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DIVISION II

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STATE OF WASHINGTON

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**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

RANGER INSURANCE COMPANY, Appellant

v.

PIERCE COUNTY and PIERCE COUNTY SUPERIOR
COURT CLERK, Respondents

**BRIEF OF RESPONDENTS PIERCE COUNTY and
PIERCE COUNTY SUPERIOR COURT CLERK**

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A. ISSUE PRESENTED

In an action alleging negligence by a superior court clerk's office, should dismissal be affirmed when the plaintiff insurance company submitted no affidavit or other evidence of any kind in response to a motion for summary judgment which was supported by a declaration affirmatively showing that the clerk's actions fully conformed to the standard of care exercised by clerks' offices in this state? (Standard of review: de novo.)

B. STATEMENT OF THE CASE

Respondents Pierce County and the Clerk of the Pierce County Superior Court ["Pierce County"] originally obtained summary judgment in this matter by order of Judge Terry K. McCluskey on July 7, 2003, only to have that reversed by a decision of this Court (App. 1) on August 17, 2004. The original motion had raised issues of agency and quasi-judicial immunity, and according to the court's majority opinion there were questions of fact concerning agency left for trial. Majority opinion at 7, 9. On remand, Pierce County filed another motion

for summary judgment, which did not revisit either agency or immunity, but rather concerned a separate issue discussed as follows at page 11 of the majority opinion:

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 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 was to place evidence in the record concerning such "proper procedures for court clerks in receiving bail moneys." Judge Chris Wickham granted that motion on March 17, 2006. Ranger filed a timely notice of appeal (CP 147) only as to "the order granting summary judgment dismissing plaintiff's claims against Pierce County" and does not challenge the dismissal of the State of Washington.

The underlying facts of this case are set out in the majority opinion and in the declaration of Deputy Clerk Dan Bohnett (CP 11). To summarize: Ranger's agent, 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 authorized to write. 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 a 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. Later, when the two defendants were in custody, Signature went to court and falsely averred that it had paid the forfeitures and obtained orders directing the Clerk to refund the money to Signature, which was done. Signature did not pay the money to Ranger. Again, the facts are laid out in more detail in the majority opinion and Bohnett's declaration.

C. ARGUMENT

Having been defrauded by its own agent, then, Ranger sued the Clerk, the County and the State alleging at paragraph 2.8 of its complaint (CP 109) (emphasis added) that defendants

"negligently released funds owed to [plaintiff] to Signature Bail Bonds or to a third party, without the authority from [plaintiff]." The majority opinion of this Court, quoted above, 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; the fact that the opinion earlier (pages 7, 9) stated that such questions also remained on the actual and apparent authority issues did not make agency "the salient issue" on remand as asserted at page 7 of Ranger's brief (emphasis supplied). Nor was the Court's analysis of the negligence issue a mere "comment" as characterized at page 8 of Ranger's brief.

Indeed, the discussion in the majority opinion of a clerk's duty of care was a recognition that although it was not a ground upon which summary judgment was originally granted, the threshold issue of negligence was an independent matter for resolution on remand. *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 Pierce County'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 majority opinion at page 11 indicated that on remand, evidence concerning the standard of care for clerk's offices in fiscal matters was, if not required, at least admissible. That was the law of this case by virtue of this 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).

Accordingly, on remand Pierce County submitted the declaration of Joel McAllister (CP 73; App. 20) 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). Mr. McAllister's curriculum vitae (CP 79; App. 26) was attached to his declaration. He is the Manager of Finance and Information Services for the King County Department of Judicial Administration, which is in effect the Clerk's Office of the King County Superior Court. His CFO experience in 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.

The core of McAllister's declaration is the following:

5. As is discussed in both Mr. Bohnett's declaration and the majority

opinion, two days after the Ranger check was received, James Barbieri, manager of Signature Bail Bonds, personally appeared in the clerk's office, announced that Signature was stopping payment on the three checks it had written on May 26, stated Ranger was going to cover them, and "directed the clerk" (majority opinion at 5) to allocate \$25,000 of the Ranger check to the two bonds in the 1997 Rogers case and \$10,000 to the two bonds in the 2000 Sims case. As is shown by the chart on page 2 of the opinion, the \$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, see page 1 of the majority opinion. 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. 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 relation-

ships 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.

This directly addresses the evidentiary gap identified by the majority opinion, because it states the procedures employed by clerk's offices in Washington, explains why those procedures make sense, and shows that in following the directions given by Barbieri, the Clerk's Office acted as a reasonable, prudent clerk would do.

The surety justification procedure to which Mr. McAllister refers is under RCW 19.72.040 (emphasis added):

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.

Signature's petition leading to the justification order which was in effect at the time of the subject transactions is at CP 47 (identified at ¶7 of the Bohnett declaration, CP 13).

There are other aspects of Mr. McAllister's declaration. In the first, he explains at ¶3 that the majority opinion was wrong in assuming that the clerk's actions were "clearly in error" when the \$35,000 was originally rung in as cash bail. (There was at the time no evidence in the record on that clerk's practice point, either.) Mr. McAllister explains that "cash bail" is a kind of default transaction code (#3310) in the judicial receipting system (JRS) of the Administrative Office of Courts, and that it was proper to place those funds under that code. "If

under the same circumstances the same \$35,000 check had been presented to my office, or to virtually any other clerk's office in the State of Washington, it would properly have been entered as cash bail under JRS transaction code 3310, just as the Pierce County Clerk's Office did."

Mr. McAllister also addresses Ranger's contention, discussed at page 3 of the majority opinion, "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." Noting that the opinion states that there is no evidence the invoice was ever received by the clerk, Mr. McAllister states at ¶4 that if such a designation of funds had been received, the clerk would have been expected to follow it, but goes on to say, "Because Ranger Insurance Company did direct the clerk to allocate at least \$20,000 of the \$35,000 to the 1998 case, and because as I stated above, complying with such a direction, whether there is a forfeiture of record or not, is fully

in keeping with the standard of care in clerk's offices, in my opinion the clerk 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." Finally, Mr. McAllister states at ¶6 that the clerk acted properly in complying with the court orders directing payment of the funds to Signature.

In resisting Pierce County'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 proceeding, 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 does 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).

Instead, in its brief Ranger quotes snippets of McAllister's declaration out of context (pages 8, 9), repeatedly characterizes his testimony as mere "suggestions" (*id.*), accuses him of "callousness" and "lack[ing] credulity" (at 9), and concludes, "Being ignorant or simply not caring about what is dictated by a court document cannot equate to following the standard of care of a reasonably prudent clerk." (Brief at 10). The problem here is that McAllister's testimony is evidence in the record of this case concerning the applicable standard of care, and Ranger's briefing is merely the argument of counsel. Once a defendant adduces evidence showing there is no genuine issue for trial, the burden shifts to the plaintiff to set forth specific facts sufficiently rebutting the moving party's contentions and

disclosing the existence of material issues of disputed fact. *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). The nonmoving party may not rely on speculation or argumentative assertions that unresolved factual issues remain. *Seven Gables Corp. v. MGM/UA Entertainment Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986) ("[A]fter the moving party submits adequate affidavits, the nonmoving party must set forth specific facts that sufficiently rebut the moving party's contentions and disclose that a genuine issue as to a material fact exists.").

The factual record supporting the trial court's order is un-rebutted. As Judge Wickham stated (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.

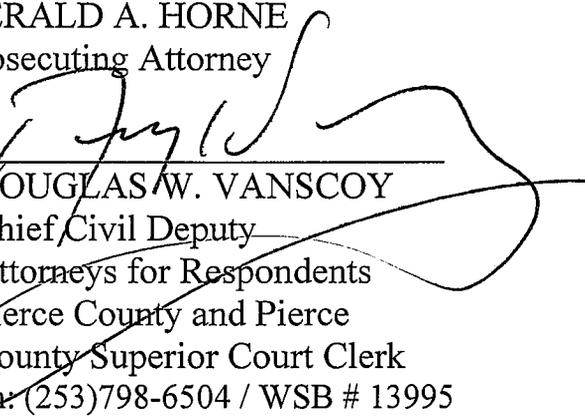
Ranger mistakenly asserts at page 2 of its brief that the issue presented by this appeal is whether there was negligence "when the Pierce County Clerk failed to follow directives set forth in a bail bond and accompanying power of attorney." Instead, the true issue was stated by this Court in its August 17, 2004 opinion (App. 11): "[W]hether 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." (Emphasis added.) Because following remand the record now includes the unchallenged McAllister declaration which demonstrates that accepted standard practices used by clerks' offices throughout the State of Washington do not call for such review of underlying documents and do permit compliance with directions of a court-justified bond agency, Judge Wickham properly held there is no genuine issue of material fact for trial.

D. CONCLUSION

The Court should affirm the order of the trial court.

DATED: October 5, 2006.

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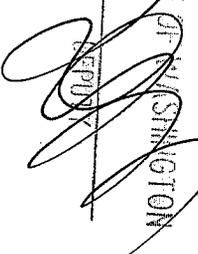
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document was delivered this 5th day of October, 2006, to ABC-Legal Messengers, Inc., with appropriate instruction to forward the same to counsel of record as follows:

Appellant Ranger Brett A. Purtzer, Esq.
Insurance Company Law Offices of Monte Hester
 1008 S. Yakima Ave., Ste. 302
 Tacoma, WA

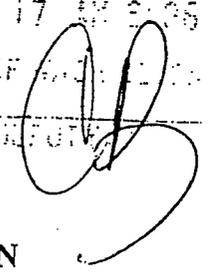


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APPENDIX
RAP 10.3(a)(7)

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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.

UNPUBLISHED OPINION

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

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 Beriberi'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)).

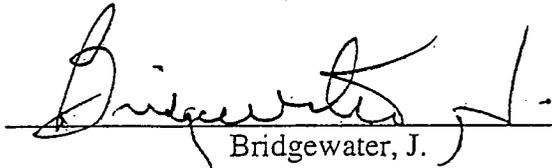
Here, although Ranger named the State in the caption of its initial complaint, it did not serve the State or make any allegations against it. Rather, the insertion of the State in the caption appears to have been a scrivener’s error. In its brief, Ranger contends that the initial summons

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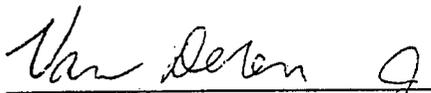
and complaint were "only meant to address tortious activity by Pierce County and its employee clerk." Reply Br. of Appellant at 10. Ranger filed a notice of claim against the State with the risk management division on April 11, 2002. Ranger then served the State and filed an amended complaint adding 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.


Bridgewater, J.

I concur:


Van Deren, 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.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

RANGER INSURANCE COMPANY,

Plaintiff,

NO. 02 2 04147 2

vs.

DECLARATION OF JOEL McALLISTER

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

Defendants.

I, Joel T. McAllister, declare that I have personal knowledge of the matters set forth below and that I am competent to testify to the matters stated herein.

1. I am the Manager of Finance and Information Services for the King County Department of Judicial Administration, and I have been so employed since July 2000. The curriculum vitae attached to this declaration is current and accurate.

2. The Department of Judicial Administration ("DJA") includes the functions performed by Superior Court clerk's offices in other counties. As is stated in my *c.v.*, one of my responsibilities is reviewing accounting procedures of the DJA to ensure compliance with

1 generally accepted accounting principles. As the chief financial officer of the DJA, I am in
2 communication with my counterparts in other clerk's offices in Washington, frequently
3 attending meetings of the Washington State Association of Court Clerks by invitation to
4 discuss specific clerk finance issues, and attending meetings of clerks' finance officers a
5 couple times a year. I am familiar with the standard of care exercised in clerk's offices in the
6 state concerning the handling of funds. I am also familiar with the judicial receipting system
7 ("JRS") and the judicial accounting sub-system maintained by the Administrative Office of
8 the Courts to promote consistency among counties in accounting systems and in the
9 administration of funds.

10
11 3. I have read the unreported decision of the Court of Appeals filed on August 17,
12 2004 in this case, as well as the declaration of Pierce County Deputy Clerk of Court Dan
13 Bohnett dated May 15, 2003 and filed as Exhibit "A" to Pierce County's original motion for
14 summary judgment. At page 4 of the majority opinion Judge Bridgewater stated:

15 The clerk's office initially recorded the moneys as "[c]ash bail" on
16 cause no. 98-1-03952-5, involving Rogers. CP at 38-39. The
17 clerk's actions were clearly in error, as Signature had previously
18 posted a Ranger appearance bond for cause no. 98-1-03952-5.

19 Actually, ringing in the \$35,000 as "cash bail" was the correct procedure. It is not uncommon
20 for funds to be deposited in a case before a court order reaches the clerk's office. The JRS
21 transaction code for cash bail, 3310, is the code that was used by the clerk when the Ranger
22 check was received, as can be seen by review of Exhibits "B15" and "B18" identified in the
23 Bohnett declaration. This code (3310) is the proper one to use whenever funds are tendered in
24 a criminal case in which the clerk has not yet received an order specifying what to do with
25 such funds. In effect, it is a default transaction code. The clerk cannot be in a position of
turning away funds only to have the paperwork arrive later, as this would give rise to

1 confusion, including the potential for defendants to remain in custody beyond their lawful
2 release date. The person working fund receipts is expected to record incoming funds in the
3 cause number designated by the payor, and if there is no clear transaction code for allocating
4 the funds in a criminal case, to show the transaction as cash bail. If under the same circum-
5 stances the same \$35,000 check had been presented to my office, or to virtually any other
6 clerk's office in the State of Washington, it would properly have been entered as cash bail
7 under JRS transaction code 3310, just as the Pierce County Clerk's Office did.

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9 4. According to Mr. Bohnett's declaration, at paragraph 5, "On 5/31/00 Ranger
10 Insurance Company paid \$35,000 into the registry of the Court referencing State v. David
11 Jack Rogers, Case No. 98-1-03952-5, see Exhibits 'B14-15' and 'B18'." According to Judge
12 Bridgewater's opinion, at page 3, "Ranger contends that along with the check, it submitted an
13 invoice to the court indicating that \$20,000 was to be applied to Rogers cause no. 98-1-03952-
14 5 and that \$15,000 was to be applied to Rogers cause no. 97-1-05295-7." The majority
15 opinion goes on to say that there is no evidence in the record to show that the clerk received
16 such an invoice. If such a designation had in fact been made, the clerk would be expected to
17 allocate the funds as designated: \$15,000 to the 1997 case and \$20,000 to the 1998 case. I do
18 not know whether such an invoice in fact reached the clerk, but it is undisputed that the
19 \$15,000 was in fact reallocated by the clerk to the 1997 case a few days later per James
20 Barbieri's instructions (discussed below). As Judge Bridgewater stated in footnote 2 on page
21 5, "The clerk correctly applied \$15,000 to a forfeited cause number (97-1-05295-7) where
22 Ranger was the surety, and returned that money to Ranger's agent for that case." Because
23 Ranger Insurance Company did direct the clerk to allocate at least \$20,000 of the \$35,000 to
24 the 1998 case, and because as I stated above, complying with such a direction, whether there
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1 is a forfeiture of record or not, is fully in keeping with the standard of care in clerk's offices,
2 in my opinion the clerk clearly handled the receipt of the \$20,000 which is involved here
3 properly and in a manner fully consistent with the standard of care in clerk's offices in this
4 state.

5 5. As is discussed in both Mr. Bohnett's declaration and the majority opinion, two
6 days after the Ranger check was received, James Barbieri, manager of Signature Bail Bonds,
7 personally appeared in the clerk's office, announced that Signature was stopping payment on
8 the three checks it had written on May 26, stated Ranger was going to cover them, and
9 "directed the clerk" (majority opinion at 5) to allocate \$25,000 of the Ranger check to the two
10 bonds in the 1997 Rogers case and \$10,000 to the two bonds in the 2000 Sims case. As is
11 shown by the chart on page 2 of the opinion, the \$15,000 bond in the Rogers case was
12 Ranger's; the other three were Granite State's. The clerk's office would not have known that,
13 however, without pulling the court files and reviewing the bond documents themselves. Even
14 if for some reason a clerk noticed that there were two different sureties involved, I would
15 expect the clerk's reaction to be, in effect, "So what?". These bond companies are justified by
16 the Superior Court through an established process designed to show that the company is
17 qualified to conduct business in this field. Clerk's offices are not expected to challenge agents
18 of companies that are expressly authorized by the Superior Court to operate. This would be
19 especially true, as here, where the company (Signature) is authorized by the Court to issue
20 bonds for both the sureties involved, Ranger and Granite State, see page 1 of the majority
21 opinion. Aside from that, the clerk would not be aware of the relationship if any between the
22 two sureties. Insurance companies buy and sell each other, and pieces of each other, from
23 time to time. They can also have agreements between themselves governing various aspects
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1 of their businesses. In short, it would be extremely difficult for a clerk's office to question, in
2 any timely and meaningful fashion, the direction of a bond agent to allocate funds of one
3 surety to the obligations of another. Neither my office nor any other clerk's office in the
4 state, to my knowledge, has ever engaged in such a review of the bona fides of bail bond
5 agents. If clerks are required to second-guess the relationship between insurance companies
6 and the authority of bond agents, this would increase our work load, our service lines would
7 be longer than they are, and we would likely have to build in a buffer to give us time for such
8 reviews. If my office were to undertake such reviews, I would expect our ability to handle
9 matters such as exoneration of bail and prisoner releases on bail to be materially affected. For
10 example, currently we advise the public that a document filed with the Court is available to
11 the public within five days. If we were required to undertake review of the underlying bail
12 documents and relationships of the companies and agents, I would expect a comparable delay
13 to be implemented. Certainly, the standard of care which currently exists in clerk's offices in
14 this state does not call for such reviews.
15

16 6. According to the majority opinion at pages 4-5, after the funds were allocated
17 as Barbieri directed, Signature went to court and "falsely stated that it, not Ranger, had paid
18 the forfeited bonds," the Court ordered the clerk to pay the money to Signature and the clerk
19 complied. In complying with the direct order of the Court, albeit one which (unknown to the
20 clerk) had been fraudulently obtained by Signature, the clerk was of course acting consistent
21 with the standard of care existing in clerk's offices in this state.
22

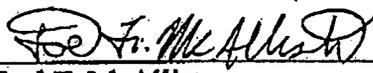
23 7. For the reasons stated, in my opinion the actions of the Pierce County Superior
24 Court Clerk's Office in connection with the Ranger check and the 1997 and 1998 Rogers and
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2000 Sims cases were fully consistent with the standard of care concerning receipt, allocation and disbursement of funds as those exist in clerk's offices today and in 2000.

I declare under penalty of perjury of the laws of the State of Washington the foregoing to be true and correct.

EXECUTED this 15 day of February, 2006, at Seattle, King County, Washington.


Joel T. McAllister

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Joel T. McAllister, Finance Manager

Education

BS Business Administration – Oregon State University 1983

Master of Management/Doctor of Jurisprudence – Willamette University 1987

Professional Experience

⇒ July 2000 - present: King County Department of Judicial Administration (DJA), Seattle, Washington.

Manager of Finance and Information Services. Responsible for finance and information services for the King County Superior Court Clerk's office. Supervise Accounting, Disbursements, Cashiers, Judgments, Collections, Customer Service and File Access functions. Monitor and evaluate staff performance and training, provide direction as needed. Interact with Superior Court judges and members of the bar on matters related to court file access and retention, finance and customer service. Develop, draft and implement policies and procedures to ensure legal and operational compliance with relevant statutory requirements. Draft announcements of procedural changes for publication. Research, compile and present complex financial reports to upper management, the bench and members of the State and local legislature. Responsible for reporting on the department's revenues as well as the \$341 million public trust in the court's registry, consisting of over 106,000 open accounts and involving over \$124 million in receipts annually. Review accounting procedures to ensure compliance with Generally Accepted Accounting Principles. Oversee administration of and responsible for compliance with numerous state and Federal grants. Serve as chief financial advisor to the department and prepare budgetary reports and forecasts. Participate in management meetings and planning sessions, form and participate in numerous local and statewide committees to develop proposed legislation impacting the court's financial activities and/or judgment recording. Respond to customer complaints and requests.

Accomplishments:

- Lead development of automated case scheduling implementation and e-commerce application
- Trained staff and successfully converted public court file access from hard copy (paper files) to use of electronic records
- Implemented collection program for criminal legal financial obligations. Drafted all appropriate policies and procedures and worked with the court, the bar, the State legislature and the public to implement. Hired and trained staff. Significantly increased collection rate on backlogged court-ordered payments

⇒ June 1999 - July 2000: Autoglide, Inc. Kent, Washington.

Co-founder and Vice President, Secretary/Treasurer, and Member, Board of Directors. Responsibilities involved management of business operations, including market development, capitalization and personnel management. Acted as liaison between Investors, Management and Board of Directors. Incorporated the business in 1997 and served as Secretary/Treasurer. Joined full-time as Vice President in 1999.

Accomplishments:

- Formed corporate organization with funding to develop new technology
- Completed technological development on schedule and significantly under budget
- Assisted with patenting process
- Wrote business plan for production startup

- Drafted private placement memorandum for production startup capitalization and negotiated terms of technology license

⇒ Jan. 1993 - June 1999: Management & Training Corporation (MTC), Tongue Point Job Corps Center, Astoria, Oregon.

Director of Finance and Administration. Directly supervised Accounting, Purchasing, Food Services, IT/Communications, Property and Facilities Maintenance departments. Responsible for budget preparation, adherence and financial reporting for three Job Corps sites encompassing 225 staff, 850 students and \$15 million in operating funds annually. Negotiated and administered numerous Federal, state and private contracts, with several exceeding \$55 million each.

Accomplishments:

- Coordinated and conducted audits of lower-tier contractors, participated in audits of other Job Corps centers
- Streamlined functionality of each department facilitating staff reductions and significant savings
- Implemented an integrated accounting system and consolidated financial reporting for each site
- Fostered a comfortable working environment where productivity, creativity and morale flourished
- Achieved levels of financial performance not previously met within the corporation. This was achieved through open communication and thorough information flow
- Graduate of MTC's Executive Development program
- Facilitated an in-depth audit from the Inspector General's office that lasted over five months. The audit resulted in no costs being challenged or questioned. Rather, the audit team drafted a set of recommendations on "best practices" observed at Tongue Point that went out to all Job Corps centers

⇒ Feb. 1988 - Jan. 1993: The Ogilvie Company, Inc., Seattle, Washington.

Initially hired as an Accountant. Promoted to CFO within four months. Was responsible for financial reporting, public and private sector contract negotiation and administration, maintaining banking relationships and overall cash management. At time of hire, the company was primarily a commercial construction contractor, which was later transitioned into manufacturing. Fourteen months after hire, I was promoted to Operations Manager and given responsibility for all aspects of operations. Responsible for wind up of operations of construction division and ramp up of manufacturing division. Secured needed financing. Negotiated commercial leases. Negotiated contracts for production, both public and private. Developed and successfully implemented business transition plan. Responsible for all aspects of manufacturing operations including personnel management, contract compliance, quality control, and financial performance and reporting.

Accomplishments:

- Secured needed bank financing
- Transitioned company from construction to manufacturing.
- Negotiated with the US Coast Guard to enter a large, multi-year contract for purchase of manufactured goods
- Leveraged the multi-year, Federal contract to secure needed credit and supply terms
- Transitioned company from having sporadic cash flow with heavy operating losses, to an even, predictable cash flow with significant net income

Community Involvement

- Astoria Rotary Club member 1990-1999; club president 1993-94
- Board member, Clatsop County chapter of American Red Cross 1990-1993
- Instructor, Linfield College 1994-1995. Taught upper division courses in financial management and entrepreneurship
- Board member, Lower Columbia Youth Soccer Association 1993-1996, treasurer 1994-1995