

No. 74406-2-I

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

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MARIAN LANDA,

Plaintiff – Respondent,

v.

HAELLEN HOLIDAY,

Defendant – Appellant, pro se.

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**BRIEF OF RESPONDENT**

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COURT OF APPEALS DIV. I  
STATE OF WASHINGTON

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## **I. INTRODUCTION**

Defendant-Appellant Haellen Holiday (“Holiday”) brings this appeal after the conclusion of an unlawful detainer proceeding where Plaintiff-Respondent Mandy Landa (“Landa”)’s right to possession of the premises is undisputed. After the trial court signed an order directing the issuance of a writ of restitution, but before the writ of restitution was actually issued, Holiday voluntarily vacated the premises. Now, Holiday raises allegations and arguments never raised before and improperly couches her arguments as error of jurisdictional magnitude. Because this case is moot and this Court cannot provide either Landa or Holiday any relief, this appeal serves no purpose other than to harass Landa and needlessly increase litigation expenses. This Court should dismiss this appeal, affirm the trial court’s decision, and sanction Holiday.

## **II. ASSIGNMENT OF ERROR**

Landa does not assign any error to any aspect of the trial court’s decisions.

### **III. STATEMENT OF ISSUES**

Landa disagrees with Holiday's assignment of error and submits the following issues which more appropriately reflect the questions before this Court:

1. Should this Court dismiss Holiday's appeal because Holiday failed to preserve her issues for appeal?
2. Should this Court dismiss Holiday's appeal because Holiday did not comply with the Rules of Appellate Procedure?
3. Should this Court dismiss Holiday's appeal because this case is moot?
4. In the alternative, should this Court affirm the trial court's decision because the trial court both had jurisdiction over the case and properly decided as a matter of law that Landa had the right to possession?
5. In the alternative, should this Court affirm the trial court's decision because, if there was error, the error was harmless?
6. Should this Court sanction Holiday for a frivolous appeal and award Landa attorney fees?

#### IV. RESTATEMENT OF THE CASE

Holiday's statement of the case is argumentative and not a statement of the case at all. Rather, it is a mischaracterization of the events leading up to the unlawful detainer proceeding. Holiday omits the evidence supporting the trial court's decision. That evidence is set forth here.

**A. Landa offered Holiday a place to live temporarily.**

Holiday and Landa were friends. CP 14. During their friendship, Holiday needed a place to stay so Landa offered her a vacant room in her home ("Premises"). CP 2, 14. Holiday accepted and took occupancy of the Premises. *Id.* Due to the temporary nature of the tenancy, no lease was signed. *Id.*

**B. Landa served Holiday a Notice to Vacate for committing waste on the Premises.**

Shortly after taking occupancy of the Premises, Holiday started to behave in ways that concerned Landa. Holiday sent Landa angry and paranoid texts; removed Holiday's furniture from the Premises; destroyed plantings; and started producing marijuana-salve in significant quantities, creating residue and stench on the Premises. CP 2, 14–15; 19–33.

On November 10, 2015, Landa served Holiday with a 3-day Notice to Vacate (“Notice to Vacate”). CP 15, 35. Holiday failed to vacate the Premises. CP 15.

**C. Landa filed the unlawful detainer action against Holiday and asked the trial court to set a show cause hearing.**

Landa commenced the unlawful action on November 18, 2015 by filing and serving a Summons and Complaint for Unlawful Detainer. CP 1–8, 24. Landa also filed a Motion to Show Cause (“Motion”), asking the trial court to order Holiday appear and explain why she shouldn’t be ordered out of the Premises. CP 9–35. Landa supported the Motion with a Declaration describing the events leading up to the unlawful detainer action, copies of the Notice to Vacate, and photographs of the damage to the Premises. CP 14–35.

**D. The trial court entered the Order to Show Cause.**

The trial court granted Landa’s Motion and entered an Order to Show Cause, ordering Holiday to appear on November 30, 2015 to show cause why it should not enter an order directing the issuance of restitution restoring possession of the Premises to Holiday (“Show Cause Hearing”). CP 36–37.

**E. The trial court signed the Order to Issue Writ.**

The parties appeared for the Show Cause Hearing on November 30 — Holiday appearing pro se and Landa appearing through counsel. CP 39. After hearing the parties’ oral arguments, the trial court signed an Order Directing Issuance of Writ of Restitution (“Order to Issue Writ”). CP 39; CP 72–73. The Order to Issue Writ reads in relevant part:

Plaintiff having filed her Motion and an Order to Show Cause why a Writ of Restitution should not be issued ...; it appearing to the Court from the Complaint and Plaintiff’s motion that Plaintiff is entitled to have such a Writ of Restitution and that the Court has jurisdiction to order the Writ to issue; NOW, THEREFORE: IT IS HEREBY ORDERED:

1. The Clerk of the Court shall issue a Writ of Restitution authorizing King County Sheriff to ... restore Plaintiff to possession of [the] premises.

CP 72.

**F. Holiday voluntarily vacated the Premises before any writ of restitution was issued.**

The day of the Show Cause Hearing—before the Order to Issue Writ was presented to the Clerk to actually have the writ issued—Holiday moved out of the Premises. CP 84; *see also* BA<sup>1</sup> 6, 10. No writ of restitution was ever issued. CP 84. Holiday never returned to the Premises.

*Id.*

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<sup>1</sup> References to Holiday’s opening brief will be by citing to “BA”, followed by the page number(s).

**G. Holiday filed her Notice of Appeal.**

Holiday filed a Notice of Appeal with the trial court on December 10, 2015. CP 42–43. Holiday’s Notice of Appeal stated she was appealing the judgment and order entered in the above entitled cause of action ... and every part of the judgment, but limited thereto...

*Id.* Holiday did not attach a copy of any order from which her appeal was made. *Id.*

**V. ARGUMENT**

**A. Standard of review.**

The record, though Holiday has not properly presented it, consists entirely of written material; therefore, this Court stands in the same position as the trial court and reviews the record de novo. *Progressive Animal Welfare Soc’y v. Univ. of Wash.*, 125 Wn.2d 243, 252, 884 P.2d 592 (1994). Likewise, this Court reviews questions of law de novo. *Carlstrom v. Hanline*, 98 Wn. App. 780, 780, 990 P.2d 986 (2000).

This Court may also sustain the trial court’s decision on *any* basis supported by the record. *Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 493, 933 P.2d 1036 (1997).

**B. This Court should dismiss Holiday’s appeal because she failed to preserve her issues for appeal.**

This Court should decline to review Holiday’s only claim of error because she did not raise the associated issues at the trial court. RAP 2.5(a); *Washburn v. Beatt Equip. Co.*, 120 Wn.2d 246, 290, 840 P.2d 860 (1992) (“Arguments or theories not presented to the trial court will generally not be considered on appeal.”); *see also Hall v. Feigenbaum*, 178 Wn. App. 811, 818, 319 P.3d 61 (2014), *review denied*, 180 Wn.2d 1018, 327 P.3d 54 (2014).

Holiday argues for the first time she was Landa’s “employee.” Holiday’s theory is that because she was an “employee”, she was “exempt” from entry of any order under the unlawful detainer statutes. The record does not show that Holiday advanced her theory to the trial court or that the trial court ever had the opportunity to consider or rule on the issue. *Washburn*, 120 Wn.2d at 291; CP 1–119. And while Holiday purports to disguise her unpreserved assignment of error as a lack of trial court jurisdiction, she conflates subject matter jurisdiction with the trial court’s authority to rule on the issue of possession. *Infra* Section V.F.

Similarly, Holiday improperly includes attachments to her opening brief that are not in the trial court record. RAP 10.3(8); *see also State v. Bugai*, 30 Wn. App. 156, 157, 632 P.2d 917 (1981) (refusing to review

affidavits appended to opening appellate brief because not submitted to trial court). Accordingly, this Court should decline to consider Holiday's Declaration, the Attachments to Holiday's Declaration, and G. Michael Strauss' Declaration. This Court should decline to review Holiday's assignment of error, any materials not a part of the record, and dismiss this appeal.

**C. This Court should dismiss Holiday's appeal for failure to comply with the Rules of Appellate Procedure.**

Holiday's case is otherwise not properly presented on appeal. Because the procedural defects result in inconvenience to this Court and unfairness to Landa, Holiday's appeal should be dismissed.

**a. Holiday fails to identify what it is she wants this Court to review.**

Holiday has not identified which decision of the trial court, or which part of the trial court's decisions, she is challenging. RAP 2.4(a). Holiday's Notice of Appeal is similarly defective because she did not identify what order she was appealing or attach any order to her Notice of Appeal. RAP 5.3; CP 42–43. These defects are particularly problematic given Holiday's mischaracterization of the trial court proceedings: Holiday asserts the trial court committed error when it "issu[ed] ... the writ of restitution." BA 8. But no writ of restitution was ever issued. CP 84.

**b. Holiday fails to perfect the record.**

Holiday has not met her burden of perfecting the record so that the Court has before it all of the relevant evidence. *Dash Point Vill. Associates v. Exxon Corp.*, 86 Wn. App. 596, 612, 937 P.2d 1148, (1997), *amended on denial of reconsideration*, 86 Wn. App. 596, 971 P.2d 57 (1998). Holiday has not provided Landa with a copy of the verbatim report of proceedings. RAP 9.5(a)(1). Again, this defect is particularly problematic given Holiday's mischaracterization of the trial court proceedings: Holiday purports to quote a verbatim report in claiming "Ms. Landa's legal counsel admitted to the Superior Court Judge, on the record ... that there was no rental agreement." BA 8. But there is no "Exhibit 29" and Landa's counsel has not seen any report of proceedings.

**c. Holiday submits an improper brief.**

Holiday's opening brief does not make *any* reference to the record for any of her factual statements or designate the page and part of the record which supports each of her factual statements. RAP 10.3(a)(5); 10.4(f). Assuming Holiday's factual statements supported an issue preserved for appeal, this Court cannot efficiently and expeditiously review the accuracy of those factual statements. *Litho Color, Inc. v. Pac. Employers Ins. Co.*, 98 Wn. App. 286, 305–06, 991 P.2d 638 (1999). Holiday has not demonstrated why specific findings of the trial court are

not supported by evidence and failed to cite to the record in support of any such argument. Holiday should be sanctioned for submitting an improper brief. RAP 10.7; *Litho Color, Inc.*, 98 Wn. App. at 305–06.

**D. A lawful summary of the unlawful detainer proceeding.**

If this Court does review the substance of Holiday’s appeal, a proper description of the unlawful detainer proceeding’s unique nature and scope is warranted to provide this Court with the proper framework to support dismissal.

The tenancy between Landa and Holiday was residential; it is therefore governed by the Residential Landlord–Tenant Act, RCW 59.18 (“RLTA”). *Leda v. Whisnand*, 150 Wn. App. 69, 77, 207 P.3d 468 (2009). But the procedures set forth in the generalized unlawful detainer statutes, RCW 59.12, apply to the extent they are not supplanted by RLTA’s procedures. *Id.*

Once Holiday “commit[ed] waste upon the [P]remises ... and remain[ed] in possession after [Landa served her with] three days’ notice to quit”, Holiday was guilty of unlawful detainer. RCW 59.12.030(5). Holiday’s unlawful detainer status gave Landa the right to commence an unlawful detainer action with a summons and complaint. RCW 59.12.070. Landa’s action, like every unlawful detainer action, was “a narrow one, limited to the question of possession ....” and meant only to recover

possession of the Premises. RCW 59.12.030; *Hall v. Feigenbaum*, 178 Wn. App. 811, 818, 319 P.3d 61 (2014), *review denied*, 180 Wn.2d 1018, 327 P.3d 54 (2014) (quoting *Munden v. Hazelrigg*, 105 Wn.2d 39, 45, 711 P.2d 295 (1985)); *see also Josephinium Associates v. Kahli*, 111 Wn. App. 617, 624, 45 P.3d 627 (2002) (“[I]ssues unrelated to possession are not properly part of an unlawful detainer action.”).

Landa also had the right, at the time she served the summons and complaint, to seek possession of the Premises on an expedited basis with the help of a writ of restitution. RCW 59.12.090. To do so, Landa was required to note the matter for the Show Cause Hearing. RCW 59.18.370. The Show Cause Hearing provided Holiday with the opportunity to present appropriate defenses.

The unlawful detainer statute permits a tenant to assert “any legal or equitable defense or set-off arising out of the tenancy.”

....

To protect the summary nature of the unlawful detainer action, defenses “arise out of the tenancy” only when they affect the tenant's right of possession or are “based on facts which excuse a tenant’s breach.” Where a defense exists that arises out of the tenancy, the court must consider it.

Conversely, where a defense or counterclaim is not necessary to determining the right to possession, the court has no jurisdiction to consider it in an unlawful detainer action.

*Josephinium Associates*, 111 Wn. App. at 624–25 (internal citations omitted).

But because Landa's pleadings showed she had the right to be restored to possession of the Premises *as a matter of law*, the court was *required* to enter an order directing the issuance of a writ of restitution. RCW 59.18.380. There was no jury trial because there was no genuine issue of material fact pertaining to Landa's right to possession. *Id.*; *Carlstrom v. Hanline*, 98 Wn. App. 780, 788, 990 P.2d 986 (2000) (no jury trial in unlawful detainer proceedings).

**E. This Court should dismiss Holiday's appeal as moot.**

Holiday presents this Court with only abstract propositions where the substantial question actually involved in the trial court (the right to possession of the Premises) no longer exists. *Sorenson v. City of Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972) (stating general rule that appeal should be dismissed if case is moot). This Court cannot even provide the basic relief sought at the trial court—recovery of possession of the Premises. *In re Det. of H.N.*, 188 Wn. App. 744, 749, 355 P.3d 294 (2015), *review denied*, 185 Wn.2d 1005, 366 P.3d 1244 (2016) (“A case is moot if a court can no longer provide effective relief.”).

Holiday voluntarily moved out of the Premises the day of the Show Cause Hearing, before the issuance of any writ of restitution. CP 84; BA 6. And Holiday is not the first tenant to present this Court with a moot case under nearly identical circumstances. In *Josephinium Assocs. v.*

*Kahli*, the tenant-appellant voluntarily vacated after the unlawful detainer action was filed. 111 Wn.App. 617, 622, 627, 45 P.3d 627 (2002). This Court succinctly stated:

“A case is technically moot if the court cannot provide the basic relief originally sought, or can no longer provide effective relief.” The record indicates that Kahli vacated her apartment at the Josephinium on May 25, 2000. Kahli’s case is thus moot.

*Id.* at 622 (internal citations omitted). Moreover, Holiday does not even claim she has any right to possession. *Cf. Hous. Auth. of City of Pasco & Franklin Cty. v. Pleasant*, 126 Wn. App. 382, 387–89, 109 P.3d 422 (2005) (declining to follow *Josephinium Assocs.* where tenant did not concede right to possession). Holiday does not ask the Court to review for error the trial court’s finding that Landa was entitled to possession over Holiday. Instead, Holiday asks this Court to “remand this case to the Trial Court with instructions to dismiss this case.” BA 11. Landa humbly suggests that but for Holiday’s Notice of Appeal, the underlying case may very well have already concluded, by dismissal or otherwise. Holiday’s appeal should be dismissed as moot.

**F. If this Court does not dismiss Holiday’s appeal, it should affirm the trial court’s decisions because it had jurisdiction over the unlawful detainer action.**

The trial court’s subject matter jurisdiction over Landa’s unlawful detainer action is constitutional, not statutory. *See* WASH. CONST. art.

IV, sec. 6. This Court recognizes the trial court's broad jurisdiction over Landa's action:

The superior court has jurisdiction over unlawful detainer actions. The state constitution vests the superior court with broad authority over real estate disputes, and the unlawful detainer statute explicitly gives jurisdiction over unlawful detainer actions to the superior court. This jurisdiction remains constant regardless of procedural missteps by the parties, but a party filing an action after improper notice may not maintain such action or avail itself of the superior court's jurisdiction.

*Hall*, 178 Wn. App. at 818–19 (internal citations omitted).

Holiday's contention that her alleged "employee status" divested the trial court of subject matter jurisdiction is merely an attempt to overcome her failure to preserve her issues for appeal. This Court rejected an attempt just like that in *MHM & F, LLC v. Pryor*, 168 Wn. App. 451, 277 P.3d 62 (2012). In affirming entry of an order for writ of restitution, this Court explained:

[T]he improvident and inconsistent use of the term "subject matter jurisdiction" has caused it to be confused with a court's authority to rule in a particular manner.

Whether the superior court ruled correctly or incorrectly in this particular case, it did not lack subject matter jurisdiction. The court's subject matter jurisdiction in cases involving the title or possession of real property is expressly granted by the state constitution and has not been "vested exclusively in some other court." We narrowly construe exceptions to the constitution's jurisdictional grant. Thus, it is incorrect to say that the court acquires subject matter jurisdiction from an action taken by a party or that it loses subject matter jurisdiction as the result of a party's failure to act.

If the type of controversy is within the superior court's subject matter jurisdiction, as it is here, "then all other defects or errors go to something other than subject matter jurisdiction."

*MHM & F, LLC*, 168 Wn. App. at 460 (internal citations omitted). In sum, the trial court's subject matter jurisdiction over Landa's unlawful detainer action did not depend on the nature of Holiday's and Landa's living arrangement. The trial court's decision should be affirmed.

**G. The trial court did not error in signing the Order to Issue Writ.**

Assuming Holiday properly appeals the Order to Issue Writ, the trial court did not error. First, Holiday makes much of the fact that there was no *written* lease. BA 8. Again, Holiday failed to preserve this issue for appeal so it should not be considered. Nevertheless, a lease does not have to be in writing. *See e.g., Leda v. Whisnand*, 150 Wn. App. 69, 73, 207 P.3d 468 (2009) (oral lease subject to unlawful detainer action).

Second, the record for review demonstrates Landa complied with the unlawful detainer statute's method of process by providing Holiday with the Notice to Vacate due to waste/nuisance. CP 29–33, 35. Because Landa complied with the procedural prerequisites, Holiday's reliance on *Sullivan v. Purvis* is misplaced. 90 Wn.App. 456, 966 P.2d 912. *Sullivan* is a Division Three case where the tenant moved to quash a writ of restitution given the landlord's failure to properly give notice. *Id.* at 458–

59. Because of *that* failure, Division Three reversed the order to vacate and dismissed the action. *Id.* at 460; *see also Hous. Auth. of City of Everett v. Terry*, 114 Wn.2d 558, 564, 789 P.2d 745 (1990) (proper notices required by RCW 59.12.030 said to be “jurisdictional condition precedent”). Here, Holiday does not assign any error regarding the Notice to Vacate.

At the Show Cause Hearing, and after reviewing Landa’s pleadings and hearing the parties’ oral arguments, the trial court reasonably determined Landa was entitled to be restored to possession of the Premises. CP 72–73. Holiday did not answer Landa’s Complaint and did not file any responsive pleadings with the trial court—Landa’s right to possession is undisputed on the record for review. CP 1–119.

**H. Even if the trial court erred in signing the Order to Issue Writ, Holiday fails to demonstrate the error was prejudicial.**

“It is well established that errors in civil cases are rarely grounds for relief without a showing of prejudice to the losing party.” *Saleemi v. Doctor's Associates, Inc.*, 176 Wn.2d 368, 380, 292 P.3d 108 (2013). And error isn’t prejudicial unless it affects, or presumptively effects, the outcome of trial. *Thomas v. French*, 99 Wn.2d 95, 104, 659 P.2d 1097, 1102 (1983) (error without prejudice not grounds for reversal). Holiday makes no effort to show how she was prejudiced by the trial court’s

decisions. The trial court did not even schedule a trial. And again, Holiday moved out of the Premises before a writ of restitution was issued. Any error was harmless.

**I. This Court should sanction Holiday for filing a frivolous appeal and award Landa her attorney fees.**

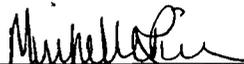
Holiday's appeal is frivolous because, considering the record as a whole, it presents no debatable issues and is so devoid of merit that there is no reasonable possibility of reversal. *Streater v. White*, 26 Wn. App. 430, 434–35, 613 P.2d 187 (1980). Landa is entitled to an award of her attorney fees for having to defend against Holiday's meritless appeal as permitted by the rules of appellate procedure. *Mahoney v. Shinpoch*, 107 Wn.2d 679, 691, 732 P.2d 510 (1987); RAP 18.9(a). Holiday has not complied with the rules of appellate procedure and her appeal has no other apparent purpose but to harass Landa given the right to possession of the Premises is undisputed. Landa respectfully requests that this Court impose monetary sanctions on Holiday and dismiss the appeal as permitted by RAP 18.9(a)–(c).

## VI. CONCLUSION

This Court should strike Holiday's opening brief, dismiss her appeal, and award Landa costs and attorney's fees on appeal. In the alternative, Landa respectfully requests this Court affirm the trial court's decisions.

DATED this October 28, 2016

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### **CERTIFICATE OF SERVICE**

The undersigned certifies, under penalty of perjury under the laws of the State of Washington, that on the below date I caused to be filed with Division I of the Court of Appeals of the State of Washington, and arranged for service of true and correct copies of the foregoing BRIEF OF RESPONDENT upon the following:

*By U.S. Mail*

Haellen Holiday  
251 W. 7th St.  
Yachats, OR 97489

DATED at Seattle, Washington this 28<sup>th</sup> day of October, 2016.

*/s/ An Nguyen* \_\_\_\_\_  
An Nguyen, Paralegal