

71441-4

71441-4

No. 714414-I

COURT OF APPEALS, DIVISION I,
FOR THE STATE OF WASHINGTON

NEIL DONNER and KIYOMI G. DONNER, husband and wife, and
the marital community thereof,

Appellants,

v.

JAMES M. BLUE, as Trustee for Northwest Neurological Surgery
Trust; JOHN W. RIEKE and GENE E. ROBERTSON, husband and
wife, and the marital community thereof; JAMES C. HAWKANSON
and JANE H. HAWKANSON, husband and wife, and the marital
community thereof; JOHN E. SPRING, single person; SHANE KIM
and DANA KIM, husband and wife, and the marital community
thereof,

Respondents.

BRIEF OF RESPONDENTS
JAMES C. and JANE H. HAWKANSON

Emmelyn M. Hart, WSBA #28820
Michael A. Jaeger, WSBA #23166
Lewis Brisbois Bisgaard & Smith LLP
2101 4th Ave., Suite 700
Seattle, WA 98121
(206) 436-2020
Attorneys for Respondents
James C. and Jane H. Hawkanson

FILED
APPELLATE DIVISION
NOV 10 10 2005

ORIGINAL

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. COUNTERSTATEMENT OF THE ISSUE.....	2
III. COUNTERSTATEMENT OF THE CASE.....	3
IV. SUMMARY OF THE ARGUMENT	4
V. ARGUMENT	5
A. Standard of Review.....	5
B. The Trial Court’s Decision to Grant Summary Judgment in the Hawkansons’ Favor Was Proper	6
1. The trial court properly dismissed the Donners’ negligence claim based on the absence of a duty owed.....	6
2. The trial court properly dismissed the Donners’ breach of easement claim where there was no evidence of a breach	15
3. The trial court did not abuse its discretion by denying the Donners’ request for injunctive relief where they failed to satisfy the criteria necessary for such relief.....	16
VI. CONCLUSION.....	18

CASES

<i>Atherton Condo. Apartment-Owners Ass'n Bd. v. Blume Dev. Co.</i> , 115 Wn.2d 506, 799 P.2d 250 (1990)	7, 8
<i>Bemethy v. Walt Failor's, Inc.</i> , 97 Wn.2d 929, 653 P.2d 280 (1982)	8
<i>Brown v. Voss</i> , 105 Wn.2d 366, 715 P.2d 514 (1986)	16
<i>Buck Mountain Owner's Ass'n v. Prestwich</i> , 174 Wn. App. 702, 308 P.3d 644 (2013)	15
<i>Bushy v. Weldon</i> , 30 Wn.2d 266, 191 P.2d 302 (1948)	15
<i>Cowiche Canyon Conservancy v. Bosley</i> , 118 Wn.2d 801, 828 P.2d 549 (1992)	5
<i>Folsom v. Burger King</i> , 135 Wn.2d 658, 958 P.2d 301 (1998)	8
<i>Forbus v. Knight</i> , 24 Wn.2d 297, 163 P.2d 822 (1945)	9, 10
<i>Gaines v. Pierce County</i> , 66 Wn. App. 715, 834 P.2d 631 (1992)	7
<i>Grande Ronde Lumber Co. v. Buchanan</i> , 41 Wn.2d 206, 248 P.2d 394 (1952)	16
<i>Hartley v. State</i> , 103 Wn.2d 768, 698 P.2d 77 (1985)	8
<i>Hughes v. King County</i> , 42 Wn. App. 776, 714 P.2d 316 (1986), <i>review denied</i> , 106 Wn.2d 1006 (1986)	10, 11, 12
<i>King v. Riveland</i> , 125 Wn.2d 500, 886 P.2d 160 (1994)	16
<i>LaPlante v. State</i> , 85 Wn.2d 154, 531 P.2d 299 (1975)	6
<i>Lewis v. Krussel</i> , 101 Wn. App. 178, 2 P.3d 486 (2000)	8
<i>Moran Junior College v. Standard Oil Co. of California</i> , 184 Wash. 543, 52 P.2d 342 (1935)	13
<i>Morner v. Union Pac. R. Co.</i> , 31 Wn.2d 282, 196 P.2d 744 (1948)	8
<i>Morris v. McNicol</i> , 83 Wn.2d 491, 519 P.2d 7 (1974)	6
<i>Pedroza v. Bryant</i> , 101 Wn.2d 226, 677 P.2d 166 (1984)	8

<i>Pepper v. J.J. Welcome Const. Co.</i> , 73 Wn. App. 523, 871 P.2d 601, <i>review denied</i> , 124 Wn.2d 1029 (1994)	7, 8
<i>Phillips v. King County</i> , 87 Wn. App. 468, 943 P.2d 306 (1997), <i>aff'd on other grounds</i> , 136 Wn.2d 946 (1998)	7
<i>Port of Seattle v. Int'l Longshoremen's Union</i> , 52 Wn.2d 317, 324 P.2d 1099 (1958)	17
<i>Postema v. P.C.H.B.</i> , 142 Wn.2d 68, 11 P.3d 726 (2000)	17
<i>Preston v. Duncan</i> , 55 Wn.2d 678, 349 P.2d 605 (1960)	6
<i>Price ex rel. Estate of Price v. City of Seattle</i> , 106 Wn. App. 647, 24 P.3d 1098 (2001)	8
<i>Right-Price Recreation, LLC v. Connells Prairie Cmty. Council</i> , 146 Wn.2d 370, 46 P.3d 789 (2002)	5
<i>Snyder v. State</i> , 19 Wn. App. 631, 577 P.2d 160 (1978)	7
<i>Wash. Fed'n of State Employees v. State</i> , 99 Wn.2d 878, 665 P.2d 1337 (1983)	17
<i>Wilson v. Steinbach</i> , 98 Wn.2d 434, 656 P.2d 1030 (1982)	5
STATUTORY AUTHORITIES	
RCW 7.40.020	17
RULES AND REGULATIONS	
CR 56(c)	6
RAP 14.2	19
ADDITIONAL AUTHORITIES	
<i>Merriam Webster's Collegiate Dictionary</i> (11th ed.2003)	16
RESTATEMENT (THIRD) OF PROP.: SERVITUDES § 4.13(1) (2014)	13
RESTATEMENT (THIRD) OF PROP.: SERVITUDES § 4.13(3) (2014) .	14, 16

I. INTRODUCTION

Sewer backups are an unfortunate, but common problem in U.S. cities and towns. Sanitary sewer overflows can be caused by a number of factors, including pipe breaks or cracks due to tree roots that grow into and obstruct the sewer line. They can be inconvenient, stressful, time consuming, and sometimes costly. Claims for damages to homes and property caused by sewer backups probably lead to more misunderstandings and hard feelings than any other single kind of claim.

This is the unlucky circumstance in which appellants Neil and Kiyomi Donner found themselves in 2012, when raw sewage flooded the basement of their Mercer Island home. The overflow occurred when the roots of a tree located on respondent Dr. James Blue's adjacent property¹ intruded into and damaged the sewer line servicing the Donners' property.

The Donners sued Blue and several uphill neighbors² with

¹ For ease of reading, the Hawkansons refer to Dr. Blue as the owner of the undeveloped parcel lying downhill and west of the Donners' property. In actuality, the parcel is owned by Northwest Neurological Surgery Trust ("trust"). CP 148-49. Dr. Blue serves as the Trustee for the trust. *Id.*

² Respondents John and Gene Robertson, James and Jane Hawkanson, John Spring, and Shane and Dana Kim all own and reside in single family homes located uphill and east of the Donners. The Hawkansons will refer to the respondents collectively, when the context so requires, as "the uphill neighbors."

whom they share use of the common sewer line seeking damages and injunctive relief. The trial court, the Honorable William Downing, summarily dismissed their lawsuit with prejudice. The Donners appeal.

No matter how much the Donners wish for a different result, one inescapable truth remains: the Hawkansons are not automatically liable for the Donners' resulting property damage and cleanup expenses just because the backup occurred. Negligence is not presumed by the fact that injury occurred. The Hawkansons are only liable if they breached a duty owed to the Donners and that breach caused the Donners injury. They did not; accordingly, the trial court did not err by summarily dismissing the Donners' lawsuit. The Court should affirm.

II. COUNTERSTATEMENT OF THE ISSUE

The Hawkansons acknowledge the Donners' assignment of error, but believe the issue associated with that error, as it pertains to them, is more appropriately formulated as follows:

Did the trial court err by summarily dismissing the homeowners' lawsuit for consequential damages against their neighbors where the uphill neighbors did not owe the homeowners' a duty to prevent the roots

All of the parties' properties are located on a fairly steep hill on Mercer Island that slopes upward from west to east. CP 61. A map showing the locations of the parties' respective properties is in the Appendix and can also be found at CP 175.

of a tree situated on land owned by the downhill neighbor from clogging the parties' shared sewer line and causing sewage to flood the homeowners' basement?

III. COUNTERSTATEMENT OF THE CASE

The Donners' introduction and statement of the case are accurate; however, several statements deserve comment.

First, the Donners do not allege any defect in the sewer line above their connection. They instead concede the blockage that damaged their property occurred in the shared sewer line where it runs under Blue's property. Br. of Appellants at 1, 3. In other words, the blockage occurred in a portion of the sewer line shared by the Donners *and* the uphill neighbors. The Donners also concede the sole cause of that blockage was the intrusion of tree roots from a tree growing on Blue's property into the shared sewer line. *Id.*; CP 53. Maintenance of the sewer line under the Hawkansons' property is not at issue in this lawsuit nor is any condition on their property. CP 53.

Second, the Donners repeatedly blame the uphill neighbors for the sewer blockage that occurred and claim the neighbors failed to maintain the shared sewer line and protect them from damage as required by two express easements. Br. of Appellants at 1, 4, 10. But in a classic case of the pot calling the kettle black, the Donners

fail to mention they have an express sewer line easement over Blue's property that makes them just as responsible for the maintenance and repair of the shared sewer line as their uphill neighbors. CP 246, 248. Yet they performed no maintenance or repair on that pipe until the blockage in 2012 forced them to do so.

IV. SUMMARY OF THE ARGUMENT

Where a plaintiff simultaneously alleges claims in negligence, nuisance, and trespass, this Court may confine its review solely to the negligence claim because it forms the basis of the other two claims. Here, the Donners allege a single negligence claim with multiple theories; accordingly, the Court need not consider the nuisance and trespass claims apart from their negligence claim.

The trial court properly dismissed the Donners' negligence claim where they failed to establish the Hawkansons owed them anything other than an equitable duty of contribution toward the costs they incurred in repairing and maintaining the shared sewer line.

The trial court properly dismissed the Donners' breach of easement claim. Where the Hawkansons fulfilled the limited equitable duty they owed to the Donners, they did not breach the

easement. It follows, then, that the Donners were not entitled to consequential damages.

Finally, the trial court did not abuse its discretion by denying the Donners' request for injunctive relief under the circumstances presented below. Injunctive relief was not warranted where the damaged sewer line had been repaired, the Hawkansons contributed to the cost of those repairs, and the Donners presented no evidence that the Hawkansons would not satisfy their equitable duty of contribution in the future.

V. ARGUMENT

A. Standard of Review

This Court reviews the grant of summary judgment *de novo*, engaging in the same inquiry as the trial court. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 811, 828 P.2d 549 (1992). *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). The Court must consider the facts and all reasonable inferences in the light most favorable to the nonmoving party. *Wilson*, 98 Wn.2d at 437; *Right-Price Recreation, LLC v. Connells Prairie Cmty. Council*, 146 Wn.2d 370, 381, 46 P.3d 789 (2002).

Summary judgment is proper when the record presents no genuine issues of material fact and the moving party is entitled to

judgment as a matter of law. CR 56(c). But a trial is only necessary if there is a genuine issue as to any material fact. *LaPlante v. State*, 85 Wn.2d 154, 158, 531 P.2d 299 (1975); *Morris v. McNicol*, 83 Wn.2d 491, 519 P.2d 7 (1974); *Preston v. Duncan*, 55 Wn.2d 678, 681, 349 P.2d 605 (1960).

B. The Trial Court's Decision to Grant Summary Judgment in the Hawkansons' Favor Was Proper³

The Donners contend the Hawkansons' owed them a duty of care; specifically, to maintain and repair the shared sewer line regardless of what caused the obstruction. Br. of Appellants at 9-10. According to the Donners, the Hawkansons' breach of that duty gave rise to a number of claims for consequential damages which the trial court improperly dismissed on summary judgment. *Id.* at 11-14. Not so. The trial court did not err by summarily dismissing the Donners' lawsuit.

1. The trial court properly dismissed the Donners' negligence claim based on the absence of a duty owed

The Donners simultaneously allege claims in negligence, nuisance, and trespass. Br. of Appellants at 11. The Court should confine its review to the Donners' negligence claim because it forms

³ The Hawkansons join in the legal arguments advanced by the other uphill neighbors in their respective response briefs and specifically incorporate those arguments by reference herein.

the basis for both their nuisance and their trespass claims. *Snyder v. State*, 19 Wn. App. 631, 635, 577 P.2d 160 (1978) (noting three separate legal theories based upon one set of facts constitute one “claim for relief”).

In Washington, a negligence claim presented in the garb of nuisance need not be considered apart from the negligence claim. *Atherton Condo. Apartment-Owners Ass'n Bd. v. Blume Dev. Co.*, 115 Wn.2d 506, 527, 799 P.2d 250 (1990). In those situations where the alleged nuisance is the result of the defendant's alleged negligent conduct, rules of negligence are applied. *Id.* at 527. As with nuisance, claims for trespass and negligence arising from a single set of facts are analyzed as a single negligence claim. *Pepper v. J.J. Welcome Const. Co.*, 73 Wn. App. 523, 546, 871 P.2d 601, *review denied*, 124 Wn.2d 1029 (1994), *overruled on other grounds by Phillips v. King County*, 87 Wn. App. 468, 943 P.2d 306 (1997), *aff'd on other grounds*, 136 Wn.2d 946 (1998); *Gaines v. Pierce County*, 66 Wn. App. 715, 719-20, 834 P.2d 631 (1992).

Here, the Donners ground their negligence, nuisance, and trespass claims on a single set of facts, *i.e.*, the Hawkansons' alleged inaction with regard to maintenance and repair of the

shared sewer line. Essentially, the Donners allege a single negligence claim with multiple theories; accordingly, the Court need not consider the nuisance and trespass claims apart from the negligence claim. *Atherton*, 115 Wn.2d at 528; *Pepper*, 736 Wn. App. at 546-47.

Negligence is not presumed by the fact that injury occurred, but must be affirmatively proved. *Morner v. Union Pac. R. Co.*, 31 Wn.2d 282, 291, 196 P.2d 744 (1948). The elements of negligence are duty, breach, causation, and injury. *See, e.g., Hartley v. State*, 103 Wn.2d 768, 777, 698 P.2d 77 (1985). The primary issue here is duty. *Pedroza v. Bryant*, 101 Wn.2d 226, 228, 677 P.2d 166 (1984); *Bemethy v. Walt Failor's, Inc.*, 97 Wn.2d 929, 933, 653 P.2d 280 (1982). If there is no duty, then the Donners have no claim against the Hawkansons as a matter of law and summary judgment was appropriate. *See Folsom v. Burger King*, 135 Wn.2d 658, 671, 958 P.2d 301 (1998).

A property owner generally is under no affirmative duty to take corrective action for the protection of those who own adjacent land. *Lewis v. Kruszel*, 101 Wn. App. 178, 185, 2 P.3d 486 (2000). *See also, Price ex rel. Estate of Price v. City of Seattle*, 106 Wn. App. 647, 654-56, 24 P.3d 1098 (2001) (holding liability of a

property owner, if any, is predicated on conditions created on the owner's land arising from the owner's actions, of which he knew or should have known). A property owner likewise has no duty to prevent damage to another property when the damage is caused by a condition on a third person's property. *Forbus v. Knight*, 24 Wn.2d 297, 313, 163 P.2d 822 (1945). Rather, it is the duty of the owner of the offending agency to restrain its encroachment upon the property of another. *Id.*

In *Forbus*, the roots of a tree on Knight's property invaded Forbus's property and periodically clogged Forbus's sewer pipe line, causing sewage to backup into the basement of her home. Forbus brought an action to recover damages for the cost of repeatedly cleaning and repairing her line. The trial court dismissed the action with prejudice because it was unable to conclude that Knight's tree was the source of the problem. *Id.* at 303-304. The trial court stated that the fault lay entirely with Forbus because she had failed to cement the joints of her sewer and that such failure was the sole proximate cause of the roots entering the pipe. *Id.* at 305. The Supreme Court reversed on procedural grounds and ordered a new trial, but indicated the trial court was wrong on the merits as well:

It is not the law that the owner of premises is to be charged with negligence if he fails to take steps to make his property secure against invasion or injury by an adjoining landowner. *It is the duty of the one who is the owner of the offending agency to restrain its encroachment upon the property of another, not the duty of the victim to defend or protect himself against such encroachment and its consequent injury.*

Id. at 313 (emphasis added).

Here, the Donners concede the sole cause of their injury and damages was the intrusion of tree roots on *Blue's* property into the shared sewer line where it ran under *Blue's* property. Br. of Appellants at 1, 3; CP 53. The Hawkansons clearly do not own or control that offending agency. Under *Forbus*, they had no duty to protect the Donners from the damage caused by the tree roots originating on *Blue's* property. But even if they did, which the Hawkansons do not concede, the Donners did not sustain their burden of showing that any action by the Hawkansons' contributed to the sewer blockage. *See, e.g., Hughes v. King County*, 42 Wn. App. 776, 714 P.2d 316 (1986), *review denied*, 106 Wn.2d 1006 (1986) (reversing judgment against county where landowners failed to sustain burden of showing intentional or negligent action by county which caused flooding).

In *Hughes*, a storm sewer maintained and operated by King

County on the County's easement in a parking lot overflowed and flooded a neighboring auto showroom and lot. The damage occurred during a "75-year storm" that spanned two days. *Id.* at 778. The owners of the auto lot sued the County seeking compensatory damages. After a bench trial, the trial court found that a bottleneck in a private storm sewer located downstream from the owners' property caused the County's sewer to backup and overflow. Nevertheless, the trial court concluded that the flooding constituted trespass and that the County had failed to sustain its burden to show that the flooding was not the result of its own actions. *Id.* at 779. The County appealed the trial court's determination of liability.

This Court reversed, holding there was no evidence the County contributed in any way to the flooding that damaged the auto lot:

Negligence could have arisen at several stages, including the design, construction, and maintenance of the drainage system. No finding was made that the County's design, construction, or maintenance of the system's pipes upstream and through appellants' property were deficient in any manner. Although the trial court noted that the County had not inspected or maintained the pipe running through appellants' property since 1969, no evidence suggests that failure to inspect this portion of the system in any way caused the flooding.

Id. at 780-81. Reversal was required because the owners of the auto lot had failed to show that an intentional or negligent action by the County caused the flooding or that the County was negligent in maintaining the system. *Id.* at 782.

Here, as in *Hughes*, there was no evidence that any intentional or negligent act by the Hawkansons caused the Donners' basement to flood with sewage or that the Hawkansons were negligent in maintaining the shared sewer line. The Hawkansons had no control over the trees growing on *Blue's* property. That the Donners' expert claimed the root intrusion could have been detected and prevented through routine inspection is not enough to establish the required causal connection. CP 159. He offered no opinion characterizing proper maintenance nor claimed that any uphill neighbor failed to maintain the shared sewer line.

The Donners rightly conceded below that their allegations centered on the uphill neighbors' alleged failure to maintain the shared sewer line rather than on an alleged failure to inspect. RP at 39. None of the uphill neighbors had actual or constructive notice the sewer line was in a defective condition until the sewer backup in 2012. CP 61, 75, 80, 135, 137. They had the right to assume, in the absence of such notice, that the shared sewer line

was in proper working order. *See Moran Junior College v. Standard Oil Co. of California*, 184 Wash. 543, 552, 52 P.2d 342 (1935).

The Donners nevertheless argue the Hawkansons had an equitable duty to maintain and repair the common sewer line as servitude beneficiaries of the 1963 utility easement over the Donners' property. Br. of Appellants at 9. While the Donners correctly note that easement allocates no responsibility for maintenance or repairs, they misinterpret the effect of that omission. Br. of Appellants at 9, 10. Equity did not require the Hawkansons to do anything more than contribute to the maintenance and repair costs associated with the shared sewer line, which they did.

In the absence of an agreement, the servitude beneficiary has a duty to repair and maintain those portions of the servient estate as may be necessary to prevent unreasonable interference with the servient estate. RESTATEMENT (THIRD) OF PROP.: SERVITUDES § 4.13(1) (2014) ("RESTATEMENT"). But the affirmative duty to make repairs extends only to portions of the servient estate that are under the beneficiary's control. *Id.*, cmt. b.

Here, the Donners confuse themselves with Blue and

assume they are the servient estate to whom the Hawkansons owed a duty. Br. of Appellants at 10. In fact, they are both a dominant estate and a servient estate. The Donners are servitude beneficiaries by virtue of their express sewer line easement over Blue's property. CP 248. They are also holders of a servient estate benefitting the Hawkansons by virtue of the easement that traverses their property. As a consequence, they are both benefitted and burdened by the sewer easement. Given that the blockage occurred on Blue's servient property rather than on the Donners' servient property, any equitable duty to make repairs would necessarily be owed to Blue rather than to the Donners.

To the extent the Hawkansons owed *any* equitable duty to the Donners, that duty was limited. Joint use by the servient owner and the servitude beneficiary of the servient estate creates an obligation to share costs:

Joint use by the servient owner and the servitude beneficiary of improvements used in enjoyment of an easement or profit, or of the servient estate for the purpose authorized by the easement or profit, gives rise to an obligation to contribute jointly to the costs reasonably incurred for repair and maintenance of the portion of the servient estate or improvements used in common.

RESTATEMENT § 4.13(3) (emphasis added). The Hawkansons' use of a sewer line admittedly shared with the Donners and the other

uphill neighbors thus did not create any duty other than a duty to share in the costs of maintenance and repair. *Buck Mountain Owner's Ass'n v. Prestwich*, 174 Wn. App. 702, 308 P.3d 644 (2013). *See also, Bushy v. Weldon*, 30 Wn.2d 266, 268, 191 P.2d 302 (1948) (affirming trial court's conclusion that owners of adjacent parcels, who each had an easement over a common driveway, were required to split maintenance costs for the driveway equally). The Hawkansons fulfilled that duty. CP 251-53.

Where the Hawkansons fulfilled their limited duty to the Donners, the trial court did not err by dismissing the Donners' negligence claim.

2. **The trial court properly dismissed the Donners' breach of easement claim where there was no evidence of a breach**

The Donners next allege they asserted a valid breach of easement claim. Br. of Appellants at 12. But they again fail to explain how the Hawkansons breached the easement agreement. *Id.* That they claim a breach occurred does not make it so.

As the Donners concede, the easement allocates no responsibility for maintenance or repairs. *Id.* at 5. Accordingly, the only duty the Hawkansons owed to the Donners was an equitable one - to share the cost of maintaining and repairing the shared

sewer line. RESTATEMENT § 4.13(3). They fulfilled that duty. It follows, then, that the Donners were not entitled to consequential damages. The trial court did not err by dismissing this claim.

3. The trial court did not abuse its discretion by denying the Donners' request for injunctive relief where they failed to satisfy the criteria necessary for such relief

Finally, the Donners claim the trial court erred by failing to grant injunctive relief. Br. of Appellants at 15. This argument is nothing but the Donners' arbitrary *ipse dixit*.⁴ The trial court properly denied injunctive relief because the Donners failed to establish a clear legal or equitable right and a well-grounded fear of immediate invasion of that right entitling them to such relief.

The granting or withholding of an injunction is addressed to the sound discretion of the trial court to be exercised according to the circumstances of the particular case. *Grande Ronde Lumber Co. v. Buchanan*, 41 Wn.2d 206, 248 P.2d 394 (1952). For purposes of granting or denying injunctive relief, the trial court's decision cannot be based upon untenable grounds, manifestly unreasonable, or arbitrary. *King v. Riveland*, 125 Wn.2d 500, 515, 886 P.2d 160 (1994). *See also, Brown v. Voss*, 105 Wn.2d 366, 372, 715 P.2d 514 (1986) (noting the fundamental principle that a

⁴ "*ipse dixit*" means an assertion made but not proved. *Merriam Webster's Collegiate Dictionary* 660 (11th ed.2003).

trial court is vested with broad discretionary power to shape and fashion injunctive relief to fit the particular facts, circumstances, and equities of the case before it). Injunctive relief may be available to a party under the circumstances set forth in the injunction statute, RCW 7.40.020. The three criteria necessary for injunctive relief under the statute are: (1) a clear legal or equitable right; (2) a well-grounded fear of immediate invasion of that right; and (3) that the acts complained of are either resulting in or will result in actual and substantial injury. *See, e.g., Port of Seattle v. Int'l Longshoremen's Union*, 52 Wn.2d 317, 319, 324 P.2d 1099 (1958).

Because all three criteria must be satisfied to warrant any relief, the failure to establish one or more of the criteria generally dictates that the relief requested be denied. *Wash. Fed'n of State Employees v. State*, 99 Wn.2d 878, 888, 665 P.2d 1337 (1983).

Here, the Donners fail to adequately brief or argue their claim that injunctive relief was improperly denied. They cite to a single, inapposite case dealing with injunctive relief and do not attempt to analyze the relevant factors. Br. of Appellants at 15. Passing treatment of an issue or lack of reasoned argument is insufficient to warrant the Court's consideration. *Postema v. P.C.H.B.*, 142 Wn.2d 68, 123-24, 11 P.3d 726 (2000).

Furthermore, that the Hawkansons insist they owe no duty to the Donners does not mean that the Hawkansons do not intend to contribute toward the cost of maintaining or repairing the shared sewer line in the future. As counsel for Spring succinctly stated during oral argument on the motions, “none of the uphill [neighbors] are contesting the duty to keep the sewer line running. And since it’s been damaged, we want it to run properly.” RP at 39. In keeping with that sentiment, the Hawkansons agreed to pay their proportionate share of the costs incurred by the Donners to repair the sewer line.

Injunctive relief was not warranted where the damaged sewer line had been repaired and the Hawkansons contributed to the cost of those repairs. Further, the Donners presented no evidence that the Hawkansons would not satisfy their equitable duty of contribution in the future. The trial court thus did not abuse its discretion by refusing to grant injunctive relief.

VI. CONCLUSION

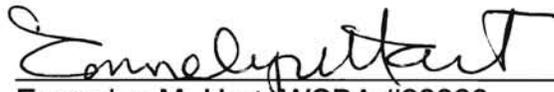
There is no dispute that roots from a tree on Blue’s property clogged the parties’ shared sewer line, which caused sewage to flood the Donners’ basement and damage their property and personal belongings. The dispositive issue is whether the

Hawkansons had a duty to defend or protect the Donners from that encroachment. They did not. They had only an equitable duty to contribute to the costs incurred in maintaining and repairing the shared sewer line. They fulfilled that obligation.

The trial court properly granted summary judgment in favor of the Hawkansons. This Court should affirm and award costs on appeal to the Hawkansons. RAP 14.2

DATED this 9th day of July, 2014.

Respectfully submitted,



Emmelyn M. Hart, WSBA #28820

Michael A. Jaeger, WSBA #23166

Lewis Brisbois Bisgaard & Smith LLP

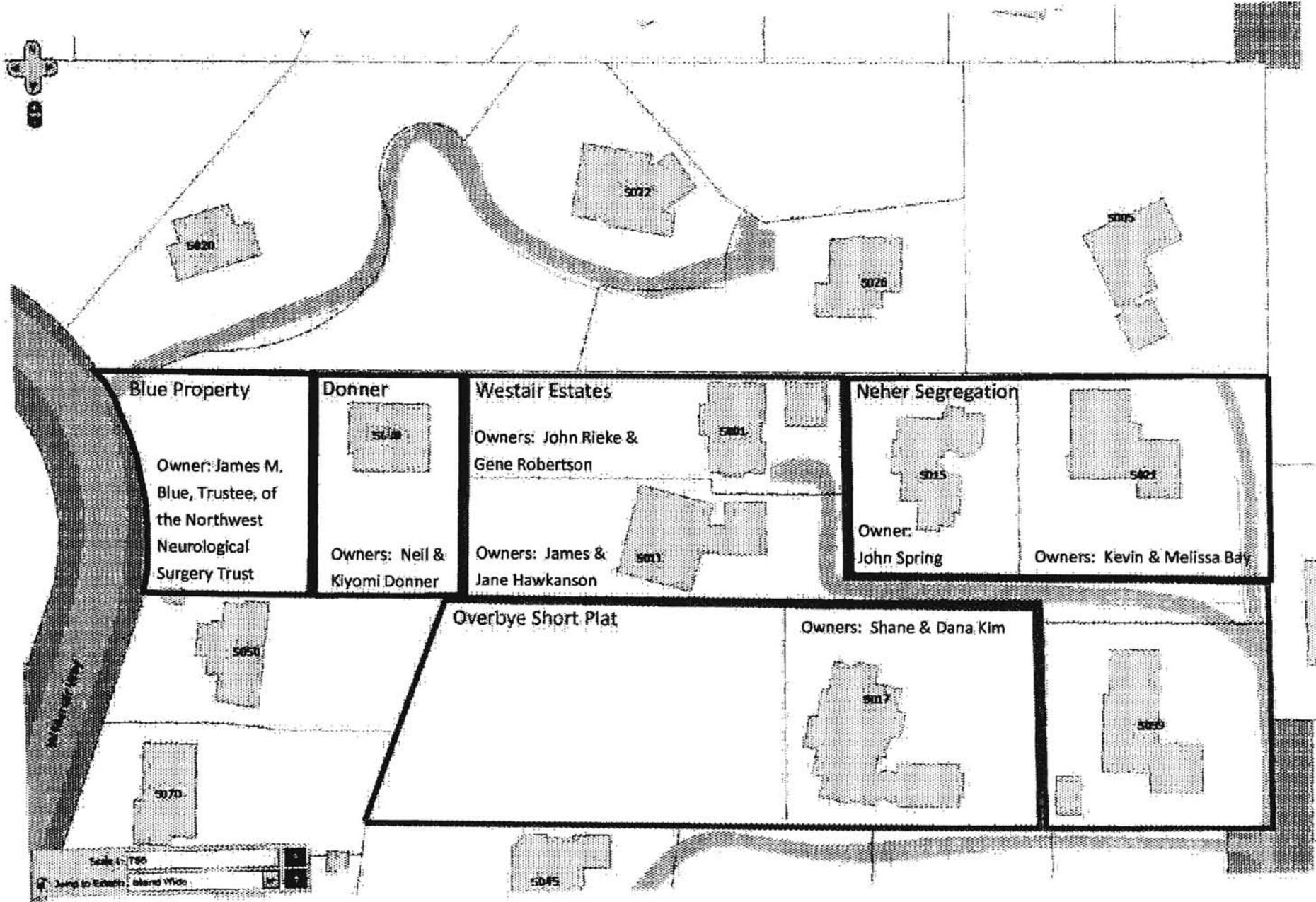
2101 4th Ave., Suite 700

Seattle, WA 98121

(206) 436-2020

Attorneys for Respondents Hawkanson

APPENDIX



DECLARATION OF SERVICE

The undersigned declares and states that on the date listed below I deposited with the U.S. Postal Service, postage prepaid, a true and accurate copy of the **Brief of Respondents Hawkanson** for service on the following parties:

Michael Daudt
Karen A. Willie
Terrel, Marshall, Daudt & Willie
936 N. 34th St., Suite 400
Seattle, WA 98103-8869

William E. Gibbs
Bergman & Gibbs, LLP
14205 SE 36th Street, Suite 100
Bellevue, WA 98006

Thomas A. Heller
Heller Wiegenstein, PLLC
144 Railroad, Suite 210
Edmonds, WA 98020

Pamela A. Okano
Marilee C. Erickson
Reed McClure
1215 Fourth Avenue, Suite 1700
Seattle, WA 98161

Gary A. Trabolsi
Gardner Trabolsi & Associates
2200 Sixth Avenue, Suite 600
Seattle, WA 98121

Gordon G. Hauschild
Wood Smith Henning & Berman
520 Pike Street, Suite 1205
Seattle, WA 98101

Original and one copy sent via messenger for filing with:
Clerk's Office
Court of Appeals, Division I
600 University St.
Seattle, WA 98101-1176

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed in Seattle, Washington this 9th day of July, 2014.


Vicki Milbrad


2014 JUL 10 11:25:56
CLERK OF APPEALS
COURT OF APPEALS
600 UNIVERSITY ST
SEATTLE WA 98101