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No. 95575-1

**SUPREME COURT  
OF THE STATE OF WASHINGTON**

RANDY REYNOLDS & ASSOCIATES, INC.

v.

KASEY HARMON

RESPONSE TO BRIEF OF AMICUS TACOMA-PIERCE COUNTY  
HOUSING JUSTICE PROJECT

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**I. RCW 59.18.390(1) APPLIES TO ALL MOTIONS FOR STAY UNDER CHAPTER 59.18 RCW**

Throughout its brief, Amicus Tacoma-Pierce County Housing Justice Project (hereafter Tacoma-Pierce) argues that RCW 59.18.390(1) applies only after issuance of a writ of restitution at a show cause hearing when there will be a subsequent unlawful detainer trial, and not when a writ was granted in a default judgment.

RCW 59.18.390(1) provides that:

**the defendant** or person in possession of the premises **within three days after the service of the writ of restitution may execute to the plaintiff a bond** to be filed with and approved by the clerk of the court in such sum as may be fixed by the judge, with sufficient surety to be approved by the clerk of the court, conditioned that they will pay to the plaintiff such sum as the plaintiff may recover for the use and occupation of the premises, or any rent found due, together with all damages the plaintiff may sustain by reason of the defendant occupying or keeping possession of the premises...

(emphasis supplied).

When interpreting a statute, the court's "fundamental objective is to ascertain and carry out the Legislature's intent."

*Kovacs v. Department of Labor & Industries*, 186 Wn.2d 95, 98, 374

P.3d 669 (2016)(citing *Department of Ecology v. Campbell & Gwinn*,

*LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002)). If a statute is plain on its face, the court must “assume the Legislature meant exactly what it said and apply the statute as written.” *Town of Woodway v. Snohomish County*, 180 Wn.2d 165, 174, 322 P.3d 1219 (2014).

A court must not interpret a statute in a “way that renders any portion meaningless or superfluous.” *Jongeward v. BNSF Railroad Co.*, 174 Wn.2d 586, 278 P.3d 157 (2012)(citing *Svendsen v. Stock*, 143 Wn.2d 546, 555, 23 P.3d 455 (2001)). A court “may not read language into a statute that is not there.” *State v. Dennis*, Slip. Op. 95083-1 at page 5, 407 P.3d 1146 (2018). A court may not add words to or delete words from a statute. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003).

These principles were applied in *Dennis*. RCW 9.41.040 allows offenders to petition for restoration of firearm rights “after five or more consecutive years in the community without being convicted.” *Dennis*, Slip Op. at 3. *Dennis* argued that any conviction-free consecutive five years met the qualification. *Id.* at 4. The state argued that the five years must immediately precede the petition. *Id.* at 5. The Supreme Court opined that:

No language in the statute states the five-year period must immediately precede the petition. If the legislature wanted the five-year period to immediately precede a petition, it would have said so; we may not read language into a statute that is not there.

*Id.*

RCW 59.18.390(1) authorizes “the defendant or person in possession of the premises” to obtain a stay and prescribes the procedure to be followed by the trial court. The statute applies to each and every such person. The bond is required “if the tenant wishes to continue to occupy the premises.” *Housing Authority v Pleasant*, 126 Wn. App. 382, 390, 109 P.3d 422 (2005).

The legislature well knows how to authorize ex parte hearings without notice. For example, RCW 7.94.050 authorizes ex parte extreme risk protection orders. RCW 10.14.080 authorizes ex parte temporary antiharassment protection orders. RCW 26.50.070, a provision of the Domestic Violence Protection Act, authorizes ex parte temporary orders for protection. Had the legislature wished in RCW 59.18.390(1) to authorize ex parte hearings, it certainly knew how to do so.

Contrary to the argument of Tacoma-Pierce, RCW

59.18.390(1) applies whenever the defendant or any other person in possession of the premises seeks a stay.

**II. THE NOTICE AND BOND REQUIREMENTS IN RCW 59.18.390(1) ARE MANDATORY**

Tacoma-Pierce argues that RCW 59.18.390(1) is not mandatory on the basis that the statute is intended to protect the tenant (Brief of Tacoma-Pierce pages 2 - 3). It is true that the opportunity afforded by RCW 59.18.390(1) to obtain a stay protects the tenant. However, the statutory conditions precedent to a stay, that there be a bond that meets the standard set forth in the statute and that the landlord have notice of the hearing where the bond will be set protect the landlord. *Randy Reynolds & Associates, Inc., v. Harmon*, 1 Wn. App. 2d 239, 251 - 252, 404 P.3d 602 (2017).

A statute which imposes a duty upon a public officer that is intended to protect a private citizen against loss or injury to property is mandatory. *Niichel v. Lancaster*, 97 Wn.2d 620, 625, 647 P.2d 1021 (1982). Statutes that regulate court procedures and are intended to protect rights of litigants are mandatory. Singer, *Statutes and Statutory Construction*, Seventh Ed. Vol. 3 § 57:23 page 91 (2008).

Moreover, if a court may stay a writ outside RCW

59.18.390(1), the notice requirement and the criteria for the bond set forth in the statute are meaningless or superfluous. RCW 59.18.390(1) is mandatory. The Court of Appeals correctly concluded that RCW 59.18.390(1) applies. Reynolds, 1 Wn. App. 2d at 252.

**III. CR 60 ALLOWS A TENANT TO APPEAR EX PARTE ONLY FOR THE LIMITED PURPOSE OF OBTAINING AN ORDER TO SHOW CAUSE WHY THE JUDGMENT SHOULD NOT BE VACATED**

Tacoma-Pierce argues that “CR 60 provides superior courts with a specific notice procedure for motions to vacate default judgments, which does not require notice to the opposing party until after the court sets a show cause hearing on the motion to vacate” (Brief of Tacoma-Pierce page 2). Under CR 60(e), a party can appear ex parte and obtain an order to show cause why any judgment, whether default or not, should not be vacated. CR 60 does not authorize the court to grant substantive relief. By hearing the substantive motion for stay, the trial court engaged in ex parte communication beyond that which is allowed by CR 60.

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#### IV. RCW 59.18.390(1), NOT CR 62 APPLIES

Tacoma-Pierce argues that CR 62:

grants broad equitable authority for courts to stay proceedings to enforce judgments during the pendency of a motion to vacate, and does not require that the opposing party be given an opportunity to examine into the sufficiency of any required security prior to issuance of a stay.

(Brief of Tacoma-Pierce page 2).

CR 62(b) provides that:

In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion...

The rule conflicts with RCW 59.18.390(1), which requires a bond that is in an amount sufficient to:

pay to the plaintiff such sum as the plaintiff may recover for the use and occupation of the premises, or any rent found due, together with all damages the plaintiff may sustain by reason of the defendant occupying or keeping possession of the premises...

Special proceedings are proceedings created by statute that are unknown to the common law. *Putman v. Wenatchee Valley Medical Center, P.S.*, 166 Wn.2d 974, 980, 982, 216 P.3d 374 (2009). The legislature's power to enact statutes that govern court procedures is

broad regarding special proceedings and more limited regarding common law actions. *Id.* This standard protects the separation of powers by preserving the Supreme Court's ability to set court rules for common law actions, but allows the legislature to set rules for proceedings created by statute. *Id.*

Unlawful detainer actions are special proceedings. *Christensen*, 162 Wn.2d at 374 (citing *State ex rel. Smith v. Parker*, 12 Wn. 685, 688, 42 P.113 (1895)). Under CR 1 the civil rules govern all suits of a civil nature, except as stated in CR 81. *In re Detention of Young*, 163 Wn.2d 684, 689, 184 P.3d 1180 (2008). CR 81(a) provides that:

Except where inconsistent with rules or statutes applicable to special proceedings, these rules shall govern all civil proceedings.

Under CR 81(a) when a civil rule conflicts with a statute that applies to unlawful detainer actions, the statute applies. RCW 59.18.390(1) and CR 62(b) irreconcilably conflict. First, RCW 59.18.390(1) requires a bond. CR 62(b) authorizes the court to order a bond, but does not require that it do so. Second, RCW 59.18.390(1) prescribes a standard to be used by the court in setting the amount of

the bond. CR 62(b) provides only that the stay shall be “on such conditions for the security of the adverse party as are proper.” Under CR 81(a), RCW 59.18.390(1) not CR 62 applies.

Citing *Thompson v. Butler*, 4 Wn. App. 452, 454, 482 P.2d 791 (1971), *Kelly v. Powell*, 55 Wn. App. 143, 148, 776 P.2d 996 (1989) and *Canterwood Place L.P. v. Thande*, 106 Wn. App. 844, 846, 25 P.3d 495 (2001) Tacoma-Pierce argues that courts decline to apply CR 81(a) in unlawful detainer proceedings unless express inconsistencies exist between the plain language of the unlawful detainer statutes and the civil rules (Brief of Tacoma-Pierce pages 11 - 12).

As discussed above there are express inconsistencies between the plain language of RCW 59.18.390(1) and CR 62(b). Moreover, these cases do not support the argument of Tacoma-Pierce.

In *Thompson*, at issue was whether RCW 59.12.130 conflicted with CR 38 and 39. The Court of Appeals opined that:

We need not decide whether unlawful detainer is a special proceeding for purposes of CR 81, because there is nothing inconsistent in CR 38 and 39 with RCW 59.12.130. Those rules provide for trial by jury as does the statute.

*Thompson*, 4 Wn. App at 454. *Kelly* involved a request for award of double the amount of rent due under RCW 59.12.170. The Court of Appeals opined that “[u]nlawful detainer actions are special proceedings, but nothing in [Chapter 59.12 RCW] is inconsistent with CR 54 ( c ).” *Id.* at 148.

Although cited by Tacoma-Pierce, *Canterwood Place* shows that RCW 59.18.390 and not CR 62 applies. In *Canterwood Place*, the tenant claimed that the summons was defective on the basis that CR 6 excludes intermediate Saturdays, Sundays and legal holidays. The Court of Appeals reasoned that under CR 81(a):

[C]omplete rules in Chapter 59 RCW will generally prevail over the civil rules. However, Chapter 59 does not contain a complete rule regarding the calculation of days for the purpose of return of service deadlines. There is no method for computing time, nor is there a provision regarding whether the ‘days’ referred to in the statute are business days, court days, or calendar days.

On that basis, the Court of Appeals concluded that RCW 59.12.070 was not “complete” and therefore that both RCW 59.12.070 and CR 6 applied. *Id.* at 849.

Tacoma-Pierce does not claim that RCW 59.18.390(1) is not “complete” and points to no omission or ambiguity in the statute

which necessitates application of CR 62 to fill in any blanks in the statute.

Subsequent authority not cited by Tacoma-Pierce shows that RCW 59.18.390(1) and not CR 62 applies. In *Christensen v. Ellsworth*, 162 Wn.2d 365, 370, 173 P.3d 228 (2007), at issue was whether under CR 6(a) a notice to pay rent or vacate must exclude intermediate weekends and holidays. The court opined that:

[T]he application of CR 6(a) to the statutory notice period is contrary to the plain language of the statute. The legislature intended for the phrase ‘three days’ to convey its ordinary meaning of three calendar days. Three calendar days is inconsistent with CR 6(a), which excludes weekends and holidays from time periods of less than seven days. **Any expansion of the prescribed time interferes with the purpose of the unlawful detainer statute, which is to provide a landlord with a speedy, efficient procedure by which to obtain possession of the premises after a breach by the tenant.**

*Id.* at 375 - 376 (citing *MacRae v. Way*, 64 Wn.2d 544, 546, 392 P.2d 827 (1964)(emphasis supplied)).

The legislature intended for the phrase “the defendant, or person in possession of the premises” to convey the plain ordinary meaning of that phrase. A reading of RCW 59.18.390(1) in which a stay may be granted at a hearing held without notice to the landlord,

and without a bond that meets the standard set forth in the statute “interferes with the purpose of the unlawful detainer statute, which is to provide a landlord with a speedy, efficient procedure by which to obtain possession of the premises.” *Christensen*, 162 Wn.2d at 375 - 376 (citing *MacRae*, 64 Wn.2d at 546). RCW 59.18.390(1) applies, not CR 62.

#### **IV. CR 55 IS IRRELEVANT**

Tacoma-Pierce argues that CR 55(c)(1) provides that for good cause shown and upon such terms as the court deems just, the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with CR 60(b) (Brief of Tacoma-Pierce page 13). This argument was not raised by Tenant Harmon. The trial court did not set aside an order of default or the judgment. CR 55 does not apply.

#### **V. THE COURT OF APPEALS DECISION DOES NOT MAKE TIMELY REVIEW OF DEFAULT JUDGMENTS “IMPRACTICAL, IF NOT IMPOSSIBLE”**

Tacoma-Pierce argues that the Court of Appeals decision makes “timely review of unlawful detainer default judgments

impractical, if not impossible.” That claim is unfounded. First, the trial court can set a show cause hearing on a date that is before the writ can lawfully be executed under RCW 59.18.390(1). Second, the tenant can vacate the premises but continue to assert her right to possession. That is what the tenant in *Pleasant* did on appeal. *Pleasant*, 126 Wn. App. at 385 Third, the tenant can post a bond under RCW 59.18.390(1).

#### VI. A TRIAL WAS NOT REQUIRED

Citing RCW 59.18.380, Tacoma-Pierce argues that “[w]hether or not the court issues a writ of restitution at show cause hearing, the court is *required* to enter an order directing the matter to proceed to trial” (Brief of Tacoma-Pierce pages 7 - 8). Tacoma-Pierce proffers what it would have the Supreme Court believe is a quotation from RCW 59.18.380. Below is an accurate excerpt from RCW 59.18.380. The passages in bold are what is quoted in the brief of Tacoma-Pierce.

**At the time and place fixed for the hearing of plaintiff’s motion for a writ of restitution,** the defendant, or any person in possession or claiming possession of the property, may answer, orally or in writing, and assert any legal or equitable defense or set-off arising out of the tenancy. If the answer is oral

the substance thereof shall be endorsed on the complaint by the court. The court shall examine the parties and witnesses orally to ascertain the merits of the complaint and answer, and **if it shall appear that the plaintiff has the right to be restored to possession of the property, the court shall enter an order directing the issuance of a writ of restitution**, returnable ten days after its date, restoring to the plaintiff possession of the property and if it shall appear to the court that there is no substantial issue of material fact of the right of the plaintiff to be granted other relief as prayed for in the complaint and provided for in this chapter, the court may enter an order and judgment granting so much of such relief as may be sustained by the proof, and the court may grant such other relief as may be prayed for in the plaintiff's complaint and provided for in this chapter, then the court shall enter an order denying any relief sought by the plaintiff for which the court has determined that the plaintiff has no right as a matter of law; PROVIDED, That within three days after service of the writ of restitution issued prior to final judgment, the defendant, or person in possession of the property, may, in any action for the recovery of possession of the property for failure to pay rent, stay the execution of the writ pending final judgment by paying into court or to the plaintiff, as the court directs, all rent found to be due, and in addition by paying, on a monthly basis pending final judgment, an amount equal to the monthly rent called for by the lease or rental agreement at the time the complaint was filed: PROVIDED FURTHER, That before any writ shall issue prior to final judgment the plaintiff shall execute to the defendant and file in the court a bond in such sum as the court may order, with sufficient surety to be approved by the clerk, conditioned that the plaintiff will prosecute his or her action without delay, and will pay all costs that may

be adjudged to the defendant, and all damages which he or she may sustain by reason of the writ of restitution having been issued, should the same be wrongfully sued out. **The court shall also enter an order directing the parties to proceed to trial on the complaint and answer in the usual manner.**

**If it appears to the court that the plaintiff should not be restored to possession of the property, the court shall deny plaintiff's motion for a writ of restitution and enter an order directing the parties to proceed to trial within thirty days on the complaint and answer.**

Tacoma-Pierce does not accurately depict the statute.

Moreover, RCW 59.18.380 applies to hearings on motions for a writ of restitution, not when a default judgment is obtained. In any event, even if RCW 59.18.380 did apply, the statute requires entry of an order directing that the case proceed to trial only when a writ is issued “prior to final judgment” or “if it appears that the plaintiff should not be restored to possession of the property.”

#### **VII. THAT THE TENANT COULD HAVE ELECTED TO APPEAL IS IRRELEVANT**

Tacoma-Pierce argues that had tenant Harmon chosen to file an appeal, she could have obtained a stay of the writ of restitution via RCW 59.12.200. That is both true and irrelevant. Moreover, this

argument was not raised by Tenant Harmon.<sup>1</sup> The court may, but usually does not, reach arguments raised only by amicus. *State v. Duncan*, 185 Wn.2d 430, 374 P.3d 83 (2016).

Tenant Harmon did not elect to appeal. Had she done so, in order to obtain a stay of the writ, she would have been required to post a bond under RCW 59.12.200. Instead, she chose to proceed before the trial court. Having made that choice, in order to obtain a stay RCW 59.18.390(1) required that she post a bond that met the statutory standard.

**VIII. THAT THE LANDLORD OBTAINED THE WRIT EX PARTE IS NOT A BASIS FOR TENANT HARMON TO OBTAIN THE STAY EX PARTE**

Tacoma-Pierce “calls specific attention to the fact that Reynolds’ only entitlement to relief in this unlawful detainer was pursuant to entry of a default judgment and issuance of a writ of restitution pursuant to the default judgment (CP 20 - 22)” (Brief of

<sup>1</sup>

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In her supplemental brief at page 8, tenant Harmon discusses RCW 59.18.380 in a very limited way, stating “At the show cause hearing, the tenant has an opportunity to present any defenses he or she has and the trial court examines witnesses to determine the merits of the complaint and answer. RCW 59.18.380.” Tenant Harmon did not argue that under RCW 59.18.380, a trial was required.

Tacoma-Pierce pages 4 - 5). That is true but irrelevant. Unlike the stay obtained by tenant Harmon, the default judgment and writ were obtained by landlord Reynolds in full compliance with all requirements of statute and the court rules. That they were obtained ex parte was not a basis for tenant Harmon to obtain a stay ex parte.

### CONCLUSION

The Supreme Court should hold that under RCW 59.18.390(1), when a tenant seeks a stay of a writ, the landlord is entitled to notice of the hearing where the stay will be considered, and as a condition precedent to obtaining a stay, the tenant must post a bond which meets the statutory standard.

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Respectfully submitted,



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## Transmittal Information

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