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Appellate Case No. 243737

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

ED L. CHRISTENSEN, Appellant,

v.

RICHARD A. ELLSWORTH, Respondent.

APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF CONTENTS 1

TABLE OF CASES AND AUTHORITIES CITED 1

ARGUMENT 3

 1. RCW 59-12-180 Does Not Govern in the alculation
 of the Three-Day Notice Provision in RCW 59.12.030. 3

 2. Respondent Misinterprets *Canterwood Place v. Thande*
 in Arguing that CR 6 Applies to the Calculation of the
 Three-Day Notice Provision of RCW 59.12.030(3). 6

TABLE OF CASES AND AUTHORITIES

TABLE OF CASES CITED

Canterwood Place v. Thande, 106 Wash.App. 844,
25 P.3d 495 (2001) 6

Housing Authority of the City of Everett v. Terry,
114 Wash.2d 558, 789 P.2d 745 (1990) 5

Housing Resource Group v. Price, 92 Wash.App. 394,
958 P.2d 327 1998) 4

Heaverlo v. Keico Industries, Inc., 80 Wash.App. 724,
911 P.2d 406 (1996) 4

MacRae v. Way, 64 Wash.2d 544, 392 P.2d 827 (1964) 5

TABLE OF STATUTES CITED

RCW 59.12.030 3, 4, 5, 6

RCW 59.12.030(3) 4, 5, 6

RCW 59.12.070 5, 6

RCW 59.12.180 3, 4

TABLE OF RULES CITED

CR 1 3, 4, 6

CR 2 4

CR 3 4

CR 4 4

CR 4.1 4

CR 6 3, 4, 6

ARGUMENT

1. RCW 59-12-180 DOES NOT GOVERN IN THE CALCULATION OF THE THREE-DAY NOTICE PROVISION IN RCW 59.12.030.

In its response brief, Respondent erroneously argues that CR 6 applies to the computation of the three-day provision in RCW 59.12.030.

In making this argument, Respondent points to RCW 59.12.180.

RCW 59.12.180 states in its entirety:

Except as otherwise provided in this chapter, the provisions of the **laws of this state** with reference to practice in **civil actions** are applicable to, and constitute the rules of practice in the proceedings mentioned in this chapter; and the provisions of such **laws** relative to new **trials and appeals**, except so far as they are inconsistent with the provisions of this chapter, shall be held to apply to the proceedings mentioned in this chapter.

RCW 59.12.180 (emphasis added). RCW 59.12.180 refers to the “laws of this state” as these “laws” constitute rules of practice governing “civil actions” relative to “trials and appeals.” If, under RCW 59.12.180, CR 6 applies to the computation of time under RCW 59.12.030, the terms of RCW 59.12.030 and RCW 59.12.180 should be read in conjunction with the provisions of the Superior Court Rules of Civil Procedure.

CR 1 defines the rules of civil procedure:

These rules govern the procedure **in the superior court** in all suits of a civil nature whether cognizable as cases at law or in equity with the exceptions stated in rule 81. . . .

CR 1 (emphasis added). CR 2 states: “There shall be one form of action to be known as ‘**civil action.**’” CR 2 (emphasis added). Thus, the Superior Court Rules of Civil Procedure apply to all “civil actions” in the superior court. “Except as provided in rule 4.1, a **civil action** is commenced by service of a copy of a **summons** together with a copy of a **complaint**, as provided in rule 4 or by filing a complaint” CR 3 (emphasis added). Thus, the rules of practice, to which RCW 59.12.180 expressly refers, govern “civil actions,” as defined under CR 2, which are commenced in the superior court by service of a summons and complaint or by filing a complaint, in accordance with CR 3 and 4.

Accordingly, if CR 6 applies to the computation of the three-day provision in RCW 59.12.030, there must be a civil action before the superior court commenced by the service of a summons and complaint as provided by CR 4 or by the filing of a complaint.

RCW 59.12.030(3) requires that, before taking legal action against a tenant, a landlord must serve notice on the tenant that the tenant is in default for failure to pay rent, and must pay rent or vacate the premises within three days. Housing Resource Group v. Price, 92 Wash.App. 394, 958 P.2d 327, 331 (1998); Heaverlo v. Keico Industries, Inc., 80 Wash.App. 724, 726, 911 P.2d 406 (1996)(“RCW 59.12 provides a limited summary proceeding to preserve the peace by providing an expedited

method for resolving the right to possession of property.”); Housing Authority of the City of Everett v. Terry, 114 Wash.2d 558, 564-65, 789 P.2d 745 (1990) (proper notice under RCW 59.12.030 is a “jurisdictional condition precedent” for an action in Superior Court). Only after the expiration of the three-day notice under RCW 59.12.030(3), may the superior court take subject matter jurisdiction. Id. (ruling that the “court properly exercised subject matter jurisdiction when it terminated his tenancy based on his failure to pay or to vacate the premises within three days of the notice”).

RCW 59.12.030 does not require that the three-day notice must be filed in the form of a complaint. See RCW 59.12.070 (defining the contents of a complaint under the unlawful detainer statute). The three-day notice provision under RCW 59.12.030 does not require the service of a summons. Id. Accordingly, the three-day notice provision under RCW 59.12.030, does not initiate a civil action before the superior court as defined under CR 2 and 3. See MacRae v. Way, 64 Wash.2d 544, 392 P.2d 827 (1964) (“Such jurisdiction as the superior court obtains arises out of service of the statutory summons. It does not arise from service of the statutory notices, *e.g.*, notice to quit, notice to pay rent or vacate.”) If no civil action has been initiated under RCW 59.12.030, CR 6 does not apply

because the civil rules only apply only to “procedure[s] in the superior court.” See CR 1.

Thus, Respondent argues erroneously that, pursuant to RCW 59.12.180, CR 6 applies to the computation of the three-day notice under RCW 59.12.030(3).

2. RESPONDENT MISINTERPRETS *CANTERWOOD PLACE V. THANDE* IN ARGUING THAT CR 6 APPLIES TO THE CALCULATION OF THE THREE-DAY NOTICE PROVISION OF RCW 59.12.030(3).

Respondent erroneously interprets Canterwood Place v. Thande, 106 Wash.App. 844, 25 P.3d 495 (2001) as supporting its argument that CR 6 applies to the calculation of the three-day notice provision of RCW 59.12.030(3).

The Canterwood Court did not consider the three-day provision of RCW 59.12.030(3). Rather, the Canterwood Court focused on RCW 59.12.070. Id. at 846. RCW 59.12.070 defines the content and method of issuance of complaints and summons in unlawful detainer actions. The Canterwood Court’s ruling that CR 6 governs the computation of time under RCW 59.12.070 is correct because RCW 59.12.070 initiates a civil action before the superior court with the service and/or filing of a summons and complaint.

DATED this 5th day of December, 2005

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