

NO. 75635-4-I

IN THE WASHINGTON SUPREME COURT

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OLYMPIC PENINSULA NARCOTICS ENFORCEMENT TEAM;  
CLALLAM COUNTY SHERIFF BILL BENEDICT;  
CLALLAM COUNTY SHERIFF'S DEPARTMENT; and  
CLALLAM COUNTY

Appellants,

v.

REAL PROPERTY KNOWN AS

(1) JUNCTION CITY LOTS 1-12 INCLUSIVE, BLOCK 35;  
(2) LOT 2 OF THE NELSON SHORT PLAT LOCATED IN  
JEFFERSON COUNTY; and  
ALL APPURTANCES AND IMPROVEMENTS THEREON, OR  
PROCEEDS THEREFROM,

Respondents *in rem*,

STEVEN L. FAGER;  
DBVWC, INC.; and  
LUCILLE M. BROWN LIVING TRUST

Interested Parties.

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ON APPEAL FROM  
THE SUPERIOR COURT OF WASHINGTON  
FOR JEFFERSON COUNTY  
No. 09-2-00413-6

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*AMENDED* PETITION FOR REVIEW

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## TABLE OF CONTENTS

A.	IDENTITY OF PETITIONER .....	1
B.	COURT OF APPEALS DECISION.....	1
C.	INTRODUCTION TO THE CASE AND ISSUES PRESENTED. ....	1
D.	STATEMENT OF FACTS .....	4
E.	WHY REVIEW SHOULD BE ACCEPTED .....	10
	1. <b>The plain language of the statute permits reimbursement for legal fees reasonably incurred in preventing civil forfeiture, even when those fees also served the criminal case .....</b>	10
	2. <b>The Court of Appeals applied a restrictive interpretation to a statute meant to be liberally construed in favor of claimants.....</b>	12
	3. <b>The question of what types of attorney fees are permitted under RCW 69.50.505(6) is an important question that satisfies the requirements of RAP 13.4(b)(4)(1), (4).....</b>	15
	4. <b>The Court of Appeals misconstrued the requirements of RCW 69.50.505(5) and allowed OPNET to raise a procedural argument that had been waived below.....</b>	17
IV.	CONCLUSION .....	20

## TABLE OF AUTHORITY

### Federal Cases

*Franks v. Delaware*,  
438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978) ..... 7, 9

### State Cases

*Guillen v. Contreras*,  
169 Wn. 2d 769, 238 P.3d 1168 (2010) ..... Passim

*Barlindal v. City of Bonney Lake*,  
84 Wn. App. 135, 925 P.2d 1289 (1996) ..... 18-19

*Brand v. Dept of Licensing*,  
139 Wn.2d 659, 989 P.2d 1111 (1999) ..... 14

*Guillen v. Contreras*,  
147 Wn. App. 326, 195 P.3d 90 (2008),  
reversed 169 Wn. 2d 769, 238 P.3d 1168 (2010) ..... 13

*Moen v. Spokane City Police*,  
110 Wn. App. 714, 42 P.3d 456 (2002) ..... 13

*Nucleonics, v. Washington Pub. Power Supply Sys*,  
101 Wn.2d 24, 677 P.2d 108 (1984) ..... 15

*Snohomish Reg'l Drug Task Force v. Real Prop. Known as 20803 Poplar Way*,  
150 Wn. App. 387, 150 Wn. App. 387 (2009) ..... 12

*State v. Delgado*,  
148 Wn.2d 723, 63 P.3d 792 (2003) ..... 12

*State v. Longo*,  
185 Wn. App. 804, 343 P.3d 378 (2015) ..... 16

*State v. Watson*,  
155 Wn.2d 574, 122 P.3d 903 (2005) ..... 16

*Utilities Dist. 1 of Grays Harbor Cty. v. Crea*,  
88 Wn. App. 390, 945 P.2d 722 (1997) ..... 17

**State Statutes**

RCW 69.50.505 ..... 17  
RCW 69.50.505(3)..... 10  
RCW 69.50.505(5)..... 4, 17, 18,19  
RCW 69.50.505(6)..... 4, 11, 12, 17

**State Rules**

CrR 3.6 ..... 6, 8  
CrR 8.3(b) ..... 6  
RAP 13.4(b)(1) ..... 4, 17  
RAP 13.4(b)(1), (2) & (4)..... 5  
RAP 13.4(b)(1), (2) and (4) ..... 17  
RAP 13.4(b)(4) ..... 4, 16, 17  
RAP 13.4(b)(4)(1), (4) ..... 15

**A. IDENTITY OF PETITIONER**

Petitioners Steve and Tim Fager, respondents below, ask this Court to review the decision of the Court of Appeals referred to in Section B below.

**B. COURT OF APPEALS DECISION**

The Jefferson County Superior Court awarded attorney fees incurred by Steve and Tim Fager in successfully contesting a drug forfeiture of real property. Division One of the Court of Appeals reversed the award of attorney fees to Tim Fager. The court also held that an undefined portion of Steve Fager's attorney fee award was not authorized by the statute. *Olympic Peninsula Narcotics Enft Team v. Real Prop. Known as 1) Junction City Lots 1 Through 12 Inclusive, Block 35*, (Slip Op. No. 75635-4-1, filed May 22, 2017). The Court of Appeals denied a motion to reconsider or clarify its opinion on August 16, 2017.

**C. INTRODUCTION TO THE CASE AND ISSUES PRESENTED**

This petition for review involves the unlawful seizure of real property located in rural Jefferson County, and the attorney fees awarded to Steve and Tim Fager after they successfully fought to have the property returned.

Steve and Tim Fager are brothers who operate a water company on land located in rural Jefferson County. They also grew medical marijuana in a building located on the same property. In 2009, the Olympic Peninsula Narcotics Enforcement Team (OPNET) seized that property and initiated a civil forfeiture pro-

ceeding. At the same time, the State file<sup>1</sup>d criminal charges against the Fagers for manufacturing marijuana. The hearings in the civil forfeiture case were continued while the parties litigated the legality of the search warrant through the criminal case.

The Fagers knew they could plead guilty to non-felony offenses with little or no jail time, but that a guilty plea would result in the forfeiture of the land in the civil case. They also knew that a successful challenge to the search warrant in the criminal matter would result in dismissal of the forfeiture in the civil matter. Wishing to avoid the loss of their property, which was valued in excess of \$500,000, the Fagers moved forward with a suppression/dismissal motion. Following a nine-day criminal motions hearing, the trial court found that OPNET had demonstrated a reckless disregard for the truth in obtaining the search warrant and had engaged in governmental misconduct in destroying evidence. The criminal charges were dismissed, and the appellate court affirmed that ruling. Close to six years after the wrongful taking of the property, OPNET was forced to dismiss the forfeiture proceeding and release the seized property.

Pursuant to RCW 69.50.505(6), the trial court found the Fagers were entitled to attorney fees reasonably incurred in defending against the forfeiture. This included attorney fees that served a dual or secondary purpose in the criminal case. Consequently, fees spent on demonstrating an unlawful seizure of evidence

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to be used in the forfeiture case were included in the fee award, even though the suppression hearing was litigated under the criminal cause number. Fees related solely to the criminal case, and which did not bear directly upon the civil forfeiture proceeding, were excluded. OPNET appealed that ruling.

Unfortunately, the Court of Appeals confused matters by not providing an explanation for its reversal: “The findings of fact and conclusions of law show the court erred in awarding attorney fees based on factors unrelated to the civil forfeiture proceeding.” Slip Op at 14. The court referenced one of the findings and remanded the case to the trial court to “determine the number of hours reasonably expended by Steven Fager to prevail in the civil forfeiture proceeding multiplied by a reasonable hourly rate.” Slip Op. at 14, 15.

The following issues are presented for review:

1. In *Guillen v. Contreras*,<sup>2</sup> this Court accepted review to determine the meaning of “substantially prevails” in a forfeiture proceeding. It was an issue of first impression. Here, the Court again encounters an issue of first impression relating to the same statute. While *Guillen* established *who* is entitled to attorney fees in a forfeiture proceeding, this Court is now called upon to clarify what *type* of attorney fees are permitted in a forfeiture proceeding. Specifically, is a property owner entitled to all attorney fees reasonably incurred to prevail in the civil forfeiture proceeding, even if those fees also served a purpose in the criminal case? As

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<sup>2</sup> 169 Wn. 2d 769, 777, 238 P.3d 1168, 1172 (2010)

.. ..

in *Guillen*, this is an issue of public importance that should be decided by this Court. Is review appropriate under RAP 13.4(b)(4)?

2. The language of the forfeiture statute does not expressly prohibit attorney fees where the work served a dual or secondary purpose. Thus, in vacating the attorney fees awarded to Steve Fager, the Court of Appeals added a restriction not contained within the plain language of the statute. This is contrary to this Court's decision in *Guillen v. Contreras*, which requires the attorney fee provision to be liberally construed in favor of claimants. Is review appropriate under RAP 13.4(b)(1)?

3. OPNET seized property owned by Steve Fager and a small corporation, of which Tim Fager is a shareholder. The trial court found that Tim Fager had a substantial financial interest in the property and that his attorney fees were incurred in protecting his interest in the property. Despite the lack of a timely objection by OPNET at a time in which Tim Fager could have presented additional evidence, the Court of Appeals found that Tim Fager was not a proper claimant because he had failed to file a notice of intent to contest the forfeiture. In doing so, the Court of Appeals misconstrued the requirements of RCW 69.50.505(5) and allowed OPNET to raise a procedural argument that had been waived below. Is review appropriate under RAP 13.4(b)(1), (2) & (4)?

D. STATEMENT OF FACTS

Steve Fager and the Discovery Bay Village Wellness Collective (DBVWC) own the property at 115 Freeman Lane. Tim and Steve Fager are the majority shareholders in DBVWC. *CP 163, 167*. They are also major shareholders in the water company that operates on the property. *Id.*

In addition to the water company, Steve and Tim cultivated medical marijuana on the property. They are both medical marijuana patients. *CP 167*.

On October 9, 2009, the Jefferson County Prosecutor charged each brother with one count of Manufacturing Marijuana and one count of Possession with Intent to Deliver Marijuana. *CP 535*. The charges were based on marijuana found in a building at 115 Freeman Lane.

In addition to the criminal charges, OPNET and Clallam County seized the 115 Freeman Lane property and initiated a forfeiture proceeding. Steven Fager, individually and in his role as representative for the DBVWC, was served with notice of the forfeiture and filed an objection. *CP 508-09*. Tim Fager was served with a forfeiture notice relating to personal property seized from his house, which had also been searched. *CP 355-59*. He filed an objection to that seizure, upon which he later prevailed. *CP 355-59*. Tim was not served with notice of the 115 Freeman Lane seizure and, accordingly, did not file a notice of claim.

The total value of property seized exceeded \$500,000 at the time of the raid. *CP 167*. The economic loss through seizure would have had a much bigger impact on the Fagers than the potential criminal convictions. *Id; CP 163*. As self-

employed businessmen, Tim and Steve were unconcerned with marijuana convictions on their records. *Id.*

Steve Fager hired Jeff Steinborn to represent him in the criminal case and the forfeiture, while Tim hired James Dixon for similar representation. *Id.* Jeff Steinborn “advised Steve that he could plead guilty to a misdemeanor with little or no jail time, but that it would allow the State to keep his property.” *CP 160*. Per Mr. Steinborn, “Steve was unequivocal in stating that while he was not concerned about a conviction for marijuana on his record, he was unwilling to surrender the property wrongfully seized by OPNET.” *Id.*

Tim Fager emphatically agreed with his brother. He and his attorney “theorized that the criminal and civil forfeiture cases were both part of a concerted attempt by OPNET to obtain the property at 115 Freeman Lane. From inception, our strategy in the criminal case was directed at preventing a civil forfeiture.” *CP 206*.

The attorneys informed their clients that a favorable ruling in a suppression motion would resolve the civil forfeiture because of collateral estoppel. By contrast, if they won a suppression motion in the civil forfeiture case first, the State would not be barred from pursuing the criminal case. *CP 160, 163, 206*. The forfeiture proceedings were continued pending resolution of the criminal case.

The defense began preparing for their motions to suppress or dismiss pursuant to CrR 3.6 and CrR 8.3(b). *CP 206*. No one anticipated these motions would

become a six-year odyssey involving more than 10,000 pages of discovery and requiring multiple motions to compel discovery and officer interviews. *CP 174, 178, 268-80.*

With costs mounting, Steve Fager hired the local firm of Haas & Ramirez for the forfeiture/criminal matter. Mr. Haas recalled, his first meeting with Steve, “a criminal conviction was the least of Steven Fager’s concerns. His sole focus was on protecting the property he had worked so long and hard to acquire.” *CP 174.*

Following a nine-day hearing the court ruled for the defense. Written findings were entered on January 9, 2013. *CP 214.* In granting the *Franks* motion,<sup>3</sup> the trial court concluded that OPNET officers had repeatedly made false statements regarding their ability to smell marijuana, and that the false statements were made with reckless disregard for the truth. *Id.* The court also found governmental mismanagement due to the destruction of key evidence under questionable circumstances. With the evidence suppressed, the court dismissed the criminal charges. *Id.*

Acknowledging the interconnectedness of the criminal prosecution and the civil forfeiture, the prosecution left the decision of whether to appeal up to the OPNET stakeholders. *CP 265-67.* The prosecutor informed Risk Management that if the suppression order was not reversed, the stakeholders “will in all likeli-

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<sup>3</sup> *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978).

hood be required to pay the Fagers' attorney fees, which are believed to be substantial." *CP 265-67*. After considering these consequences, OPNET decided to file an appeal.

Following Division Two's opinion affirming the suppression order, Mr. Dixon filed a motion for summary judgment based on collateral estoppel. Over a month passed before OPNET finally released the property and moved to dismiss the forfeiture. *CP 107*.

Steve and Tim Fager filed a motion for attorney fees, supported by timesheets and declarations from Jeff Steinborn, Mike Haas, James Dixon, Steve Fager and Tim Fager. *CP 48-50; 159-285*. Claimants only sought attorney fees for work related specifically to the forfeiture. Time entries related solely to the criminal case were excluded. As Mr. Dixon explained:

10. In preparing this declaration in support of attorney fees, I reviewed my timesheets and invoices. I believe I have removed all charges for any hours expended solely on the criminal case, such as general research and investigation on criminal defenses and arraignments. This also included the time spent researching and presenting a separate CrR 3.6 motion to suppress marijuana found at Tim Fager's house. Although I was successful in the motion, that particular motion related solely to the criminal case rather than the forfeiture. For the same reasons, I excluded my time spent recovering Tim Fager's personal property seized from his house. While this was time well spent, it did not directly relate to my efforts to invalidate the search at 115 Freeman Lane, and as such, was only indirectly related to the forfeiture.

*CP 208*. Mr. Haas similarly omitted from his billing any entries that did not relate to the forfeiture. *CP 176*.

OPNET challenged some of the remaining charges as related just to the criminal case. *CP 510-11*. Rather than argue over the matter, the Fagers simply removed all questioned charges. *CP 537-38*. OPNET indicated that it had no factual objections as to reasonableness of the remaining fees. *RP 20-21*.

A hearing on the attorney fees was heard on August 5, 2015. OPNET'S main argument was that the attorney forfeiture statute only permitted reimbursement of fees for work related "solely" to the forfeiture. *CP 318*. Work that benefited the criminal case could not be included. OPNET acknowledged that if this same legal work had been filed under the forfeiture cause number, it would have been reimbursable. *RP 39*. OPNET argued that in order to receive attorney fees, the forfeiture proceeding had to be heard first. *Id.*

The trial court rejected that reasoning, finding it inconsistent with the plain language and legislative intent behind the statute:

2. Plaintiffs ask this Court to read RCW 69.50.505(6) as permitting reimbursement only when the attorney fees relate "solely" to the forfeiture proceeding. But the plain language of the statute does not contain that limitation, and this Court will not infer such a limitation in a statute that is to be liberally construed in favor of the claimants. This Court finds that where the primary purpose behind the incurred fees was to prevent the forfeiture, the statute allows for reimbursement of those attorney fees. The fact that the attorney fees served a dual purpose by also benefiting the criminal case does not change the analysis. The attorney fees related to the suppression motion are all compensable under RCW 69.50.505(6).

CP 519.

E. **WHY REVIEW SHOULD BE ACCEPTED**

1. **The plain language of the statute permits reimbursement for legal fees reasonably incurred in preventing civil forfeiture, even when those fees also served the criminal case.**

In 2001, our state legislature amended the forfeiture statute to enable claimants to receive reimbursement from the government for wrongfully seized property. “The purpose of the addition of the attorney fee provision was to provide greater protection to people whose property is seized.” *Guillen v. Contreras*, 169 Wn. 2d 769, 777, 238 P.3d 1168, 1172 (2010). As modified, the statute provides in relevant part:

In any proceeding to forfeit property under this title, where the claimant substantially prevails, the claimant is entitled to reasonable attorneys' fees reasonably incurred by the claimant.

RCW 69.50.505(6).

RCW 69.50.505(6) has four requirements for reimbursement: 1) a forfeiture proceeding, where 2) the claimant substantially prevails, and in doing so 3) reasonably incurs attorney fees that 4) are reasonable. All four conditions are easily satisfied in this case.

- a. **There was a proceeding to forfeit property**

OPNET seized the 115 Freeman Lane property on October 9, 2009. The forfeiture statute provides that when real property is seized, “proceedings for forfeiture shall be deemed commenced by the seizure.” RCW 69.50.505(3). Thus, the forfeiture proceeding began on October 9, 2009, and continued until August 5,

2015, when it was dismissed. *CP 107*. Although the formal hearings in the civil case were continued while the parties litigated the issues through the criminal case, the parties agreed that work in the forfeiture proceeding would continue. *See CP 35, 42-44*.

**b. The Fagers substantially prevailed in the hearing**

A claimant “substantially prevails” when he or she recovers property that had been seized by law enforcement. *Guillen*, 169 Wn.2d at 780. OPNET did not challenge this finding on appeal.

**c. The Fagers reasonably incurred legal fees in defending against the forfeiture**

Judge Harper made a factual finding that “the Fagers reasonably incurred the requested attorney fees in defending against the forfeiture.” *CP 539*. The trial court considered all of the evidence submitted, and determined that the Fagers would not have spent over \$300,000 in attorney fees to avoid a misdemeanor that would not have impacted either of their livelihoods. The court reasonably concluded that the discovery and suppression motions were directed at the forfeiture proceeding and preventing loss of real property. This was a factual finding for which there was substantial evidence.

**d. The attorney fees in this case are reasonable**

OPNET did not challenge the reasonableness of the fees charged. *See RP 20-21*.

**2. The Court of Appeals applied a restrictive interpretation to a statute meant to be liberally construed in favor of claimants.**

The Court of Appeals did not engage in statutory analysis but summarily found that the trial court had erred. One can only assume that the appellate court accepted OPNET's argument that legal work filed in a criminal case cannot be considered work for the forfeiture proceeding. In other words, legal work can only serve one purpose.

Certainly the legislature could have drafted a statute that contains this limitation by adding the phrase "reasonable attorneys' fees reasonably incurred by the claimant *solely for the forfeiture*." But the legislature did not do so and the court "cannot add words or clauses to an unambiguous statute when the legislature has chosen not to include that language." *State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792 (2003). OPNET's argument for inferred restrictions fails.

Washington cases provide two governing principles for interpretation of forfeiture statutes. First, "forfeitures are not favored and such statutes are construed strictly against the seizing agency." *Snohomish Reg'l Drug Task Force v. Real Prop. Known as 20803 Poplar Way*, 150 Wn. App. 387, 392, 150 Wn. App. 387 (2009). Second, the legislature intended the attorney fee provision "to be read liberally." *Guillen v. Contreras*, 169 Wn.2d at 777. Public policy supports awarding attorney fees to claimants seeking the return of property wrongfully seized by

law enforcement. *Moen v. Spokane City Police*, 110 Wn. App. 714, 718-21, 42 P.3d 456 (2002).

*Guillen v. Contreras* is instructive for its discussion regarding the legislative intent and liberal interpretation of the attorney fee provision of the forfeiture statute. In *Guillen*, police seized a car and cash that appeared to be used in a drug transaction. The trial court ruled that the car and some of the money was not subject to forfeiture, but that most of the money was properly forfeited. *Guillen*, 169 Wn.2d at 771-72. Because the claimant only recovered approximately one quarter of the property seized, the trial court found the claimant was not the “substantially prevailing” party. *Id.* The court of appeals affirmed that ruling. *Guillen v. Contreras*, 147 Wn. App. 326, 195 P.3d 90 (2008).

This Court accepted review and reversed the Court of Appeals. In explaining its approach to this statutory language, the Supreme Court stated, “this court pays particular attention to the legislative purpose behind attorney fee provisions.” *Guillen*, 169 Wn.2d at 777. Looking at the purpose of the statute—to provide greater protection to people whose property is seized—the Court concluded that the legislature “intended this attorney fee provision to be read liberally.” *Id.* at 778. Analogizing to the liberal application of attorney fees for injured workers, the Court concluded that even a partial recovery of property triggers the attorney fees provision. *Id.*

This legislative intent is consistent with the trial court's ruling in the current case. The fight with OPNET over seized property nearly bankrupted the Fagers. *CP 168-69*. Only by incurring substantial attorney fees were the Fagers able to establish OPNET's reckless disregard for the truth in its investigation. The Fagers were fortunate they had the resources to continue their protracted battle with OPNET. However, even they could not have brought these motions without the knowledge that they would receive reimbursement from OPNET once the property was returned. This economic reality was addressed in *Guillen*:

Without an award of attorneys' fees, the family will probably have to forfeit all the cash recovered and sell the car to pay its attorneys fighting the civil forfeiture. If the purpose of the statute is to protect citizen's rights against wrongful seizure of their property, then granting attorney fees whenever claimants substantially prevail on some issue, or receive more than nominal relief, may be necessary to accomplish that statutory purpose.

*Guillen*, 169 Wn.2d at 778.

Under OPNET's tortured interpretation of the statute, the government can avoid responsibility for its actions by filing criminal charges. Without attorney fees, the Fagers' recovery of the unlawfully seized property would be a pyrrhic victory, as the Fagers would still be nearly \$300,000 out-of-pocket as a result of OPNET's illegal actions. This is inconsistent with the letter and spirit of the forfeiture statute. See *Brand v. Dept of L&I*, 139 Wn.2d 659, 667, 989 P.2d 1111

(1999) (“[I]t is important to evaluate the purpose of the specific attorney fee provision and to apply the statute in accordance with that purpose.”)

“A policy requiring liberal construction is a command that the coverage of an act’s provisions be liberally construed and that its exceptions be narrowly confined.” *Nucleonics, v. Washington Pub. Power Supply Sys*, 101 Wn.2d 24, 29, 677 P.2d 108, 110 (1984). OPNET’s attempt to narrowly construe the language of the attorney fee provision to exclude any legal work that served a dual purpose would defeat this tenet of liberal interpretation.

**3. The question of what types of attorney fees are permitted under RCW 69.50.505(6) is an important question that satisfies the requirements of RAP 13.4(b)(4)(1), (4).**

Both parties recognized the importance of this particular issue in their briefing. OPNET devoted 16 pages of its opening brief to this argument, while the Fagers dedicated 23 pages to it. The parties examined the rules of statutory construction, other attorney fee cases, and the similarities and differences between Washington and federal statutes. The Court of Appeals was provided with the opportunity to bring clarity to this issue, but only injected more uncertainty.

The Court of Appeals remanded the case and directed the trial court to “determine the number of hours reasonably expended by Steven Fager to prevail in the civil forfeiture proceeding multiplied by a reasonable hourly rate.” Slip Op. at 15. But this is precisely what the trial court did the first time. The Court of Appeals did not reference the trial court’s original calculations of hours and fees, or

point out any miscalculations. A future judge or attorney reading the decision would not necessarily know what type of fees are permitted for a claimant who has prevailed in a forfeiture proceeding. The Fagers filed a motion to clarify or reconsider its decision, but the Court denied the motion without comment.

The issue in this case is an extension of the work begun by this Court in *Guillen v. Contreras*. Our case presents issues of public interest, as it is typical for criminal charges to be filed alongside civil forfeitures. Confusion and unnecessary litigation over attorney fees will continue until there is a more definitive statement of the law. *See State v. Watson*, 155 Wn.2d 574, 577, 122 P.3d 903, 904 (2005) (acceptance of review RAP 13.4(b)(4) appropriate where a lower court decision “invites unnecessary litigation on that point and creates confusion generally.”) Further, as discussed above, the Court of Appeals ruling has the potential to chill challenges to wrongfully seized property. Review is appropriate under RAP 13.4(b)(4).

If allowed to stand, this opinion would also result in judicial inefficiency. OPNET argued, and the Court of Appeals apparently accepted, that the only way claimants could have recovered attorney fees for the suppression hearing is if it was filed and heard first in the civil matter. Not only does this put form before substance, but it results in judicial inefficiency as well. A suppression ruling made in a civil forfeiture hearing is not binding upon the criminal court. *See State v. Longo*, 185 Wn. App. 804, 343 P.3d 378 (2015). But a ruling in a criminal case is

binding upon the civil forfeiture proceeding. *Barlindal v. City of Bonney Lake*, 84 Wn. App. 135, 925 P.2d 1289 (1996). As the trial court noted, there is no doubt that had the Fagers brought the forfeiture action first, OPNET would have forced them to relitigate the suppression hearing in the criminal case because collateral estoppel would not have applied. *RP 57-58*. The judge recognized that it would have made no sense to try the civil forfeiture first. *RP 64*. For all these reasons, review is appropriate under RAP 13.4(b)(4).

Review is also appropriate under RAP 13.4(b)(1), as the narrow construction of the attorney fee provision stands in sharp contrast to the liberal construction in favor of claimants required in *Guillen*. OPNET's reasoning, which presumably the Court of Appeals accepted, is contrary to the policy considerations set forth in *Guillen*.

**4. The Court of Appeals misconstrued the requirements of RCW 69.50.505(5) and allowed OPNET to raise a procedural argument that had been waived below.**

The trial court awarded the requested attorney fees incurred by Tim Fager based on his financial interest in the property as part owner of DBVWC. *RP 67-68*. OPNET's counsel presented no argument to rebut Tim's ownership interest in the property.

On appeal, OPNET argued that Tim Fager is not a party to the forfeiture because he "failed to satisfy the statutory prerequisites of RCW 69.50.505." *Brief of App. at 39*. Specifically, OPNET argued that Tim had to file a claim of interest

in the property under RCW 69.50.505(5) in order to recover reimbursement of attorney fees. *Id.* OPNET also argued that Tim could not assert an interest through DBVWC, as the notice of intent to contest the forfeiture was from Steve Fager in his individual capacity only, not from DBVWC.

As an initial matter, this argument fails because by its express terms, RCW 69.50.505(5) only requires a claimant to give notice after he or she is served with a notice of forfeiture. Moreover, OPNET waived this procedural defect when it did not raise an objection in its written memorandum or at the hearing. The first mention of this issue was at a post-motion hearing for entry of the written findings, at which point there was no longer an opportunity for the Fagers to respond with additional evidence. Specifically, if there was a timely objection, Tim could have introduced evidence showing that he was relieved from the obligation to file a notice of intent because OPNET was aware of his ownership interest, yet failed to provide notice of seizure. Further, Steve could have introduced evidence that OPNET recognized that he was challenging the seizure both personally and through DBVWC.

OPNET was not surprised that Tim was a claimant, or they would have objected when he filed his motion for attorney fees. They did not. Instead, they went through his attorney fees motion with a fine tooth comb, looking for everything related to just the criminal charge. OPNET has known for at least two years about the likelihood of having to reimburse Steve and Tim for their attorney fees.

This is apparent from the previously discussed email from Mark Nichols dated January 14, 2013, in which he warned that OPNET faced potential liability for “the Fagers’ attorney fees.” CP 266.

Review is appropriate to resolve three issues. First, to clarify under what conditions a claimant must file notice per RCW 69.50.505(5) when the seizing agency fails to serve him with a notice of forfeiture. Second, to clarify whether an objection made after the close of evidence and after the court has issued a ruling is sufficient to preserve a procedural issue on appeal. And third, to determine whether a procedural defect in a claimant not filing a notice is waived when it not raised in a timely fashion. *See e.g., Utilities Dist. 1 of Grays Harbor Cty. v. Crea*, 88 Wn. App. 390, 395-96, 945 P.2d 722 (1997) (so long as a party has actual notice that it may be liable for attorney fees and an opportunity to settle the matter, saving the parties time and expense, a trial court’s award of attorney fees is not an abuse of discretion). These issues were addressed in Respondent’s Brief below (BoR 36-43), but not adequately addressed by the Court of Appeals in the current case. The issues relating to Tim Fager and the notice provision of RCW 69.50.505(5) all satisfy RAP 13.4(b)(1), (2) and (4).

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IV. CONCLUSION

This case raises important issues that need to be resolved by this Court.

The Fagers respectfully request that this Court grant this petition for review.

Respectfully submitted: September 18, 2017

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# Appendix 1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

THE OLYMPIC PENINSULA )  
NARCOTICS ENFORCEMENT TEAM, )  
BILL BENEDICT CLALLAM COUNTY )  
SHERIFF, CLALLAM COUNTY )  
SHERIFF'S DEPARTMENT and )  
CLALLAM COUNTY, )

Appellants, )

v. )

REAL PROPERTY KNOWN AS )  
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Respondents in rem, )

STEVEN L. FAGER, DBVWC, INC., a )  
Washington corporation and THE )  
LUCILLE M. BROWN LIVING TRUST, )

Interested Parties. )

No. 75635-4-1

DIVISION ONE

UNPUBLISHED OPINION

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STATE OF WASHINGTON  
2017 MAY 22 AM 10:00

SCHINDLER, J. — The Uniform Controlled Substances Act, chapter 69.50 RCW, allows seizure and forfeiture of real property the owner knows is being used or intended

to be used in the manufacture of controlled substances.<sup>1</sup> In a contested civil forfeiture proceeding, the law enforcement agency has the initial burden of proving probable cause to seize the property by a preponderance of the evidence. A property owner who substantially prevails is entitled to an award of reasonable attorney fees in the civil forfeiture proceeding.<sup>2</sup> The Olympic Peninsula Narcotics Enforcement Team (OPNET), Clallam County Sheriff Bill Benedict, the Clallam County Sheriff's Department, and Clallam County (collectively, Clallam County) appeal the findings of fact, conclusions of law, and order awarding Steven Fager and Timothy Fager \$295,185.64 in attorney fees. Because substantial evidence does not support finding Timothy Fager is a claimant in the civil forfeiture proceeding, he is not entitled to an award of attorney fees. But substantial evidence supports finding Steven Fager is entitled to an award of attorney fees reasonably incurred as the substantially prevailing claimant in the civil forfeiture. We reverse in part, affirm in part, and remand to determine the amount of reasonable attorney fees Steven Fager incurred in the civil forfeiture proceeding.

## FACTS

### Criminal Charges and Civil Forfeiture Action

In September 2009, OPNET detectives requested the court issue search warrants for utility records and a thermal-image search of property located at 115 Freeman Lane in Port Townsend, Jefferson County. The affidavit in support of the search warrants describes the strong smell of marijuana on several occasions by the detectives. On September 22, the court issued the search warrants. The utility records showed abnormal utility consumption. Thermal images showed heat activity consistent

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<sup>1</sup> RCW 69.50.505(1)(h).

<sup>2</sup> RCW 69.50.505(6).

No. 75635-4-1/3

with an indoor marijuana growing operation. On October 1, a court issued a warrant to search the property.

On October 9, 2009, the Jefferson County Prosecutor filed separate criminal charges against Steven Fager and Timothy Fager for manufacturing and possession with intent to deliver marijuana. A Clallam County special prosecutor represented the State. Jeffrey Steinborn represented Steven Fager and James Dixon represented Timothy Fager. The court consolidated the criminal cases.

Simultaneously on October 9, Clallam County filed a motion and declaration of probable cause to issue a warrant in a civil forfeiture proceeding to seize the property at 115 Freeman Lane. The court authorized issuance of the warrant to seize the property. The declaration in support of seizure and intended forfeiture states that on October 8, OPNET detectives executed a search warrant at 115 Freeman Lane and found "a large, sophisticated, indoor marijuana growing operation." The title search of the property showed Steven Fager, the Discovery Bay Village Wellness Collective Inc. (DBVWC), and the Lucille M. Brown Living Trust (Trust) had property interests in the property. The declaration describes the property and ownership of the two parcels. The declaration states, in pertinent part:

One of the parcels is believed to be owned by Steven L. Fager. The other is believed to be owned by the Discovery Bay Village Water Company, for which Steven L. Fager is both the president and the registered agent.

Clallam County filed a lis pendens against 115 Freeman Lane and served a notice of seizure and of civil forfeiture of the property on Steven Fager, DBVWC, and the Trust on October 9.

The October 9 summons and notice of the intended seizure and forfeiture states,  
in pertinent part:

THE STATE OF WASHINGTON TO:

STEVEN L. FAGER, DBWVC, Inc., a Washington corporation, and  
the LUCILLE M. BROWN LIVING TRUST

A lawsuit has been started against defendant real property in the above-entitled court by the Plaintiffs, the Olympic Peninsula Narcotics Enforcement Team, Bill Benedict Clallam County Sheriff, Clallam County Sheriff's Department and Clallam County. Plaintiff's claim is stated in the written Complaint for Forfeiture In Rem, a copy of which is attached to this Summons and Notice of Intended Seizure and Forfeiture.

NOTICE IS HEREBY GIVEN that the court has issued a Warrant of Arrest In Rem for the parcel of real property, together with all appurtenances and improvements thereon, known as

- 1) 115 Freeman Lane, Port Townsend, WA 98368, Junction City Lots 1 through 12 Inclusive, Block 35
- 2) 115 Freeman Lane, Port Townsend, WA 98368, Lot 2 of the Nelson Short Plat

....  
And pursuant to that warrant and upon the filing of the Complaint for Forfeiture In Rem in this cause, the Plaintiff's intend to seize the above-described property and through this action intend to forfeit all right, title and interest in the above-described real property to Plaintiffs in accordance with the procedures set forth in RCW 69.50.505.

In order to defend against this lawsuit, you must respond to the complaint by stating your claim in writing and by serving a copy upon the person signing this summons within ninety (90) days of the seizure or a default judgment may be entered and the property forfeited without notice. A default judgment is one where the plaintiff is entitled to what he asks for because you have not responded.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time. Any person or interested party claiming ownership or a right to possession of the above-described real property shall be afforded a hearing thereon if they notify Plaintiffs in writing of such claim within ninety (90) days of the seizure of the above-described real property. One method of serving a copy of your claim on the Plaintiff is to send it by certified mail with return receipt requested to:

Olympic Peninsula Narcotics Enforcement Team  
223 E. 4th  
Port Angeles, WA 98362

If Plaintiffs are not notified by means of a written claim to ownership or right to possession of the above-described real property by any person or interested party within ninety (90) days of the seizure, the property will be deemed forfeited to the Plaintiffs.

On November 13, 2009, Steven Fager filed a notice of claim of an ownership interest in the property. On January 26, 2010, the parties filed an agreed order of continuance of the civil forfeiture proceeding pending resolution of the criminal case. The court stayed the civil forfeiture proceeding.<sup>3</sup>

On August 11, 2010, Steinborn withdrew as the attorney for Steven Fager and Michael Haas and Samuel Ramirez entered a notice of appearance.

In December 2011, Steven Fager and Timothy Fager filed a motion under CrR 3.6 to suppress evidence seized as a result of the search warrants and a motion to dismiss the charges under CrR 8.3(b). During the nine-day pretrial hearing, the court heard testimony from several witnesses on a number of issues. On January 9, 2013, the court entered lengthy findings of fact and conclusions of law. The findings address the credibility of a confidential informant, items seized from the residence, the validity of the search warrants based on the smell of marijuana, the State's production of discovery, and the motion to dismiss under CrR 8.3(b).

The court concluded there was "mismanagement" of discovery but "this mismanagement does not rise to the level of requiring dismissal of charges." The court concluded statements that detectives made in the affidavits in support of issuance of the search warrants about the smell of marijuana had to be redacted.

[B]ased on OPNET's reckless disregard for the truth, all statements relating to the smell of marijuana must be redacted from the affidavit in support of the thermal image warrant and the affidavit in support of the search warrant for 115 Freeman Lane.

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<sup>3</sup> The unchallenged findings state the court stayed the civil forfeiture proceedings.

After redacting "the statements relating to the smell of marijuana," the court concluded there was no probable cause to issue the warrants, suppressed evidence obtained from the search, and dismissed the charges.

Clallam County appealed. State v. Fager, 185 Wn. App. 1050, 2015 WL 563081, at \*1. Clallam County challenged admission of the testimony of defense expert Dr. James Woodford on the smell of marijuana and argued the trial court erred in determining there was no probable cause to support issuance of the warrants.

We concluded Clallam County waived the right to challenge the admissibility of Dr. Woodford's testimony and his testimony supported finding "material misrepresentations regarding [OPNET's] ability to detect the marijuana odor." Fager, 2015 WL 563081, at \*5,\*6. Because the findings supported lack of probable cause and the order to suppress, we affirmed dismissal of the charges. Fager, 2015 WL 563081, at \*8.

On April 24, 2015, Haas and Ramirez withdrew and Dixon entered a notice of appearance on behalf of Steven Fager.

Voluntary Dismissal of Civil Forfeiture Action

On April 24, 2015, Steven Fager filed a motion for summary judgment dismissal of the civil forfeiture proceeding. Steven Fager argued collateral estoppel barred Clallam County from introducing evidence suppressed in the criminal case in the civil forfeiture proceeding. Steven Fager argued that absent evidence of a marijuana growing operation, Clallam County could not establish "a substantial nexus between the seized property and the production of marijuana." In support, Steven Fager submitted the CrR 3.6 and CrR 8.3(b) findings of fact and conclusions of law and order, the

decision in Fager, 2015 WL 563081, and his declaration. In his declaration, Steven

Fager states:

I am one of the owners of the property that is the subject of this forfeiture action. . . .

. . . The other owner of the 115 Freeman Lane property is the Discovery Bay Village Wellness Collective (DBVWC), a Washington Corporation. I am one of the owners of that corporation, as is my brother, Timothy Fager. I am the representative of DBVWC for purposes of this litigation.

After Steven Fager filed the motion for summary judgment, Clallam County released the lis pendens and filed a motion to voluntarily dismiss the civil forfeiture action under CR 41(a)(1)(B). Clallam County states that following the decision in Fager, 2015 WL 563081, it tried "to resolve and conclude pending forfeitures" and "no longer intend[s] to proceed with the forfeiture of the subject property."<sup>4</sup> The court granted the motion to dismiss the civil forfeiture.

Steven Fager and DBVWC, as "the owners" of the property in the civil forfeiture action, filed a motion for "reimbursement" of attorney fees totaling \$290,883.06 and reimbursement for the fees for two expert witnesses in the criminal case. The motion states, "Steven Fager brings this motion for attorney fees in his individual capacity as well as in his role as DBVWC's representative." The motion also notes, "Tim Fager is a partial owner in the DBVWC." In his declaration, Steven Fager asserts he and Timothy Fager are majority shareholders of DBVWC. The attorneys who represented Steven Fager and Timothy Fager in the criminal case, Steinborn, Hass, and Dixon, submitted declarations in support of the request for attorney fees.

Clallam County asserted that a claimant in the civil forfeiture proceeding is not entitled to "recoup the attorney fees that he incurred defending a criminal prosecution."

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<sup>4</sup> Clallam County attached a draft of a proposed settlement agreement.

No. 75635-4-1/8

Clallam County argued neither DBWVC nor Timothy Fager were claimants entitled to an award of attorney fees in the civil forfeiture proceeding.

The court entered extensive findings of fact and conclusions of law on the motion for attorney fees. The court concluded Steven Fager and Timothy Fager were entitled to an award of reasonable attorney fees as substantially prevailing claimants under RCW 69.50.505(6), "This Court finds . . . [t]he attorney fees related to the suppression motion are all compensable under RCW 69.50.505(6)." The court ordered Clallam County to pay Steven Fager and Timothy Fager \$293,185.64 in attorney fees as the prevailing claimants and an additional \$2,000.00 for attorney fees incurred in responding to objections to the proposed findings of fact and conclusions of law. Clallam County appeals.

#### ANALYSIS

##### Civil Forfeiture

The Uniform Controlled Substances Act (UCSA), chapter 69.50 RCW, allows the seizure and forfeiture of property the owner knows is being "used or intended to be used in the manufacture of controlled substances." RCW 69.50.050(1)(a), (h). An in rem forfeiture under RCW 69.50.505 is a civil proceeding. State v. Catlett, 133 Wn.2d 355, 366-67, 945 P.2d 700 (1997) (citing FINAL LEGISLATIVE REPORT, 51st Leg., at 119 (Wash. 1989) ("Seizure and forfeiture are civil processes and are independent of the outcome of any criminal charges that might be brought against the owner of the property.")).

A law enforcement agency is authorized to seize real property after issuance of a judicial writ based on probable cause. RCW 69.50.505(2); Tellevik v. Real Prop. Known as 31641 W. Rutherford St., Located in the City of Carnation, Wash., & All

No. 75635-4-1/9

Appurtenances & Improvements Thereon, 120 Wn.2d 68, 78, 838 P.2d 111 (1992). The seizing agency must also file and record a lis pendens on the property. RCW 69.50.505(2).

The statute requires notice of seizure and intent to forfeit the property to be served in writing on any individual having a known right or interest in the property.

RCW 69.50.505(3). RCW 69.50.505(3) states:

In the event of seizure pursuant to subsection (2) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9A RCW, or a certificate of title, shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

A person claiming ownership and contesting forfeiture in the seized real property must notify the agency in writing of the claim within 90 days. RCW 69.50.505(5). RCW 69.50.505(5) states that if a person notifies a seizing law enforcement agency in writing of the person's claim of ownership or right to possession of seized property, then the person "shall be afforded a reasonable opportunity to be heard as to the claim or right."

If a person does not notify the law enforcement agency in writing within 90 days, the property "shall be deemed forfeited." RCW 69.50.505(4). RCW 69.50.505(4) states:

If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession . . . within . . . ninety days in the case of real property, the item seized shall be deemed forfeited.

Timothy Fager

Clallam County contends the court erred in awarding Timothy Fager attorney fees as a claimant in the civil forfeiture proceeding. Clallam County asserts substantial evidence does not support finding Timothy Fager is a claimant entitled to an award of attorney fees in the civil forfeiture action. Steven Fager and Timothy Fager argue Clallam County waived the right to raise this issue for the first time on appeal. The record does not support their argument. The record shows Clallam County asserted Timothy Fager was not entitled to an award of attorney fees as a claimant in the civil forfeiture proceeding. For instance, Clallam County filed a written objection to the proposed order on the grounds that "substantial evidence does not support a finding that Timothy Fager has a 'legal' interest in the property."

We review whether substantial evidence supports the findings of fact and whether those findings, in turn, support the conclusions of law. Sunnyside Valley Irrig. Dist. v. Dickle, 149 Wn.2d 873, 879, 73 P.3d 369 (2003); Ridgeview Props. v. Starbuck, 96 Wn.2d 716, 719, 638 P.2d 1231 (1982). Substantial evidence is the quantum of evidence "sufficient to persuade a rational fair-minded person the premise is true." Sunnyside, 149 Wn.2d at 879.

No. 75635-4-1/11

The court did not enter a written finding that expressly addresses whether Timothy Fager was a claimant in the civil forfeiture proceeding. However, finding of fact 3 states Steven Fager and DBVWC filed a notice of claim and Timothy Fager is a shareholder in DBVWC.

Steve Fager and the Discovery Bay Village Wellness Collective (DBVWC) own this property and filed an objection to the forfeiture. Both Tim and Steve Fager are shareholders in DBVWC. The total value of the property seized was in excess of \$500,000.

Substantial evidence does not support the finding that DBVWC filed a notice of claim or that either DBVWC or Timothy Fager is a claimant in the civil forfeiture proceeding. The title search of the property showed Steven Fager and the Trust had a property interest in parcel A and DBVWC had a property interest in parcel B. The undisputed record establishes Clallam County properly served Steven Fager, DBVWC, and the Trust with notice of the intent to seize 115 Freeman Lane. The notice states:

In order to defend against this lawsuit, you must respond to the complaint by stating your claim in writing and by serving a copy upon the person signing this summons within ninety (90) days of the seizure.

Steven Fager argues Timothy Fager is a claimant because he is a "major shareholder" of DBVWC and DBVWC has a recorded interest in parcel B of 115 Freeman Lane. Steven Fager asserts he filed the notice of claim as the "appointed representative for DBVWC." But contrary to the assertion of Steven Fager that he was also acting as a representative of DBVWC, the notice of claim in the civil forfeiture proceeding is solely on behalf of Steven Fager. The notice of claim does not state Steven Fager was acting as a representative of DBVWC. The notice of claim states: "CLAIMANT STEVEN FAGER, through counsel, claims and [sic] ownership and/or

No. 75635-4-1/12

possessory interest" in 115 Freeman Lane. We also note neither DBVWC nor Timothy Fager ever filed a notice of claim.

Because the record establishes Steven Fager filed a notice of claim only in his individual capacity as an owner of the property and neither DBVWC nor Timothy Fager filed a notice of claim, the court erred in awarding attorney fees to Timothy Fager under RCW 69.50.505(6).

Award of Attorney Fees under RCW 69.50.505(6)

Clallam County contends the court erred in awarding Steven Fager attorney fees incurred in the criminal case under RCW 69.50.505(6) in the civil forfeiture proceeding. RCW 69.50.505(6) states:

In any proceeding to forfeit property under this title, where the claimant substantially prevails, the claimant is entitled to reasonable attorneys' fees reasonably incurred by the claimant.

We review questions of statutory interpretation de novo. Jametsky v. Olsen, 179 Wn.2d 756, 761, 317 P.3d 1003 (2014). Our objective is to ascertain and carry out the legislature's intent. Jametsky, 179 Wn.2d at 762.

In Brand v. Department of Labor & Industries, 139 Wn.2d 659, 667, 989 P.2d 1111 (1999), the court held, "[I]t is important to evaluate the purpose of the specific attorney fees provision and to apply the statute in accordance with that purpose." In Guillen v. Contreras, 169 Wn.2d 769, 777, 238 P.3d 1168 (2010), the court states, "This court pays particular attention to the legislative purpose behind attorney fee provisions." (Citing Brand, 139 Wn.2d at 667.)

In Guillen, the court held that the "purpose of the addition of the attorney fee provision was to provide greater protection to people whose property is seized" and "the

legislature intended this attorney fee provision to be read liberally." Guillen, 169 Wn.2d at 777-78. The court concluded:

If the purpose of the statute is to protect citizen's rights against wrongful seizure of their property, then granting attorney fees whenever claimants substantially prevail on some issue, or receive more than nominal relief, may be necessary to accomplish that statutory purpose.

Guillen, 169 Wn.2d at 778.

There is no dispute on appeal that Steven Fager is entitled to an award of reasonable attorney fees as a substantially prevailing claimant in the civil forfeiture proceeding. See Andersen v. Gold Seal Vineyards, Inc., 81 Wn.2d 863, 865, 505 P.2d 790 (1973) (as a general rule, where a plaintiff voluntarily dismisses, the defendant is the prevailing party).

Steven Fager argues that because the court suppressed the evidence seized for lack of probable cause and dismissed the charges in the criminal proceedings, Clallam County could not establish the property was subject to forfeiture in the civil forfeiture proceeding. We agree.

In a civil forfeiture action, the seizing agency has the initial burden to show probable cause and "establish, by a preponderance of the evidence, that the property is subject to forfeiture." RCW 69.50.505(5). Probable cause requires the existence of reasonable grounds for suspicion supported by circumstances sufficiently strong to warrant a person of ordinary caution in the belief that the property was used or intended to be used in violation of the UCSA. City of Walla Walla v. \$401,333.44, 164 Wn. App. 236, 245, 262 P.3d 1239 (2011).

It is well established that collateral estoppel prohibits the use of unlawfully obtained evidence in a civil forfeiture proceeding. Deeter v. Smith, 106 Wn.2d 376,

No. 75635-4-1/14

378-79, 721 P.2d 519 (1986) (unlawfully obtained evidence in a criminal case is inadmissible in a civil forfeiture proceeding); Barlindal v. City of Bonney Lake, 84 Wn. App. 135, 142, 925 P.2d 1289 (1996) (doctrine of collateral estoppel applies when issue decided in criminal case is identical to issue presented in civil forfeiture proceeding); City of Des Moines v. Pers. Prop. Identified as \$81,231 in U.S. Currency, 87 Wn. App. 689, 701, 943 P.2d 669 (1997) (conclusive determination of search and seizure in criminal case barred challenging the seizure in the civil forfeiture proceeding).

Steven Fager moved for summary judgment dismissal in the civil forfeiture on the grounds that absent the evidence suppressed in the criminal case, Clallam County could not establish probable cause. Clallam County dismissed the civil forfeiture proceeding under CR 41(a)(1)(B). As the substantially prevailing claimant, Steven Fager is entitled to an award of attorney fees reasonably incurred in the civil forfeiture proceeding.

Clallam County also challenges the reasonableness of the attorney fee award. An appellate court will uphold an attorney fee award unless it finds the trial court manifestly abused its discretion. Chuong Van Pham v. Seattle City Light, 159 Wn.2d 527, 538, 151 P.3d 976 (2007). A trial court abuses its discretion when it exercises discretion on untenable grounds or for untenable reasons. Pham, 159 Wn.2d at 538. A decision based "on an erroneous view of the law" constitutes an abuse of discretion. Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 339, 858 P.2d 1054 (1993).

The findings of fact and conclusions of law show the court erred in awarding attorney fees based on factors unrelated to the civil forfeiture proceeding. For example,

finding of fact 14 states:

The Court finds a number of reasons why the total amount of attorney fees is higher than average. One is the duration of the case, close to six years. Another is the fact intensive nature of the suppression motions. This Court notes that yet another reason for the greater expense is the way in which the State approached the criminal case. The Fagers were required to bring motions to obtain discovery, to interview officers, to obtain the return of property, and to obtain an adequate record on appeal after the State failed to order necessary transcripts. There had to be a fight over virtually everything in the case. This pattern continued after the appeal, when plaintiffs did not release the seized property until claimants filed a motion for summary judgment. This course of conduct is well documented in the court file, the declarations, and in the findings of Judge Verser.<sup>[5]</sup>

On remand, the court shall determine the number of hours reasonably expended by Steven Fager to prevail in the civil forfeiture proceeding multiplied by a reasonable hourly rate. Berryman v. Metcalf, 177 Wn. App. 644, 660, 312 P. 3d 745 (2013).

We reverse the order awarding attorney fees to Timothy Fager under RCW 69.50.505(6). We remand to determine the amount of reasonable attorney fees Steven Fager is entitled to under RCW 69.50.505(6). Consistent with the purpose of RCW 69.50.505(6), upon compliance with RAP 18.1, Steven Fager is entitled to an award of reasonable attorney fees on appeal.

WE CONCUR:

DeVolder, J.

Trickey, ACJ

Cox, J.

<sup>5</sup> Emphasis added.

# Appendix 2

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

THE OLYMPIC PENINSULA )  
NARCOTICS ENFORCEMENT TEAM, )  
BILL BENEDICT CLALLAM COUNTY )  
SHERIFF, CLALLAM COUNTY )  
SHERIFF'S DEPARTMENT and )  
CLALLAM COUNTY, )

Appellants, )

v. )

REAL PROPERTY KNOWN AS )  
1) JUNCTION CITY LOTS 1 )  
THROUGH 12 INCLUSIVE, BLOCK 35 )  
2) LOT 2 OF THE NELSON SHORT )  
PLAT LOCATED IN JEFFERSON )  
COUNTY, AND ALL )  
APPURTENANCES AND )  
IMPROVEMENTS THEREON, OR )  
PROCEEDS THEREFROM, )

Respondents in rem, )

STEVEN L. FAGER, DBVWC, INC., a )  
Washington corporation and THE )  
LUCILLE M. BROWN LIVING TRUST, )

Interested Parties. )

No. 75635-4-1

DIVISION ONE

ORDER DENYING MOTION  
FOR RECONSIDERATION

Steven Fager and Timothy Fager filed a motion for reconsideration of the opinion filed on May 22, 2017, and the appellants Olympic Peninsula Narcotics Enforcement Team, Clallam County Sheriff Bill Benedict, Clallam County Sheriff's Department, and

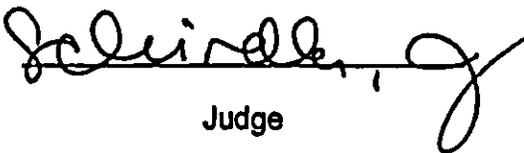
No. 75635-4-1/2

Clallam County filed an answer to the motion. A majority of the panel has determined that the motion should be denied. Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

Dated this 16<sup>th</sup> day of August, 2017.

FOR THE COURT:

  
Judge

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STATE OF WASHINGTON  
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