

73828-3

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No. 738283-1

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**COURT OF APPEALS, DIVISION 1  
OF THE STATE OF WASHINGTON**

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**Eric Rootvik**

**Appellant**

**V.**

**Department of labor and industries**

**Respondent**

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**Reply to respondent's brief**

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2015 OCT 21 AM 11:11  
COURT OF APPEALS DIVISION 1  
STATE OF WASHINGTON

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Congratulations to the department for putting up some case law for the first time. I was beginning to think I was going to be the only one.

Unfortunately, most of it is off point and would appear to be misdirection. Smoke and mirrors. But I suppose that is the point.

I guess when a guy with only high school diploma puts up a fight and you have no case you need to pound on the table. But I did find your brief helpful.

The department has brought attention to some confusion and other issues which I will attempt to rectify. Unfortunately, as before I cannot do it in the fashion everyone would prefer. So I apologize again for the hardship. Despite the obvious errors and tedious writing, I would appreciate it if the court would read the whole document. I do make good arguments.

So what I am going to do here is some housekeeping, rather than go tit for tat, before I get into the meet of the issues.

- 1 The department has complained that I have failed to assign error or only referred to the superior court. I may have been confusing but I actually have been complaining about both the superior court and the ALJ decision. I think I did that but I will attempt to clarify my position. I assign error to the ALJ final order 6.4, 6.12, 6.13, 6.14 and will clarify my argument a little later.

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- 2 The department complains I haven't used case law like I should. I understand. But it occurred to me that if you make the argument that the case law not cited supports haven't you what might be called case-law anew? After all, if you can't recreate the case law then the case law your worrying about doe sent actually exist. And I have to believe the judges of this court have most of this stuff memorized (but no guarantied). Now I do not want it to sound like I am being smart. But my various issues that I have tried to get accommodations for repeatedly are driving this.
- 3 I have surly done a poor job of writing this brief. But it's not like I have not asked for accommodations and assistance after having provide adequate reason and documentation. But if the court were to ignore my argument because of its many organization defect alone, it would be allowing the State of Washington to be unjustly enriched to the toon of \$1000. Nearly two months' household expenses.
- 4 The department screams and stomps about protecting the public as though the department should be given unlimited authority to police everyone about everything. In fact, the department does try. But the fact is the legislature realizes it is both limited in its authority and its physical ability. Hence RCW18.27.090 exemptions from the requirement to register under the contractor's registration act.
- 5 The department inaccurately refers to the image on the front page of Eric the closet guy .com as cabinets. Actually that is nothing more than an artist rendition and nothing in that image is a cabinet as it relates to cabinets in the Definition of a contractor. Even if that were my work they would not be cabinets because they are not a structural unit as a cabinet would be in this case. They rely on a metal rail to

remain standing. By the way, doors and drawers do not = cabinet. They = drawers and doors.

- 6 My testimony should be stricken from the record because the ALJ erred in forcing me to testify. At AR140 the department waves direct opting instead to ask questions on cross. When it came time for me to testify I said I did not want to. The ALJ said I did but in fact that was just an opening statement AR182. Then the ALJ forced me to testify against my will. I would like the court to explain to me how you can cross examine testimony that never occurred. The purpose of Cross is to challenge the testimony. The department waived its right to call me as a witness and I had every right to decline to testify. The ALJ erred by allowing the questioning.
- 7 The ALJ erred when he instructed me that Mike Vines would represent me during my questioning upon which unknown to myself and the ALJ I went into what I call sit and spin mode. This is a problem I have driven by ADD where I can hear everything but cannot connect with what's going on. Therefore, could not object to any issues. Now the recorded say something slightly different with regard to the ALJ's instructions. But this is what I heard. It does not take much to incapacity me. intact I warned the ALJ at the beginning. Mike vines was not there to represent me. He was there simply to asset me. The ALJ's instruction regarding how mike and I were to interact further created problems. For example, he said we could not both ask questions calling it double teaming. This caused communication confusion and had the overall effect of denial of due process.

- 8 The department complains that there is no reference to my having liability insurance in the record. This is true. That is because when the ALJ and the department elicited that information regarding EGR fabricators I was incompasited and could not object. That information was inflammatory and irrelevant and should not have been allowed. The ALJ erred in allowing that testimony.
- 9 The department tries to argue that I fall under the definition of contractor because custom shelving is adding to real-estate. In reading the definition of contractor it refers to several things including adding to, modifying or subtracting from. But then there is the phrase "attached to real-estate". This suggest that all of the items listed relevant to this case are things that are permanent and a fixture to the real-estate. So adding, modifying etcetera refers to things that become fixtures to the real-estate. There is further evidence this is what the legislature was thinking in RCW18.27.090(5)(8) were the legislature writes "not fabricated into and do not become a part of a structure under the common law of fixtures. Based on this analysis my activity's do not fall under the definition of contractor.
- 10 The department also tries to define a cabinet using the dictionary. Unfortunately, what they define as a cabinet is inaccurate for purposes of interpreting the definition of a contractor and more specifically the phrase "Cabinet's or similar". Speaking as an expert whom has more than thirty years' experience in carpentry and cabinetry. A cabinet or similar in a home is a structural unit comprised of a top, bottom, sides, and back generally built to conform with normal standards for those products. The shelving systems I sell go together just like Ikea AR163 lin1. Except they have no

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backs and would fall over if not secured with the thin metal rail secured by drywall screws.

- 11 The department argues that State v. W.R., Jr., 181 Wn.2d 757, 770, 336 P.3d 1134 (2014) is not relevant and that shifting the burden to the defendant from the start because I am not a registered contractor is not unconstitutional. I disagree. First, shifting the burden from the get go to a defendant in a quasi-criminal case such as this is a denial of due-process and is completely contrary to the notion of being innocent until proven guilty. The fines of \$1000, \$3000 or more make this essentially a criminal prosecution alone. Secondly, even if the court disagrees with that analysis. As soon as I said I was exempt AR78 line 9, I negated the charge and the burden shifted back to the department. The case cited proves this. There is no evidence in the record that the ALJ considered this even though he was made aware of it at AR229 and would incorporate that into his decision. At AR229, intact in the ALJ's final order he specifically said at 6.4 AR302 by quoting RCW18.27.310(2) that the burden was on me. The ALJ erred because he did not properly assign burden to the department thereby denying me due-process. AR302
- 12 The department argues regarding my argument regarding jurisdiction over the web sites used to prove advertising is off base and lacks case law support. I disagree that it is off base. There is no case law in this area and I am probably the first one to ever raise this particular issue. The closest case law involves obtaining jurisdiction over out of state companies requiring some sort of direct action in the state. The courts have observed that informational websites such as mine having only phone numbers

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and e-mail address do not meet the requirements of jurisdiction. The question here is only complicated or rather confusing because we are accustomed to seeing a thing in action. Like a post card advertisement arriving at our home. However, when it comes to computers and the internet we are of course unable to see how these things occur. However, the department has helped us out by admitting in its brief, saying that "*The Department does not need to prove the physical location of the computer server that stores an Internet advertisement*". now we know two things. The first is that in order for the department to obtain jurisdiction it must prove that the advertisement occurred within Washington borders. Secondly the department admits that the advertisement is on a server some were. Commonsense dictates that server needs to be located in Washington state. The charging document NCZIK00895 describes the advertisement having occurred at 7173 Linderson Way SW, Tumwater WA which I assume is the office location of Terry Zinker whom issued the infraction. Terry Zinker testified at AR 106 that she obtained the information that is the bases of the infraction by specifically going to Craig's list and searching. This kind of activity is proactive and could mean by way of analogy driving to Texas and reading a billboard saying that I will build you a house in Washington state and concluding that a contractor's license is required in Washington state to advertise in Texas just because it is directed at Washington resident. That of course is silly. Zinker testifies at AR155-7 that she does not no. if an advertisement is located on a server and you must go to that server to see it. The location of that server is critical as to determining jurisdiction. The department failed to provide anything but the misguided notion that

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viewing an advertisement remotely on a computer determines jurisdiction. The ALJ erred in failing to catch this and made an incorrect determination that the department had meet its burden regarding jurisdiction.

**Lastly the case law they site is a 2014 case. This infraction occurred in 2013.**

- 13 The department argues that my reference to Department a/Revenue v. Boeing Co., 85 Wn.2d 663, 665-67,538 P.2d 505 (1975) has no application. In fact, the court made the rather plain observation that if the Massive tool were removed there would still be a warehouse. Essentially saying that the multi ton tool that was bolted to the building was not a fixture. The implication of course is that if a thing is removed has the real-estate been altered. The answer is no. just as in the Boeing case if my shelving is removed the real-estate has not been altered. This is relevant to the exemption statutes.
- 14 The ALJ erred when he says at AR246 line 8, “he admitted that if it screwed up, I’ll come back and repair it.”. This stamen only appears when the ALJ says it. There is not testimony by me that says I repair. In fact, I my testimony only refers to having a Warranty AR201 line23. Warranty work is not repair. Warranty work is making the customer whole for his purchase. Repair work is to repair something as a separate contract in this context.
- 15 The department argues that the new sale of additional shelving to a former customer then they move there closet shelving to a new location somehow involve installation and repair and maintain trying to establish that I do those things for the purpose of falling under the control of WAC 296-200A-016(7). The truth is that the sale of new

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shelves is nothing more than a new sale of shelving. And it has no further implications in the law anywhere. My testimony at AR216 was simply "I mean, if they wanted to move it to another house and the particular setup needed to be six inches shorter or had the available six inches, they might call me for more parts. But, you know, nobody has ever called me for that".

16 The department tries to override RCW18.27.090(5) by suggesting that WAC 296-200A-016(7) is superior because of the definition of contract. They also want the court to rely on their interpretation. However, their interpretation can't be found in the definition of contractor. Even if I could be my activates are exempt under the exemption statute which the department clearly ignore. This is not the only farce of the department WAC 296-200A-016(1). This wac involves appliance installation were a refrigerated is delivered and the water line for the ice make is connect to an existing angel stop or valve. I defy anyone to find support for this in the definition of contractor. This sort of thing is absolutely exempt under RCW18.27.090(5). This is just an example of the agency trying to enact their own legislation for whatever misguided purposes they have. Their own rule application states that this rule is basically informational and would add no further burden to the business or their enforcement activity. I think we need to take them at their word. This wac is only informational.

17 The ALJ also errored when he relied on WAC 296-200A-016(7) in his decision 6.8 at AR303. There is no evidence anywhere in the record that I meet all the criteria for this WAC Even if he though I fell under the definition of contractor the exemption

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statute would relive me of contractor registrations requirement. In order to be subjected to this WAC I must install, repair, and maintain. I have never installed or maintain AR2016.

- 18 The ALJ errors in his decision 6.12 and 6.14 AR305 When he concludes that because I install that the current statutory exemption does not apply. He asserts that the removal of the word install is evidence that installing is no longer exempt.

This is illogical. You cannot interpret something into a statute that is not there. The legislature chose to modify this installing exemption probably because the court in Department of Labor and Industries v. Davison, 126 Wn. App. 730, 73-3, 109 ~.3d 419 (2005), suggested that the statute was vague.

The legislature re-wrote this statute likely in response to that. What they did not do was delete the installation exemption (5) all together implying that they merely wanted to rewrite it to be less vague.

There is one other exemption that is very similar to paragraph 5, that would be paragraph 8 involving “(8) Any person who only furnished materials, supplies, or equipment without fabricating them into, or consuming them in the performance of, the work of the contractor;”.

Paragraph 8 clearly deals with material and again draws the line at fabricating them into the structure. Both the ALJ decision and the department argument seem to be predicated on chapter 8 which is incorrect.

So what does paragraph 5 mean. The first part involving the sale of finished product etcetera which is what I sell is obvious. Obvious as well would be the second part

“that are not fabricated into and do not become a part of a structure under the common law of fixtures”. What exactly does the department and the ALJ think that means? The plain language interpretation would be that some form of attachment to the real-estate is expected at least occasionally and that the exemption ends when it becomes fabricated into and part of the structure under the common law of fixtures. The common law of fixture essentially means that it becomes a permanent part of the real-estate. The thin metal rail that is the sole connection to the wall does not constitute a fixture in this case because it can be removed easily and the hole filled with spackle. AR300-301. The shelving never becomes attached to the wall. It merely stands there or hangs like a picture. The ALJ erred in his decision regarding the exemption and legislative intent.

- 19 the ALJ erred in his decision 6.14 at AR305 because it is indecipherable and makes no sense.

It seems prudent to explain how I have been able to point out the places in the record were issues are. I finally got a PDF version of the administrative record from the transcriber. At first they tried to charge me what the department paid for the transcription \$1600. But after I said I would address the matter with the court. Because I have the software that can make it searchable I was able to find some of the places in the record.

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The court should at a minimum reverse for the reasons stated above. The notice I had at all times was the Department of Labor V Davison. Its application is still on point even with the legislative change that was nothing more than clarification.

But there are more serious matters of denial of due process from the ALJ handling of Mike vines who was only there to assist and prevented me from interjecting when mike was speaking.

The ALJ also denied me due process when he failed to shift the burden back to the state once I negated there charge by pointing out I am exempt.

Due process was also denied when the ALJ actions inadvertently put me into sit and spin mode incapacitating me. Allowing me to supplement the record would have helped with this. However, the ALJ denied me this at the outset of the hearing. This is a tough one. The only person that has the answer would be me.

Given the number of issues involving denial of due process it might be prudent to send this thing back to the beginning. The ALJ simply made too many mistakes.

Respectful submitted by Eric Rootvik

10-21-16

**Eric  
Rootvik**

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**COURT OF APPEALS, DIVISION 1  
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**Eric Rootvik**

**Appellant**

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**Department of labor and industries**

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**Affidavit in support of statement and documents**

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**2016 OCT 31 AM 11:12  
DIVISION 1 APPEALS (DIV 1)  
STATE OF WASHINGTON**

Under pains of perjury I swear that every document I have submitted in this case and all documents in the future are true and correct copies of the originals.

I also swear that each and every statement I have made or will make is the truth to the best of my knowledge.

I felt this was easier because I have forgotten to provide affidavits in the past.

Eric Rootvik 10-21-2016

**Eric  
Rootvik**

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**Eric Rootvik**

**Appellant**

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**Department of labor and industries**

**Respondent**

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**Affidavit of service**

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2016 OCT 31 PM 11:12  
DIVISION OF APPEALS & CIVIL  
STATE OF WASHINGTON

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I did serve the department via e-mail by prior agreement of this reply brief attached affidavit today 10-21-2016

Eric Rootvik 10-21-2016

Eric

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