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Appellate Court # 68908-8-I
Superior Court #11-2-34703-6 SEA

COURT OF APPEALS
DIVISION I
FOR WASHINGTON STATE

VASHON MAURY ISLAND PARK DIST.

Respondent,

vs.

RACHAEL GAY ROSSER

Appellant.

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OCT 9 2012
COURT OF APPEALS
DIVISION I
FOR WASHINGTON STATE

Appellant's Brief

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ORIGINAL

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I. Introduction

a. This case involves two vested properties: one is acreage granted to Vashon School in 1912; the second one is the property abutting the school property belonging to appellant Rachael Gay Rosser. The Rosser property was vested in 1944 when Mr. Rosser (Gay's Father and Mother) purchased the property as a homestead. Mr. Rosser passed away in 2007 at which time Gay Rosser was granted title to said property to care for her aging mother. Gay paid the remaining balance on the existing mortgage and has full control of the land in her name. She is still acting guardian for her mother.

b. Vashon School District is a school district under the direction of school districts common to King County that are not associated with a city such as Seattle, Renton, Kent, etc., school districts. The officials connected with Vashon School District claim the Vashon School District was/is an entity unto itself and had the authority to run their entity without compliance to the statutes controlling county schools and their operations. Examples are the remodeling of Vashon High School without advertisement to the general contractors of Washington, Oregon, Idaho requiring prevailing wages.

c. The so claimed "Vashon Maury Island Park Department" seems to be a claimed group of persons gathered unto themselves without being sanctioned with King County, the State of Washington, or the Federal Government. Their method of operation was to present a fraudulent position to groups of persons common to the Vashon School District with

young children promising a new ball field on an undisclosed parcel of property. The undisclosed property was the old Vashon Island School District property vested in 1912 when the first school was built. There was never a notice of intent filed or posted as required under chapter 36.70A.

d. The gravamen of this appeal is that the unsanctioned entity of Vashon/Maury Island Park Department schemed money from a few Vashon Island homeowners. A false document was drafted claiming Vashon School District had leased the above school property from Vashon School District. The said lease was to run for thirty years.

e. The scheme was started on or about 2006 by Wendy Braicks, who claimed/s to be executive director of Vashon/Maury Island Park Depart. The scheme was to make false documents with Vashon Island School District to lease the above said property without having to pay state taxes for the use of said property for a project that is only authorized under chapter 36.70A/B/C RCW.

f. The contractor selected to do the work for the park department invaded the appellant's property by removing fences, trees, and property

corner markers. The appellant then started protesting their invasion of private property to protect her investment; to which, started the scheme against her in this action filed with the King County Superior Court. Thus, the appellant filed this appeal in protest of the frivolous injunction granted to a party without jurisdiction over the subject matter of the action and jurisdiction over the person.

II. Assignments of Error

No. 1. Judge Middaugh refused to take notice of the temporary Injunction signed by the commissioner on a case assigned to a particular judge by order of the King County Presiding Judge's schedule. (CP 503-509)

No. 2. Judge Middaugh refused to comply with CR 56 that requires a Summary Judgment Order to be signed forthwith after the case is argued in court. (CP 696 & 403-490)

No. 3. There was no service of process on defendant for ex parte hearing dated 10/10/2011 on preliminary injunction in violation of the assigned case schedule to Judge Middaugh. (CP 44)

No. 4. November 1, 2011, Judge Middaugh continued the Temporary Restraining Order entered in Ex Parte on 10/10/2011 without making findings of fact of due process of law required to grant jurisdiction for a previously signed Ex Parte Order.

No. 5. The petitioner was not served the Summons and Complaint until October 9, 2011. The Summons granted 20 days to file a Notice of

Appearance not including the day of service. A Note for Motion Docket requires a seven-day notice to the opposite party before Motion maintains jurisdiction to be heard under the King County Local Rule 7. The hearing on November 1, 2011 failed to gain jurisdiction under the due process laws granted by the 14th Amendment of the U. S Constitution. (CP 397)

No. 6. Counsel for the plaintiff refused to comply with **DISCIPLINE OF CARMICK 146 Wn.2d 582 (June 2002) @ 595**, RPC 3.3(f), RPC 3.5(b), Title 42 § 1983, and the 14th Amendment of the U. S. Constitution of the United States.

Issues Pertaining to Assignments of Error

Item No. 1

a. Judge Middaugh was a Superior Court Judge assigned to the criminal calendar. She had a working knowledge of the legal statute requirements under CrRLJ 2.1(c) to find probable cause under sub (1), sub (2) and Sub (7). There were no findings of fact or conclusions of law made to any issue of due process of law required under the 14 Amendment of the U. S. Constitution as to whether or not the Superior Court had maintained jurisdiction over the cause of action or the parties to the action that must be controlled under chapter 36.70A, B, or C.

b. Any temporary injunction must be made by judge empowered to commit persons charged with offenses against the State, other than a judge pro tem. CrRLJ 2.1(c). Superior Court Commissioner granted the original Temporary Injunction.

No. 2

a. The Summary Judgment Order was not signed for thirty days after the hearing and argument. It contained no findings of fact or conclusions of law that suggested the King County Superior Court maintained any due process of law or statutory jurisdiction over the cause of action or the parties to the action.

No. 3

a. Service of process must be made on the defendant a minimum of seven (7) days before any hearing in Ex Parte or other court.

No. 4

a. A ruling without jurisdiction is void.

No. 5

a. There was no due process to the defendant to gain a hearing in front of an Ex Parte Commissioner.

No. 6

a. Counsel for the plaintiff violated CR 11 and extortion by compelling the defendant to attend a hearing in front of a court without jurisdiction over the party or the subject matter of the claim.

III. Statement Of The Case

This case involves an entity of persons claiming to control a non-commissioned park situated on Vashon Island. The entity has no ties with King County or Washington State or a tax base to perform any type contract to let for any type construction for any type park project associated with King County, the State of Washington or the Federal Government. In this instance, the entity obtained temporary funds from the general public on Vashon Island to construct an illegal park under chapter 36.70A on school property common to Vashon Island.

The school property abuts the appellant's property on two sides. The contractor working the illegal contract encroached upon the petitioners property with abandon and willful malice destroying numerous century old fir trees and disrupting wetlands and natural drainage to a lake causing water problems on the petitioner's property. The petitioner tried several times to stymie their advances with reports to the King County DDES who served four stop work orders that were ignored.

Wendy Braicks (claims to be the party responsible for all actions of this entity) served and filed an illegal complaint against the appellant claiming to own said property and quiet title (CP 4) to gain an anti-harassment injunction against the appellant. (CP 1-20).

Mrs. Braicks hired counsel Jaime D. Allen from Ogden Murphy Wallace PLLC to represent this action against the defendant/Appellant. The said action failed to maintain any jurisdiction either statutory or personal against the appellant to gain an injunction against any protest brought forth by the appellant.

The plaintiff, Vashon Maury Island Park District, gained a thirty-year injunction against appellant by undue process of law. (CP 697-701).

The defendant/appellant was dragged into an Ex Parte hearing on October 10, 2011 without process of any hearing date or time required under King County Local Rule 7 inclusive or CR 4. The appellant appeared and objected to that hearing but had no idea what the requirements might require for a hearing involving due process of law. There was no summons or complaint issued or served for that particular hearing. (CP 44) There was no police report issued or filed with the court to give rise to any criminal act claimed of by the plaintiff. Never the less, the plaintiff was granted a Temporary Restraining Order by an Ex Parte Commissioner in violation of CrRLJ 2.1(c).

This appeal is based on the Constitutional Violations associated with the Fifth and Fourteenth Amendment of the U.S. Constitution and Title 42 § 1983.

IV. SUMMARY OF ARGUMENT

Deleted by choice of the appellant.

V. ARGUMENT

The Court Must Maintain Jurisdiction For a Valid Order

Definition:

**Jurisdiction: BLACK'S LAW DICTIONARY SIXTH EDITION
DELUXE (1990)**

"A term of comprehensive import embracing every kind of judicial action. Federal Land Bank of Louisville Ky. v. Crombie, 258 Ky 383, 80 S.W.2d 39,40. It is the power to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the subject matter and the parties. Pinner v. Pinner, 33 N.C.App. 204, 234 S.E.2d 633."

This action involves a non-commissioned entity composed of commoners situate on Vashon and Maury Islands in King County. Their intent was to take donations from homeowners common to the islands and lease school property on Vashon Island without paying taxes on the new installation of a grass covered ball field.

Facts Common to Disposition of Plaintiff's Claim.

1. The school property is property of the State of Washington.

**METROPOLITAN PARK DIST. v. STATE 85 Wn.2d 821, 539 P.2d
854 (Sept. 1975) @ 825**

"Ultra vires acts are those done 'wholly without legal authorization or in direct violation of existing statutes. . .' *Finch v. Matthews*, 74 Wn.2d 161, 172, 443 P.2d 833 (1968). RCW 79.08.080 establishes legal authorization for the issuances of use deeds. It provides that when an application is made, the Governor shall appoint a 5-man citizen committee to investigate into the merits of the application in order that it can determine whether the deed should be granted.

There have been no pleadings filed or served on the appellant that attests

to any findings of fact that suggest there to be a grant by any State statute or other document that granted the plaintiffs right to use State controlled land under the control of land deeded for the use of any school for construction of any playground for a ball field.

Chapter 79.08 RCW was revised under chapters 36.70A, [1990 1st ex.s. c 17 § 1.], B, [1995 c 347 § 404.], and C [1995 c 347 § 702.]. **RCW**

36.70C.010

“The purpose of this chapter is to reform the process for judicial review of land use decisions made by local jurisdictions, by establishing uniform, expedited appeal procedures and uniform criteria for reviewing such decisions, in order to provide consistent, predictable, and timely review.”

RCW 36.70C.020(2)

“(2) ‘Land use decision’ means a formal plan enacted by a local jurisdiction’s body or officer with the highest level of authority to make the determination, including those with authority to hear appeals, on:

- (a) “An application for a permit or other governmental approval required by law before real property may be improved, developed, modified, sold, transferred, or used, but excluding applications for permits or approvals use, vacate, or transfer streets, parks, and similar types or public property; . . .
- (b) An interpretation or declaratory decision regarding the application to a specific property of zoning or other ordinances or rules regulating improvement, development, modification, maintenance, or use of real property
- (3) ‘Local jurisdiction’ means a county, city, or incorporated town.

RCW 36.70C.070: A land use petition must set forth:

- (1) The name and mailing address of the petitioner;
- (2) The name and mailing address of the petitioner's attorney,
- (3) The name and mailing address of the local jurisdiction whose land use decision is at issue;
- (4) Identification of the decision making body or officer, together with a duplicate copy of the decision, or, if not a written decision, a summary or brief description of it;
- (5) Identification of each person to be made a party under RCW 36.70C.040(2)(b) through (d);
- (6) Facts demonstrating that the petitioner has standing to seek judicial review under RCW 36.70C.060;
- (7) A separate and concise statement of each error alleged to have been committed;
- (8) A concise statement of facts upon which the petitioner relies to sustain the statement of error; and
- (9) A request for relief, specifying the type and extent of relief requested.

Irregularities in the complaint

The plaintiff, Vashon Maury Island Park District, served a complaint on the appellant on the night of October 9th 2011 claiming a hearing in Ex Parte for a temporary Restraining Order to be held on October 10, 2011 at 9:30AM. There was/is no Summons filed with the complaint or with the Proposed Order Granting Vashon Maury Island Park District's Motion for Temporary Restraining Order. Nevertheless, the defendant did appear. (CP 41-43) The restraining order allowed the defendant to continue using the Eastern Easement. (CP 42)

There was no summons filed with the court. Without a summons

demanding an answer to the claim or the Temporary Restraining Order, the court failed to obtain subject matter jurisdiction or personal jurisdiction over the defendant. **SULLIVAN v. PURVIS 90 Wn. App. 456, 966 P.2d 912 (Feb. 1998) @ 460**

“Jurisdiction relates to the power of the court, not to the rights of the parties as between each other. *Wesley v. Schneckloth*, 55 Wn.2d 90, 93, 236 P.2d 658 (1959) Jurisdiction cannot, therefore, be conferred by agreement or stipulation of the parties. *Id.* Any judgment entered without jurisdiction is void. *Id.* at 93-94, A party may waive personal jurisdiction, but not subject matter jurisdiction. *In re Puget Sound Pilots Ass'n*, 63 Wn.2d 142, 148, 385 P.2d 711 (1963)”

The claim was filed in the King County District Criminal Court. As such, the action must be processed under CrRLJ. CrRLJ 2.1(c;)

“(c) Citizen Complaints. Any person wishing to institute a criminal action alleging a misdemeanor or gross misdemeanor **shall appear before a judge empowered to commit persons charged with offenses against the state, other than a judge pro tem.**

The first hearing was in Ex Parte with commissioner Hollis Holman without the plaintiff, Wendy Braicks present. The plaintiff claims in their Motion for Temporary Restraining Order that Vashon Park Department is a municipal corporation of the state of Washington. (CP 35). Neither the Claim nor the Motion make any reference to having a vested right as a municipal corporation with the State of Washington.

There is no municipal stamp associated with this department. (CP 10). (CP 8) at item 8 of the illegal lease agreement is notification to the lessor, Vashon School District, that the park department is not a municipal corporation of State proprietary.

The lease was originally made to protect the existing school for teaching as maybe for a preschool or other type schooling. The only thing of concern was the gym that was structurally unsound. (CP 7) There is nothing in the lease that authorized the demolition of the school. The loss of the school would jeopardize the intent of the lease. Nevertheless, the school was destroyed in violation of the lease.

Jurisdiction of the Court

Before a park may be upgraded or installed, the project must comply with chapter 36.70A, B, or C. **LAKESIDE INDUS. v. THURSTON COUNTY 119 Wn. App. 886, 83 P.3d 433 (Jan. 2004) @ 893:**

There is no record of Vashon Maury Island Park District receiving any order from the Land Use Petition Act under chapter 36.70A through C to use school property for the installation of a grass park for ball fields.

@ 894:

"A party who seeks relief under LUPA carries the burden of the standards in RCW 36.70C.130(1) through (2)."

RCW 36.70A.030(14):

"'Recreational land' means land so designated under **RCW 36.70A.1701 and that, immediately prior to this designation, was designated as agricultural land of long-term commercial significance under RCW 36.70A.179. Recreational land must have playing fields and supporting facilities existing before July 4, 2004, for sports played on grass playing fields."

Due Process Requirements for Jurisdiction

Appellant moved for dismissal of this claim on October 20, 2011, (CP 500), December 14, 2011, (CP 499), and January 4, 2012, (CP 497, 501-509). The appellant, not having counsel because of indigence and being unfamiliar with court procedure, was oppressed by the plaintiff to her derogation by appellant's acts of undue process at the start of this scheme. This act was with malice and intent to harm and injure the appellant with intent to defraud the general public just because she was intent on preserving her right to control her personal property. The plaintiff never called the Sheriff to make a report of interference with their process in installing an illegal playground. This act violated the federal constitutional guaranties of equal protection and due process; therefore the

appellant seeks a damages remedy under Title 42 § 1983. Judge Laura Gene Middaugh of the King County Superior Court denied the appellant's continued motions to dismiss without making any findings of due process of law on the order of injunction or jurisdiction over the subject matter or the parties to the action. **LUTHERAN DAY CARE V. SNOHOMISH COUNTY** 119 Wn.2d 91, 829 P.2d 746 (May 1992) @ 117

Title 42 U.S.C. § 1983 reads:

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the injured in an action at law, suit in equity, or other proper proceeding for redress.”

The appellant further states that she is entitled to damages under the Consumer Protection Act, chapter 19.86 RCW. She has cited the five elements brought forth by the plaintiff and its attorney to gain an Order of Injunction without due process of law. **ROBINSON v. AVIS RENT A CAR SYS.** 106 Wn. App. 104, 22 P.3d 818 (May 2001) @ 113

“To establish a violation of the CPA, a private plaintiff must establish five elements: (1) an unfair or deceptive act or practice; (2) occurring within trade or business; (3) affecting the public interest; (4) injuring the plaintiff's business or property; and (5) a cause relation between the deceptive act and the resulting injury. As to (1) and (4), [a] casual link is required between the unfair

or deceptive acts and the injury suffered by plaintiff.” “A plaintiff establishes causation if he [or she] shows the trier of fact that he [or she] relied upon a misrepresentation of fact.” The causation requirement is met where the defendant “induced the plaintiff to act or refrain from acting. Injury and causation are established if the plaintiff loses money because of unlawful conduct.”

MISSION SPRINGS v. CITY OF SPOKANE 134 Wn.2d 947 (Apr. 1998) @ 964

“A cause of action for deception of property without due process is ripe immediately because the harm occurs at the time of the violation as does the cause of action. *See Zinermon v. Burch*, 494 U.S. 113, 125, 110 S. Ct. 975, 983, 108 L. Ed. 2d 100 (1990) (“[The constitutional violation actionable under § 1983 is complete when the wrongful action is taken.”); *Rutherford v. City of Berkley*, 780 F.2d 1444, 1447 (9th Cir. 1986) (substantive due process violated at the moment harm occurs); *Sintra, Inc. v. City of Seattle*, 119 Wn.2d 1, 21 n.11 829 P.2d 765 (1992)

The appellant did serve and file a “Note for Motion Docket”, a “Motion to Vacate the Order of Injunction” and a “Proposed Order of Dismissal and Damages” after the Notice of Appeal was served and filed. The hearing was held and denied without oral argument on July 6, 2012 with the statement that the plaintiff did not answer the motion. The case is set for trial on March 25, 2013.

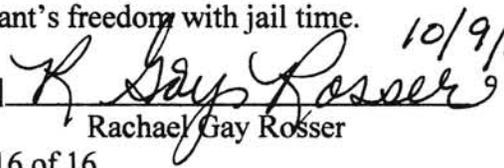
VI. CONCLUSION

The appellant asks this court to reverse the Order to Show Cause, the Order for Summary Judgment for violations of the above listed

violations of due process of law and assess a fine under CR 11 against Jamie D. Allen WSBA 35742 for violations of RPC 3.3(f) and 3.5(b) under **DISCIPLINE OF CARMICK**^{ibid 4}. The appellant is asking the fine against counsel to be substantial for refusing to comply with CR 4, 5, 11, 12(b)(6), and 56. Further that she be fined for acts of barratry for filing an action against an innocent homeowner for immoral purposes in a court without jurisdiction over the subject matter or the parties. Counsel's action is in reality grounds for disbarment. The fine against counsel should be enough to make the appellant whole. The Order of Injunction was amended to 30 years using a finding of fact under (CP 526) by claiming the Original Order for a temporary injunction was taken from the illegal hearing in the Ex Parte by Commissioner Hollis Holman.

The fine against Jaime Drozd Allen, WSBA #35742 must be a minimum of \$500,000.00. This amount is conservative to the damages caused to the property and the fact that if some party to the action made another false report to the court that the appellant was in breach of the injunction might jeopardize the appellant's freedom with jail time.

[Signed]


Rachael Gay Rosser

10/9/2012