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SUPREME COURT  
OF THE STATE OF WASHINGTON

WILLIAM RALPH,  
  
Appellant,

VS.

WEYERHAEUSER COMPANY, a  
Washington corporation; AND  
GREEN DIAMOND RESOURCE  
COMPANY, a Washington  
corporation,

Respondents.

No. 91711-6  
(Consolidated with Nos. 91725-6,  
91726-4 and 91727-2)

**JOINT ANSWER TO  
MOTION FOR  
DISCRETIONARY REVIEW**

WILLIAM RALPH,  
  
Appellant,

VS.

STATE OF WASHINGTON  
DEPARTMENT OF NATURAL  
RESOURCES,

Respondents.

*Joint Answer to Motion for Discretionary Review*

**HILLIS CLARK MARTIN &  
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 ORIGINAL

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; WEYERHAEUSER  
COMPANY, a Washington  
corporation; and GREEN DIAMOND  
RESOURCE COMPANY, a  
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VIRGINIA CAREY, individually;  
JAMIE CAREY, individually; and  
PARADYCE INDUSTRIES INC.,  
d/b/a THE PRINT SHOP, a  
Washington corporation,

Appellants,

vs.

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

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**I. IDENTITY OF RESPONDING PARTIES AND STATEMENT OF RELIEF SOUGHT**

Respondents, Washington Department of Natural Resources, Weyerhaeuser Company, and Green Diamond Resource Company (together, "Defendants"), do not oppose discretionary review under RAP 2.3(b)(4) of the trial court's orders changing venue for these cases to Lewis County. The Court should decline review under RAP 2.3(b)(1) and (2) because the trial court did not commit error. If the Court accepts review, it should affirm.

**II. NATURE OF CASE AND DECISION**

Lewis County is the proper venue for these cases. Plaintiffs reside in Lewis County, their properties are located in Lewis County, the storm and flooding at issue occurred in Lewis County, and the activities complained of (various forest practices, but primarily timber harvesting) took place in Lewis County. But Plaintiffs do not want to try these cases in Lewis County. In fact, they have gone to great lengths to keep these cases out of Lewis County. They insist the choice of venue is theirs, and they want to sue in King County.

Plaintiffs are wrong; the legislature determines proper venue for actions. RCW 4.12.010(1) codified the local action rule. This rule requires that all actions involving title, possession, or injury to real

property be commenced in the county where the property is located. Until recently, the jurisdictional nature of the rule ensured that plaintiffs honored the legislature's intent. The jurisdiction granted by this statute was exclusive and not subject to waiver. If a plaintiff filed in the wrong county, the case would be dismissed. This provided a powerful incentive for plaintiffs to file in the proper county. This was the law of Washington from 1854 until 2014.

In December 2014, this Court held for the first time that the jurisdictional nature of RCW 4.12.010(1) conflicted with article IV, section 6 of the state constitution. To save the statute and preserve the sound legislative policy behind it, the Court created a new doctrine under which the statute set forth *mandatory* venue. Mandatory venue cannot be subject to waiver. Otherwise it would be optional, not mandatory.

The Court applied its new doctrine and determined that Lewis County was the mandatory venue for these actions. Pursuant to this Court's decision, the trial court changed venue to Lewis County over Plaintiffs' objections. Plaintiffs now ask the Court to accept discretionary review. If the Court accepts discretionary review, it should affirm the orders changing venue from King County to Lewis County.

### III. ISSUES PRESENTED FOR REVIEW

Should the trial court's orders changing venue for these cases from King County to Lewis County be affirmed?

### IV. GROUNDS FOR DISCRETIONARY REVIEW

If the Court accepts review, it should do so under RAP 2.3(b)(4), because the parties agree that the orders involve a controlling question of law as to which there is substantial ground for difference of opinion, and immediate review would materially advance termination of the litigation.

### V. STATEMENT OF THE CASE

Plaintiffs allege damage to their properties in Lewis County from flooding of the Chehalis River caused by the storm that occurred December 2-4, 2007. App. at 1-52.<sup>1</sup> They filed three separate lawsuits in King County against Defendants on December 2, 2010, and filed a fourth lawsuit on January 31, 2011. *Id.* Plaintiffs allege that Defendants' forest practices caused the flooding. *Id.* Defendants answered in January, February, and March 2011. App. at 52-111.

In June 2011, Defendants moved to dismiss the cases under CR 12(h)(3) for lack of jurisdiction over the subject matter of the

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<sup>1</sup> Unless otherwise indicated, all citations to the Appendix refer to the appendix attached to Plaintiffs' motion for discretionary review.

lawsuits (injuries to real property located in Lewis County). App. at 112-120, 140-46, 169-179, 201-207. In July 2011, the King County Superior Court granted some of the motions, and denied the others. *See Ralph v. State Dept. of Natural Res.*, 182 Wn.2d 242, 246-47, 343 P.3d 342 (2014) (reciting procedural history). Plaintiffs appealed the dismissals, which were subsequently consolidated. *Ralph*, 182 Wn.2d at 247. The King County Superior Court stayed the remaining cases pending appeal. *See, e.g.*, App. at 234-36.

On December 22, 2011, this Court noted in a separate case that its interpretation of RCW 4.12.010(1) as jurisdictional under *Snyder v. Ingram*, 48 Wn.2d 637, 638, 296 P.2d 305 (1956), remained good law unless overruled. *Five Corner Family Farms v. State*, 173 Wn.2d 296, 315 n.5, 268 P.3d 892 (2011). Nine months later, the Court of Appeals followed *Snyder* and affirmed the dismissals for lack of jurisdiction. *Ralph v. State Dept. of Natural Res.*, 171 Wn. App. 262, 269-70, 286 P.3d 992 (2012). Plaintiffs moved for discretionary review, which this Court granted. *Ralph v. State Dept. of Natural Res.*, 176 Wn.2d 1024, 301 P.3d 1047 (2013).

On December 31, 2014, this Court held that RCW 4.12.010(1) related to venue and not jurisdiction, overruling *Snyder* and at least eight other precedents. *Ralph*, 182 Wn.2d at 258-59. Defendants filed a motion

for reconsideration on January 20, 2015. The Court requested a response to the motion for reconsideration on February 4, 2015. Plaintiffs filed their response on February 19, 2015. On April 1, 2015, the Court denied the motion for reconsideration. The Court's mandate issued on April 2, 2015.

On April 8, 2015, Defendants filed motions to change venue to Lewis County and assess the costs of changing venue against Plaintiffs. App. at 239-59. The trial court granted the motions. App. at 304-307, 313-15, 320-21, 326-28. Plaintiffs seek discretionary review. App. at 299-328.

## **VI. ARGUMENT**

For the reasons set forth below, the Court should decline to accept review under RAP 2.3(b)(1) and (2) because the trial court did not commit error. If the Court accepts review, it should do so under RAP 2.3(b)(4), because the orders changing venue involve a controlling question of law the resolution of which may materially advance the ultimate termination of this litigation. Defendants do not oppose discretionary review under RAP 2.3(b)(4).

**A. The Trial Court Did Not Err by Changing Venue to Lewis County.**

**1. Mandatory venue lies in Lewis County.**

The trial court correctly changed venue for these actions to Lewis County under this Court's new mandatory venue doctrine. In *Ralph*, the Court held that RCW 4.12.010 relates to mandatory venue, not jurisdiction. 182 Wn.2d at 257. The Court read RCW 4.12.010 together with RCW 4.12.030(1) and RCW 4.12.060 to determine that, if an action for injury to real property "has not been commenced in the proper county under RCW 4.12.010, the court in that county *shall transfer it to the proper county* pursuant to RCW 4.12.060." *Id.* at 255 (emphasis added).

The Court concluded:

We hold RCW 4.12.010 applies to tort actions seeking monetary relief for damages to real property and relates to venue, not jurisdiction. If an action for injuries to real property is commenced in an improper county, the result is not dismissal but rather a change of venue to the county in which the real property is located.

*Id.* at 259. There is no ambiguity in the Court's language. By changing venue to Lewis County, the trial court correctly followed the Court's instructions in *Ralph*.

**2. Mandatory venue should not be subject to waiver.**

Plaintiffs now ask the Court to accept review for the purpose of removing its "mandatory" label and determining that RCW 4.12.010 is a

venue statute subject to waiver and subordinate to other venue statutes, thereby completing their circumvention of the legislature's intent to require real property cases to be commenced in the county in which the property is located. The Court should reject Plaintiffs' arguments.

The mandatory venue doctrine is not subject to waiver.

RCW 4.12.010(1) codifies the local action rule, which could not be waived. *See Miles v. Chinto Mining Co.*, 21 Wn.2d 902, 907, 153 P.2d 856 (1944) (parties could not waive compliance with RCW 4.12.010(1)). Although the Court "saved" the statute from conflicting with article IV, section 6 by interpreting the statute as relating to venue, nothing in that section prohibits the legislature from designating exclusive venue for certain types of actions. *See, e.g., ZDI Gaming Inc. v. State ex rel. Washington State Gambling Com'n*, 173 Wn.2d 608, 616-20, 268 P.3d 929 (2012) (legislature may designate Thurston County as the sole venue for appeals of Gambling Commission decisions, and affirming the Pierce County Superior Court's order changing venue to Thurston County). And nothing in *Ralph* suggests that compliance with RCW 4.12.010 is optional. Instead, the Court used the word "mandatory" to preserve the legislature's intent that compliance with the statute be compulsory.

3. *Defendants did not waive their objection to venue.*

Even if the mandatory venue doctrine were subject to waiver, no waiver occurred in this case. Waiver is the intentional and voluntary relinquishment of a known right. *Pub. Util. Dist. No. 1 of Lewis Cnty. v. WPPSS*, 104 Wn.2d 353, 365, 705 P.2d 1195 (1985). Here, Defendants objected to the trial court's jurisdiction under CR 12(h)(3), which expressly permits an objection to the court's jurisdiction over the subject matter at any time. CR 12(h)(3) ("*Whenever* it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.") (emphasis added); *see also* RAP 2.5(a)(1) (party may challenge trial court jurisdiction for the first time on appeal). At the time Defendants objected to the trial court's jurisdiction in June 2011<sup>2</sup>, RCW 4.12.010, as interpreted and enforced by this Court and lower courts, restricted superior court jurisdiction. *See Five Corners Family Farmers*, 173 Wn.2d at 315 n.5 (recognition that *Snyder v. Ingram*, 48 Wn.2d 637, 296 P.2d 305 (1956), remained good law unless overruled). It was not until December 31, 2014 that the Court overruled *Snyder* (and various other decisions) and held that

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<sup>2</sup> As Plaintiffs acknowledge, Defendants had already denied Plaintiffs' allegations that venue was proper in King County. Motion at Section IV.

RCW 4.12.010 related to venue, not jurisdiction. *See Ralph*, 182 Wn.2d at 258 n.5 (listing jurisdictional decisions overruled by *Ralph*).

The assertion of a proper objection to the trial court's jurisdiction in June 2011 under the law then controlling cannot constitute a waiver in any sense. The Court changed the law in its *Ralph* decision in December 2014. Before *Ralph*, Defendants had a right to dismissal for lack of jurisdiction.<sup>3</sup> After *Ralph*, Defendants had a right to a mandatory change of venue. The right that Plaintiffs' argue was waived in June 2011 did not exist until December 2014. Defendants could not have intentionally and voluntarily waived a *known* right to request a change of venue until after December 2014. *See, e.g., Holzsager v. Valley Hosp.*, 646 F.2d 792, 796 (2nd Cir. 1981) (defendant did not waive a Rule 12 defense that became available during the course of the case by virtue of an intervening Supreme Court decision) (citing *Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 143-45, 87 S. Ct. 1975, 18 L.Ed.2d 1094 (1967)). And in any event Defendants did not waive that right; they promptly

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<sup>3</sup> Plaintiffs also contend Defendants' previous argument that RCW 4.12.010 was jurisdictional somehow now precludes Defendants from requesting a change in venue. Motion at Section V.B.1. But the Court's precedent made clear that without jurisdiction, the trial court could do nothing but enter an order of dismissal. *Cugini v. Apex Mercury Mining, Co.*, 24 Wn.2d 401, 409, 165 P.2d 82 (1946). Under that precedent, a trial court lacking jurisdiction could not order a change of venue. *Id.* Defendants therefore had no basis in law to request a change of venue as an alternative form of relief.

requested a change of venue less than a week after the Court's mandate issued in *Ralph*.<sup>4</sup>

**4. The other venue statutes cited by Plaintiffs are not mandatory.**

Plaintiffs cite three other venue statutes to argue that venue is proper in King County: RCW 4.12.020, RCW 4.12.025, and RCW 4.92.010. Motion at Section V.B.2. However, the Plaintiffs have already argued that these statutes apply to these cases instead of RCW 4.12.010, an argument the Court rejected in *Ralph*. See Defs.' App. 1 at 17-18 (Plaintiffs' Brief to the Supreme Court in *Ralph*) and *Ralph*, 182 Wn.2d at 249-51 (rejecting Plaintiffs' argument). The Court held that RCW 4.12.010 applies to these cases, and that venue for these actions should be transferred to Lewis County. *Ralph*, 182 Wn.2d at 255, 259.

Even if the Court had not already rejected Plaintiffs' arguments, these other statutes would still not change the result. RCW 4.12.025 is the default venue provision for civil actions, and it applies only if a more

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<sup>4</sup> One would not have expected Plaintiffs to oppose this request based on their earlier pleadings. In an ironic twist, Plaintiffs now oppose the remedy they sought under RCW 4.12.010, which was a change of venue to Lewis County instead of dismissal. App. at 130-31, 159-60, 190-91, 217-18 ("In the alternative, if the court finds certain elements of Plaintiffs [sic] claims to be local interests, unique to the properties" [sic] physical location, then venue change, not dismissal of the action as a whole, is the only appropriate remedial action.")

specific venue statute does not apply. *Moore v. Flateau*, 154 Wn. App. 210, 214-15, 225 P.3d 361 (2010) (citing *Russell v. Marenakos Logging Co.*, 61 Wn.2d 761, 765, 380 P.2d 744 (1963)), *review denied* 168 Wn.2d 1042, 233 P.3d 889. Because the Court has already determined that RCW 4.12.010 applies, and because Plaintiffs argue that RCW 4.12.020 and RCW 4.92.010 also apply, RCW 4.12.025 cannot apply.

Lewis County is a proper venue under RCW 4.12.020 and RCW 4.92.010. Under RCW 4.12.020, the legislature authorizes plaintiffs who suffer personal injury or injury to personal property to file in one of several counties, one of which is the county where the cause of action or some part thereof arose. RCW 4.12.020(3). Under RCW 4.92.010, the legislature authorizes plaintiffs who assert claims against the state to file in one of several counties, including the county where the plaintiff resides, the county where the cause of action arose, and the county in which the real property that is the subject of the action is situated. RCW 4.92.010(1), (2), and (3). Under RCW 4.12.010, the legislature requires plaintiffs who suffer injury to real property to file only in the county where the property is located. RCW 4.12.010(1). Courts should read statutes in harmony whenever possible, and avoid interpretations that create conflicts between statutes. *Tunstall v.*

*Bergeson*, 141 Wn.2d 201, 211, 5 P.3d 691 (2000). Moreover, a specific statute applies over more general statutes. *Id.* Here, Plaintiffs allege injury to real property in Lewis County and injury to personal property in Lewis County. The legislative intent of RCW 4.12.020, RCW 4.92.010, and RCW 4.12.010 may be given effect by determining (again) that Lewis County is the proper venue for these actions. Lewis County is a proper venue under all of the statutes, and RCW 4.12.010 is the most specific statute regarding proper venue for these actions. The trial court did not err by changing venue for these actions to Lewis County.

Plaintiffs argue that the trial court abused its discretion by ordering a change of venue under RCW 4.12.030(3) for the convenience of the parties and the witnesses. Motion at Section V.B.2. Plaintiffs do not dispute that they, their injured properties (both real property and personal property), and the eye witnesses to the storm are located in Lewis County. Instead, they ask this Court to substitute its judgment for that of the trial court to evaluate the venue most convenient for the parties and the witnesses. To support their argument, they argue that one Defendant's (Weyerhaeuser's) decision to gather documents responsive to Plaintiffs' discovery requests from various locations for inspection in one location (Weyerhaeuser's headquarters in Federal Way) makes King County the most convenient venue for all parties and their witnesses.

Motion at Section V.B.2. They also argue that King County is the most convenient venue for unidentified experts who may purportedly testify at trial. *Id.* These arguments are absurd; if taken at face value, they would permit parties (including defendants) to choose the most convenient venue merely by moving documents for production to a different county or designating experts based upon the county in which the experts reside. In reality, expert witnesses routinely travel from all over the country to testify in the *appropriate* venue. And if Plaintiffs have an issue with the location of document production, a discovery conference is their remedy – not a change in venue. The trial court did not abuse its discretion by rejecting Plaintiffs’ arguments and changing venue to Lewis County.

5. ***The trial court did not err by ordering Plaintiffs to pay the costs of changing venue.***

Finally, Plaintiffs argue that the trial court erred by ordering them to pay the costs of changing venue. Motion at Section V.B.3. However, Plaintiffs complain of injuries to their real property in Lewis County. They filed these actions in King County. Regardless of whether RCW 4.12.010(1) relates to jurisdiction (as it did until the Court’s decision in *Ralph*) or venue (as it has since *Ralph*), the statute plainly required these cases to be commenced in Lewis County. It says:

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(1). Nothing in the statute's language suggests that compliance with it is permissive. The Court has already determined that Lewis County, not King County, is the proper venue for these actions. RCW 4.12.030(1) authorizes a change of venue to the proper county, and RCW 4.12.090 requires that the plaintiff pay the costs for changing venue to the proper county. The trial court correctly ordered Plaintiffs pay the costs of changing venue.

**B. If the Court Denies Plaintiffs' Motion, It Should Award Defendants Their Attorneys' Fees.**

Courts award attorneys' fees where authorized by statute, contract, or a recognized ground in equity. *Penn. Life Ins. Co. v. Emp't Sec. Dep't*, 97 Wn.2d 412, 413, 645 P.2d 693 (1982). Here, Defendants are entitled an award of their reasonable attorneys' fees under RCW 4.12.090. The statute requires a court to award the defendant its reasonable attorneys' fees if the plaintiff commences an action in the wrong county and could have determined the proper county with reasonable diligence. RCW 4.12.090(1). Here, Plaintiffs knew that the

flooding caused injury to their real property in Lewis County. Basic legal research would have revealed that RCW 4.12.010 required them to file their lawsuits in Lewis County regardless of whether the statute related to jurisdiction or venue. But Plaintiffs failed to exercise reasonable diligence and instead filed their cases in King County. If the Court denies Plaintiffs' motion for discretionary review, the Court should award Defendants their attorney fees for this appeal and remand to the trial court for determination of the appropriate amount of fees.

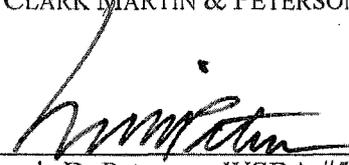
#### VII. CONCLUSION

The trial court did not err by changing venue for these cases to Lewis County. If the Court accepts review under RAP 2.3(b)(4), it should hold that the mandatory venue doctrine is not subject to waiver and affirm.

RESPECTFULLY SUBMITTED this 30th day of July, 2015.

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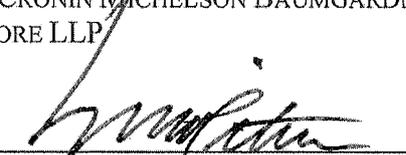
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# **DEFENDANTS APPENDIX 1**

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

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IN THE SUPREME COURT OF THE  
STATE OF WASHINGTON

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RECEIVED

WILLIAM RALPH, individually,  
Plaintiff-Petitioner,

MAY 03 2013

vs.

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

HILLIS CLARK MARTIN & PETERSON

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.

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**SUPPLEMENTAL BRIEF OF PETITIONER RALPH, ET AL.**

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## 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.<sup>1</sup> 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.<sup>2</sup>

## **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

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<sup>1</sup> 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.

<sup>2</sup> *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).<sup>3</sup> Here, the

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<sup>3</sup> 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.

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RESPECTFULLY SUBMITTED this 3rd day of May 2013.

PFAU COCHRAN VERTETIS AMALA, PLLC

By: 

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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.

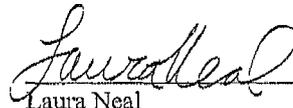
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DATED this 3rd day of May 2012.



\_\_\_\_\_  
Laura Neal  
Legal Assistant to  
Darrell L. Cochran

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**Subject:** Case #91711-6 - William Ralph v Weyerhaeuser Company, et al. - Defendants-Respondents' Joint Answers

RE: Case # 91711-6 - *William Ralph v Weyerhaeuser Company, et al.*

Attached are copies of the Joint Answer to Statement of Grounds for Direct Review, with Appendices; Joint Answer to Motion for Discretionary Review, with Appendix; and Certificate of Service in the above-referenced matter.

The person submitting these briefs is Louis D. Peterson, Telephone: (206) 623-1745, WSBA No. 5776, e-mail address: [lou.peterson@hcmp.com](mailto:lou.peterson@hcmp.com).

The Joint Answers are being served on all counsel of record by email and U.S. mail.

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