in relevant part as follows:

> **SECTION 1. APPLICABILITY** Any division of land ***for the purpose of lease or sale into two or more lots*** but less than five lots, parcels or tracts within the unincorporated area of Grant County shall proceed in compliance with this ordinance.
>
> **SECTION 2. EXEMPTIONS** The provisions of this Ordinance ***shall not apply to***:

...

> (4) Farmstead[1]: The subdivision which is created as a result of this exemption may not be resubdivided for five years unless it is in accordance with this ordinance or with the ordinance dealing with subdivisions of five or more lots.

CP 142-43, Ex. 21 (emphasis ours); *see also* CP 40; CL 12. Wentworths became aware of this exemption through their correspondence[2] with the County over five years prior to the failed Hornback conveyance when Wentworths employed the exemption to segregate and sell a parcel to the Snegoskys, without implicating the short-plat ordinance. CP 33, FF 3.

On October 31, 1995, when the parties executed the subject real estate contract, the legal landscape had not yet changed. CP 39; CL 11. Over five years had passed since the Snegosky conveyance and thus Wentworths were permitted to spin off an acre parcel to Hornbacks without the need of a short-plat. CP 33; FF 6, CL 11-12. The lot was to be segregated from the larger, 3.6-acre parcel, which remained after the

---

[1] "Farmstead" is defined in Section 3 of the ordinance as "that area of agricultural land devoted to but not limited to dwellings, outbuildings, corrals, gardens and orchards for personal and non-commercial use or as determined by the Administrator." CP 142-43; Ex. 21.

[2] The letter which Wentworths received from the Grant County Planning Department, dated November 24, 1987, and admitted into evidence at trial, reads: "[t]here is a way that you can sell off or spin off pieces of property without going through either a long or short plat and that can be done once every five years in accordance with the State law." CP 142-43; Ex. 25.

conveyance to the Snegoskys. CP 33; FF 4, 6. Thus, in keeping with exception to the local ordinance, Wentworths intended to segregate and sell just one lot. They did not subdivide the property into ***two or more*** lots for present sale, and thus avoided the application of the short-plat ordinance.

Consequently, Hornbacks' contention that RCW 58.17 and the local ordinance apply in this case is erroneous. Hornbacks are not entitled to the remedies enumerated in RCW 58.17.210 or Section 34 of the county zoning ordinance, and the lower courts' decisions denying the same should be affirmed.

B. <u>The Wentworths were not required to get a short-plat approved before undertaking to sell the lot to Hornbacks.</u>

Alternatively, even if the trial court were to have ruled that RCW 58.17 and the local ordinance effective at the time the parties entered the contract applied, which Wentworths strongly dispute, they still were not required to have completed the segregation of the parcel before conveying it to Hornbacks.

This issue was addressed in *Valley Quality Homes, Inc. v. Bodie*, 52 Wn. App. 743, 763 P.2d 840 (1988), *rev. denied* 112 Wn.2d 1008 (1989). In that case, plaintiff sought rescission of a real estate contract and attorneys' fees after learning that defendants were not willing to cover

the costs to construct a sewer line, install a fire hydrant, and pay the engineer's fees. *Valley Quality Homes, Inc.*, 52 Wn. App. at 745, 763 P.2d 840. Plaintiff contended it was entitled to the relief sought because defendants purportedly violated RCW 58.17 by failing to file a final plat prior to selling the land. *Id.*, 763 P.2d 840. Citing the trial court's memorandum opinion, Division III of the Court of Appeals stated in pertinent part:

> In short, ch. 58.17 RCW embodies a concept of comprehensive minimum requirements for divisions of land into five (or, at local option, ten) or more lots, and leaves the detailed regulation of divisions into four (or, at local option, nine) or fewer lots to local regulation. ***There is nothing I have been able to identify in the statute which requires final approval of a short plat before the sale of lots. RCW 58.17.030 clarifies that, if such a requirement exists, it must be found in the local subdivision ordinance.***

Id. at 748, 763 P.2d 840 (emphasis ours). The Moses Lake City ordinance, however, was completely devoid of any such requirement. *Id.*, 763 P.2d 840. Accordingly, Division III held that because Moses Lake City ordinance did not require a final plat be filed prior to sale, RCW 58.17 did not apply, and thus, the plaintiff was not entitled to statutory rescission or attorneys' fees. *Id.* at 748, 763 P.2d 840.

Not unlike the case in *Valley Quality Homes*, in this case, the county zoning ordinance that was in effect on October 31, 1995, is silent on the issue of whether a seller must obtain approval of a short-plat prior

to selling a lot to a buyer. CP 142-43, Ex. 21. However, under no circumstances should the lack of such a provision be interpreted to mean its promulgators intended otherwise. *Cf. H&H P'ship v. State*, 115 Wn. App. 164, 171, 62 P.3d 510 (2003) *citing Am. Nat'l Fire Ins. Co. v. B&L Trucking & Contr. Co.*, 134 Wn.2d 413, 428, 951 P.2d 250 (1998) (noting that the court should not manufacture an ambiguity in a statute where none exists).

As such, the trial court properly held that Wentworths did not violate RCW 58.17 by not segregating Hornbacks' lot before selling it to them, and the decision of the trial court and Division III should be upheld.

II. CONCLUSION

Wentworths did not violate RCW 58.17 or the local zoning ordinance, and they respectfully request this Court to affirm the rulings of the trial court and Court of Appeals.

RESPECTFULLY SUBMITTED this 14th day of March, 2007.

LARSON FOWLES, PLLC

By _____
LARRY W. LARSON
WSBA# 06522
MITCHELL J. HEAPS
WSBA #35457
Attorneys for Respondents
Ken and Diane Wentworth

STATE OF WASHINGTON)
:ss.
County of Grant)

Shannon M. Vance, being first duly sworn upon oath, deposes and says:

That she is a secretary for the firm of Larson Fowles, PLLC, the attorneys for the Respondent in the above-entitled action; that on the 14th day of March, 2007, she enclosed in an envelope a copy of the Respondents' Supplemental Brief in the above-entitled matter; sealed the same and caused the same to be mailed, postage pre-paid via USPS, to the following:

Carl N. Warring
1340 East Hunter Place
Moses Lake, WA 98837

the last-known address of said person.

Shannon M. Vance

SUBSCRIBED AND SWORN TO before me this 14th day of March, 2007.

DENIESE WAGLEY
COMMISSION EXPIRES
NOTARY
PUBLIC
SEPT. 25, 2008
STATE OF WASHINGTON

Notary Public (Signature)

Deniese R Wagley
(Print Name)

(Seal or Stamp)

My appointment expires: 9-25-08