

Supreme Court Case No. 88115-4
Court of Appeals No. 67515-0-I (Consolidated with 67704-7-I)

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
May 03, 2013, 12:56 pm
BY RONALD R. CARPENTER
CLERK

WILLIAM RALPH, individually,
Plaintiff-Petitioner,

vs.

RECEIVED BY E-MAIL *bjh*

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

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-Petitioners,

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,

Defendants-Respondents.

SUPPLEMENTAL BRIEF OF PETITIONER RALPH, ET AL.

Darrell L. Cochran, WSBA #22851
Loren A. Cochran, WSBA #32773
Kevin M. Hastings, WSBA #42316

PFAU COCHRAN VERTETIS
AMALA, PLLC
911 Pacific Avenue, Suite 200
Tacoma, Washington 98402
(253) 777-0799

 ORIGINAL

TABLE OF CONTENTS

I. INTRODUCTION.....1

II. ASSIGNMENTS OF ERROR3

Assignments of Error3

No. 1: By relying on RCW 4.12.010, the Washington Superior Court, King County, erred in dismissing Ralph’s and Forth’s lawsuit for lack of subject matter jurisdiction under CR 12(h)(3).....3

Issues Pertaining to Assignments of Error3

No. 1: The Washington Superior Court has universal original jurisdiction over all cases and proceedings under article IV, section 6 of the Washington State Constitution. Does RCW 4.12.010 divest the Washington Superior Court of its universal original jurisdiction to hear a tort action, or is RCW 4.12.010 simply a venue statute where it applies?3

No. 2: Even though these tort lawsuits partially involve real property, Ralph and Forth filed suit to recover monetary damages for injuries personal to them. Does RCW 4.12.010 apply in this tort lawsuit?.....3

III. STATEMENT OF CASE3

A. Procedural history3

B. Relevant Facts4

IV. ARGUMENT7

A. The Washington Superior Court, King County, erred in dismissing Ralph’s lawsuit because article

	IV, section 6 confers it universal original subject matter jurisdiction.	7
B.	The cases upon which the superior court and Division One relied upon must be overturned to the extent that they are inconsistent with article IV, section 6.	8
C.	<i>Cugini</i> and <i>Snyder</i> cannot stand in conflict with article IV, section 6 of our constitution.	9
D.	<i>Cugini</i> and <i>Snyder</i> cannot stand in conflict with several of this Court’s recent opinions on related statutes.....	10
E.	Ralph is challenging the constitutionality of applying RCW 4.12.010 as a limit on the Washington Superior Court’s original jurisdiction.....	11
F.	Washington law does not support the argument that RCW 4.12.010 is different because it involves land.....	12
G.	Applying RCW 4.12.010 as a venue statute only will do nothing to affect stability of title to real property.....	15
H.	The superior court here erred in applying RCW 4.12.010 where Ralph’s claims are transitory in nature and request monetary damages only.	16
V.	SUMMARY AND CONCLUSION	18

TABLE OF AUTHORITIES

CASES

<i>Citizens for a Better Environment</i> , 523 U.S. 83, 118 S. Ct. 1003, 140 L.Ed.2d 210 (1998).....	7
<i>City of Redmond v. Moore</i> , 151 Wn.2d 664, 668-69, 91 P.3d 875 (2004)	12
<i>Cugini v. Apex Mercury Mining Co.</i> , 24 Wn.2d 401, 165 P.2d 82 (1946).....	8, 9, 10
<i>Dougherty v. Dep't of Labor & Indus.</i> , 150 Wn.2d 310, 316–20, 76 P.3d 1183 (2003).....	7, 10, 13, 15
<i>Lunsford v. Saberhagen Holdings, Inc.</i> , 166 Wn.2d 264, 280, 208 P.3d 1092 (2009).....	10
<i>Marley v. Dep't of Labor & Indus.</i> , 125 Wn.2d 533, 541, 886 P.2d 189 (1994).....	7, 10, 15
<i>Matsyuk v. State Farm Fire & Cas. Co.</i> , 173 Wn.2d 643, 659, 272 P.3d 802 (2012).....	10
<i>McLeod v. Ellis</i> , 2 Wn. 117, 122, 26 P. 76 (1891).....	16
<i>Moore v. Perrot</i> , 2 Wash. 1, 4, 25 P. 906 (1891)	12
<i>Payne v. Peninsula Sch. Dist.</i> , 653 F.2d 863, 869 (2011).....	7
<i>Reed Elsevier v. Muchnick</i> , 559 U.S. 154, 130 S. Ct. 1237, 1243-44, 176 L.Ed.2d 18 (2010).....	7, 13
<i>Shelton v. Farkas</i> , 30 Wn. App. 549, 553, 635 P.2d 1109 (1981).....	16
<i>Shoop v. Kittitas County</i> , 108 Wn. App. 388, 398, 30 P.3d 529 (2001).....	8, 14, 15
<i>Shoop v. Kittitas County</i> , 149 Wn.2d 29, 38, 65 P.3d 1194 (2003).....	7, 10, 13
<i>Snyder v. Ingram</i> , 48 Wn.2d 637, 296 P.2d 305 (1956).....	8, 9, 10

<i>State ex rel. U.S. Trust Co. v. Phillips</i> , 12 Wn.2d 308, 316-17, 121 P.2d 360 (1942)	16
<i>State v. Posey</i> , 174 Wn.2d 131, 272 P.3d 840, 842–45 (2012).....	7, 10, 14
<i>Washington State Bank v. Medalia Healthcare L.L.C.</i> , 96 Wn. App. 547, 555, 984 P.2d 1041, 1047 (1999).....	16
<i>Williams v. Leone & Keeble, Inc.</i> , 171 Wn.2d 726, 730, 734, 254 P.3d 818 (2011).....	7, 10, 15
<i>Windust v. Dep’t. of Labor and Indus.</i> , 52 Wn.2d 33, 37, 323 P.2d 241 (1958).....	9
<i>Young v. Clark</i> , 149 Wn.2d 130, 133–34, 65 P.3d 1192 (2003).....	7, 10, 14, 15
<i>ZDI Gaming, Inc. v. State ex rel. Washington State Gambling Comm’n</i> , 173 Wn.2d 608, 616–18, 268 P.3d 929 (2012).....	7, 10, 12, 14

CONSTITUTIONAL PROVISIONS

Const. art. IV, § 6.....	1, 8, 9, 11, 12, 13, 14
--------------------------	-------------------------

STATUTES

RCW 4.12.010	1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18
RCW 4.12.020(3).....	17, 18
RCW 4.12.025(3).....	17
RCW 4.92.010	17
RCW 9.46.095	12

RULES

CR 12	5
CR 12(h)(3).....	3

OTHER AUTHORITIES

14 Karl B. Tegland, <i>Washington Practice Civil Procedure</i> §6:5 (2011) ..	17
---	----

I. INTRODUCTION

Petitioners William Ralph and William Forth, et al., each filed a lawsuit in the Superior Court, King County, to recover damages from extensive flooding to their property in Lewis County. The superior court dismissed each complaint on the ground that the court lacked subject matter jurisdiction under RCW 4.12.010. Ralph and Forth appealed to the Court of Appeals, Division One, where their lawsuits were consolidated on appeal for efficiency. For clarity, this brief hereinafter refers to both Ralph and Forth collectively as “Ralph” because both appeals involve identical legal issues arising from an identical procedural posture.

This petition presents a straight-forward question that has, in principle, already been decided: does RCW 4.12.010 divest the Washington Superior Court of its original subject matter jurisdiction to hear a tort action? This Court has recently and repeatedly answered ‘no’ to the same question under different statutes, including a related Chapter 4.12 RCW section. The rationale is that a legislative promulgation cannot divest the superior court of the original jurisdiction that article IV, section 6 confers. Here, article IV, section 6 does not function differently in relation to RCW 4.12.010, and Ralph respectfully asks this Court to reverse and remand.

This petition also presents the question of whether the superior

court erred in relying upon RCW 4.12.010 where only monetary damages for a tort action were at stake. RCW 4.12.010's "injury to land" requirement is unclear, and Ralph believes the statute applies to situations where an "injury to land" occurs in the abstract. Ralph brings a tort action that concerns real property, but he only seeks monetary damages, which are transitory in nature. The traditional justification that lawsuits should be filed in the county in which the land is located to notify subsequent land purchasers about title defects does not apply where the damages from which the complaint seeks relief can literally be seen or found through a physical property inspection. The damages here are patent, not latent.

II. ASSIGNMENTS OF ERROR

Assignments of Error

No. 1: By relying on RCW 4.12.010, the Washington Superior Court, King County, erred in dismissing Ralph's and Forth's lawsuit for lack of subject matter jurisdiction under CR 12(h)(3).

Issues Pertaining to Assignments of Error

No. 1: The Washington Superior Court has universal original jurisdiction over all cases and proceedings under article IV, section 6 of the Washington State Constitution. Does RCW 4.12.010 divest the Washington Superior Court of its universal original jurisdiction to hear a tort action, or is RCW 4.12.010 simply a venue statute where it applies?

No. 2: Even though these tort lawsuits partially involve real property, Ralph and Forth filed suit to recover monetary damages for injuries personal to them. Does RCW 4.12.010 apply in this tort lawsuit?

III. STATEMENT OF CASE

A. Procedural history

The facts of this case are not disputed. This consolidated case will affect 6 lawsuits of plaintiffs who filed a tort action in one county to recover from damage to real and personal property located in a different

county.¹ In each of these lawsuits, the defendants filed a motion to dismiss for lack of subject matter jurisdiction, arguing that RCW 4.12.010 limits jurisdiction for “any injuries” to real property to the county in which the property is situated.

Three judges heard three of the six cases and denied the defendants’ motions to dismiss for lack of subject matter jurisdiction; these cases are currently stayed at trial court, pending the outcome of this appeal. In the other three cases, two judges granted the defendants’ motions to dismiss. Two of the dismissed cases, *Ralph v. State Dep’t of Nat. Res.*, 67515-0-I, and *Forth v. State Dep’t of Nat. Res., et al.*, 67704-7-I, are the subject of this petition for review.²

B. Relevant Facts

Ralph is a resident of Lewis County, Washington, where he owns real property. CP-Ralph at 3; CP-Forth at 2. In December 2007, his

¹ Five cases were filed in the Superior Court, King County: (1) *Davis et al. v. State Dep’t of Nat. Res. et al.*, King County Superior Court Case No. 10-2-42010-0 KNT (Cayce, J.); (2) *Forth et al. v. State Dep’t of Nat. Res. et al.*, King County Superior Court Case No. 10-2-42009-6 KNT (McCullough, J.); (3) *Carey et al. v. State Dep’t of Nat. Res.*, King County Superior Court Case No. 10-2-42011-8 KNT (Mack, J.); (4) *Ralph v. Weyerhaeuser, et al.*, King County Superior Court Case No. 10-2-42012-6 KNT (Gain, J.); and (5) *Ralph v. State Dep’t of Nat. Res., King County Superior Court Cause No. 11-2-05769-1 KNT (McCullough, J.)*. And one was filed in the Superior Court, Pierce County: *Triol et al v. State Dep’t of Nat. Res. et al.*, Pierce County Superior Court Case No. 11-2-06140-5 (Hogan, J.). *Davis* is not part of this appeal; however, the plaintiffs there will move for relief from judgment under CR 60 if this petition is successful.

² *Davis et al. v. State Dep’t of Nat. Res. et al.*, King County Superior Court Case No. 10-2-42010-0 KNT (Cayce, J.), was the third case that was dismissed. *Davis* did not perfect her appeal and is not a petitioner, even though her case was dismissed under the same reasons for lack of subject matter jurisdiction.

property flooded when landslides displaced waters from the Chehalis River. CP-Ralph at 3; CP-Forth at 2.

Seeking recovery from damages to real and personal property, Ralph filed suit in the Superior Court, King County, where all defendants reside and may be sued under Chapter 4.12 RCW (personal injury statute and corporation statute) and Chapter 4.92 RCW (state statute). CP-Ralph at 4, 11; CP-Forth at 5-6, 13. His complaint alleged that the defendants' unreasonably dangerous and unlawful forest practices on steep and unstable slopes of the Chehalis River basin caused their properties to flood. CP-Ralph at 2, 4-7; CP-Forth at 2, 6-9. Ralph suffered monetary damages necessary to, among other things, restore real property, replace or repair personal property, and recover lost business expectancies. CP-Ralph at 10-11; CP-Forth at 9-12. He pleaded only special and general damages. CP-Ralph at 10; CP-Forth at 12.

The defendants moved to dismiss Ralph's lawsuit under CR 12(h)(3) for lack of subject matter jurisdiction. CP-Ralph at 19-32; CP-Forth 38-48. Essentially, the defendants argued that the Superior Court, Lewis County, was the only court with proper subject matter jurisdiction over the lawsuit because Ralph alleged injury to his real property. CP-Ralph at 21-23; CP-Forth at 40-41. When an action arises out of an injury to property, the defendants contended, RCW 4.12.010 applies. CP-Ralph

at 21-22; CP-Forth at 40-41. When RCW 4.12.010 applies, the defendants further contended, only the superior court in the county in which the real property is located—here Lewis County—has subject matter jurisdiction. CP-Ralph at 22; CP-Forth at 41. Superior court Judge LeRoy McCullough, King County, agreed with the defendants and dismissed Ralph’s lawsuit for lack of subject matter jurisdiction. CP-Ralph at 171-72; CP-Forth at 166-68.

Ralph appealed to Division One and raised two issues. First, Ralph argued that article IV, section 6 of the Washington State Constitution confers universal original subject matter jurisdiction and, therefore, RCW 4.12.010 cannot divest the Superior Court, King County, of its jurisdiction over his lawsuit. Division One recognized that this Court has recently and repeatedly “interpreted filing restrictions similar to the one in RCW 4.12.010 as specifying venue, and expressly overruled previous decisions holding the statutes jurisdictional.” However, citing cases from the 1940s and 1950s, Division One was constrained to hold that RCW 4.12.010 affected jurisdiction. Division One followed the precedent from the 1940s and 1950s even though it was “difficult to reconcile” with several of this Court’s recent decisions.

Ralph also argued in the alternate that RCW 4.12.010 did not apply because he was claiming only monetary damages. Division One rejected his argument, reasoning that his complaint involved “injury to land” and therefore was local in nature.

IV. ARGUMENT

A. The Washington Superior Court, King County, erred in dismissing Ralph’s lawsuit because article IV, section 6 confers it universal original subject matter jurisdiction.

On several occasions, this Court has recently held that statutes cannot displace the Washington Superior Court’s original jurisdiction conferred under article IV, section 6, and has overruled precedents to the contrary. *See, e.g., State v. Posey*, 174 Wn.2d 131, 272 P.3d 840 (2012); *ZDI Gaming, Inc. v. State ex rel. Washington State Gambling Comm’n*, 173 Wn.2d 608, 616–18, 268 P.3d 929 (2012); *Williams v. Leone & Keeble, Inc.*, 171 Wn.2d 726, 730, 734, 254 P.3d 818 (2011); *Dougherty v. Dep’t of Labor & Indus.*, 150 Wn.2d 310, 316–20, 76 P.3d 1183 (2003); *Young v. Clark*, 149 Wn.2d 130, 133–34, 65 P.3d 1192 (2003); *Shoop v. Kittitas County*, 149 Wn.2d 29, 38, 65 P.3d 1194 (2003); *Marley v. Dep’t of Labor & Indus.*, 125 Wn.2d 533, 541, 886 P.2d 189 (1994).³ Here, the

³ 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 Elsevier v. Muchnick*, 559 U.S. 154, 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).

Superior Court, King County, erred by relying upon RCW 4.12.010 to dismiss Ralph's lawsuit for lack of subject matter jurisdiction, even though it had original subject matter jurisdiction under article IV, Section 6 to hear tort actions such as Ralph's lawsuit. The briefs already before this Court explain this issue, and repetition here is not necessary.

B. The cases upon which the superior court and Division One relied upon must be overturned to the extent that they are inconsistent with article IV, section 6.

In dismissing Ralph's lawsuit, the Superior Court, King County, and Division One have relied upon two cases that this Court published over 50 years ago: *Cugini v. Apex Mercury Mining Co.*, 24 Wn.2d 401, 165 P.2d 82 (1946), and *Snyder v. Ingram*, 48 Wn.2d 637, 296 P.2d 305 (1956). *Cugini* and *Snyder* are a part of a handful of cases in the 1940s and 1950s standing for the general proposition that the precursor statute of RCW 4.12.010 is jurisdictional in nature; they are part of a line of cases that, as Division One previously recognized, has "a tendency to speak of improper venue and lack of subject matter jurisdiction as though they mean the same thing." *Shoop v. Kittitas County*, 108 Wn. App. 388, 398, 30 P.3d 529 (2001), *aff'd on other grounds*, *Shoop*, 149 Wn.2d 29.

The briefs before this Court explain in detail why *Cugini* and *Snyder* do not control and, again, repetition is not necessary here. However, Ralph emphasizes that *Cugini* and *Snyder* do not control this

petition because neither case considered RCW 4.12.010 under article IV, section 6, which is the issue squarely before this Court now. To the extent that *Cugini* and *Snyder* are inconsistent with article IV, section 6, they must be reversed.

C. *Cugini* and *Snyder* cannot stand in conflict with article IV, section 6 of our constitution.

The supremacy of our constitution over any legislative statute governs this case, and *stare decisis* does not protect court precedent that conflicts with our constitution. “Under our constitution there is a limit to the application of the doctrine of stare decisis. That limitation inheres in our checks and balance form of constitutional democracy, which vests the legislative power in the legislature and the people, subject only to certain constitutional prohibitions and limitations. . . . Of course, it is the duty of the court to invalidate a statute if it contravenes the constitution.” *Windust v. Dep’t. of Labor and Indus.*, 52 Wn.2d 33, 37, 323 P.2d 241 (1958).

Recently, this Court has held that article IV, section 6 confers on the Washington Superior Court universal subject matter jurisdiction and that, as a result, statutes cannot be applied to divest the superior court of jurisdiction. This reasoning is consistent with the well-established principle that the state constitution is supreme law. Here, relying on *Cugini* and *Snyder*, the superior court erred in applying RCW 4.12.010 as

a limit on original jurisdiction. To the extent that *Cugini* and *Snyder* conflict with the numerous recent decisions holding that article IV, section 6 grants original jurisdiction on the Washington Superior Court, they must be reversed.

D. *Cugini* and *Snyder* cannot stand in conflict with several of this Court's recent opinions on related statutes.

Similarly, *Cugini* and *Snyder* cannot stand in conflict with this Court's recent decisions holding that legislative statutes cannot displace the Washington Superior Court's original jurisdiction. *See, e.g., Posey*, 174 Wn.2d 131; *ZDI Gaming, Inc.*, 173 Wn.2d 608; *Williams*, 171 Wn.2d 726; *Dougherty*, 150 Wn.2d 310; *Young*, 149 Wn.2d 130; *Shoop*, 149 Wn.2d 29; *Marley*, 125 Wn.2d 533. To the extent that *Cugini* and *Snyder* are in conflict with modern case law, they have already been overruled by effect. *See, e.g., Lunsford v. Saberhagen Holdings, Inc.*, 166 Wn.2d 264, 280, 208 P.3d 1092 (2009) (“A later holding overrules a prior holding sub silentio when it directly contradicts the earlier rule of law). The more recent pronouncement controls. *See, e.g., Matsyuk v. State Farm Fire & Cas. Co.*, 173 Wn.2d 643, 659, 272 P.3d 802 (2012) (“As a matter of construction, when there is conflicting case law, *Woodley* should control, as this court's more recent pronouncement on the subject.”).

E. Ralph is challenging the constitutionality of applying RCW 4.12.010 as a limit on the Washington Superior Court's original jurisdiction.

For clarity, Ralph is challenging RCW 4.12.010 *as applied* to limit the superior court's jurisdiction, not the constitutionality of the statute, as defendant-respondents believe. Much of the defendant-respondents' briefing conflates facial constitutional challenges with as-applied constitutional challenges, asserting in one breath that the issue is whether RCW 4.12.010 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). Ct. App. Br. of Resp.'t at 2, 9. Most recently, the defendant-respondents have conflated facial and as applied challenges in their answer to the petition for review as follows: "Confronted with the incontrovertible evidence that the statute now codified at RCW 4.12.010 did not conflict with Article IV, Section 6 when the state constitution was written, Plaintiffs are now placed in the difficult position of explaining how Section 6 has since been amended to render the statute unconstitutional." Resp't's Ans. to Pet. for Rev. at 11. But Ralph has nothing to "explain[]" because he is not arguing that RCW 4.12.010 is unconstitutional; instead, Ralph has always argued that it has been

unconstitutionally applied as a limit on the Washington Superior Court's original jurisdiction.

“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 Superior Court, King County, unconstitutionally applied RCW 4.12.010 here, the statute would remain in full effect, and the only impact of the decision would be to reverse its decision here and prohibit future application of the statute as a limit on jurisdiction. *Id.*; *ZDI Gaming*, 173 Wn.2d at 619 (“We interpret statutes as constitutional if we can, and here we can.”) RCW 4.12.010's “shall” language can be read constitutionally by interpreting the word “shall” to be permissive. *Id.* (“By interpreting the word “shall” to be permissive, RCW 9.46.095 relates to venue, not jurisdiction.”).

F. Washington law does not support the argument that RCW 4.12.010 is different because it involves land.

This case is about applying legislative statutes to unconstitutionally limit the Washington Superior Court's original jurisdiction under article IV, section 6. From the beginning, defendant-respondents have sought to distract from this straight-forward issue by arguing RCW 4.12.010 is

different because it involves land. However, defendant-respondents have provided no authority to support the necessary predicate to their argument, namely, *that article IV, section 6* operates differently when land is at stake (as opposed to claiming that RCW 4.12.010 is special because it involves land). Defendant-respondents cannot offer any such support because none exists.

Instead, defendant-respondents rely upon an incomplete and contrived statutory interpretation analysis to argue that RCW 4.12.010 is “plainly constitutional.” Resp’t’s Ans. to Pet. for Rev. at 6-12. Much of the problem with this analysis, however, is that courts have historically muddled concepts of venue and jurisdiction, resulting in what federal courts call “drive-by jurisdictional rulings.” *Reed*, 130 S.Ct. at 1244. At least two Washington appellate courts have also recognized that the imprecise and casual use of the term “jurisdiction” has caused inconsistent opinions. *Shoop*, 108 Wn. App. at 397-98 (some early Supreme Court decisions “display a tendency to speak of improper venue and lack of subject matter jurisdiction as though they mean the same thing”); *see also Dougherty*, 150 Wn.2d at 315 (“the separate issues of venue and jurisdiction have been blurred”). Furthermore, as explained above, Ralph is not arguing that RCW 4.12.010 is unconstitutional.

Under article IV, section 6, “The superior court shall . . . 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.” (Emphasis added). As this Court has several times held, article IV, section 6’s clear language confers equal jurisdiction to the superior court; the legislature cannot limit the superior court’s jurisdiction in a certain matter *unless it vests authority over such matters in some other court, such as a court of limited jurisdiction*. Const. art. IV, § 6; *Young*, 149 Wn.2d 130; *Shoop*, 149 Wn.2d 29. Here, the legislature did not enact RCW 4.12.010 to “carve out” the limited jurisdiction of an inferior court, as its plain language states, in relevant part:

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.

Defendant-respondents do not argue that RCW 4.12.010 carves out jurisdiction to a court of limited jurisdiction because they cannot. Without vesting jurisdiction in some other court, RCW 4.12.010 cannot constitutionally limit the Washington Superior Court’s original jurisdiction. *See Posey*, 174 Wn.2d 131; *ZDI Gaming, Inc.*, 173 Wn.2d

608; *Williams*, 171 Wn.2d 726; *Dougherty*, 150 Wn.2d 310; *Young*, 149 Wn.2d 130; *Shoop*, 149 Wn.2d 293; *Marley*, 125 Wn.2d 533. Therefore, by dismissing Ralph's lawsuit under RCW 4.12.010, the Washington Superior Court, King County, unconstitutionally applied RCW 4.12.010 and must be reversed.

G. Applying RCW 4.12.010 as a venue statute only will do nothing to affect stability of title to real property.

Defendant-respondents unpersuasively predict a “destabilizing effect on title to real property” if this Court holds that RCW 4.12.010 is related to venue. Resp't's Ans. to Pet. for Rev. at 16. However, if RCW 4.12.010 is held to affect only venue, parties would simply file motions that are framed differently but still involve the same issue of where to try the case. Here, for example, if this case is reversed and remanded, the defendant-respondents will immediately move to change venue, arguing why Lewis County is a better venue. There may be many reasons why the superior court may exercise its discretion to have a case involving title to property filed in the county in which the property is located. Ralph will not speculate as to what these reasons might be, but the point is that such issues are left properly in the discretion of the superior court. If a case involves title to real property, a compelling argument is that the superior court of the county in which the land is located is the proper venue

because, as a matter of public policy, individuals should not be required to perform statewide title searches.

H. The superior court here erred in applying RCW 4.12.010 where Ralph's claims are transitory in nature and request monetary damages only.

Ralph also contends that his claims are personal to him and transitory in nature because his action seeks relief in the form of monetary and will not affect title or property in the abstract. *See State ex rel. U.S. Trust Co. v. Phillips*, 12 Wn.2d 308, 316-17, 121 P.2d 360 (1942); *McLeod v. Ellis*, 2 Wn. 117, 122, 26 P. 76 (1891); *Washington State Bank v. Medalia Healthcare L.L.C.*, 96 Wn. App. 547, 555, 984 P.2d 1041, 1047 (1999); *Shelton v. Farkas*, 30 Wn. App. 549, 553, 635 P.2d 1109 (1981). Ralph's claims deal with an "injury" to real property only in the most literal sense: floodwaters damaged real property and personal belongings. But this form of "injury" is not what RCW 4.12.010 contemplates. Instead, RCW 4.12.010 contemplates an "injury" to real property in the more abstract sense, meaning that *title* is affected, and accordingly, RCW 4.12.010 requires such actions are to be brought in the county in which the property is located to protect future owners.

Certainly Ralph's real property is part of a lawsuit because floodwater damaged it, but this alone does not make the action local in nature. 14 Karl B. Tegland, *Washington Practice Civil Procedure* §6:5

(2011) (citing *State v. Superior Court of Spokane County*, 110 Wn. 49, 187 P. 708 (1920)) (“The mere fact that real estate is attached in an action which would otherwise be considered a transitory action does not convert the action into a local action.”). To the contrary, Ralph is solely seeking monetary damages, and the superior court will not have to deal directly with the real and personal property that the defendants are alleged to have negligently damaged. Future owners will have nothing to gain from notice that the defendants’ negligence caused Ralph to suffer monetary damages. This action affects Ralph personally, not his land or title to land in the abstract. Therefore, RCW 4.12.010 does not apply to Ralph’s lawsuit.

This issue is particularly important because, if the lawsuits are remanded, the defendants will undoubtedly move to change venue. In one of the stayed cases, *Triol et al v. State Dep’t of Nat. Res. et al.*, Pierce County Superior Court Case No. 11-2-06140-5, the plaintiffs have already invested over \$60,000 in costs and have nearly gone to trial in Pierce County (the case was stayed only after Division One’s opinion was released because the erosion is continuing). Ralph filed in jurisdictions where the defendant resides and there is no reason to have the case tried in the county where the property is located. RCW 4.12.020(3); RCW 4.12.025(3) (actions against corporations); RCW 4.92.010 (actions against the state). These specific statutes should not apply with any more force

than RCW 4.12.010. Applying RCW 4.12.010 and forcing the trial to occur in the county where the property is located provides no benefit in theory (i.e., no cloud on title), and no benefit in practice (i.e., the jury is not going to visit the land when photos and videos are brought to the courtroom). As the damages are transitory and flow to the plaintiffs who have had to deal with cleaning up their land, and the loss of use and enjoyment thereof, there is no reason why the personal injury venue statute does not apply. RCW 4.12.020(3).

V. SUMMARY AND CONCLUSION

The superior court is one bench, and the legislature cannot divest the original jurisdiction that article IV, section 6 confers, unless it vests that authority in a court of lesser jurisdiction. RCW 4.12.010 does not vest authority in a lesser jurisdiction. Thus, several lawsuits, including Ralph's, were improperly dismissed for want of jurisdiction under RCW 4.12.010. Petitioners respectfully ask the Court to reverse and remand.

Additionally, the superior court erred in applying RCW 4.12.010 because Ralph's lawsuit sounds in tort and requests only monetary damages. Having no rational basis to apply "injury to land" outside of the abstract scenario, Ralph posits that the competing personal injury venue statute, RCW 4.12.020(3), is in conflict and applies here.

///

RESPECTFULLY SUBMITTED this 3rd day of May 2013.

PFAU COCHRAN VERTETIS AMALA, PLLC

By: 

Darrell L. Cochran, WSBA No. 22851

Loren A. Cochran, WSBA No. 32773

Kevin M. Hastings, WSBA No. 42316

STATE OF WASHINGTON)
)ss
COUNTY OF KING)

Laura Neal, 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 May 3, 2013, I placed for delivery with Legal Messengers, Inc., a true
and correct copy of the above, directed to:

Mark Jobson
Attorney General of Washington
7141 Cleanwater Drive SW
P.O. Box 40126
Olympia, WA 98504-0126
Attorney for: State of Washington Dept. of Natural Resources

Kelly P. Corr
Seann C. Colgan
Joshua J. Preece
Corr Cronin Michelson Baumgardner & Preece LLP
1001 Fourth Avenue, Suite 3900
Seattle, WA 98154
Attorneys for: Green Diamond Resource Company

Louis D. Peterson
Hillis Clark Martin & Peterson, P.S.
1221 Second Avenue
Suite 500
Seattle, WA 98101
Attorney for: Weyerhaeuser Company

DATED this 3rd day of May 2012.



Laura Neal
Legal Assistant to
Darrell L. Cochran

OFFICE RECEPTIONIST, CLERK

To: Laura Neal
Subject: RE: Filing for Today; Cause No. 88115-4

Received 5/3/13

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Laura Neal [<mailto:laura@pcvalaw.com>]
Sent: Friday, May 03, 2013 12:55 PM
To: OFFICE RECEPTIONIST, CLERK
Subject: Filing for Today; Cause No. 88115-4

Please find attached the Supplemental Brief of Petitioner Ralph to Washington Supreme Court.

Thank you,
Laura

LAURA NEAL
LEGAL ASSISTANT TO DARRELL L. COCHRAN

253.617.0284 DIRECT 253.627.0654 FACSIMILE
253.777.0799 MAIN 800.349.PCVA TOLL-FREE
laura@pcvalaw.com

Columbia House
403 Columbia St
Suite 500
Seattle, WA 98104

911 Pacific Avenue
Suite 200
Tacoma, WA 98402
www.pcvalaw.com

PEAU COCHRAN
VERTETIS AMALA