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Consolidated No. ~~67418-8-I~~
(Appeals Nos. 67515-0-I and 67704-7-I)

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

**WILLIAM RALPH,
Plaintiff-Appellant,**

vs.

**STATE OF WASHINGTON DEPARTMENT OF NATURAL
RESOURCES,
Defendant-Respondent.**

**WILLIAM FORTH, et al.,
Plaintiffs-Appellants,**

vs.

**STATE OF WASHINGTON DEPARTMENT OF NATURAL
RESOURCES, et al.
Defendants-Respondents.**

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2012 MAR -7 PM 2:24

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I. INTRODUCTION

Plaintiffs-Appellants, William Ralph, William Forth, Guy Bauman, Eileen Bauman, Linda Stanley, the estate of Coral Cotton, Donald LeMaster, and David Givens (together, “Plaintiffs”), blame Defendants-Respondents, Washington State Department of Natural Resources, Weyerhaeuser Company, and Green Diamond Resource Company (together, “Defendants”), for the flooding of Plaintiffs’ real property in Lewis County. This flooding occurred during the record-breaking December 2007 storm, during which the Chehalis River overflowed its banks. Plaintiffs allege that Defendants’ forest practices caused the flooding.

Plaintiffs filed their action against Defendants in King County. In accordance with controlling precedent, the trial court granted Defendants’ motion to dismiss Plaintiffs’ action without prejudice for lack of jurisdiction. Plaintiffs have appealed.

In their appeal, Plaintiffs argue that the statute relied upon by the trial court, RCW 4.12.010(1), is unconstitutional as a statute limiting superior court jurisdiction. However, RCW 4.12.010(1) and the case law interpreting that statute are grounded in the principle of *in rem* jurisdiction. In cases involving real property, a trial court must have jurisdiction over the subject of the action (here, the real property) in

addition to jurisdiction over the claims. Contrary to Plaintiffs' argument, this jurisdictional limitation is constitutional, and the trial court properly dismissed Plaintiffs' action for lack of jurisdiction.

II. STATEMENT OF ISSUES ON APPEAL

Is RCW 4.12.010(1) constitutional as a statute limiting superior court jurisdiction over real property located in a different county?

Did the trial court properly dismiss Plaintiffs' action without prejudice for lack of jurisdiction?

III. STATEMENT OF THE CASE

Plaintiffs own real property and reside in Lewis County. Forth, CP 1-15; Ralph CP 1-11. During the course of a historic storm in December 2007, the Chehalis River overflowed its banks and flooded Plaintiffs' property. *Id.* Plaintiffs filed suit against Defendants in King County Superior Court, alleging that Defendants' forest practices on real property in Lewis County caused the flooding. *Id.* Plaintiffs asserted claims of negligence, trespass, tortious interference, inverse condemnation, unlawful agency action, and violation of Washington's Shoreline Management Act of 1971. Forth, CP 9-11; Ralph, CP 8-10.

In their appellate briefing, Plaintiffs state they seek only an award of damages for injury to their property. App. Br. at 3. However, in their

complaint, Plaintiffs also requested that the trial court enjoin Defendants' use of real property in Lewis County. Forth, CP 12-13; Ralph, CP 10-11.

Defendants moved to dismiss without prejudice for lack of jurisdiction over the subject real property, based on the Washington Supreme Court's holding in *Cugini v. Apex Mercury Min. Co.*, 24 Wn.2d 401, 165 P.2d 82 (1946), and related cases. Forth, CP 38-45; Ralph, CP 19-25. Plaintiffs objected, arguing that the statute relied upon by Defendants was unconstitutional. Forth, CP 49-61; Ralph, CP 33-44. The trial court granted Defendants' motion (Forth, CP 166-68; Ralph, CP 171-72) and Plaintiffs have appealed (Forth CP 169-74; Ralph, CP 173-178).

IV. ARGUMENT

A. RCW 4.12.010(1) Is Constitutional as a Statute Limiting Superior Court *In Rem* Jurisdiction.

Since before Washington statehood, the Legislature has by statute restricted the jurisdiction of superior courts over actions regarding real property located in other counties. This is in accordance with well-established principles of *in rem* jurisdiction. Washington Supreme Court precedent holding that RCW 4.12.010(1) is a statute limiting superior court jurisdiction does not conflict with Article IV, Section 6 of the Washington Constitution. The trial court properly followed this precedent and dismissed Plaintiffs' claims for lack of jurisdiction.

1. RCW 4.12.010(1) Relates to Jurisdiction.

The statute at issue, RCW 4.12.010(1), states:

Actions for the following causes shall be commenced in the county in which the subject of the action, or some part thereof, is situated: (1) For the recovery of, for the possession of, for the partition of, for the foreclosure of a mortgage on, or for the determination of all questions affecting the title, or for any injuries to real property.

RCW 4.12.010 (formerly Rem. Rev. Statutes § 204). As the Washington Supreme Court held in *Cugini v. Apex Mercury Mining, Co.*, 24 Wn.2d at 409: “The provisions of §204 are *jurisdictional* in character. Actions involving title or injury to real property may only be commenced in the county in which the real property is situated. *Otherwise, the action must be dismissed for want of jurisdiction.*” (Emphasis added). The Court has clarified that RCW 4.12.010(1) relates to jurisdiction over the subject of the action: “Unless the action is commenced in the county in which the *subject of the action . . .* is located, the court does not have jurisdiction to determine the issues involved.” *Snyder v. Ingram*, 48 Wn.2d 637, 639-40, 296 P.2d 305 (1956) (emphasis added). Additionally, the Supreme Court determined that the statute’s jurisdictional requirement cannot be waived. *Alaska Airlines, Inc. v. Molitor*, 43 Wn.2d 657, 665, 263 P.2d 276 (1953) (citing *State ex rel. Grove v. Card*, 35 Wn.2d 215, 211 P.2d 1005 (1949); *Cugini*, 24 Wn.2d 401; *Miles v. Chinto Min. Co.*, 21 Wn.2d 902, 153 P.2d 856 (1944)).

In *Cugini*, the plaintiffs commenced a quiet title action in Lewis County Superior Court for real property in Lewis County. 24 Wn.2d at 402. The defendants moved to change venue to Pierce County for the convenience of the witnesses. *Id.* The Lewis County Superior Court granted the defendants' motion. *Id.* The plaintiffs appealed to the Washington Supreme Court. *Id.* The Supreme Court affirmed, holding that RCW 4.12.010(1) was jurisdictional in nature. *Id.* at 409. Once vested with jurisdiction, the Lewis County Superior Court could transfer venue (and jurisdiction) to Pierce County Superior Court for any of the grounds identified in RCW 4.12.030 (formerly Rem. Rev. Stat. § 209). *Id.*

Plaintiffs argue that RCW 4.12.010(1) relates to venue, not jurisdiction. App. Br. at 9. However, Plaintiffs never cite or discuss any of the five Washington Supreme Court decisions holding otherwise (*Snyder*, *Alaska Airlines*, *Grove*, *Cugini*, and *Miles*). The Supreme Court's holding in *Snyder* could not be more clear – if an action listed in RCW 4.12.010(1) is not commenced in the county in which the subject real property is located, “the court does not have jurisdiction to determine the issues involved.” 48 Wn.2d at 639-40.¹ Plaintiffs fail to point out that

¹ The Washington Supreme Court recently recognized the jurisdictional nature of RCW 4.12.010(1) in *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 315 n.5, ___ P.3d ___ (2011) (“Unless we were to overrule *Snyder*, if RCW 4.12.010 required that this case be filed in Franklin County, the proper remedy would have been dismissal, not transfer. The parties have not briefed this issue, and we decline to address it.”).

adoption of their argument would require this Court to disregard all of this Supreme Court precedent. The Court should reject Plaintiffs' venue argument.

2. RCW 4.12.010(1) Includes All Cases Involving Injury to Real Property.

In accordance with its plain language, RCW 4.12.010(1) includes all cases for any injury to real property. RCW 4.12.010(1) lists six classes of cases that fall within its scope: (1) cases for the recovery of real property; (2) cases for possession of real property; (3) cases for partition of real property; (4) cases for foreclosure of a mortgage on real property; (5) cases for the determination of all questions affecting title to real property; and (6) cases for any injury to real property. Here, Plaintiffs' action fits within the last class of cases.

Even an action seeking only money damages for injury to real property, not involving issues of title or possession, must be commenced in the county where the subject property is located. *State ex rel. King County v. Superior Court of Pierce County*, 104 Wash. 268, 276, 176 P. 352 (1918). In *King County*, the plaintiff receiver of the Tacoma Meat Company sought damages from defendants King County and Pierce County, alleging that negligent diversion of the Puyallup River flooded the Tacoma Meat Company's real property (located in Pierce County).

104 Wash. at 269. The plaintiff properly commenced the action in Pierce County Superior Court, and defendant King County sought a change of venue, which was denied. *Id.* King County sought a writ of mandamus compelling the Pierce County Superior Court to change venue. *Id.* The Supreme Court denied the writ, holding that an action for negligent injury to real property in which the plaintiff seeks money damages is local in nature, and may only be properly commenced in the county in which the property is located. 104 Wash. at 276.

Following the long-standing and well-grounded principles of *in rem* jurisdiction, the Washington Supreme Court has repeatedly applied RCW 4.12.010 to limit the jurisdiction of superior courts over property located outside the county in which the superior court is located. In *Miles v. Chinto Min. Co.*, the Supreme Court applied RCW 4.12.010 to vacate, for lack of jurisdiction, a Spokane County Superior Court decree quieting title to real and personal property located in Stevens County. 21 Wn.2d at 907. In *Alaska Airlines v. Molitor*, the Supreme Court similarly applied RCW 4.12.010 to prohibit the King County Superior Court from entering an order regarding possession of real property located in Alaska. 43 Wn.2d at 666-67. In *Snyder v. Ingram*, the Supreme Court likewise applied RCW 4.12.010 to prohibit the King County Superior Court from adjudicating title and possession to personal property located in Chelan

County. 48 Wn.2d at 639-40. In all of these cases, the Supreme Court stated that the superior court lacked jurisdiction over the subject of the lawsuits: real or personal property located outside the county in which the superior court was situated.

Defendants incorrectly argue that “injury” to real property, as used in RCW 4.12.010(1), only refers to disputes affecting title. App. Br. at 19. However, Defendants’ argument ignores both the plain language of RCW 4.12.010(1) and the Supreme Court precedent interpreting the statute. Washington courts begin statutory interpretation with the plain language of the statute. *State v. JP*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). If the plain language of a statute is susceptible to two interpretations, courts adopt the interpretation that gives effect to all of the statute’s language, and avoid the interpretation that renders any language meaningless or superfluous. *Id.* Here, RCW 4.12.010(1) expressly distinguishes between disputes affecting title to real property and disputes involving injury to real property. Equating “injury” with “title” as Plaintiffs suggest would render meaningless the language “any injuries to real property” in RCW 4.12.010(1). The Court should therefore disregard Plaintiffs’ interpretation of RCW 4.12.010(1).

Furthermore, the Washington Supreme Court has already determined that injuries to real property under RCW 4.12.010(1) include

damage to property caused by flooding. In *King County*, 104 Wash. 268 at 276, the Supreme Court noted that jurisdiction over an action for negligent flooding of real property located in Pierce County lies only with the Pierce County Superior Court. This Court should disregard Plaintiffs' unsupported argument equating disputes for injury to real property with disputes over title to real property.

3. RCW 4.12.010(1) Does Not Conflict with Article IV, Section 6 of the Washington Constitution.

Courts presume that statutes are constitutional. *State v. Shafer*, 156 Wn.2d 381, 387, 128 P.3d 87 (2006). A party challenging the constitutionality of a statute must prove that the statute is unconstitutional beyond a reasonable doubt. *Id.* When applying these principles, the Washington Supreme Court has stated:

This “demanding standard of review” is justified because, as a co-equal branch of government that is sworn to uphold the constitution, we assume the Legislature considered the constitutionality of its enactments and afford great deference to its judgment.

Tunstall ex rel. Tunstall v. Bergeson, 141 Wn.2d 201,220, 5 P.3d 691 (2000) (quoting *Island County v. State*, 135 Wn.2d 141, 147, 955 P.2d 377 (1998)).

Plaintiffs challenge the constitutionality of RCW 4.12.010(1) as a statute relating to superior court jurisdiction. Plaintiffs cite to Article IV, Section 6 of the Washington Constitution, which states in part:

The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court.

Plaintiffs note the Supreme Court recently used this language to determine that the Legislature does not have authority to vest subject matter jurisdiction over personal injury actions in one superior court over another. *See* App. Br. at 12. Plaintiffs then argue, by extension, that Article IV, Section 6 prohibits all legislative restrictions on superior court jurisdiction.

Plaintiffs' constitutional argument is wrong. First, the Washington Supreme Court recently stated that Article IV, Section 6 relates to jurisdiction over the "subject matter," defined as the "type of controversy." *Williams v. Leone & Keeble, Inc.*, 171 Wn.2d 726, 730, 254 P.3d 818 (2011). Article IV, Section 6 does not address *in rem* jurisdiction

Washington law has always restricted superior court jurisdiction over claims regarding real property located in a different county. Since the Washington Territorial Legislature enacted the Code of 1881, Washington law has required plaintiffs to commence actions regarding

real property in the county where the subject property was located.

RCW 4.12.010(1) (formerly § 47 of Code of 1881).

This rule arose from the common law distinction between “local” actions (which must be commenced where the subject of the action is located) and “transitory” actions (which may be commenced wherever a defendant may be found). *See Washington State Bank v. Medalia Healthcare L.L.C.*, 96 Wn. App. 547, 555, 984 P.2d 1041 (1999) (distinguishing local actions from transitory actions). The distinction first arose in United States jurisprudence in *Livingston v. Jefferson*, 4 Hall L.J. 78, 15 F.Cas. 660 (1811). In *Livingston*, Chief Justice John Marshall dismissed a trespass action for damages filed in Virginia against former President Thomas Jefferson for lack of jurisdiction because the subject real property was located in Louisiana. *Id.* The Washington Supreme Court recognized the codification of the common law principle set forth in *Livingston* in 1891. *See McLeod v. Ellis*, 2 Wash. 117, 122, 26 P. 76 (1891) (noting that, under the language of RCW 4.12.010, an action for injury to real property located in another county must be dismissed for lack of jurisdiction).

Second, even if Article IV, Section 6 did relate to superior court *in rem* jurisdiction over real property located in another county (it does not), Plaintiffs’ argument would require the Court to read Article IV, Section 6

of the Washington Constitution in isolation, ignoring language used in the rest of the Constitution. Article IV, Section 6 vests “the superior court” with original jurisdiction over cases “in which the demand or the value of the property in controversy amounts to three thousand dollars or as otherwise determined by law,” and also “in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court.” Const. art. IV, § 6. Though this section does vest jurisdiction in a superior court, it does not describe *which* superior court.

The state constitution uses “the superior court” to refer to the superior court for an individual county. *See* Const. art. IV, § 5 (election of judges to the superior court for each county). In contrast, the constitution uses “superior courts” when referring to all superior courts. *See* Const. art. IV, § 1 (“The judicial power of the state shall be vested in a supreme court, *superior courts*, justices of the peace, and such inferior courts at the legislature may provide.”); §11 (“The supreme court and the *superior courts* shall be courts of record, and the legislature shall have power to provide that any of the courts of this state, excepting justices of the peace, shall be courts of record.”); § 13 (“The judges of the supreme court and judges of the *superior courts* shall severally at stated times, during the continuance in office, receive for their services the salaries prescribed by

law therefor, which shall not be increased after their election, nor during the term for which they shall have been elected.”); § 24 (“The judges of the *superior courts*, shall from time to time, establish uniform rules for the governance of the *superior courts*.”) (emphasis added).

Thus, the plain language of the Washington constitution does not restrict the Legislature’s authority to limit superior court jurisdiction *in rem* because Article IV, Section 6 uses the singular “superior court” rather than the plural “superior courts.”

To succeed, Plaintiffs must argue that for 120 years – since it first recognized the local action rule codified at RCW 4.12.010(1) – the Washington Supreme Court has somehow ignored the scope of the superior courts’ jurisdiction set forth in Article IV, Section 6. This is inconceivable.

In 1891, the Washington Supreme Court addressed both the scope of superior court jurisdiction in Article IV, Section 6, and the jurisdictional limit codified in RCW 4.12.010(1). In *Moore v. Perrott*, 2 Wash. 1, 2, 25 P. 906 (1891), the Court discussed the jurisdiction of superior courts under Article IV, Section 6. During the same session, the Court decided *McLeod v. Ellis*, 2 Wash. 117, 26 P. 76 (1891). In *McLeod*, the Supreme Court recognized that, pursuant to section 47 of the Washington Territorial Code of 1881 (now RCW 4.12.010), a superior

court located in one county did not have jurisdiction over an action for title or injury to real property located in another county.

2 Wash. at 120-22. The Washington Supreme Court followed *McLeod* in *Miles*, *Cugini*, *Alaska Airlines*, and *Snyder*. Neither the Supreme Court nor the Legislature has identified and remedied the supposed conflict that Plaintiffs imagine. The reason is simple: no such conflict exists.

B. The Trial Court Lacked Jurisdiction Over Plaintiffs' Action.

Plaintiffs have ignored the jurisdictional requirements of RCW 4.12.010(1) and Washington Supreme Court precedent. Plaintiffs commenced their action against Defendants in King County Superior Court. In addition to injunctive relief, Plaintiffs seek damages for injury to their real and personal property resulting from the flooding of their real property in Lewis County. Defendants objected to the trial court's jurisdiction over the subject real property, citing RCW 4.12.010(1), *Cugini*, and related case law. The trial court, following controlling precedent, dismissed Plaintiffs' action without prejudice. This Court should affirm the trial court's determination that it lacked jurisdiction over the Plaintiffs' action.

Plaintiffs argue that RCW 4.12.010(1) does not apply in this case because Plaintiffs seek money damages, making their action transitory

rather than local in character. App. Br. at 15-19. The Court should reject Plaintiffs' argument because it ignores controlling precedent and the nature of Plaintiffs' action. First, the Washington Supreme Court has already addressed this issue. In *King County*, the Supreme Court determined that an action for damages arising from flooding of real property is local, and must be commenced in the county where the subject property is located. 104 Wash. at 276.

Second, when determining whether an action is local or transitory, a court should examine the nature of plaintiffs' action and the relief requested. *Silver Surprise, Inc. v. Sunshine Min. Co.*, 74 Wn.2d 519, 522, 445 P.2d 334 (1968) (examining the plaintiff's complaint and determining that it was "patently a contract action"). Actions for trespass are local in nature. See *Olympia Min. & Milling Co. v. Kerns*, 64 Wash. 545, 550, 117 P. 260 (1911) (actions for trespass "are purely local in character."). Here, Plaintiff's action is essentially one for trespass. Plaintiffs allege that Defendants caused the waters of the Chehalis River to overflow its banks and invade Plaintiffs' real property, damaging both the realty and the personal property located on the realty. But for this invasion of water, Plaintiffs would have no claim against Defendants. Consistent with the nature of Plaintiffs' action, Plaintiffs seek damages for the injuries caused by the flooding and also seek injunctive relief, presumably to prevent

Defendants from causing further flooding. Consequently, the trial court did not err when it applied RCW 4.12.010(1) to Plaintiffs' action.

The authority relied upon by Plaintiffs is inapposite. *McLeod v. Ellis and State ex rel. U.S. Trust Co. v. Phillips* were both actions to recover damages for breach of a contract for the sale of timber. *McLeod*, 2 Wash. at 120-22; *Phillips*, 12 Wn.2d 308, 309-10, 121 P.2d 360 (1942). *Medalia Healthcare* was an action to recover damages for conversion of a medical practice's accounts, contract rights, equipment, and general intangibles. 96 Wn. App. at 549. *Shelton v. Farkas* was an action to recover damages for breach of contract for the sale of a violin. 30 Wn. App. 549, 554-58, 635 P.2d 1109 (1981). *Silver Surprise* was an action to recover damages for breach of contract for the defendant's failure to perform mining exploration work. 30 Wn. App. at 520-21. None of these cases involved tortious injury to real property caused by flooding.

C. The Constitutional Precedent Relied Upon By Plaintiffs Is Inapposite.

Plaintiffs use a semantic device to argue that RCW 4.12.010(1) is unconstitutional as a statute restricting superior court jurisdiction, confusing jurisdiction over the subject matter with jurisdiction over the subject real property. Plaintiffs cite *Young v. Clark*, 149 Wn.2d 130,

65 P.3d 1192 (2002), *Shoop v. Kittitas County*, 149 Wn.2d 29, 65 P.3d 1194 (2002), and *Williams v. Leone & Keeble, Inc.*, 171 Wn.2d 726, 254 P.3d 818 (2011). However, none of these cases relates to injury to real property.

Young v. Clark permits persons injured in motor vehicle accidents to file their lawsuit where any one of the defendants reside, not just where the cause of action arose. In *Young*, the plaintiff, a resident of Snohomish County, sued the defendant, a resident of Pierce County, for negligence arising out of a car accident that occurred in Kittitas County. 149 Wn.2d at 131-32. The Washington Supreme Court, citing Article IV, Section 6 of the Washington Constitution, held that RCW 4.12.020 is a statute relating to venue, not subject matter jurisdiction. *Id.* at 134.

Shoop v. Kittitas County permits persons injured in motor vehicle accidents allegedly caused by a county's negligence to request a transfer of venue if the plaintiff files the lawsuit in the wrong venue. In *Shoop*, the plaintiff was injured while driving her car across the Cle Elum River Bridge located in Kittitas County. 149 Wn.2d at 32. The plaintiff attempted to sue Kittitas County for negligence in King County. *Id.* However, King County is not one of the two counties nearest to Kittitas County, as contemplated by RCW 36.01.050. *Id.* The Washington Supreme Court, again citing Article IV, Section 6 of the Washington

Constitution, held that RCW 36.01.050 is a statute relating to venue, not subject matter jurisdiction. *Id.* at 37.

Williams v. Leone & Keeble, Inc. permits injured workers to sue a non-employer third party for negligence for an injury suffered in the workplace. In *Williams*, an employee of a subcontractor suffered an injury while working on a construction project in Idaho. 171 Wn.2d at 729. The employee sought to sue the general contractor, a Washington corporation, for negligence in Spokane County Superior Court. *Id.* The superior court dismissed the action for “want of jurisdiction.” The Washington Supreme Court reversed, holding that the superior court did have subject matter jurisdiction over the worker’s negligence claim for personal injury. *Id.* at 734.

Young, Shoop, and Williams have no bearing on this case. None of those cases involved RCW 4.12.010(1), and none involved injury to real property. These distinctions are important because, as the Supreme Court clarified in *Williams*, “subject matter jurisdiction” relates to the “type of controversy.” 171 Wn.2d at 730. The parties agree that the King County Superior Court has general jurisdiction to determine claims of negligence, trespass, and similar tort claims. However, the King County Superior Court does not possess jurisdiction over the *subject real property* located

in Lewis County. Therefore, trial court properly granted Defendants' motion to dismiss.

D. Important Policy Considerations Behind *In Rem* Jurisdiction Support the Jurisdictional Limitations Set Forth In RCW 4.12.010(1).

Two related yet distinct policy considerations justify the jurisdictional nature of RCW 4.12.010(1). The first relates to records affecting real property. Currently, a person may search the transactional and judicial records of an individual county to reliably identify all matters affecting a parcel of real property located in that county. For this reason, only the superior court of the county in which the subject real property is situated has jurisdiction to enter a judgment affecting title to that property. *See, e.g., Miles*, 21 Wn.2d at 907 (vacating judgment entered by Spokane County Superior Court for real property located in Stevens County). By ensuring that only the superior court for the county in which the subject real property is situated has jurisdiction over the six classes of cases described in RCW 4.12.010(1), the Legislature ensures that this policy consideration is given effect.

The second policy consideration is the preservation of clear jurisdictional boundaries for superior courts in real property cases. Plaintiffs argue that whenever a superior court has subject matter jurisdiction over a dispute and personal jurisdiction over the parties, the

court has jurisdiction over the merits. Such a simplistic view incorrectly suggests that a Washington superior court may adjudicate a quiet title action over real property located in Florida, so long as the court has personal jurisdiction over the defendant. However, there is more to a court's jurisdiction than simply jurisdiction over the type of controversy and over the defendant. When real property is involved, the court must have jurisdiction over the real property itself. This is the essence of jurisdiction *in rem*, and absent such jurisdiction, a court should dismiss the action.

E. Dismissal Without Prejudice Is An Appropriate Remedy When A Court Lacks Jurisdiction.

Absent jurisdiction, a superior court must dismiss the case. *Alaska Airlines*, 43 Wn.2d at 666-67. Here, the trial court dismissed Plaintiffs' action for lack of jurisdiction over the subject real property. The trial court therefore did not err, and this Court should affirm.

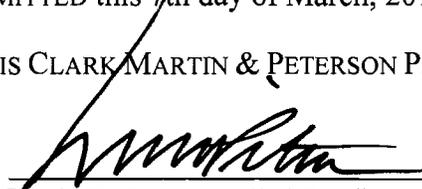
V. CONCLUSION

Washington law has always required that plaintiffs commence actions for recovery, possession, partition, foreclosure, title, or injury to real property in the county in which the property is situated. Commencing such an action in the proper county is necessary for the trial court to acquire jurisdiction over the subject real property. By commencing their action in King County Superior Court for injury to their real property

located in Lewis County, Plaintiffs violated this fundamental principle of jurisdiction. The trial court properly dismissed Plaintiffs' action for lack of jurisdiction. This Court should affirm.

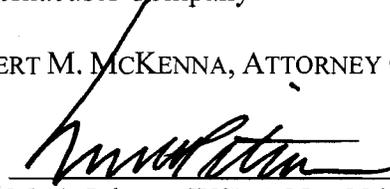
RESPECTFULLY SUBMITTED this 7th day of March, 2012.

HILLIS CLARK MARTIN & PETERSON P.S.

By: 

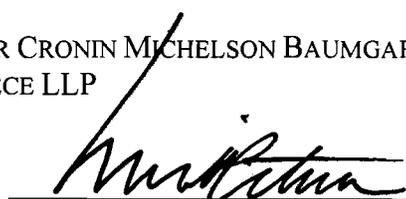
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CONSOLIDATED No. 67418-8-I
(APPEALS NOS. 67515-0-I, AND 67704-7-I)

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

WILLIAM RALPH, individually,

Plaintiff-Appellant,

v.

STATE OF WASHINGTON
DEPARTMENT OF NATURAL
RESOURCES,

Defendant-Respondent.

WILLIAM FORTH, individually; GUY
BAUMAN, individually; EILEEN
BAUMAN, individually; LINDA
STANLEY, individually and as personal
representative IN RE THE ESTATE OF
CORAL COTTON; ROCHELLE
STANLEY, as personal representative IN
RE THE ESTATE OF CORAL COTTON;
DONALD LEMASTER, individually; and
DAVID GIVENS, individually,

Plaintiffs-Appellants,

v.

STATE OF WASHINGTON
DEPARTMENT OF NATURAL
RESOURCES, a Washington State public
agency; WEYERHAEUSER COMPANY,
a Washington corporation; and GREEN
DIAMOND RESOURCE COMPANY, a
Washington corporation,

Defendants-Respondents.

**CERTIFICATE OF
SERVICE**

ORIGINAL

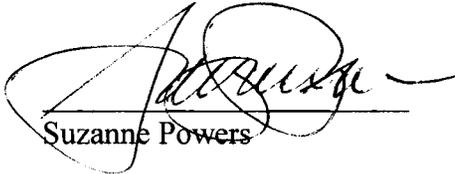
I, Suzanne Powers, am a legal assistant for the law firm of Hillis Clark Martin & Peterson P.S., 1221 Second Avenue, Suite 500, Seattle, WA 98101. I hereby certify that on the 7th of March, 2012, I caused to be served true and correct copies of the ***Respondents' Brief*** and this ***Certificate of Service*** on the following:

Darrell L. Cochran
Ryan M. Carson
Pfau Cochran Vertetis Amala PLLC
911 Pacific Avenue, Suite 200
Tacoma, WA 98402-4413

Via Legal
Messenger

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 7th day of March, 2012 at Seattle, Washington.


Suzanne Powers

ND: 4817-0713-7294v1