

WASHINGTON STATE COURT OF APPEALS DIVISION THREE

CASE SUMMARIES FOR ORAL ARGUMENT

The following summaries are drawn from briefs and lower court judgments. The summaries have not been reviewed for accuracy by the judges and are intended to provide a general idea of facts and issues presented in the cases. The summaries should not be considered official court documents. Facts and issues presented in these summaries should be checked for accuracy against records and briefs, available from the Court, which provide more specific information.

Date of Hearing: Wednesday October 26, 2011
Location: Spokane, 500 N. Cedar

9:00 AM

1) **No.: 29702-1-III**

Case Name: Terrie L. Gunderson v. City of Millwood, et al

County: Spokane

Case Summary: In February 2009, Terrie Gunderson purchased and began operating “Sun Beans” coffee shop and tanning salon on N. Argonne Road in Millwood. The City undertook construction to repair N. Argonne Road from early May to late August 2009. Around the time construction was complete, Gunderson forfeited her business for failure to make lease payments. She sued the City, alleging, among other things, negligence and inverse condemnation on the theory the road repair project caused her financial loss that forced her out of business. The court granted summary judgment in favor of the City. Gunderson appeals.

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2) **No.: 29548-6-III**

Case Name: Dan Henderson, et al v. John Pederson

County: Spokane

Case Summary: McGlade's Bistro is a restaurant located in a critical aquifer area of Spokane County, and uses a septic system regulated by county ordinance. Henderson, Membrey, Kunz, and Harvey-Jarvis (Appellants) each own or occupy property near McGlade's. They complained to the county's planning director (Pederson) that McGlade's septic system is inadequate relative to its wastewater output and noncompliant with the ordinance. While the county's investigation was pending, Appellants sought a writ of mandamus to compel Pederson to enforce the county code against McGlade's. The trial court denied the writ and granted the county's motion for summary judgment, resulting in this appeal.

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11:00 AM

3) **No.: 28975-3-III**

Case Name: Joel K. Freudenthal, et ux v. Juan Gutierrez, et ux, et al

County: Yakima

Case Summary: Freudenthal owns farming property situated to the south and west of Gutierrez's contiguous orchard property. A north-south gravel road running along the easterly lines of both properties is located within the east 16 feet of the Gutierrez property, but is only 8 feet wide. Gutierrez installed a wire fence along the road's easterly edge that prevented Freudenthal from bringing a hay swather onto his property. Freudenthal sued for trespass, quiet title, injunction and declaratory judgment, contending the entire east 16-foot perimeter of the Gutierrez property was part of an existing easement, and that an additional adjacent 14-foot-wide easement allowed Freudenthal full and unrestricted right to use the aggregate 30-foot strip for purposes of ingress and egress. Gutierrez contended the easement was limited to the 8-foot-wide road. The court granted summary judgment in favor Freudenthal, ordering removal of all obstructions to the full 16-feet and also confirming existence of the adjacent 14-foot easement. Gutierrez appeals.

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4) **No.: 29554-1-III**

Case Name: State of Washington v. Deborah Daily

County: Douglas

Case Summary: The Douglas County Superior Court affirmed Deborah Daily's district court conviction for driving under the influence (DUI). This court granted Daily's motion for discretionary review to determine whether the trial court should have considered the lesser included offense of physical control of a vehicle while under the influence and the affirmative defense of being safely off the roadway.

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5) **No.: 29438-2-III**

Case Name: Robert Chaney v. Providence Health Care d/b/a Sacred Heart Medical Center and Children Hospital

County: Spokane

Case Summary: Sacred Heart Medical Center determined that its employee Robert Chaney was unfit for duty and placed him on involuntary leave under the Family Medical Leave Act (FMLA). Chaney's physician later medically certified him as fit for duty, but Sacred Heart terminated Chaney's employment upon expiration of his FMLA leave. Chaney sued Sacred Heart, alleging wrongful discharge in violation of public policy (retaliation for use of FMLA leave) and violation of the FMLA. A jury returned a verdict in favor of Sacred Heart. Chaney appeals.

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12:00 PM

6) **No.: 28972-9-III**

Case Name: State of Washington v. Jennifer Lynn Kirwin

County: Spokane

Case Summary: Jennifer Kirwin was convicted of three counts of first degree custodial interference after she took her three children on a month-long, multi-state road trip in violation of a parenting plan. Kirwin appeals.

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