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COURT OF APPEALS
DIVISION II

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NO. _____

STATE OF WASHINGTON

BY _____

DEPILLY

**SUPREME COURT OF THE
STATE OF WASHINGTON**

FILED
JUL 18 2007
CLERK OF SUPREME COURT
STATE OF WASHINGTON
[Signature]

RANGER INSURANCE COMPANY, Respondent

v.

**PIERCE COUNTY and PIERCE COUNTY SUPERIOR
COURT CLERK, Petitioners**

**PETITION FOR DISCRETIONARY REVIEW
OF PETITIONERS PIERCE COUNTY and
PIERCE COUNTY SUPERIOR COURT CLERK**

Court of Appeals No. 34729-6-II

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ORIGINAL

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I. IDENTITY OF PETITIONER

Pierce County and Clerk of the Pierce County Superior Court (hereinafter, "the Clerk"), defendants in the above-entitled action, seek review of the decision designated in part II below.

II. DECISION BELOW

The Clerk seeks discretionary review of the May 22, 2007, published decision of Division II of the Court of Appeals, *Ranger Insurance Co. v. Pierce County*, ___ Wn. App. ___, ___ P.3d ___ (2007) (App. 1).

III. ISSUES PRESENTED FOR REVIEW

1. When dealing with bonding companies which have been approved ("justified") by the Superior Court under RCW 19.72.040, are Clerks of Court required to question directions by those companies which allocate among cases the assets of sureties for whom the Court has justified the companies to write? (RAP 13.4(b)(4): Issue of substantial public interest)
2. Where the Court of Appeals earlier remanded in part for want of evidence whether the standard of care applicable to Clerks of Court had been met, and on remand there was unrebutted competent evidence showing there had been no breach of that standard of care, may the Court of Appeals disregard that evidence and that issue on subsequent appeal? (RAP 13.4(b)(1),(4): Conflict with decisions of the Supreme Court, and issue of substantial public importance)

IV. STATEMENT OF THE CASE

A. NATURE OF ACTION

This action arises out of the return of \$35,000 in forfeited appearance bond money to Signature Bail Bonds (Signature). Ranger Insurance Company (Ranger) and Granite State Insurance Company (Granite State) were two corporate sureties for which Signature was authorized (“justified”) by the Superior Court to write appearance bonds. Ranger deposited a \$35,000 check with the Clerk of the Pierce County Superior Court (Clerk) at Signature’s request after Ranger and Granite State bonds written by Signature were forfeited due to the bonded defendants’ failure to appear. The Clerk later allocated the \$35,000 to four separate bonds as directed by Signature. When the criminal defendants were apprehended, the forfeited bonds were exonerated and the money was returned to Signature by the Clerk pursuant to orders entered by the Superior Court. Signature then failed to return the money to Ranger. Ranger thereafter brought this negligence action against the Clerk seeking to hold the Clerk liable for Signature’s misconduct.

In an earlier appeal, *Ranger Ins. Co. v. Pierce County*, noted at 122 Wn. App. 1077, 2004 Wash. App. LEXIS 1894 (2004) (App. 14), *rev. denied*, 154 Wn.2d 1030, 116 P.3d 399 (2005) (*Ranger I*), the Court of Appeals held that the Clerk could be liable for returning the money to Signa-

ture, despite the fact that the Clerk did so pursuant to valid court orders. The Court of Appeals further held that there were outstanding issues of fact under both agency law (apparent authority) and negligence law (standard of care for clerk's offices), and remanded. On remand, the Clerk submitted competent evidence establishing that the standard of care for clerk's offices had been met here. Ranger neither moved to strike that evidence nor submitted any controverting material, but again appealed when summary judgment was granted. In a published opinion, *Ranger Ins. Co. v. Pierce County*, __ Wash. App. __, __ P.3d __ (2007) (App. 1) (*Ranger II*), the Court of Appeals ignored the standard of care (negligence) issue, instead analyzed the evidence the Clerk had submitted solely as pertaining to the apparent authority (agency) issue, declared the evidence irrelevant to that issue, and reversed and remanded.

B. FACTS

The underlying facts of this case are fully set out in *Ranger I* (App. 14) and in the declaration of Deputy Clerk Dan Bohnett (CP 11). To summarize: Signature Bail Bonds owed the Superior Court a total of \$35,000 for forfeiture of two bonds in each of two criminal cases; one of the bonds (\$15,000) was Ranger's, and the other three were those of another company (Granite State Insurance) for which Signature was also justified by the Superior Court to write (CP 50). Signature tricked Ranger

into sending not just \$15,000 but \$35,000 to the Clerk by falsely informing Ranger that a forfeiture had been ordered in another (third) case. Then Signature's manager, James Barbieri, went to the Clerk's office and directed that the \$35,000 be applied to the two cases in which the one Ranger and the three Granite State bonds had been ordered forfeited (CP 12, 29). Later, when the bonded defendants were in custody, Signature went to court and falsely averred that it had paid the forfeitures (CP 37, 40) and obtained orders (CP 38, 43) directing the Clerk to refund the money to Signature, which the Clerk then did. Signature did not pay the money to Ranger. Again, the facts are laid out in more detail in *Ranger I* and Bohnett's declaration (CP 11).

C. PROCEDURAL POSTURE

Having been defrauded by its own agent, then, Ranger sued the Clerk and the County alleging at paragraph 2.8 of its complaint (CP 109) (emphasis added) that defendants "negligently released funds" owed to Ranger. The Clerk originally obtained summary judgment in this matter in 2003, only to have that reversed by *Ranger I*. The original motion had raised issues of agency and quasi-judicial immunity, and according to *Ranger I* there were questions of fact concerning both agency and negligence (standard of care) left for trial. *Ranger I* at 7, 9, 11 (App. 20, 22, 24). On remand, the Clerk filed another motion for summary judgment,

which did not revisit either agency or immunity, but rather concerned only the separate issue discussed as follows at page 11 of *Ranger I* (App. 24):

It is unclear whether a reasonable, prudent clerk would have reviewed all of the documents pertaining to Ranger's bail moneys prior to allocating Ranger's check as Barbieri instructed. At the summary judgment hearing, counsel for Pierce County argued the following:

The Clerk doesn't drill down into each file and say, well, here is the bond. Let's look at the bond. The Clerk is looking at a docket sheet that's saying . . . what is the status of that case.

....

To say that the Clerk -- every-time [sic] someone comes in and says I want to apply this money from my principal in this fashion has to pull out the original Clerk file and drill down and say . . . which principal are you acting for, that's putting too much of a burden on the Clerk.

RP at 27-28. However, the argument of counsel is not conclusive evidence as to this issue. *See Green v. A.P.C.*, 136 Wn.2d 87, 100, 960 P.2d 912 (1998). There is no other evidence in the record regarding the proper procedures for court clerks in receiving bail moneys. In conclusion, questions of material fact remain, and summary judgment was not proper. (Emphasis added.)

The purpose of the new motion on remand was to place evidence in the record concerning such "proper procedures for court clerks in receiving bail moneys."

The majority opinion in *Ranger I*, then, clearly stated that the appropriate standard of care in this particular negligence action was that of a "reasonable, prudent clerk" and said at page 11 that questions of material fact remained on that issue. Accordingly, on remand the Clerk submitted the declaration of Joel McAllister (CP 73) as evidence that the Clerk's Office had met the "reasonable clerk" standard in this case. *Cf. Hertog v. City of Seattle*, 138 Wn.2d 265, 273, 979 P.2d 400 (1999) (affidavit on summary judgment concerning standard of care for probation officers); *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 226, 770 P.2d 182 (1989) (same, for medical malpractice and product liability). *Cf. Gurno v. Laconner*, 65 Wn.App. 218, 228-29, 828 P.2d 49 (1992)(citation omitted):

To establish a prima facie case of negligence, appellant was required to show a duty, breach, proximate causation and resulting injury. Appellant failed to present any evidence as to the standard of care for training police officers, a breach of that standard, or that such a breach proximately caused her alleged false arrest.

Mr. McAllister's curriculum vitae (CP 79) was attached to his declaration. He is the Finance Manager for the Clerk's Office of the King County Superior Court (Department of Judicial Administration). His experience as a

chief financial officer in both the private and the public sectors is set out in his *c.v.*, and the basis for his knowledge of the standard of care in clerk's offices in this state is set out in paragraph 2 of his declaration (CP 74).

The core of McAllister's declaration is at paragraph 5 (CP 76-77), the pertinent portions of which are quoted in the following section of this brief. In summary, his declaration shows that clerk's offices across the state rely upon justified bonding companies to transact the business of their corporate sureties faithfully and accurately. Clerk's offices do not challenge the bona fides of such bonding companies, nor do they undertake to determine the relationships, if any, among the various corporate sureties for whom the bonding companies write. If clerks are required to question the directions of such bonding companies concerning their sureties (as the Court of Appeals has now held they must), then according to McAllister's uncontroverted evidence the processing of bail bond transactions will be delayed as much as five days to allow for review and analysis of bonds and powers of attorney. McAllister's declaration directly addressed, then, the evidentiary gap identified by *Ranger I*, because it laid out the procedures employed by clerk's offices in Washington, explained why those procedures make sense, and showed that in following the directions given by Signature, the Clerk's Office acted as a reasonable, prudent

clerk would do. Judge Christopher Wickham granted the motion, stating (RP 19-20):

I'm persuaded that Mr. McAllister's declaration is sufficiently on point as to the duty of the clerk under these circumstances and as to the accepted level of care, if you will, in this particular occupation that it prevents the issue from going to the jury. Now, had Ranger been able to come up with some evidence in opposition to that, there might have been a question of fact here, but looking at Mr. McAllister's declaration, he takes account of the undisputed circumstances in this case as they were presented to the clerk, and he doesn't need to determine whether there was actual or apparent authority.

Ranger appealed and the Court of Appeals reversed and remanded.

V. ARGUMENT

A. THE COURT SHOULD ACCEPT REVIEW TO DECIDE WHAT STANDARD OF CARE IS APPLICABLE TO CLERKS IN THEIR DAILY INTERACTION WITH BAIL BOND COMPANIES WHICH ARE JUSTIFIED BY THE SUPERIOR COURT UNDER RCW 19.72.040. (RAP 13.4(b)(4): Issue of substantial public interest)

Rather than making the threshold negligence inquiry and directly addressing the standard of care applicable under the circumstances, the Court of Appeals approached this case purely as a matter of agency law and in doing so imposed a standing duty upon clerks to review and analyze specific bonds and powers of attorneys before acting on the directions

of justified bonding companies. This holding places clerks at risk of enormous liability simply for trusting the bonding companies which communicate decisions on behalf of the corporate sureties for whom the bonding companies are specifically authorized to act by standing order of the Superior Court under RCW 19.72.040. The published opinion of Division II will thus cause clerks across the state to reevaluate the way they handle appearance bonds, and will delay the processing of those bonds as clerks endeavor to verify the bona fides of the bonding companies rather than risk this new liability exposure. The right to be released on bond is a constitutionally protected right. *Westerman v. Cary*, 125 Wn.2d 277, 289, 892 P.2d 1067 (1994). Creating a duty for clerks to make legally precise decisions regarding bonds and powers of attorneys filed by bonding companies, and regarding the interrelationships among their corporate sureties, will have an adverse effect upon the administration of bonds and risk impacting the liberty of those needing them.¹

¹ Bonding companies and their sureties also have an interest in the system operating smoothly. In the present case, Signature itself originally paid the forfeitures in the 1997 *Rogers* case and in the *Sims* case by check, but its manager, Barbieri, then informed the Clerk that Signature was stopping payment on those checks and directed the Clerk to allocate the \$35,000 deposit to cover those forfeitures. *Ranger I* at 4 (App. 17). Had the Clerk not followed those instructions, Signature, Ranger, and Granite State would all have been in violation of the forfeiture orders.

Indeed, this is exactly what the Finance Manager of the King County Clerk's Office testified in his declaration in this case:

In short, it would be extremely difficult for a clerk's office to question, in any timely and meaningful fashion, the direction of a bond agent to allocate funds of one surety to the obligations of another. Neither my office nor any other clerk's office in the state, to my knowledge, has ever engaged in such a review of the bona fides of bail bond agents. If clerks are required to second-guess the relationship between insurance companies and the authority of bond agents, this would increase our work load, our service lines would be longer than they are, and we would likely have to build in a buffer to give us time for such reviews. If my office were to undertake such reviews, I would expect our ability to handle matters such as exoneration of bail and prisoner releases on bail to be materially affected. For example, currently we advise the public that a document filed with the Court is available to the public within five days. If we were required to undertake review of the underlying bail documents and relationships of the companies and agents, I would expect a comparable delay to be implemented. Certainly, the standard of care which currently exists in clerk's offices in this state does not call for such reviews.

Declaration of Joel McAllister at 5 (CP 77). The Court failed to address these concerns, but held in effect that this undisputed evidence was totally irrelevant to the agency mold into which the Court compressed the case. *Ranger II* at 12.

The Court of Appeals thereby held that clerks act at their peril if they follow the direction of bonding companies concerning the business of the very corporate sureties for whom the Superior Court has authorized the companies to write bonds. To reach this odd result, the Court quoted from the power of attorney certificate (CP 15) which accompanied Ranger's bonds, highlighting language that says the bonds are void if used in combination with powers from any other surety company. *Ranger II* at 4. Although the Court acknowledged, "The Clerk did as Signature directed," *id.*, apparently the Court concluded that notwithstanding those directions, the Clerk was required to pull each of the files and analyze the powers of attorney. This, then, is the standard of care that the Court of Appeals is imposing upon clerks. But the record contains Mr. McAllister's unrebutted declaration (CP 76-77) stating the obvious:

[T]he clerk would not be aware of the relationship if any between the two sureties. Insurance companies buy and sell each other, and pieces of each other, from time to time. They can also have agreements between themselves governing various aspects of their businesses.

After stating in detail why he is familiar with the standard of care which is exercised by clerks of court throughout the state (CP 73-74), he states the following:

These bond companies are justified by the Superior Court through an established process designed to show that the company is qualified to conduct business in this field. Clerk's offices are not expected to challenge agents of companies that are expressly authorized by the Superior Court to operate. This would be especially true, as here, where the company (Signature) is authorized by the Court to issue bonds for both the sureties involved, Ranger and Granite State, see page 1 of the majority opinion.

(CP 76). Yet, the Court of Appeals did not address this standard of care issue which it had itself identified as relevant in *Ranger I* at 11 (App. 24). Instead, it highlighted the language from the powers of attorney filed with Ranger's bonds.

The Court of Appeals did not expressly state what the Clerk should have concluded had the powers of attorney been pulled, but it raised the issue in the context of observing (*Ranger II* at 3) that in originally submitting the \$35,000 Ranger had directed that it be allocated to two cases in which Ranger bonds had been posted. Apparently, then, the Court of Appeals read the "void if used in combination with powers of other sureties" language as evidence that Ranger prohibited its bonding agencies from ever writing one of its bonds in a case where the bond of another surety is posted. In so reading the "in combination" language, however, the Court of Appeals was clearly in error. The identical language used by the same

surety (Ranger) was construed in *People v. Ranger Ins. Co.*, 61 Cal. App. 4th 812, 816, 71 Cal. Rptr. 2d 806 (1998), where a \$65,000 Ranger bond was “stacked” on top a \$10,000 bond of another surety (Amwest) to meet a \$75,000 bail amount. Ranger argued there that the “void if used in combination” language “prohibited both the use of multiple powers of attorney to issue a single bond and the use of multiple bonds to meet the total amount of bail.” 61 Cal. App. 4th at 816. The California Court of Appeals instead held:

[T]he language in the power of attorney does not prevent the stacking of bonds to meet the total amount of bail set by the court. Instead, it renders the power of attorney void if used in combination with other powers of attorney to issue a single bond. This language complements that contained on the face of the bail bond itself, which also prohibits the use of more than one power of attorney to issue a single bond. Only one power of attorney was used in this case, so there is no basis for exonerating the forfeiture. (Emphasis added.)

61 Cal. App. 4th at 816-17.

In the present case, there was a Ranger bond stacked with a Granite State bond in the 1997 *Rogers* case, and there were two Granite State bonds stacked in the 2000 *Sims* case (*Ranger II* at 3), but there was no bond to which more than one power of attorney was attached. The Court of Appeals in *Ranger II* did not suggest there was any such multiple pow-

ers per bond violation; instead, the Court misread the narrow import of this language to somehow conclude that it placed the Clerk on notice that Ranger never acts in concert with other sureties. This is simply wrong, yet it is upon this mistaken foundation that the Court states, near the end of its opinion, “Indeed, the bail bond and related powers of attorney strongly indicate that Ranger did not have knowledge of Signature’s actions and that Signature lacked the authority to use Ranger’s money for another bonding company’s obligations.” *Ranger II* at 12.

Ranger in its July 26, 2006, brief to the Court of Appeals, at page 8, stated (emphasis added), “Clearly, Ranger’s directives to the Pierce County Clerk’s Office are contained in the bail bonds and related powers of attorney filed with the court.” Yet two years before the subject transactions the California Court of Appeals had held in *People v. Ranger Insurance Company, supra*, that the very language involved here simply means that there cannot be more than one power per bond. This language says nothing about multiple bonds by Ranger in a single case, nor about Ranger bonds not being stacked with those of another company (as in fact happened in *People v. Ranger Insurance Company, supra*). And even if somehow applicable, the language by its terms simply voids the bond; it does not say anything about the relationship of Ranger Insurance Company to any other surety.

The Court of Appeals, then, not only imposed the wrong standard of care upon clerks, but also at Ranger's prompting misread the import of the power of attorney certificates which Ranger had filed.

B. REVIEW SHOULD BE ACCEPTED BECAUSE THE COURT OF APPEALS HAS DISREGARDED THE DOCTRINE OF LAW OF THE CASE AND IGNORED RELEVANT UNREBUTTED EVIDENCE. (RAP 13.4(b)(1),(4): Conflict with decisions of the Supreme Court, and issue of substantial public importance)

In ruling on the first appeal of this case, the Court of Appeals plainly held that there were outstanding material issues of fact concerning both the apparent authority issue (*Ranger I* at 7, 9) (App. 20, 22) and concerning the underlying negligence issue (*Ranger I* at 11) (App. 24) ("Consequently, the case should proceed to trial on negligence There is no other evidence in the record regarding the proper procedures for court clerks in receiving bail moneys.") On remand, the Clerk produced evidence on those procedures, yet the Court of Appeals found that evidence irrelevant. *Ranger II* at 12.

Under the doctrine of law of the case, an appellate court cannot state the law one way and then later hold differently in the same case. "Where there has been a determination of the applicable law in a prior appeal, the law of the case doctrine ordinarily precludes redeciding the same legal issues in a subsequent appeal." *State v. Clark*, 143 Wn.2d 731, 745,

24 P.3d 1006, *cert. denied*, 534 U.S. 1000, 151 L. Ed. 2d 389, 122 S. Ct. 475 (2001) ((quoting *Folsom v. County of Spokane*, 111 Wn.2d 256, 263, 759 P.2d 1196 (1988)) ((quoting *Adamson v. Traylor*, 66 Wn.2d 338, 339, 402 P.2d 499 (1965))). The doctrine has been modified by court rule:

Under RAP 2.5(c)(2), this court may

at the instance of a party review the propriety of an earlier decision of the appellate court in the same case and, where justice would best be served, decide the case on the basis of the appellate court's opinion of the law at the time of the later review.

(Italics ours.) The parties in this case have chosen not to request review from this court of the Court of Appeals decision, and have thus not presented arguments why justice would best be served by conducting such a review. The Court of Appeals determinations therefore remain the law of the case.

State v. Strauss, 119 Wn.2d 401, 414-15, 832 P.2d 78 (1992). Similarly, Ranger did not request review by the Court of Appeals of its original holding. Nor did the Court say it was undertaking such a review.

Furthermore, justice is certainly not served by ignoring the original holding. In a case in which the plaintiff expressly pled negligent conduct by the defendant, the threshold issue of negligence is plainly an independent matter for resolution. *Cf. Mauch v. Kissling*, 56 Wn.App. 312, 783

P.2d 601 (1989) (liability of Boy Scouts for scout master's acts separately analyzed, first under agency apparent authority theory and then under negligent supervision theory). In any negligence case, the plaintiff must prove duty, breach, causation, and damages. *Nivens v. 7-11 Hoagy's Corner*, 133 Wn.2d 192, 198, 943 P.2d 286 (1997). The agency issues addressed in the original motion for summary judgment related to one of the Clerk's defenses, at page 3 of its answer (CP 113): "Signature Bail Bonds, Inc., was plaintiff's agent, and payment to Signature Bail Bonds, Inc., was payment to plaintiff." The Court in *Ranger I* at page 11 (App. 24) properly indicated that on remand, evidence concerning the standard of care for clerk's offices in fiscal matters was relevant and admissible. That was the law of this case by virtue of the Court's decision. "In its most common form, the law of the case doctrine stands for the proposition that once there is an appellate holding enunciating a principle of law, that holding will be followed in subsequent stages of the same litigation." *Roberson v. Perez*, 156 Wn.2d 33, 41, 123 P.3d 844 (2005) (citation omitted).

The Court of Appeals also disregarded settled law by rejecting the declaration of Joel McAllister. In resisting the Clerk's second summary judgment motion, Ranger sought no continuance, filed no motion to strike McAllister's declaration, and submitted no evidence to rebut it. If improper evidence is before the trial court in a summary judgment proceed-

ing, the required procedure is to object and move to strike. *See Lamon v. McDonnell Douglas Corp.*, 91 Wn.2d 345, 352, 588 P.2d 1346 (1979) (holding that failure to make a motion to strike affidavit in opposition to summary judgment waives any claim of deficiency). This approach enables the trial court to consider the matter fully upon proper briefing and ensures a fully developed record for consideration on appeal. Ranger did not, however, move to strike the McAllister declaration or seek reconsideration, nor did Ranger argue the declaration should be disregarded on appeal. *See* RAP 2.5(a) (court may refuse to consider claims not raised in the trial court).

Nevertheless, the Court of Appeals disregarded McAllister's declaration (*Ranger II* at 12), citing *Meyer v. Univ. of Wash.*, 105 Wn.2d 847, 852, 719 P.2d 98 (1986). *Meyer*, however, did not involve ignoring un rebutted evidence:

A nonmoving party in a summary judgment may not rely on speculation, argumentative assertions that unresolved factual issues remain, or on affidavits considered at face value. After the moving party submits adequate affidavits, the nonmoving party must set forth specific facts which sufficiently rebut the moving party's contentions and disclose the existence of a genuine issue as to a material fact. Issues of material fact cannot be raised by merely claiming contrary facts. Plaintiff has not presented facts

sufficient to overcome the court's summary judgment order for defendants.

105 Wn.2d at 852 (citations omitted). The thrust of this holding is that the party opposing summary judgment (here, Ranger) has an obligation to submit evidentiary materials raising a genuine issue of material fact. Perhaps the Court was seizing upon the word “adequate” in reference to the moving party’s affidavits. But the McAllister declaration was proper and adequate on the negligence issue.² For the reasons discussed above, the declaration was competent evidence which was highly relevant to the negligence issue identified for remand in *Ranger I*. Under ER 401, relevant evidence is evidence “having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable.”

² Indeed, disregarding the McAllister declaration led the Court of Appeals to repeat its earlier mistake when it quoted, in the statement of facts in *Ranger II* at 3, its *Ranger I* at 4 statement involving the Clerk’s “cash bail” entry: “The clerk’s actions were clearly in error, as Signature had previously posted a Ranger appearance bond for cause no. 98-1-03952-5.” There was no evidence to support that finding when the Court made it in *Ranger I*, and McAllister’s declaration on remand (CP 74-75) referred to it and clearly explained why the finding was flat wrong. (“This code (3310) is the proper one to use whenever funds are tendered in a criminal case in which the clerk has not yet received an order specifying what to do with such funds.”) Nevertheless, in *Ranger II* the “clearly in error” misstatement was repeated as fact.

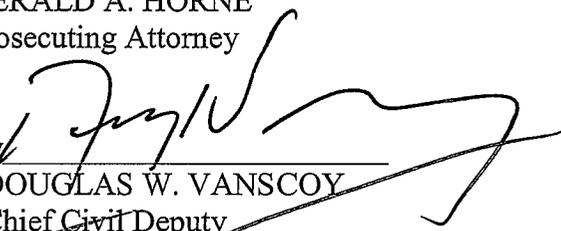
Meyer, then, does not support the Court's treatment of the McAllister declaration. In disregarding evidence developed on remand which was relevant to issues identified in *Ranger I*, the Court of Appeals decision conflicts with decisions of the Supreme Court concerning the doctrine of law of the case and concerning motions for summary judgment, with adverse effects upon a matter of substantial public importance, namely, the liability of Clerks of Superior Court across this state.

VI. CONCLUSION

For the reasons stated above, the Court should accept review of the May 22, 2007, published decision of the Court of Appeals.

DATED: June 20, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Petition for Discretionary Review was delivered this 20th day of June, 2007, to ABC-Legal Messengers, Inc., with appropriate instruction to forward the same to counsel of record as follows:

Respondent Ranger Insurance
Company:

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FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY _____
DEPUTY

APPENDIX
RAP 13.4(c)(9)

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

RANGER INSURANCE COMPANY,
Appellant,

v.

PIERCE COUNTY, STATE OF WASHINGTON
AND PIERCE COUNTY SUPERIOR COURT
CLERK,

Respondents.

NO. 34729-6-II

PUBLISHED OPINION

Van Deren, J. -- This is the second appeal in Ranger Insurance Company's suit against Pierce County based on the Superior Court Clerk's distribution of Ranger Insurance Company's bail bond money for Granite State Insurance Company's bail bond obligations. In the first appeal, we remanded for trial on whether, in light of the limiting power of attorney accompanying each bond, the Superior Court Clerk (Clerk) properly relied on the dual agent's own representations to apply and disburse Ranger's funds for Granite State's obligations. On remand, the trial court granted summary judgment to Pierce County, finding that the Clerk did not violate the standard of care for court clerks in Washington. Ranger appeals, contending that disputes of material fact still exist about whether (1) the Clerk's conduct was negligent in light of the express limiting powers of attorney on each bond; and (2) the Clerk could rely solely on the agent's known representation

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of multiple bonding companies in the absence of Ranger's actions suggesting apparent authority to use Ranger's money for another bonding company's obligations. Because the County's summary judgment motion did not address this issue of material fact, we reverse and remand again for trial.

FACTS¹

Ranger Insurance Company's agent, Signature Bail Bonds, was an authorized bail bonds agent for both Ranger and Granite State. *Ranger Ins.*, 2004 Wash. App. LEXIS 1894, at *1. Signature wrote four appearance bonds in Pierce County to secure the appearance of two criminal defendants, David J. Rogers and Brandon E. Sims. Signature wrote one of the bonds (\$15,000) on cause number 97-1-05295-7 from Ranger and the other three (a total of \$20,000) from Granite State for cause number 97-1-05295-7 for Rogers, and cause number 00-1-01029-1 for Sims.

All four of the bonds were forfeited because Rogers and Sims failed to appear. Signature directed Ranger to send \$35,000 to the clerk's registry to cover Rogers' forfeited bonds, misrepresenting to Ranger that two of its own bonds had been forfeited -- the aforementioned \$15,000 Ranger bond on cause number 97-1-05295-7 and a \$20,000 Ranger bond on cause number 98-1-03952-5 that had not been forfeited. *Ranger Ins.*, 2004 Wash. App. LEXIS 1894, at *4. The actual status of the Ranger and Granite State bonds was as

¹ The facts are taken in most part from *Ranger Ins. Co. v. Pierce County*, noted at 122 Wn. App. 1077, 2004 Wash. App. LEXIS 1894, at *1-8 (2004). Both parties rely heavily on our statement of facts in this unpublished opinion and do not provide other evidence for most of the factual details.

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follows:

1997	Rogers	97-1-05295-7	\$ 15,000	Ranger Ins.	Forfeited
1997	Rogers	97-1-05295-7	\$ 10,000	Granite St.	Forfeited
1998	Rogers	98-1-03952-5	\$ 20,000	Ranger Ins.	Not Forfeited
2000	Sims	00-1-01029-1	\$ 5,800	Granite Ins.	Forfeited
2000	Sims	00-1-01029-1	\$ 4,200	Granite Ins.	Forfeited

Ranger Ins., 2004 Wash. App. LEXIS 1894, at *2.

It is not refuted that Ranger submitted, along with the check, an invoice requesting that the clerk's office allocate \$20,000 to Rogers cause number 98-1-03952-5, which was not forfeited, and \$15,000 to Rogers cause number 97-1-05295-7, which was later forfeited. *Ranger Ins.*, 2004 Wash. App. LEXIS 1894, at *4.² Furthermore, Ranger's \$35,000 check to the Clerk referred to "State v. David Jack Rogers, Case No. 98-1-03952-5." *Ranger Ins.*, 2004 Wash. App. LEXIS 1894, at *5. The Clerk entered the check for cause no. 98-1-03952-5 in the Pierce County Superior Court journal detail report as "cash bail." Clerk's Papers (CP) at 74. "The [C]lerk's actions were clearly in error, as Signature had previously posted a Ranger appearance bond for cause no. 98-1-03952-5." *Ranger Ins.*, 2004 Wash. App. LEXIS 1894, at *5. Ranger had not posted any bonds for Sims.

Not only did Ranger direct that the \$35,000 be used only for its obligations, but each of Ranger's bail bonds have a corresponding power of attorney certificate, which state:

² Noting that appellate courts consider all facts submitted in the light most favorable to the nonmoving party, we assumed that the invoice existed in the first appeal although it was not in the record. *Ranger Ins.*, 2004 Wash. App. LEXIS 1894, at *4-5. We assume the same here.

This power void if altered or erased, *void if used* with other powers of this company or *in combination with powers from any other surety company*, void if used to furnish bail in excess of the stated face amount of this power, and can only be used once . . . and provided *this Power-of-Attorney is filed with the bond and retained as a part of the court records.*

CP at 15 (our emphases added).

After the Clerk received Ranger's instructions, Signature's manager³ directed the Clerk to apply Ranger's \$35,000 check to cover Rogers' forfeited bond under cause number 97-1-05295-7 (\$15,000), Rogers' Granite State forfeited bond under cause number 97-1-05295-7 (\$10,000), and Sims' two forfeited bonds under cause number 00-1-01029-1 (\$10,000). The Clerk did as Signature directed. *Ranger Ins.*, 2004 Wash. App. LEXIS 1894, at *5-6.

When Rogers and Sims were arrested, Signature filed to exonerate the forfeited bail moneys, "falsely stat[ing] that it, not Ranger, had paid the forfeited bonds." *Ranger Ins.*, 2004 Wash. App. LEXIS 1894, at *6. Based on Signature's misrepresentations, the trial court entered orders directing the Clerk to return the forfeited bail money to Signature. *Ranger Ins.*, 2004 Wash. App. LEXIS 1894, at *7. The Clerk disbursed the \$35,000 to Signature. *Ranger Ins.*, 2004 Wash. App. LEXIS 1894, at *7 n.2. But Signature never returned the money to Ranger. *Ranger Ins.*, 2004 Wash. App. LEXIS 1894, at *7.

On January 16, 2002, Ranger sued Pierce County, alleging that the Clerk was negligent in two ways: (1) disbursing Ranger's \$20,000 for bonds written by Granite State;⁴ and (2) returning the forfeiture money to Signature, not Ranger. *Ranger Ins.*, 2004 Wash. App. LEXIS 1894, at *7. The County moved for summary judgment, arguing that (1) Ranger was bound by

³ James Barbieri was Signature's manager.

⁴ Ranger originally sued for return of the entire \$35,000 but conceded in the first oral argument that the Clerk was not negligent in disbursing \$15,000 to Signature for Ranger's own bond.

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the acts of its agent, Signature, and (2) the Clerk was entitled to quasi-judicial immunity. The trial court granted the County's summary judgment motion. *Ranger Ins.*, 2004 Wash. App. LEXIS 1894, at *8.

Without reaching any remaining or potential issues that were not before us, including those relating to the Clerk's fiduciary responsibilities to persons required to pay money to its registry, we reversed for trial on the limited issues before us, concluding that (1) questions of material fact remained about whether, in light of the power of attorney accompanying each bond, Signature had apparent authority to receive money due Ranger that had been applied to Granite State's obligations; and (2) the Clerk did not have quasi-judicial immunity in handling Ranger's bail money because processing the money was a ministerial act. *Ranger Ins.*, 2004 Wash. App. LEXIS 1894, at *8, *17-18, *22.

We held that Signature did not have actual authority to direct the Clerk to use Ranger's money for Granite State's obligations and that "the only real issue presented is whether Signature had apparent authority for its actions." *Ranger Ins.*, 2004 Wash. App. LEXIS 1894, at *13. Thus, because "[r]easonable minds could differ as to whether Signature had actual or apparent authority to freely allocate Ranger bail moneys, and all of the facts necessary to determine this issue have not been presented," we remanded for a trial on Signature's apparent authority and rejected the trial court's reliance on Signature's own representations of authority.⁵ *Ranger Ins.*, 2004 Wash. App. LEXIS 1894, at *10. We directed the trial court to consider Ranger's objective manifestations regarding Signature's authority, as "apparent authority may not be inferred from the acts of an agent." *Ranger Ins.*, 2004 Wash. App. LEXIS 1894, at *13.

⁵ Whether apparent authority exists is a question of fact. *Costco Wholesale Corp. v. World Wide Licensing Corp.*, 78 Wn. App. 637, 646, 898 P.2d 347 (1995).

We pointed out that Ranger's objective manifestations of Signature's authority were "contained in the bail bonds and the related powers of attorney filed with the court." *Ranger Ins.*, 2004 Wash. App. LEXIS 1894, at *14. These documents informed the Clerk that Signature could act as Ranger's agent for Rogers' cases 97-1-05295-7 and 98-1-03952-5 and that Signature could not use its powers in combination with any other surety companies' powers. *Ranger Ins.*, 2004 Wash. App. LEXIS 1894, at *14.

The Clerk's reliance on a subjective belief that Signature could direct Ranger's funds contrary to Ranger's written directions posed questions of material fact about whether (1) that belief was reasonable; and (2) a clerk of ordinary prudence would make further inquiry about Signature's ability to direct Ranger's funds in light of the filed powers of attorney, the posted bail bond, and entry of "cash bail" on a preexisting bond that has not been forfeited. *Ranger Ins.*, 2004 Wash. App. LEXIS 1894, at *15.

On remand, without addressing the issue of apparent authority or any other legal or factual issues, the County moved for summary judgment based on a declaration from Joel McAllister, a manager of Finance and Information Services for the King County Department of Judicial Administration.⁶ McAllister's declaration incorporates the County's summary judgment argument and states that the applicable standard of care for clerks in Washington State is to disburse funds to any recognizable bonding agent without checking the particular file or bond. The declaration also states that, even on notice of irregularity, the usual response is "[S]o what?" McAllister states that it is too burdensome for a clerk to pull a file and check to ascertain the bonding company's express limitations on the agent's authority from the bond and filed the corresponding

⁶ According to McAllister, his office is equivalent to superior court clerk's offices in other counties.

power of attorney.

The trial court granted summary judgment to the County because “Ranger [had not] been able to come up with some evidence in opposition to that.” Report of Proceedings (RP) at 20.

Ranger appeals.⁷

ANALYSIS

Ranger’s sole contention in this appeal is that the trial court erred in granting the County’s summary judgment motion because the Clerk failed to follow Ranger’s directives in a bail bond and its accompanying power of attorney. Ranger asserts that McAllister’s declaration does not resolve the issues of material fact because a court clerk is required to follow such directives. We agree that the essential issue of material fact we identified in the first appeal still must be resolved.

In reviewing a grant of summary judgment, “we must engage in the same inquiry as the trial court.” *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). A summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR 56(c); *Marincovich v. Tarabochia*, 114 Wn.2d 271, 274, 787 P.2d 562 (1990).

We “consider the evidence and the reasonable inferences therefrom in a light most favorable to the nonmoving party.” *Schaaf v. Highfield*, 127 Wn.2d 17, 21, 896 P.2d 665 (1995).

⁷ The clerk’s papers and Ranger’s appellate brief include the State of Washington as a defendant. Ranger conceded at trial that the State of Washington should be dismissed from this case and raises no argument regarding this issue on appeal.

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“The issues of negligence and proximate cause are generally not susceptible to summary judgment.” *Ruff v. King County*, 125 Wn.2d 697, 703, 887 P.2d 886 (1995). A nonmoving party, however, “may not rely on speculation, argumentative assertions that unresolved factual issues remain.” *Seven Gables Corp. v. MGM/UA Entm’t Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986).

After the moving party submits adequate affidavits, the nonmoving party must set forth specific facts that sufficiently rebut the moving party’s contentions and disclose the existence of a genuine issue of material fact. *Meyer v. Univ. of Wash.*, 105 Wn.2d 847, 852, 719 P.2d 98 (1986). Where reasonable minds could reach but one conclusion from the admissible facts in evidence, summary judgment should be granted. *LaMon v. Butler*, 112 Wn.2d 193, 199, 770 P.2d 1027 (1989).

Here, the County submitted McAllister’s declaration attempting to explain “the proper procedures for court clerks in receiving bail moneys.” *Ranger Ins.*, 2004 Wash. App. LEXIS 1894, at *17. According to McAllister’s declaration: (1) it was not an error for the Clerk to make an entry stating that Ranger’s bail bond money for cause no. 98-1-03952-5 was “cash bail” because the phrase “cash bail” is a default transaction code to use “whenever funds are tendered in a criminal case in which the clerk has not yet received an order specifying what to do with such funds”; CP at 74, (2) “the [C]lerk clearly handled the receipt of the \$20,000 which is involved here properly and in a manner fully consistent with the standard of care in clerk’s offices in this state”; CP at 76, and (3) “[i]n complying with the direct order of the Court . . . the [C]lerk was of course acting consistent with the standard of care existing in clerk’s offices in this

state.” CP at 77. McAllister also stated,

[T]he \$15,000 bond in the Rogers case was Ranger’s; the other three were Granite State’s. The clerk’s office would not have known that, however, without pulling the court files and reviewing the bond documents themselves. Even if for some reason a clerk noticed that there were two different sureties involved, I would expect the clerk’s reaction to be, in effect, “So what”? These bond companies are justified by the Superior Court through an established process designed to show that the company is qualified to conduct business in this field. Clerk’s offices are not expected to challenge agents of companies that are expressly authorized by the Superior Court to operate. This would be especially true, as here, where the company (Signature) is authorized by the Court to issue bonds for both the sureties involved, Ranger and Granite State. . . . Aside from that, the clerk would not be aware of the relationship if any between the two sureties. Insurance companies buy and sell each other, and pieces of each other, from time to time. They can also have agreements between themselves governing various aspects of their businesses. In short, it would be extremely difficult for a clerk’s office to question, in any timely and meaningful fashion, the direction of a bond agent to allocate funds of one surety to the obligations of another. Neither my office nor any other clerk’s office in the state, to my knowledge, has ever engaged in such a review of the bona fides of bail bond agents. If clerks are required to second-guess the relationship between insurance companies and the authority of bond agents, this would increase our work load, our service lines would be longer than they are, and we would likely have to build in a buffer to give us time for such reviews. If my office were to undertake such reviews, I would expect our ability to handle matters such as exoneration of bail and prisoner releases on bail to be materially affected. . . . Certainly, the standard of care which currently exists in clerk’s offices in this state does not call for such reviews.

CP at 76-77. In sum, McAllister claims that the Clerk’s actions “in connection with the Ranger check and the 1997 and 1998 Rogers and 2000 Sims cases were fully consistent with the standard of care concerning receipt, allocation, and disbursement of funds as those exist in clerk’s offices today and in 2000.” CP at 77-78. The County’s sole evidence, McAllister’s declaration, suggests that for any given bond transaction, a clerk has no independent responsibility to bonding companies to determine a bonding agent’s authority and to properly record and disburse funds, despite the bonding companies’ written and filed directives relating to that particular bond.

Despite our holding in the first appeal that Signature had no actual authority and that a genuine issue of material fact existed about whether it had apparent authority, the County's evidence assumes a different scenario -- that Signature had actual or apparent authority. McAllister asserts that clerks are not required "to challenge agents of companies that are expressly authorized by the Superior Court to operate." CP at 76. McAllister implies that Signature had authority because "[t]hese bond companies are justified by the Superior Court through an established process designed to show that the company is qualified to conduct business in this field." CP at 76. But merely because a superior court authorizes a bonding agent, it does not follow that the agent has actual or apparent authority to substitute money from one bonding company for another bonding company's obligations.

We held that Signature lacked "actual authority to direct the [C]lerk to use Ranger's check to cover Granite State's financial obligations" for the following reasons: (1) "[W]hile the agreement between Signature and Ranger granted Signature actual authority over 'all . . . matters of bond administration,' clearly this grant of authority only extended to the administration of *Ranger* bond matters"; (2) "[t]he agreement did not give Signature authority to allocate Ranger bail moneys to pay for Granite State's forfeiture costs"; and (3) "Signature's authority in allocating bail moneys did not extend to cases where bail had not been forfeited." *Ranger Ins.*, 2004 Wash. App. LEXIS 1894, at *12-13 (internal citations omitted).

At the conclusion of the first appeal, the remaining issue was "whether Signature had apparent authority for its actions." *Ranger Ins.*, 2004 Wash. App. LEXIS 1894, at *13. "Whether an agent has apparent authority to make a contract depends upon the circumstances and is to be decided by the trier of fact." *State v. French*, 88 Wn. App. 586, 595, 945 P.2d 752 (1997) (quoting *Costco Wholesale Corp.*, 78

Wn. App. at 646) (citations omitted). The party asserting apparent authority has the burden of proof. *French*, 88 Wn. App. at 595. Whether an agent has apparent authority to bind a principal depends on the objective manifestations the principal made to a third party. *French*, 88 Wn. App. at 595. “[The principal’s] objective manifestations of [the agent’s] authority [a]re contained in the bail bond and related power of attorney.” *French*, 88 Wn. App. at 596.

In determining whether the principal’s objective manifestations will support a finding of apparent authority, we consider whether the principal’s conduct would lead a reasonable person to believe that the agent had authority to act as well as whether the one claiming apparent authority actually believed that the agent had authority to act for the principal. *King v. Riveland*, 125 Wn.2d 500, 507, 886 P.2d 160 (1994). Apparent authority cannot be based on the agent’s actions. *French*, 88 Wn. App. at 595. “While apparent authority can be inferred from the principal’s actions, ‘there must be evidence the principal had knowledge of the act which was being committed by its agent.’” *French*, 88 Wn. App. at 595 (quoting *State v. Parada*, 75 Wn. App. 224, 231, 877 P.2d 231 (1994)).

Thus, in the first appeal, we reviewed the bail bonds and related powers of attorney and held:

[A] genuine issue of material fact exists as to whether the [C]lerk reasonably believed that [Signature] had apparent authority, and all of the facts necessary to determine this issue have not been presented to this court. First, there were facts that may have led a person of ordinary prudence to make further inquiry regarding [Signature’s] authority to bind Ranger. As noted, the [C]lerk’s office had previously received the Ranger bonds posted for Rogers and the accompanying powers of attorney, indicating which bonds Ranger was insuring. In addition, the check Ranger submitted referenced the 1998 Rogers case, cause no. 98-1-03952-5; it did not refer to either the 1997 Rogers case or any cases involving Sims. . . Thus, the trial court erred in granting summary judgment on the issue of apparent authority.

Ranger Ins., 2004 Wash. App. LEXIS 1894, at

*15.

Here, McAllister's declaration endorses the Clerk's actions based solely on Signature's own representations of apparent authority.

Nothing in the record on appeal shows Ranger's objective manifestations supporting Signature's apparent authority. Nor is there any evidence that Ranger knew of Signature's fraudulent actions. *See French*, 88 Wn. App. at 595. Indeed, the bail bond and related powers of attorney strongly indicate that Ranger did not have knowledge of Signature's actions and that Signature lacked the authority to use Ranger's money for another bonding company's obligations.

Thus, on this record, the County failed to address its burden of establishing Signature's apparent authority. Accordingly, Ranger, the nonmoving party, need not have set forth specific facts to rebut the County's erroneous assumptions and contentions and disclosed the existence of a genuine issue of material fact on an issue that we had already decided in the first appeal. *See Meyer*, 105 Wn.2d at 852.

The trial court erred in granting summary judgment to the County when unresolved material issues of fact remain. We remand again for determination of, in addition to any other remaining issues for the trier of fact, whether Signature had apparent authority to direct Ranger's

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money to pay Granite State's obligations. *See French*, 88 Wn. App. at 595.

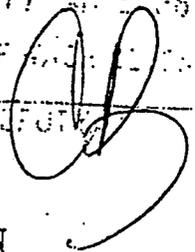
We reverse and remand for trial.

Van Deren, A.C.J.
Van Deren, A.C.J.

We concur:

Penoyar, J.
Penoyar, J.

Casey, J., Pro Tem
Casey, J., Pro Tem

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STATE OF WASHINGTON
BY 

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

RANGER INSURANCE COMPANY,

No. 30656-5-II

Appellant,

v.

PIERCE COUNTY, PIERCE COUNTY
SUPERIOR COURT CLERK, "JOHN DOE"
and "JANE DOE", and the STATE OF
WASHINGTON,

UNPUBLISHED OPINION

Respondents.

BRIDGEWATER, J. — Ranger Insurance Company appeals a summary judgment on its claim for negligence against Pierce County for misapplying bail bond moneys it received and mistakenly paid to an agent of Ranger. We reverse.

Signature Bail Bonds, Inc., a bail bond company, was authorized by the Pierce County Superior Court to post appearance and appeal bonds on behalf of Ranger Insurance Company and Granite State Insurance Company. Pursuant to a bail bond underwriting agreement entered into between Ranger and Ray Hrdlicka¹ in 1994, Signature was Ranger's agent in Washington for all bond-related activities. That agreement states in relevant part:

Agent shall be solely responsible for the satisfaction of bond forfeitures; investigation of bond principals and prospective bond principals; negotiation,

¹ Ray Hrdlicka owned 100 percent of the stock of Signature Bail Bonds, Inc.

settlement and/or satisfaction of claims against Agent by bond principals, courts and/or others; and/or any and all other matters of bond administration hereunder.

Clerk's Papers (CP) at 86.

Between February 1998 and March 2000, Signature wrote five separate appearance bonds in Pierce County to secure the appearance of two criminal defendants, David Jack Rogers and Brandon Eugene Sims. Four of these bonds were forfeited as a result of both defendants' failure to appear in court. These bonds and their forfeiture status, sureties, and amounts are summarized as follows:

1997	Rogers	97-1-05295-7	\$15,000	Ranger Ins.	Forfeited
1997	Rogers	97-1-05295-7	\$10,000	Granite St.	Forfeited
1998	Rogers	98-1-03952-5	\$20,000	Ranger Ins.	Not Forfeited
2000	Sims	00-1-01029-1	\$5,800	Granite Ins.	Forfeited
2000	Sims	00-1-01029-1	\$4,200	Granite Ins.	Forfeited

Each bond insured by Ranger was written on Ranger Insurance Company paper with a corresponding power of attorney certificate. These certificates state:

This power void if altered or erased, void if used with other powers of this company or in combination with powers from any other surety company, void if used to furnish bail in excess of the stated face amount of this power, and can only be used once.

... and provided this Power-of-Attorney is filed with the bond and retained as a part of the court records.

CP at 138, 140. Likewise, the bonds insured by Granite were written on Granite State Insurance Company paper with a corresponding power of attorney certificate.

On May 18, 2000, an order forfeiting bail and judgment on appearance bond was filed in Pierce County Superior Court for Rogers, cause no. 97-1-05295-7, and Sims, cause no. 00-1-01029-1. The bond forfeiture involving Rogers included both the Ranger and Granite State bonds.

On May 26, Signature's manager, James Barbieri, issued three checks to the Clerk of the Pierce County Superior Court for \$25,000, \$5,800, and \$4,200. The first check referenced the 1997 Rogers case (cause no. 97-1-05295-7), while the other two checks referenced the 2000 Sims case (cause no. 00-1-01029-1).

On the same day Barbieri issued the checks to Pierce County, Signature contacted Ranger and requested that Ranger send \$35,000 to the Pierce County Clerk because Signature had insufficient funds for the checks it had written. Signature represented to Ranger that forfeiture had been ordered on both its \$15,000 bond for Rogers (cause no. 97-1-05295-7) and the \$20,000 bond for Rogers (cause no. 98-1-03952-5), when in fact, there had been no forfeiture of the 1998 Rogers bond. Patricia Ferguson, a Ranger forfeiture specialist, testified in her deposition that Ranger never received court forfeiture orders and that Signature routinely notified Ranger when a forfeiture had been ordered.

On May 31, Ranger sent a check for \$35,000 to the Pierce County Superior Court. Ranger contends that along with the check, it submitted an invoice to the court indicating that \$20,000 was to be applied to Rogers cause no. 98-1-03952-5 and that \$15,000 was to be applied to Rogers cause no. 97-1-05295-7. There is no evidence in the record to establish that the Pierce County Clerk's office received the invoice as Ranger presents, however, in determining whether summary judgment was proper, we consider all facts submitted in the light most favorable to the nonmoving party. *See Wood v. Battle Ground Sch. Dist.*, 107 Wn. App. 550, 557, 27 P.3d 1208 (2001). Moreover, Dan Bohnett, a deputy clerk with the Pierce County Superior Court, stated in his declaration that Ranger's check referenced "State v. David Jack Rogers, Case No. 98-1-03952-5." CP at 23. In addition, the clerk who received Ranger's check noted that the check

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was for cause no. 98-1-03952-5 in the Pierce County Superior Court journal detail report. The clerk's office initially recorded the moneys as "[c]ash bail" on cause no. 98-1-03952-5, involving Rogers. CP at 38-39. The clerk's actions were clearly in error, as Signature had previously posted a Ranger appearance bond for cause no. 98-1-03952-5.

On June 2, Barbieri informed the Pierce County Superior Court Clerk's office that Signature was going to stop payment on the three checks it had issued on May 26 because its surety, Ranger, would be covering the forfeitures. In addition, Barbieri directed the clerk to allocate \$25,000 of the Ranger check to the two bonds forfeited on Rogers under cause No. 97-1-05295-7, and \$10,000 of the Ranger check to the two bonds forfeited on Sims under cause No. 00-1-01029-1. The clerk wrote the following in the court journal detail report:

97-1-05295-7

David J. Rogers-

original 25,000- BF stop pay by Signature . . . duplicate 35000- from Insurance co. good.

Signature via James Barbieri . . . wants us to keep \$25000.00 on second check and apply it to 97-1-05295-7[.] [H]e wants excess \$10,000.00 applied to 00-1-01029-1 Brandon Sims as a bail forf.

CP at 40. In short, Barbieri instructed the clerk to use Ranger's moneys to cover not only Ranger's obligation for Rogers, but also Granite's obligations for Rogers and Sims.

Later in June, Rogers and Sims were located and arrested. On July 13, Signature filed motions to exonerate the \$25,000 in forfeited bond money for Rogers and the \$10,000 for Sims. In its affidavits in support of these motions, Signature falsely stated that it, not Ranger, had paid the forfeited bonds. Signature also submitted copies of the checks that it had issued as evidence of payment, without informing the court that these checks had been cancelled. Pursuant to Signature's motions, the court entered orders directing the Pierce County Clerk's office to return

the forfeited bond moneys to Signature. The clerk complied with these orders and refunded the money to Signature. Signature did not return the money to Ranger.

On January 16, 2002, Ranger filed suit against Pierce County, alleging that it was liable because the court clerk negligently allocated Ranger's \$35,000² check to cover Granite's forfeiture expenses as Barbieri directed and because the clerk negligently returned the forfeiture moneys to Signature rather than Ranger. Ranger named the State of Washington in the caption of its pleading, but it did not serve the State or make any allegations against it in the complaint. On January 30, Ranger filed a confirmation of service, stating that "[t]he following defendants have been served or have accepted service: Pierce County." CP at 190-91. The State was not served at that time.

On or about April 11, 2002, Ranger filed a notice of claim against the State of Washington pursuant to RCW 4.92.100 and 4.92.110. And on December 12, 2002, Ranger served the State and filed an amended complaint adding the State as a defendant.

Pierce County moved for summary judgment, contending that Ranger was bound by the acts of its agent, Signature, in directing the allocation of the \$35,000 paid by Ranger, and that the court clerk was entitled to quasi-judicial immunity in posting and exonerating bail moneys. The State joined in the County's motion, and raised the additional defense that Ranger had failed to comply with RCW 4.92.100 and 4.92.110 by filing its complaint against the State prior to filing a claim. The court granted both the County's and the State's motions for summary judgment on the basis that Ranger was bound by the acts of its agent, Signature, and that the clerk's actions

² Although the complaint was for the total amount of \$35,000, Ranger at oral argument conceded that what was at issue was the \$20,000 that had been applied elsewhere. The clerk correctly applied \$15,000 to a forfeited cause number (97-1-05295-7) where Ranger was the surety, and returned that money to Ranger's agent for that case.

were protected by quasi-judicial immunity. The court did not address whether Ranger had failed to comply with RCW 4.92.100 and 4.92.110.

ANALYSIS

When reviewing an order of summary judgment, we engage in the same inquiry as the trial court. *M.W. v. Dep't of Soc. & Health Servs.*, 149 Wn.2d 589, 595, 70 P.3d 954 (2003). Summary judgment is proper if the pleadings, affidavits, depositions, and admissions on file demonstrate that there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). We consider all facts submitted and all reasonable inferences from them in the light most favorable to the nonmoving party. *Wood*, 107 Wn. App. at 557. The nonmoving party may not rely on speculation or argumentative assertions that unresolved factual issues remain. *Retired Pub. Employees Council of Wash. v. Charles*, 148 Wn.2d 602, 612, 62 P.3d 470 (2003). Summary judgment is not proper if reasonable minds could draw different conclusions from undisputed facts or if all of the facts necessary to determine the issues are not present. *Ward v. Coldwell Banker/San Juan Props., Inc.*, 74 Wn. App. 157, 161, 872 P.2d 69, *review denied*, 125 Wn.2d 1006 (1994).

I. Agency Authority

Ranger first asserts that the trial court erred when it granted summary judgment for Pierce County and the State on its negligence claim because the court found that Ranger was bound by the actual and apparent authority of its agent, Signature. Specifically, Ranger argues that Signature had neither actual nor apparent authority to allocate Ranger's bail funds amongst "cases, defendants, and most significantly, amongst sureties." Br. of Appellant at 15. The State and Pierce County respond that Signature had authority to transfer Ranger's funds because the

bail bond underwriting agreement between Signature and Ranger grants Signature authority over "all matters of bond administration." Br. of Resp't County at 14; Br. of Resp't State at 10. Viewing the evidence in the light most favorable to Ranger, summary judgment was not proper. Reasonable minds could differ as to whether Signature had actual or apparent authority to freely allocate Ranger bail moneys, and all of the facts necessary to determine this issue have not been presented to this court.

An agent's authority to bind its principal may be either actual or apparent. *King v. Riveland*, 125 Wn.2d 500, 507, 886 P.2d 160 (1994). Both actual and apparent authority depend upon objective manifestations made by the principal. *King*, 125 Wn.2d at 507. With actual authority, the principal's objective manifestations are made to its agent; with apparent authority, they are made to a third person. *King*, 125 Wn.2d at 507. Apparent authority cannot be inferred from the acts of the agent. *State v. French*, 88 Wn. App. 586, 595, 945 P.2d 752 (1997); *Mauch v. Kissling*, 56 Wn. App. 312, 316, 783 P.2d 601 (1989), *review denied*, 133 Wn.2d 1012 (1997) (citing *Lamb v. Gen. Assocs., Inc.*, 60 Wn.2d 623, 374 P.2d 677 (1962)).

Manifestations to third parties support a finding of apparent authority when they cause the person claiming apparent authority to actually, or subjectively, believe that the agent had authority and when the third party's belief is objectively reasonable. *King*, 125 Wn.2d at 507. The principal's conduct must lead a reasonable person to believe that the agent had authority to act; one dealing with an agent may not rely on the agent's representations when put on notice that a question exists as to the agent's authority. *French*, 88 Wn. App. at 596; *Amtruck Factors v. Int'l Forest Prods.*, 59 Wn. App. 8, 19, 795 P.2d 742 (1990), *review denied*, 116 Wn.2d 1003 (1991).

In determining whether one dealing with an agent should question an agent's authority, we consider whether:

[A] person exercising ordinary prudence, acting in good faith and conversant with business practices and customs, would be misled thereby, and such person has given due regard to such other circumstances as would cause a person of ordinary prudence to make further inquiry.

French, 88 Wn. App. at 596; *Taylor v. Smith*, 13 Wn. App. 171, 177, 534 P.2d 39 (1975) (quoting *Lamb*, 60 Wn.2d at 627). Whether apparent authority exists in a particular case is a question of fact. *Smith v. Hansen, Hansen & Johnson, Inc.*, 63 Wn. App. 355, 362, 818 P.2d 1127 (1991), *review denied*, 118 Wn.2d 1023 (1992).

Here, while the agreement between Signature and Ranger granted Signature actual authority over "all . . . matters of bond administration," clearly this grant of authority only extended to the administration of *Ranger* bond matters. CP at 86. The agreement did not give Signature authority to allocate Ranger bail moneys to pay for Granite State's forfeiture costs. Moreover, Signature's authority in allocating bail moneys did not extend to cases where bail had not been forfeited. Here, Ranger, in its check, expressly directed the application of \$20,000 to cause no. 98-1-03952-7, a case in which bail had never been forfeited. Thus, there is no question that Signature did not have actual authority to direct the clerk to use Ranger's check to cover Granite State's financial obligations, and the only real issue presented is whether Signature had apparent authority for its actions.

In its oral ruling that Signature was acting under apparent authority from Ranger, the court stated, "these agents for the bonding companies, the insurance companies, have broad powers and they're coming in and they're wheeling and dealing all of the time with bonds for Defendants." RP at 28-29. Thus, it appears that the court relied upon Barbieri's representations

to the court clerk regarding his authority to allocate Ranger's moneys. Such reliance was in error, as apparent authority may not be inferred from the acts of an agent. *French*, 88 Wn. App. at 595. Rather, in determining whether apparent authority existed, we must consider the objective manifestations that Ranger made to the clerk's office regarding Signature's authority. *See French*, 88 Wn. App. at 596.

Ranger's objective manifestations to the Pierce County Superior Court clerk's office regarding Signature's authority are contained in the bail bonds and related powers of attorney filed with the court. *See French*, 88 Wn. App. at 596. These documents informed the clerk's office that Signature was Ranger's agent as to the bonds posted for Rogers, cause No. 97-1-05295-7 and cause No. 98-1-03952-5. In addition, the corresponding powers of attorney informed the clerk's office that Signature did not have authority to use its powers "in combination with powers from any other surety company." CP at 138, 140. Thus, the clerk's office was aware of the cases in which Ranger was a surety and those in which Granite was a surety. The office was also on notice that Signature's authority from Ranger applied only to bonds written on Ranger paper.

Here, based upon the clerk's entries in the court journal, there appears to be no question that the court clerk subjectively believed that Barbieri had authority to allocate Ranger's \$35,000 as he directed. However, a genuine issue of material fact exists as to whether the clerk reasonably believed that Barbieri had apparent authority, and all of the facts necessary to determine this issue have not been presented to this court. First, there were facts that may have led a person of ordinary prudence to make further inquiry regarding Barbieri's authority to bind Ranger. As noted, the clerk's office had previously received the Ranger bonds posted for Rogers

and the accompanying powers of attorney, indicating which bonds Ranger was insuring. In addition, the check Ranger submitted referenced the 1998 Rogers case, cause no. 98-1-03952-5; it did not refer to either the 1997 Rogers case or any cases involving Sims.³ Thus, the trial court erred in granting summary judgment on the issue of apparent authority.

The dissent takes the approach that this matter can be resolved by considering the powers of an agent and appropriate payment duties. We disagree; several facts render this analysis inapposite. Firstly, although Signature had authority to deal with bond matters in one case involving Rogers, it had no authority to use money from Ranger in the other cases where Granite provided security for the bonds. Thus, Barbieri was not acting within his authority from Ranger when he directed the clerk to apply Ranger's money to the other bond forfeitures. The Clerk improperly applied the funds to Granite's bonds in violation of the express direction on Ranger's voucher. Secondly, when Signature misrepresented that it had posted the bond forfeiture money on the Granite cases at the time it requested reimbursement payment from the superior court, it was not acting within its authority from Ranger because again, the moneys forfeited had been inappropriately used for another bonding company and Signature had no authority to receive those moneys on behalf of Ranger. When the moneys were returned in the cases secured by Granite, they were not paid in relation to Ranger's obligation; thus, Signature could not have

³ Ranger also contends that the trial court erred by not considering that the clerk's office initially recorded its \$35,000 as "cash bail." Br. of Appellant at 22; Reply Br. of App. at 7. Ranger's argument appears to be two-fold. First, the clerk's office was negligent in managing Ranger's bail moneys. Second, if the clerk's office had kept track of its bail bonds and had not improperly recorded the check as "cash bail," it would have learned that Ranger had already posted bail for Rogers, cause no. 98-1-03952-5, and may have notified Ranger that bail was not forfeited in that case prior to Barbieri's instructions to the clerk for allocating Ranger's check. The record is unclear as to when Ranger received the receipt from the clerk's office stating that the check was recorded as "cash bail."

been acting on behalf of Ranger when it collected the money. Consequently, the case should proceed to trial on negligence.

It is unclear whether a reasonable, prudent clerk would have reviewed all of the documents pertaining to Ranger's bail moneys prior to allocating Ranger's check as Barbieri instructed. At the summary judgment hearing, counsel for Pierce County argued the following:

The Clerk doesn't drill down into each file and say, well, here is the bond. Let's look at the bond. The Clerk is looking at a docket sheet that's saying . . . what is the status of that case.

.....
To say that the Clerk -- everytime [sic] someone comes in and says I want to apply this money from my principal in this fashion has to pull out the original Clerk file and drill down and say . . . which principal are you acting for, that's putting too much of a burden on the Clerk.

RP at 27-28. However, the argument of counsel is not conclusive evidence as to this issue. See *Green v. A.P.C.*, 136 Wn.2d 87, 100, 960 P.2d (1998). There is no other evidence in the record regarding the proper procedures for court clerks in receiving bail moneys. In conclusion, questions of material fact remain, and summary judgment was not proper.

II. Quasi-Judicial Immunity

Ranger next argues that the trial court erred by granting the court clerk quasi-judicial immunity in the handling of Ranger's bail moneys because the recording of bail bonds is a "ministerial" act. Br. of Appellant at 27. Pierce County and the State contend that the clerk was protected because applying Ranger's check as Barbieri directed was a "quasi-judicial" act and because the clerk issued the refund checks to Signature pursuant to a valid court order. Br. of Resp't County at 36; Br. of Resp't State at 19. Ranger is correct:

Judges are absolutely immune from civil damage suits for acts performed within their judicial capacity. *Taggart v. State*, 118 Wn.2d 195, 203, 822 P.2d 243 (1992). The purpose of

judicial immunity is to ensure that judges can administer justice without fear of personal consequences. *Taggart*, 118 Wn.2d at 203; *Adkins v. Clark County*, 105 Wn.2d 675, 677, 717 P.2d 275 (1986). Quasi-judicial immunity “attaches to persons or entities who perform functions that are so comparable to those performed by judges that it is felt they should share the judge’s *absolute* immunity while carrying out those functions.” *West v. Osborne*, 108 Wn. App. 764, 772-73, 34 P.3d 816 (2001) (quoting *Lutheran Day Care v. Snohomish County*, 119 Wn.2d 91, 99, 829 P.2d 746 (1992), *cert. denied*, 506 U.S. 1079 (1993)), *review denied*, 145 Wn.2d 1012 (2000). A purely ministerial act by a clerk of the court is not a judicial act. *Mauro v. Kittitas County*, 26 Wn. App. 538, 540, 613 P.2d 195 (1980). However, when performing court-ordered functions, a person acts as an “arm of the court,” and is protected by quasi-judicial immunity. *Reddy v. Karr*, 102 Wn. App. 742, 749, 9 P.3d 927 (2000); *Babcock v. State*, 116 Wn.2d 596, 809 P.2d 143 (1991).

A “ministerial” act is one that “involves obedience to instructions or laws instead of discretion, judgment, or skill <the court clerk’s ministerial duties include recording judgments on the docket>.” BLACK’S LAW DICTIONARY 1011 (7th ed. 1999). The duties of a superior court clerk are defined by statute and include, “keep[ing] the records, files and other books and papers appertaining to the court.” RCW 2.32.050(3). “Generally speaking, a clerk of court is an officer of a court of justice, who attends to the clerical portion of its business, and who has custody of its records and files . . . Such an office is essentially ministerial in its nature, and the clerk is neither the court nor a judicial officer.” *Swanson v. Olympic Peninsula Motor Coach Co.*, 190 Wash. 35, 38, 66 P.2d 842 (1937); *see* 15A AM. JUR. 2d, *Clerks of Court* § 21. The Pierce County Superior Court website describes the Superior Court Clerk’s duties as:

[M]ostly administrative in nature, being quasi-judicial in some cases. The Clerk is responsible for maintaining the records of all cases filed in the Superior Court dating back to the 1890's. The Clerk has several quasi-judicial duties, which include issuance of various writs, orders, subpoenas and warrants.

Pierce County Clerk of the Superior Court; *available at*

<http://www.co.pierce.wa.us/pc/abtus/ourorg/clerk/abtusclk.htm> (last modified Oct. 7, 2003).

In *Mauro*, 26 Wn. App. at 541, the court clerk for Kittitas County failed to record a court order withdrawing a defendant's arrest warrant, and the County argued that the clerk's actions were shielded by judicial immunity. *Mauro*, 26 Wn. App. at 539. However, the court found that the clerk's act was ministerial and that the county would be liable for the "ministerial nonfeasance" of its employee. *Mauro*, 26 Wn. App. at 541. Here, similar to the situation in *Mauro*, the clerk was performing statutorily proscribed, ministerial duties of managing and recording bail bonds and forfeitures. Thus, Pierce County and the State are not entitled to summary judgment as a matter of law on this issue.

Pierce County and the State further contend that the clerk is immune for his or her actions in returning Ranger's moneys to Signature because the clerk was acting pursuant to a court order. Although a clerk is acting as an "arm of the court" when following a court order (*See* 15A AM. JUR. 2d Clerks of Court § 31); respondents' argument fails because, as counsel for Ranger stated at the summary judgment hearing, "if the Clerk would have had the money tracked appropriately in the appropriate account, the Clerk would have said to the judge or whoever [sic], there is no money here in the account for those purposes." RP at 24-25. Appellant Ranger is correct when it argues, "[t]he issue is not that the Clerk's Office issued a check to Signature upon court order. The issue is that the Clerk's Office used Ranger's money without any logical explanation, and

without authorization.” Br. of Appellant at 27. Because the clerk’s actions were ministerial, and because the clerk’s actions led to the eventual court order for exoneration, the clerk was not entitled to quasi-judicial immunity and summary judgment should not have been granted.

III. Failure to comply with RCW 4.92.110

Finally, the State contends that summary judgment should have been granted in favor of the State because Ranger failed to comply with RCW 4.92.100 and 4.92.110 by filing its complaint against the State prior to filing a claim. The State argues that Ranger commenced this suit against the State when it named the State as a defendant in the caption of its first complaint on January 16, 2002, three months prior to filing a claim pursuant to RCW 4.92.100 and 4.92.110. This argument is without merit.

RCW 4.92.110 provides: “No action shall be commenced against the state for damages arising out of tortious conduct until sixty days have elapsed after the claim is presented to and filed with the risk management division. The applicable period of limitations within which an action must be commenced shall be tolled during the sixty-day period.” We have held that the requirement that a plaintiff file a claim under RCW 4.92.110 is strictly enforced, and failure to comply with this statute will result in a dismissal of the plaintiff’s case. *Levy v. State*, 91 Wn. App. 934, 942, 957 P.2d 1272 (1998). However, substantial compliance is authorized for the content of the claim. *Levy*, 91 Wn. App. at 942 (citing *Lewis v. City of Mercer Island*, 63 Wn. App. 29, 33, 817 P.2d 408, review denied, 117 Wn.2d 1024 (1991)).

Here, although Ranger named the State in the caption of its initial complaint, it did not serve the State or make any allegations against it. Rather, the insertion of the State in the caption appears to have been a scrivener’s error. In its brief, Ranger contends that the initial summons

and complaint were "only meant to address tortious activity by Pierce County and its employee clerk." Reply Br. of Appellant at 10. Ranger filed a notice of claim against the State with the risk management division on April 11, 2002. Ranger then served the State and filed an amended complaint adding the State as a defendant nine months later on December 12, 2002. Thus, Ranger properly complied with RCW 4.92.100 and 4.92.110, and the State was not prejudiced in any way by the fact that it was named in the caption of the initial complaint. Moreover, Ranger did not benefit from any tolling of the statute of limitations by naming the State in its initial complaint.⁴ In conclusion, the State is not entitled to judgment as a matter of law.

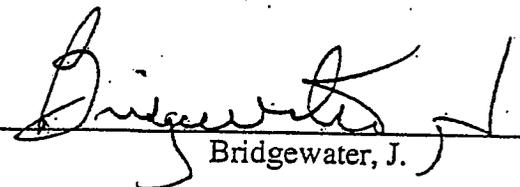
Reversed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

I concur:



Van Deren



Bridgewater, J.

⁴ The State contends that "Ranger materially benefited from naming the State in the complaint that was filed in January 16, 2002, because the statute of limitations was tolled on any claim against the State." Br. of Resp't State at 27. This argument is fallacious because Ranger was in no danger of the statute of limitations running. The date of the alleged tort is May 30, 2000-July 17, 2000, and the limitations period for a negligence claim is three years, *see* RCW 4.16.080(2). Thus, Ranger still had one year to commence a suit against the State.

MORGAN, A.C.J. (dissenting) — In 1997 and 1998, Ranger guaranteed David Jack Rogers' bail in two different cases. It guaranteed \$15,000 in cause 97-1-05295-7 and \$20,000 in cause 98-1-03952-5. It acted through Signature Bail Bonds, whose manager was James Barbieri.

On May 18, 2000, the court forfeited bail in the 1997 cause. The court did not forfeit bail in the 1998 cause.

Shortly after the forfeiture, Barbieri apparently misrepresented to Ranger that the court had forfeited bail in the 1998 case as well as the 1997 one. Thus, on May 31, 2000, Ranger paid the court clerk \$35,000—\$15,000 because of the court's order of forfeiture and \$20,000 because of a mistake that Barbieri had induced. The clerk received the entire \$35,000 as bail.

In June 2000, Rogers was apprehended. Thus, the court vacated its order of forfeiture, and the clerk refunded the \$35,000 to Barbieri as Signature's manager. Neither Barbieri nor Signature ever remitted the \$35,000 to Ranger.

In January 2002, Ranger sued the clerk.⁵ The clerk answered in part that it had paid Signature; that payment to Signature was payment to Ranger; and thus that it had discharged its liability to Ranger. The trial court granted summary judgment to the clerk, and this appeal followed.

The question in this case is not whether the clerk ever became liable. It is undisputed that Ranger paid the clerk \$35,000. The clerk had no right to retain \$20,000 of that amount at any time. The clerk had no right to retain the remaining \$15,000 after the court vacated its order of

⁵ Ranger actually sued the county. For convenience, I refer to the county as the clerk.

forfeiture in Rogers' 1997 case. After June 2000, the clerk so clearly owed Ranger \$35,000 that reasonable minds could not differ.⁶

The question in this case is whether the clerk discharged its liability by paying Barbieri. Payment to an agent is payment to the principal so long as the agent receives the payment while acting within the scope of authority granted by the principal.⁷ Accordingly, the question becomes whether, when Barbieri received the \$35,000 from the clerk, he was acting within the scope of authority granted to him by Ranger.

The question whether Barbieri was acting within the scope of authority granted by Ranger has three parts. First, did Ranger authorize Signature and Barbieri to act as its agent on bond-related matters? Second, was Barbieri acting within the scope of such authority when he received from the clerk the \$15,000 that Ranger had earlier paid in Rogers' 1997 case? Third, was Barbieri acting within the scope of such authority when he received from the clerk the remaining \$20,000?

So clearly that reasonable minds could not differ, Ranger authorized Signature and Signature's manager, Barbieri, to act as Ranger's agent on all bond-related matters. The record

⁶ This paragraph renders immaterial the parties' debate on negligence. The reason to apply negligence law is to ascertain whether the clerk is liable to Ranger. The reason to apply payment or agency law is to ascertain whether the clerk discharged its assumed or established liability by paying Ranger. Because the issue is whether the clerk paid, not whether the clerk became liable in the first instance, the case is controlled by the law of payment and agency, not by the law of negligence.

⁷ *Walker v. Pac. Mobile Homes, Inc.*, 68 Wn.2d 347, 350, 413 P.2d 3 (1966); *Smith v. Hansen, Hansen & Johnson, Inc.*, 63 Wn. App. 355, 368, 818 P.2d 1127 (1991) (when an agent has actual authority to act on behalf of the principal, the agent's exercise of the authority binds the principal), *review denied*, 118 Wn.2d 1023 (1992); *Amtruck Factors, a Div. of Truck Sales, Inc. v. Int'l Forest Prod.*, 59 Wn. App. 8, 19, 795 P.2d 742 (1990), *review denied*, 116 Wn.2d 1003 (1991); *Wolley v. Butts*, 19 Wn. App. 876, 881, 578 P.2d 80 (1978); *Taylor v. Smith*, 13 Wn. App. 171, 179, 534 P.2d 39 (1975).

contains a detailed written contract titled "Bail Bond Underwriting Agreement."⁸ The contract was executed by Ranger and Signature in 1994. It was in effect at the times pertinent here, for it was not terminated until "[s]ometime in 2001."⁹ It authorized Signature to "operate as a Ranger agent in . . . Washington"¹⁰ for the purpose of "solicit[ing] and execut[ing] bonds."¹¹ It provided that Signature would have responsibility for "the satisfaction of bond forfeitures" and "all other matters of bond administration."¹²

So clearly that reasonable minds could not differ, Barbieri was acting as Ranger's agent when he received the \$15,000 that Ranger paid in Rogers' 1997 case. Signature had posted the initial \$15,000 bond using a power of attorney to act in Ranger's name. Ranger paid \$15,000 when the court forfeited the bond. Signature's attorney later obtained an order rescinding the forfeiture, and the clerk paid Barbieri pursuant to that order. The Ranger-Signature contract gave Signature and its manager, Barbieri, the authority to act for Ranger on matters related to the satisfaction of bond forfeitures; Barbieri was acting on such a matter when he received the \$15,000 from the clerk; and thus Barbieri was acting with the scope of his authority for Ranger when he received the \$15,000 from the clerk.

⁸ Clerk's Papers (CP) at 84.

⁹ CP at 73. This is according to Patricia Ferguson, a witness designated by Ranger under CR 30(b)(6). Ferguson also noted that in 2001 Ranger and Signature began litigating against each other. *See* CP at 73-74, 79-93.

¹⁰ CP at 92.

¹¹ CP at 84.

¹² CP at 86.

So clearly that reasonable minds could not differ, Barbieri was acting as Ranger's agent when he received the remaining \$20,000. When Ranger initially paid that amount to the clerk, it was engaging, albeit mistakenly, in a "matter of bond administration."¹³ When the clerk refunded the money to Barbieri, it was engaging in the same matter. The Ranger-Signature contract gave Barbieri authority to act for Ranger on such matters, and he was acting within the scope of authority when he received the \$20,000 from the clerk. Hence, the clerk's payment to Barbieri was payment to Ranger, and the trial court did not err by granting summary judgment to the clerk.

I have deliberately omitted any reference to Granite State Insurance Company. No one alleges that Ranger's money became Granite State's money merely because of the clerk's bookkeeping errors. Thus, when the clerk paid Barbieri, it was paying Ranger's money, not Granite State's. The dispositive question is whether Barbieri was acting within the scope of his authority from Ranger when he received Ranger's money from the clerk, and Granite State's presence in the case is immaterial to that question.

I have no quarrel with Sections II and III of the majority opinion, although I see no need to reach those issues.

I would affirm the superior court.

Morgan, A.C.J.

¹³ CP at 86.

RCW 19.72.040. Individual sureties -- Examination -- Approval

In case such bond or recognizance is given in any action or proceeding commenced or pending in any court, the judge or clerk of any court of record or district court, or any party to the action or proceeding for the security or protection of which such bond or recognizance is made may, upon notice, require any of such sureties to attend before the judge at a time and place specified and to be examined under oath touching the surety's qualifications both as to residence and property as such surety, in such manner as the judge, in the judge's discretion, may think proper. If the party demanding the examination require it, the examination shall be reduced to writing and subscribed by the surety. If the judge finds the surety possesses the requisite qualifications and property, the judge shall endorse the allowance thereof on the bond or recognizance, and cause it to be filed as provided by law, otherwise it shall be of no effect.