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No. 67515-0-I
No. 67704-7-I (Consolidated)

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

WILLIAM RALPH, individually,

Appellant,

vs.

STATE OF WASHINGTON DEPARTMENT OF NATURAL RESOURCES, a Washington State Public Agency,

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

Appellants,

vs.

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,

Respondents.

APPELLANT'S REPLY BRIEF

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I. INTRODUCTION

Article IV, section 6 of our state constitution states, in relevant part:

> The Superior Court shall have original jurisdiction in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand or the value of the property in controversy amounts to three thousand dollars or as otherwise determined by law, or a lesser sum in excess of the jurisdiction granted to justices of the peace and other inferior courts, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce, and for annulment of marriage; and for such special cases and proceedings as are not otherwise provided for. 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; and said court shall have the power of naturalization and to issue papers therefor.

(Emphasis added). Defendants-Respondents ask this court to ignore the above language and affirm the wrongful dismissal of Plaintiffs-Appellants' lawsuits. Defendants urge this court to ignore modern caselaw interpreting article IV, section 6 and instead rely on cases from the first half of the 1900s that muddle concepts of venue and jurisdiction.

Plaintiffs-Appellants respectfully request this court to decline the defendants' invitation. Modern caselaw has unequivocally interpreted article IV, section 6 as conferring on Washington Superior Courts

universal original subject matter jurisdiction. Based on the modern interpretation, this court is within its authority to reject the cases that the defendants cite. The cases that defendants rely upon—all of which are from the early 1900s—are not binding authority because they did not apply article IV, section 6 to the statute in question, RCW 4.12.010.

Plaintiffs ask this court to apply article IV, section 6 to RCW 4.12.010, hold that King County Superior Court here had subject matter jurisdiction over these lawsuits, and reverse dismissal. If defendants still believe that these cases should be in another county, defendants are free to move for a change in venue.

II. REPLY ARGUMENT

A. Defendants admit that King County Superior Court has jurisdiction over Ralph's and Forth's lawsuit.

Defendants admit that jurisdiction is proper at King County Superior Court:

> The parties agree that King County Superior Court has general jurisdiction to determine claims of negligence, trespass, and similar tort claims.

Br. of Resp't at 18. Plaintiffs have filed lawsuits with claims of negligence, trespass, and other torts. Yet despite pleading these specific causes of action, the trial court nonetheless dismissed plaintiffs' lawsuit entirely. Defendants' admission highlights the unsupportable nature of the

lower courts' actions.

B. The issue on appeal is whether the trial court unconstitutionally applied RCW 4.12.010(1) as a limit on its universal original subject matter jurisdiction.

Despite bringing motions to "Dismiss for Lack of Subject Matter Jurisdiction," defendants are trying to distance themselves from discussing "subject matter jurisdiction" in favor of discussing the jurisdiction in terms of the "subject property." Defendants' position in this litigation has always been that the King County Superior Court has lacked subject matter jurisdiction, and they have not filed a cross-appeal or otherwise assigned error to the Superior Court's ruling on "subject matter jurisdiction." Therefore, this court should reject defendants' implied arguments that jurisdiction under RCW 4.12.010 is considered in terms of "subject property." RAP 2.5(a); *see Martin v. Johnson*, 141 Wn. App. 611, 170 P.3d 1198 (2007).

Regardless, defendants cite no authority to support the notion implied in their brief that, when property is involved, courts ignore the subject matter of the lawsuit and focus only on the whereabouts of the subject property. The subject matter of this lawsuit sounds in tort, which defendants have not challenged. Therefore, the only question that remains for appeal is whether the trial court unconstitutionally applied RCW 4.12.010(1) as a limit on its universal original subject matter jurisdiction.

C. Plaintiffs are not challenging the facial constitutionality of RCW 4.12.010, as some of defendants arguments and citations suggest.

For clarity, Plaintiffs are not challenging the facial constitutionality of RCW 4.12.010(1) but rather are challenging RCW 4.12.010(1) as applied to limit the Superior Court's jurisdiction, which the trial courts did here. Plaintiffs make this point because Defendants' briefing conflates facial constitutional challenges with as-applied constitutional challenges, asserting in one breath that the issue is whether RCW 4.12.010(1) is "constitutional as a statute limiting Superior Court jurisdiction over property located in a different county" (as applied), but then asserting in another breath that "[a] party challenging the constitutionality of a statute must prove that the statute is unconstitutional beyond a reasonable doubt" (facial). Br. of Resp.'t at 2, 9.

Plaintiffs are not seeking to invalidate RCW 4.12.010 but rather seek opinion as to whether the statute is unconstitutional as applied. "An as-applied challenge to the constitutional validity of a statute is characterized by a party's allegation that application of the statute in the specific context of the party's actions or intended actions is unconstitutional." *City of Redmond v. Moore*, 151 Wn.2d 664, 668-69, 91 P.3d 875 (2004). If this court agrees that the trial court here unconstitutionally applied the statute, the statute would remain in full

effect, and the only impact of the decision would be to prohibit future application of the statute as a limit on jurisdiction. *Id.*

D. Article IV, section 6 creates one Superior Court bench that has universal subject matter jurisdiction, unless jurisdiction is vested in an inferior court.

Instead of limiting jurisdiction among different counties' Superior Courts, article IV, section 6 makes clear that the Superior Court is one bench. *Young v. Clark*, 149 Wn.2d 130, 133, 65 P.3d 1192 (2003); *Dougherty v. Dep't of Labor & Indus.*, 150 Wn.2d 310, 315, 317, 76 P.3d 1183 (2003); *Moore v. Perrot*, 2 Wash. 1, 4, 25 P. 906 (1891) ("the constitution . . . gives Superior Courts <u>universal</u> original jurisdiction.") (emphasis added). As a single bench, the Superior Court retains "original jurisdiction 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. Our Supreme Court has recently interpreted this language as giving the legislature authority "to limit the Superior Court's jurisdiction in certain matters, provided it vests authority over such matters in some other court, presumably a court of limited jurisdiction." *Young*, 149 Wn.2d at 133. Here, the legislature has not vested authority over tort actions in some other court. Consequently, the Washington Superior Court has retained original jurisdiction. *Id.*; Const. art. IV, § 6.

E. Defendants' "in rem" distinction completely lacks merit.

Defendants largely premise their constitutional counter-argument on the flawed notion that the Washington Superior Court's universal original subject matter jurisdiction under article IV, section 6 vanishes when real property is at issue. Br. of Resp't at 10. Defendants acknowledge, as they must, that article IV, section 6 confers universal original subject matter jurisdiction, but they take the unreasonable position that actions pertaining to real property are somehow different. Defendants assert, without citation or justification, that "[a]rticle IV, Section 6 does not address *in rem* jurisdiction." Br. of Resp't. at 10.

Defendants are patently wrong. In fact, the first sentence of article IV, section 6, states, "The Superior Court shall have original jurisdiction in all cases at law which involve the <u>title or possession of real property</u>." (Emphasis added). This language alone shows why defendants' plain language argument fails; by its clear terms, the Superior Court (which is the entire bench, as explained below) has "original jurisdiction" in cases involving title or possession of real property, which can certainly be characterized as "*in rem*" or "local" proceedings. Similarly, the Superior Court has original jurisdiction in "all cases of . . . actions to prevent or abate a nuisance." Again, nuisance is often a land issue that can easily be characterized as an "*in rem*" or "local" proceeding. Thus, defendants'

characterization of the issues in this case as being "*in rem*," or touching upon land, does absolutely nothing to change the Superior Court's original subject matter jurisdiction. Article IV, section 6 does not distinguish between personal injury actions and in rem proceedings, and defendants' argument to the contrary wholly lacks merit.

In addition to ignoring article IV, section 6's plain language, Defendants argument and interpretation ignores recent Supreme Court jurisprudence. *Young*, 149 Wn.2d at 133 ("On its face, article IV, section 6 allows the legislature to limit the Superior Court's jurisdiction in certain matters, provided it vests authority over such matters in some other court, presumably a court of limited jurisdiction."); *Dougherty*, 150 Wn.2d 310, at 317 ("Venue and jurisdiction are distinct concepts. Jurisdiction 'is the power and authority of the court to act' . . . Jurisdiction does not depend on procedural rules. A court may acquire jurisdiction even though it is not the court of proper venue.") (internal citations omitted); *Moore*, 2 Wash. at 4 ("The language of the constitution is not that the Superior Courts shall have exclusive jurisdiction, but it gives to the Superior Courts universal original jurisdiction, leaving the legislature to carve out from that jurisdiction the jurisdiction of the justices of the peace, and any other inferior courts that may be created."); *Shoop v. Kittitas County*, 108 Wn. App. 388, 396, 30 P.3d 529 (2001) (*Shoop I*), *aff'd on other grounds*,

Shoop v. Kittitas County, 149 Wn.2d 29, 37, 65 P.3d 1194 (2003) (*Shoop II*) ("The constitution does not authorize the Legislature to prescribe or diminish the jurisdiction of the Superior Court."). The reasoning in these cases applies equally here. Our Supreme Court has unequivocally interpreted article IV, section 6 as conferring universal original subject matter jurisdiction to all Washington's Superior Courts. The legislature cannot take this jurisdiction away, unless it vests jurisdiction in an inferior court.

F. Defendants conflate jurisdiction with venue; RCW 4.12.010(1) is a venue statute.

In recent years, Washington courts have recognized that courts in past have loosely used the term "jurisdiction." *Shoop*, 108 Wn. App. at 398 ("Other [older Supreme Court] cases display a tendency to speak of improper venue and lack of subject matter jurisdiction as though they meant the same thing."); *see Dougherty*, 150 Wn.2d at 315. A similar trend is also apparent at the federal level, where courts have strived to "us[e] the term 'jurisdictional' only when it is apposite" and to "curtail . . . 'drive-by jurisdictional rulings.'" *Reed v. Elsevier*, __ U.S. __, 130 S. Ct. 1237, 1243-44, 176 L.Ed.2d 18 (2010) (quoting *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 118 S. Ct. 1003, 140 L.Ed.2d 210 (1998)); *see also Payne v. Peninsula Sch. Dist.*, 653 F.2d 863, 869 (2011).

Loosely defining "jurisdiction" is precisely what happened in all of the early 1900s cases that defendants rely on.

RCW 4.12.010(1) states that actions for "any injuries to real property" must "be commenced in the county in which the subject of the action . . . is situated." This language plainly states the location in which an action should be tried but does nothing to limit the power and authority of a Superior Court in one county over another. "Statutes which require actions to be brought in certain counties are generally regarded as specifying the proper venue and 'are ordinarily construed not to limit jurisdiction of the state courts to the courts of the counties thus designated.'" *Dougherty*, 150 Wn.2d at 316 (quoting 77 AM.JUR.2D Venue § 44, at 651 (1997)); *see also Burnside v. Simpson Paper Co.*, 123 Wn.2d 93, 98-99, 864 P.2d 937 (1994) (noting that our state constitution gives Washington Superior Courts broad original jurisdiction and that an act should not be construed to limit that grant absent clear legislative intent); *see e.g.*, *Young*, 149 Wn.2d 130; *Shoop*, 108 Wn. App. 388.

By ignoring the distinctions between jurisdiction and venue, the defendants overlook the undisputable fact that RCW 4.12.010 designates the proper <u>venue</u> for local actions. Where it applies, RCW 4.12.010 designates the county (i.e., location) in which the action should be filed, <u>not the court in which it should be filed</u>. RCW 4.12.010 ("Actions for the

following causes shall be commenced in the county in which the action . . . is situated."). Nowhere does the statute indicate that one Superior Court has more jurisdictional authority—or power—to hear actions for "injuries to real property." RCW 4.12.010.

Defendants' position in this litigation has ignored the greater importance of clearly distinguishing between "jurisdiction" and "venue." They fail to provide any reason for characterizing RCW 4.12.010(1) as a jurisdictional statute, other than it would keep these cases dismissed and neatly end their certain liability. Indeed, the "policy" considerations that defendants cite are nothing more than a farce, as explained below. For the reasons explained above and in plaintiffs' opening brief, RCW 4.12.010 is a venue statute.

G. Defendants rely on cases that are no longer good law in light of our Supreme Court's repeated holding that Washington Superior Courts have universal original subject matter jurisdiction.

In an attempt to circumvent the plain language of article IV, section 6, Defendants have relied primarily on two cases from the 1940s and 1950s that, upon close inspection, do not control this case: (1) *Cugini v. Apex Mercury Mining Co.*, 24 Wn.2d 401, 165 P.2d 82 (1946); *Snyder v. Ingram*, 48 Wn.2d 637, 296 P.2d 305 (1956). *Cugini* and *Snyder* are a part of a handful of cases standing for the general proposition that the

precursor statute of RCW 4.12.010[1] is jurisdictional in nature; they are part of a line of cases that, as Division I previously recognized, has "a tendency to speak of improper venue and lack of subject matter jurisdiction as though they mean the same thing." *Shoop*, 108 Wn. App. at 398.

Cugini and *Snyder* are factually distinguishable and are also no longer good law in light of our Supreme Court's interpretation of article IV, section 6. *Young*, 149 Wn.2d 130; *Shoop*, 149 Wn.2d 388; *Dougherty*, 150 Wn.2d 310. Those decisions, discussed in Plaintiffs' opening brief, make clear that Washington courts have refined the way they think about jurisdiction and venue. Courts are moving away from loose and imprecise use of the term "jurisdictional" in favor of recognizing that venue and jurisdiction are two distinct concepts.

By reasoning that article IV, section 6 controls the interpretation of statues similar to RCW 4.12.010, our Supreme Court has effectively overruled prior caselaw that rests on contrary reasoning, such as *Cugini* and *Snyder*. None of the cases defendants rely on examined RCW 4.12.010 under article IV, section 6. Put simply, defendants cite a rule that

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[1] Rem. Rev. Statue § 204 stated:

> 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.

is no longer good law.

1. Cugini v. Apex Mercury Mining Co.

In *Cugini*, plaintiffs filed suit in Lewis County to quiet title to a tract of timber. 24 Wn.2d at 402. Defendants moved to transfer the action to Pierce County on the ground of witness convenience, and the trial court granted the motion. *Id.* On appeal, an issue was whether the trail court erred in transferring the case to Pierce County. *Id.* Plaintiffs contended that the action was local in nature and must be commenced in Lewis County "for the reason that the Superior Court of that county had exclusive jurisdiction." *Id.* at 403-04. Defendants countered that the trial court properly granted "a change of venue" to Pierce County under Rem. Rev. Statute § 204, a precursor to RCW 4.12.010. *Id.* at 404.

The *Cugini* Court reviewed existing caselaw and concluded that "this court has not been consistent in deciding those cases in which § 204 applies." *Id.* at 409. The court then stated:

> 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.

Id. However, because the plaintiffs filed suit in Lewis County, where the property was situated, the issue was whether the trial court erred in transferring the venue. *Id.* Accordingly, the *Cugini* Court turned to Rem.

Rev. Statute § 209, the statute governing when a court could "change the place of trial for certain reasons, including that of the convenience of witnesses." *Id.* at 404, 409. The court noted,

> Actions instituted in the proper county may be transferred to another county for trial if sufficient cause be shown therefor. When a cause is transferred for trial, the court to which the transfer is made has complete jurisdiction to determine the issues in the case.

Based on § 209, the *Cugini* Court affirmed the trial court's transfer of venue.

The defendants' reliance on *Cugini* is misplaced for a couple of reasons. First, the portion of *Cugini* that the defendants have repeatedly cited for support, namely the discussion of § 204 being "jurisdictional in character," was not necessary for the *Cugini* Court to decide the case, and is therefore dictum. "'Statements in a case that do not relate to an issue before the court and are unnecessary to decide the case constitute obiter dictum, and need not be followed.'" *DCR, Inc. v. Pierce County*, 92 Wn. App. 660, 683 n. 16, 964 P.2d 380 (1980) (quoting State v. Potter, 68 Wash.App. 134, 149 n. 7, 842 P.2d 481 (1992)). The *Cugini* Court's discussion of § 204 was unnecessary to decide the case because the plaintiffs filed the action in the correct county and the court's narrow holding was merely that the change of venue was proper under § 209. *Cugini* is not a case where the plaintiff was alleged or held to have filed

the action in the wrong county, as the defendants allege that Ralph and Forth did here.

To the extent that *Cugini*'s § 204 discussion carries any authority, the second reason why defendants' reliance on *Cugini* is misplaced is readily apparent: *Cugini* loosely discusses "jurisdiction" and "venue," ignoring the distinction that modern jurisprudence makes. *Dougherty*, 150 Wn.2d at 315; *see Shoop*, 108 Wn. App. at 398 ("Other [older Supreme Court] cases display a tendency to speak of improper venue and lack of subject matter jurisdiction as though they meant the same thing."). That distinction, which the *Dougherty* Court made apparent, is now the law. It is also binding precedent that article IV, section 6 is now recognized to confer universal original subject matter jurisdiction on all Superior Courts. *Young*, 149 Wn.2d 130; *Shoop*, 149 Wn.2d 388; *Dougherty*, 150 Wn.2d at 315.

Washington courts have not yet had the opportunity evaluate RCW 4.12.010 under the modern understanding that all Superior Courts have jurisdiction to hear torts. No court has yet applied article IV, section 6 to RCW 4.12.010. The recent caselaw that plaintiffs rely on in this appeal, however, has interpreted similar statutes under article IV, section 6. Those cases control the outcome of this appeal, as they persuade this court to apply article IV, section 6 in the same fashion. Consequently, this court is

not bound by *Cugini*'s flawed reasoning and rule.

2. Snyder v. Ingram.

In *Snyder*, plaintiffs sued defendants in King County, contending that they were the rightful owners of a specific 1955 Buick car. 48 Wn.2d at 637. Plaintiffs sought to recover possession of the Buick or, alternatively, its value. *Id.* Defendants moved to dismiss under RCW 4.12.010(**2**), arguing that King County lacked jurisdiction because the Buick was located in Chelan County at the time plaintiffs commenced the lawsuit. *Id.* at 638.

The *Snyder* Court surveyed several cases decided in the 1940s, including *Cugini*, and stated that "this court is now committed to the doctrine that [RCW 4.12.010] is a jurisdictional statute, rather than one of venue." *Id.* at 638. The court rejected the argument that, if it related to jurisdiction, RCW 4.12.010 would violate article II, section 19 of our state constitution, which provides, "No bill shall embrace more than one subject, and that shall be expressed in the title." *Id.* at 640. The court then spent the remainder of the opinion explaining why the title "Of Venue" of the precursor statute to RCW 4.12.010 (and Rem. Rev. Statute § 204) did not control. *Id.* at 640-42.

Snyder is factually distinguishable from this case because the court considered RCW 4.12.010 with regard to personal property, thus

evaluating only subsection (2). Here, the issue is with regard to real property, which subsection (1) governs.

Regardless, *Snyder* does not control for the same reason that *Cugini* does not control. *Young*, 149 Wn.2d 130; *Shoop*, 149 Wn.2d 388; *Dougherty*, 150 Wn.2d at 315. Clearly, the *Snyder* is court's largest concern was that RCW 4.12.010's plain language made the statute mandatory in nature. But mandatory language does not necessarily translate into meaning jurisdictional, i.e., a Superior Court lacks power to hear the matter. Instead, although some venue statutes can be discretionary, such as RCW 4.12.030(3), which permits venue transfer based on witness convenience, some venue statutes can be instructional where they apply, such as RCW 4.12.010. Of course, the parties may dispute whether a mandatory venue statute applies, but the difference between applying the statute appropriately as controlling venue, as opposed to applying the statute inappropriately as controlling jurisdiction, is that the former results in a transfer, whereas the latter results in a dismissal. A dismissal is an extraordinary remedy that does not comport with principles of justice where the only issue a party raises is improper location of a suit. *Cf.* CR 12(b)(6) ("failure to state a claim upon which relief can be granted"); CR 56(c) (summary judgment is appropriate if "there is no genuine issue as to any material fact and that the moving party

is entitled to a judgment as a matter of law.")

The recent Supreme Court decisions that Plaintiffs cite in their opening brief—*Young*, *Shoop*, and *Dougherty*—show that our Washington courts now embrace the interpretation that article IV, section 6 of our state constitution confers universal original jurisdiction on all Superior Courts to hear all cases and proceedings. This language is clear, and should be given its plain meaning. *City of Tacoma v. Taxpayers of City of Tacoma,* 108 Wash.2d 679, 706, 743 P.2d 793 (1987) ("Where the language of the constitution is clear, the words used therein should be given their plain meaning."). No Washington court has applied the modern understanding of jurisdiction and venue to RCW 4.12.010. Although the line of cases the defendants have relied on so far hold that RCW 4.12.010 is "jurisdictional," several recent Supreme Court decisions, including *Dougherty*, *Young*, and *Shoop II*, have abrogated that conclusion by the very nature of recognizing the difference between venue and jurisdiction as distinct concepts and by applying article IV, section 6 accordingly. This court should examine RCW 4.12.010 under article IV, section 6 and hold that the Superior Court here erred in applying the statute as a limit on its constitutional authority to hear tort actions.

3. The other cases that defendants cite do not control.

In light of our Supreme Court's recent rulings in *Young*, *Shoop*,

and *Dougherty*, none of the other cases that defendants have cited control the outcome here. Like *Cugini* and *Snyder*, those cases did not consider RCW 4.12.010 under article IV, section 6. *See Alaska Airlines, Inc. v. Molitor*, 43 Wn.2d 657, 665, 263 P.2d 276 (1953); *State ex rel. Grove v. Card*, 35 Wn.2d 215, 211 P.2d 1005 (1949); *Miles v. Chinto Min. Co.*, 21 Wn.2d 902, 153 P.2d 856 (1944); *State ex rel. King County v. Superior Court of Pierce County*, 104 Wn. 268, 276, 176 P.352 (1918). Therefore, this is an open question that plaintiffs invite this court to decide.

H. These lawsuits are transitory, not local in nature.

Plaintiffs are suing defendants in tort to recover damage to their property. A finding that defendants' negligence caused damage to plaintiffs' property will not affect title or property in the abstract sense. Any future bona fide purchaser of the land could immediately appreciate the damage (e.g., mudslides, floodwater), if any remains, at the time of purchasing. These lawsuits are to make the plaintiffs whole, not to lift or impose a cloud on property title.

I. The "policy considerations" that Defendants cite should be rejected.

Defendants cite two "policy considerations" to "justify the jurisdictional nature of RCW 4.12.010(1)." Br. of Resp't at 19. These policy considerations should be rejected.

Defendants first argue that limiting Washington's Superior Court

jurisdiction will help keep the records pertaining to real property in the county where the property is located. Br. of Resp't at 19. Again, defendants fundamentally misapprehend jurisdiction and venue. As a venue statute, RCW 4.12.010(1) gives a Superior Court a degree of discretion in determining where appropriate venue is. Part of the court's calculus in determining venue is surely the desire to have certain records affecting title located in the county where the property is. Therefore, if the Superior Court is presented with a case, such as the present one, where all damage flows to the landowners personally, there is an argument that the case can be filed in a different county than where the property is located. Any "injury to property" in the form of mudslides, damaged trees, etc. would be readily apparent to any prospective purchaser. Title would not be affected. The point is, however, these determinations are within the province of the Superior Court to decide, as a question of proper venue. They are not related to jurisdiction.[2]

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[2] *See also* RCW 11.96A.040 (Vesting original jurisdiction in probate and trust matters, including real property, with every Superior Court):

> (1) The superior court of every county has original subject matter jurisdiction over the probate of wills and the administration of estates of incapacitated, missing, and deceased individuals in all instances...
>
> (2) The Superior Court of every county has original subject matter jurisdiction over trusts and all matters relating to trusts...
>
> (4) <u>The subject matter jurisdiction of the Superior Court applies without regard to venue. A proceeding or action by or before a Superior Court is not defective or invalid because of the selected venue if the court has jurisdiction of the subject matter of the action</u>.

(Emphasis added).

Defendants next argue that unconstitutionally limiting the Superior Court's jurisdiction is necessary to preserve "clear jurisdictional boundaries for Superior Courts in real property cases." Br. of Resp't at 19. Plaintiffs are unclear how this "policy consideration" comports with article IV, section 6 and should be rejected as being meritless. A public policy cannot contravene the constitution. Defendants' mention of real property located in other states is equally meritless, as plaintiffs' position is that Washington Superior Courts have universal original subject matter jurisdiction of property located in Washington. Foreign property is not at issue in this case.

III. CONCLUSION

Washington Superior Courts have universal original subject matter jurisdiction. This remains true whether a lawsuit involves people or property. Article IV, section 6 does not distinguish between people and property, so defendants' argument that a case involving property should be treated differently must fail. Defendants ignore the plain language of article IV, section 6 and ignore recent Washington jurisprudence recognizing a clear distinction between "venue" and "jurisdiction."

None of the cases that defendants cite control this court because they did not consider RCW 4.12.010 under article IV, section 6. Plaintiffs invite this court to consider RCW 4.12.010 in light of recent Supreme

Court jurisprudence interpreting article IV, section 6 and similar statutes.

The Superior Courts here unconstitutionally applied RCW 4.12.010(1) as a limit on constitutionally-conferred universal original subject matter jurisdiction. Defendants' arguments in support of the Superior Court's clear error lack merit, and plaintiffs respectfully request that this court reverse and remand both cases back to the trial court for further proceedings.

RESPECTFULLY SUBMITTED this 6th day of April, 2012.

PFAU COCHRAN VERTETIS AMALA, PLLC

By: _____

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Ami Erpenbach, being first duly sworn upon oath, deposes and says:

I am a citizen of the United States of America and of the State of Washington, over the age of twenty-one years, not a party to the above-entitled matter and competent to be a witness therein.

That on April 6, 2012, I placed for delivery with ABC Legal Services, a true and correct copy of the above document, directed to:

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DATED this 6th day of April, 2012

Ami Erpenbach
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