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COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON  
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STATE OF WASHINGTON  


SUPREME COURT OF THE STATE OF WASHINGTON

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
Division II

No. 44708-8-II

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MARK DOYLE and CAROLYN DOYLE, Husband and wife,  
Respondents

v.

JAMES GOUGHNOUR  
Petitioner

---

PETITION FOR DISCRETIONARY REVIEW

---

James Goughnour, pro se Petitioner  
P.O. Box 455  
Elma, WA 98541

(360) 482-1324

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**I. TABLE OF AUTHORITIES**

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Buckeye Buggy Co. v. Montana Stables, Inc.,  
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West v. Gregoire, 184 Wash.App. 164, 336 P.3d 110 (2014) ..... 9

**II. PARTIES**

The petitioner is James Goughnour, Appellant at the Court of Appeals and Defendant at the trial court (hereafter “Goughnour”). The respondents are Mark Doyle and Carolyn Doyle, husband and wife, Respondents at the Court of Appeals and Plaintiffs at the trial court (hereafter “the Doyles”).

### **III. COURT OF APPEALS DECISION**

The Court of Appeals decision that is the subject of this petition is the Unpublished Opinion entered March 17, 2015 by the Court of Appeals, Division II, 44708-8-II. A copy of the decision is attached to this petition as the Appendix.

The petitioner respectfully requests that this Court review only that part of the decision pertaining to affirming appellate fees and costs.

### **IV. RELIEF REQUESTED**

The petitioner requests that this court reverse that part of the decision of the Court of Appeals which affirmed appellate attorney fees and costs, and remand for correction of the decision accordingly.

### **V. ISSUE**

The issue presented for review is:

Does the Doyles' abandonment and waiver of attorney fees and cost at the trial court, as held by the Court of Appeals, also bar them from appellate attorney fees and costs?

## **VI. STATEMENT OF THE CASE**

- a. This case began with the Doyles filing of an unlawful detainer action based upon a 30 day notice to vacate without cause. The complaint additionally requested rent damage, waste, attorney fees and costs. Goughnour defended, making the claim that the Doyles in fact owed him for advanced rents resulting from a prior breach of contract on the same property, and made associated counterclaims. Goughnour further asserted that the contract between the parties did not permit unilateral termination. (Superior Court Cause No. 10-2-01361-6 filed Oct. 18, 2010 in Grays Harbor County) The trial court granted the Doyles a Writ of Restitution with no other award to either party, including no attorney fees or costs (CP 93-96).
- b. Goughnour appealed the decision of the trial court (Court of Appeals No. 41538-1-II). The Court of Appeals affirmed and awarded the Doyles attorney fees and costs. The Doyles failed to file an attorney fees affidavit and cost bill. Subsequently to issuance of the mandate, the Doyles moved for an extension of time to file an attorney fees affidavit. Goughnour filed an objection in response. The Doyles' motion was granted (Court of Appeals No. 41538-1-II, Docket).

- c. Goughnour asked this court for review of the extension of time for the Doyles to file an attorney fees affidavit (Supreme Court No. 877971 filed Aug. 23, 2012). The petition was denied.
- d. Goughnour therefore moved the Court of Appeals to recall the mandate to undo his decision making scenario that resulted from granting the Doyles an extension to file an attorney fees mandate after issuance of the mandate (No. 41538-1-II Docket). This motion was denied. Goughnour requested this court's review of that denial (Supreme Court No. 886261 filed March 29, 2013). The petition was denied.
- e. On Jan. 14, 2013, while the case was still at the appellate level, the Doyles filed a motion in the trial court for judgment of rent damage, trial court fees and costs, and appellate fees and costs (CP 133-141). On Jan 22, 2013 the trial court granted the Doyles' motion entirely including dismissal without prejudice of Goughnour's counterclaims (CP 158-160).
- f. Goughnour filed an appeal of the Jan. 22, 2013 judgment based upon both merit and procedural grounds (CP 163-168). The Doyles did not file a brief or otherwise appear. The Court of Appeals reversed the judgment for rent damage, trial court fees, and costs on the grounds

that the Doyles abandoned and waived those claims. The judgment for appellate attorney fees and costs was affirmed (Court of Appeals No. 44708-8-II, Opinion, Pages 1, 5-7). That opinion was entered March 17, 2015. It is review of that affirmation of appellate attorney fees and costs that this petitioner requests.

## VII. ARGUMENT

### a. Basis of Petition:

This petition's subject portion of the Court of Appeals opinion is that part which affirmed the trial court judgment which awarded the Doyles appellate attorney fees and costs. The basis of this Petition for Review is that the subject portion of the Court of Appeals opinion is in conflict with decisions of the Supreme Court [ RAP 13.4(b)(1) ], and also in conflict with other decisions of the Court of Appeals [ RAP 13.4(b)(2) ].

### b. Court of Appeals Grounds:

The subject portion of the Court of appeals opinion affirms that portion of the trial court judgment which awarded the Doyles appellate attorney fees and costs. The opinion reversed the remainder of the judgment which had awarded the Doyles rent

damage, trial court attorney fees, and costs. The reversals were based upon the grounds that the Doyles abandoned and waived those claims, including trial court attorney fees and costs, when they included them in their complaint for unlawful detainer but failed to pursue them at the show cause hearing (Court of Appeals No. 44708-8-II, Opinion, Pages 5-7).

However the opinion simultaneously affirmed the portion of the trial court judgment for appellate attorney fees and costs, and the Court of Appeals' own previous decision in this same case, upon the grounds that, "Goughnour's challenges have been rejected," (Court of Appeals No. 44708-8-II, Opinion, Pages 6-7). The referenced "challenges" related first, to granting the Doyles an extension of time to file an attorney fees affidavit with the Court of Appeals after issuance of the mandate (Supreme Court No. 877971 filed Aug. 23, 2012). Secondly, to moving for a recall of the mandate to put Goughnour back in the position he would have been in had the Doyles filed their attorney fees affidavit on time (Supreme Court No. 886261 filed March 29, 2013).

c. Appellate Attorney fees and Costs Abandoned and Waived:

As the Court of Appeals stated in its' opinion, the Doyles abandoned and waived attorney fees and costs when they made that claim in their unlawful detainer complaint but failed to pursue it at the show cause hearing (Court of Appeals No. 44708-8-II, Opinion, Pages 5-6). This is not just a case of the Doyles simply raising attorney fees and costs for the first time upon appeal. More than that; it is affirmatively abandoning and waiving the claim by asserting it in the complaint and failing to pursue or press that claim. Once the Doyles abandoned and waived their claim for attorney fees and costs, it remains abandoned and waived. Regardless of subsequent procedures, a claim abandoned and waived cannot be resurrected at the appellate level via a simple assertion by that party.

West v. Gregoire, 184 Wash.App. 164, 336 P.3d 110 (2014)

“When a party asserts a claim in pleadings but at trial does not ‘press’ the claims in any way or present evidence to support it, The party abandons that claim.” citing

- Rainier Nat’l Bank v. McCracken, 26 Wash.App 498, 508 615 P.2d 469 (1980)

Green v. Normandy Park Riviera Section Cmty. Club, Inc., 137 Wn. App. 665, (Feb. 2007)

“It is a long-standing rule that abandoned issues will not be addressed on appeal.” citing:

- Peck v. Davies, 154 Wasn. 559, 563, 283 P. 173 (1929)

- Gregory v. Peabody, 138 Wash. 591, 597, 244 P. 998 (1926)

- Buckeye Buggy Co. v. Montana Stables, Inc., 43 Wash. 49, 51, 85 P. 1077 (1906)
- Soderberg Adver., Inc. v. Kent-Moore Corp., 11 Wn. App. 721, 737, 524, P.2d 1355 (1974)
- Stratton v. U.S. Bulk Carriers, Inc., 3 Wn. App. 790, 793-94, 478 P.2d 253 (1970)

d. This Petition for Review Derives from Same Cause Number:

As illustrated in Section VI, Statement of the Case; the singular trial court Cause No. 10-2-01361-6 in Superior Court for Grays Harbor County remains at the root of the previous appellate action. It is within that same Cause Number at the trial court level that this court is asked to hold that the Doyles' claim for attorney fees and costs having been abandoned and waived, as decided in the Court of Appeals (Court of Appeals No. 44708-8-II, Opinion, Pages 5-7), remains abandoned and waived at the appellate level as well.

e. Issue Raised at Every Step:

Subsequent to the Doyles abandoning and waiving attorney fees and costs at the trial court's show cause hearing, then asserting a resurrection of that claim at the appellate level; Goughnour raised this issue at both appeals in this matter.

Appellant's Reply to Brief of Respondants, Court of Appeals, Div.

II, No. 41538-1:

1. Page 10, Lines 5-7.
2. Page 20, Lines 23-24 (last two lines).
3. Page 21, Lines 10-12.

Opening Brief of Appellant, Court of Appeals, Div. II, No. 44708-8

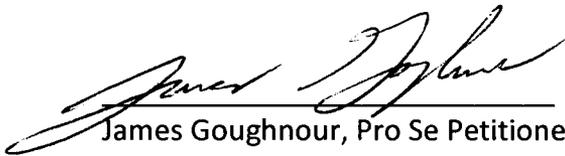
1. Page 8, Lines 10-11.
2. Page 9, Lines 2-3.
3. Page 14, bottom two lines through Page 15, top line.
4. Page 15, Lines 11-15.
5. Page 16, Lines 3-13.
6. Page 16, Lines 15-17.
7. Page 24, Lines 12-16.

Therefore this Petition for Review should be accepted because the subject portion of the Court of Appeals opinion is in conflict with decisions of the Supreme Court [RAP 13.4((b)(1)], and also in conflict with other decisions of the Court of Appeals [RAP 13.4((b)(1)].

**VIII. CONCLUSION**

This court should reverse that part of the decision of the Court of Appeals which affirmed appellate attorney fees and costs, and remand for correction of the decision accordingly.

Respectfully submitted,



Dated: April 15, 2015

James Goughnour, Pro Se Petitioner

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STATE OF WASHINGTON  
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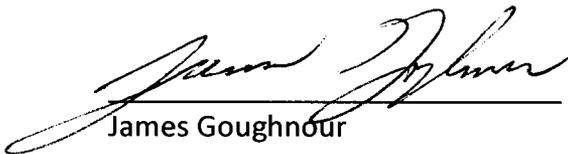
**Appendix:**

An appendix is attached to this petition containing the Court of Appeals Opinion from which review is requested.

**Declaration of Service:**

I, James Goughnour certify and declare that I served a complete copy of this Petition for Review including the appendix; on April 15, 2015 by first-class mail from Elma, Washington, postage prepaid, to Respondent's address as provided by their former counsel in his Notice of Withdrawal of Attorney, given as:

Mark Doyle and Carolyn Doyle, husband and wife  
P.O. Box 866  
Enterprise, UT 84725



Dated: April 15, 2015

James Goughnour

**APPENDIX**

This appendix contains a true and correct copy of the Unpublished  
Opinion entered March 17, 2015 from:

Court of Appeals

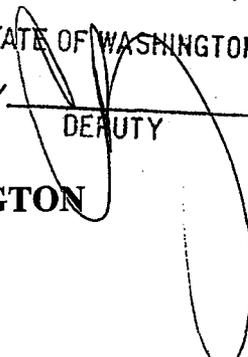
Division II

No. 44708-8-II

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DIVISION II

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STATE OF WASHINGTON

BY   
DEPUTY

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

MARK DOYLE and CAROLYN DOYLE,  
husband and wife,

Respondents,

v.

JAMES GOUGHNOUR, and all known  
occupants of 1202 W. Young St., Elma, Wash.,

Appellant.

No. 44708-8-II

UNPUBLISHED OPINION

LEE, J. — James Goughnour appeals a post-mandate judgment awarding trial court attorney fees and costs, damages, and appellate attorney fees and costs to Mark and Carolyn Doyle in this unlawful detainer action. Goughnour argues that the trial court lacked authority to grant this additional relief. We hold that the Doyles waived the right to recover trial court attorney fees, costs, and damages when they did not pursue this relief during the initial show cause hearing on their unlawful detainer complaint. However, we hold that the appellate rules authorized the trial court to enforce our award of appellate attorney fees and costs to the Doyles. Accordingly, we reverse in part, affirm in part, and remand for correction of the judgment.

**FACTS**

In 2009, the Doyles and Goughnour entered into a written rental agreement providing that Goughnour would pay \$1,000 per month to rent property from the Doyles. On April 15, 2010,

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they entered into a new agreement that expressly superseded all previous agreements, including the 2009 agreement, and provided that Goughnour would pay monthly rent of \$800 beginning May 1, 2010. The agreement provided further that either party could terminate the lease upon 30 days' notice.

In October 2010, the Doyles filed a complaint for eviction/unlawful detainer. The complaint alleged that Goughnour had not paid rent since August 2010. The Doyles requested termination of the tenancy, issuance of a writ of restitution, a monetary judgment of \$1,600 for delinquent rent, and an award of attorney fees and costs. The trial court issued an order to show cause why it should not grant the relief requested.

Goughnour answered that he had an accrued rental credit due to rent that he overpaid under the 2009 agreement and that he was entitled to apply this overpayment to the rent due in September and October 2010. He asserted several other affirmative defenses as well.

During the show cause hearing on November 1,<sup>1</sup> the only relief that the Doyles requested was a writ of restitution. The trial court granted the show cause order and issued a writ of restitution. Both the order and the writ were prepared by the Doyles' attorney, and neither awarded damages, attorney fees and costs, or reserved judgment thereon.

Goughnour appealed the show cause order and the writ of restitution. In an unpublished opinion, we affirmed the trial court and awarded the Doyles attorney fees and costs on appeal. *Doyle v. Goughnour*, noted at 167 Wn. App. 1018, 2012 WL 950091. We subsequently mandated

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<sup>1</sup> The transcript of this hearing is part of the record in Goughnour's prior appeal under No. 41538-1-II. We may take judicial notice of court records in the same case. ER 201(f); *Spokane Research & Defense Fund v. City of Spokane*, 155 Wn.2d 89, 98, 117 P.3d 1117 (2005).

the case to the trial court for further proceedings in accordance with our opinion. Approximately three weeks later, our commissioner granted the Doyles' motion to reopen the time to file an affidavit of fees and expenses.<sup>2</sup> The commissioner then awarded the Doyles appellate attorney fees of \$5,760 and appellate costs of \$35.95. We denied Goughnour's motions to modify the ruling extending the time to file the attorney fee request and the award of appellate attorney fees and costs in a single order, and the Supreme Court denied review of that ruling.

On January 14, 2013, the Doyles moved for entry of judgment in the trial court in the amounts awarded by this court, plus an additional \$1,600 in unpaid rent for September and October 2010, and trial court attorney fees of \$1,800 and trial court costs of \$377 incurred in the pre-appeal proceedings, for a total amount of \$9,572.95 plus interest. The trial court entered judgment for the amounts requested in favor of the Doyles. Goughnour appeals that judgment.

#### ANALYSIS

##### A. AUTHORITY TO AWARD DAMAGES/TRIAL COURT ATTORNEY FEES AND COSTS

Goughnour contends that the trial court lacked authority to enter the January 2013 judgment because the November 2010 show cause order was a final order that did not allow the Doyles to seek additional relief in the form of damages or trial court attorney fees and costs. We review this challenge de novo. *See City of College Place v. Staudenmaier*, 110 Wn. App. 841, 845-46, 43 P.3d 43 (applying de novo review to questions of law), *review denied*, 147 Wn.2d 1024 (2002).

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<sup>2</sup> The affidavit was due within 10 days of the filing of our decision, but the commissioner extended the deadline because we neglected to send the Doyles' attorney a copy of the opinion. RAP 18.1(d).

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As we recognized in our previous opinion, this was an unlawful detainer action under chapter 59.18 RCW. *Doyle*, 2012 WL 950091, at \*2; CP 114. Upon filing an action for unlawful detainer, the plaintiff may apply for an order directing the defendant to appear and show cause why a writ of restitution should not issue restoring possession of the property to the plaintiff. RCW 59.18.370; *Country Manor MHC, LLC v. Doe*, 176 Wn. App. 601, 612, 308 P.3d 818 (2013). The trial court may grant a writ of restitution at the show cause hearing if the right to possession is clear, and it may grant other requested relief if there are no substantial issues of material fact. *Indigo Real Estate Services, Inc. v. Wadsworth*, 169 Wn. App. 412, 421, 280 P.3d 506 (2012); *Hartson P'ship v. Goodwin*, 99 Wn. App. 227, 230-31, 991 P.2d 1211 (2000). The court's jurisdiction in unlawful detainer proceedings is limited to the right to possession of real property and a few related issues such as damages and rent due. *Angelo Prop. Co. v. Hafiz*, 167 Wn. App. 789, 811 n.38, 274 P.3d 1075 (quoting *Phillips v. Hardwick*, 29 Wn. App. 382, 385-86, 628 P.2d 506 (1981)), review denied, 175 Wn.2d 1012 (2012). In addition, the prevailing party in an unlawful detainer action may recover his or her costs and reasonable attorney fees. RCW 59.18.290(2).

Because unlawful detainer is a special statutory form of action that involves different and speedier procedures than ordinary civil actions, it cannot be turned into an ordinary action. 17 WILLIAM B. STOEBCUK AND JOHN W. WEAVER, WASHINGTON PRACTICE: REAL ESTATE: PROPERTY LAW § 6.80, at 444 (2d ed. 2004). Therefore, questions that the statute allows to be tried in an unlawful detainer action must be tried at the show cause hearing, or they will be barred. 17 STOEBCUK, *supra*, § 6.80 at 444.

Our Supreme Court applied this principle in rejecting an action for damages that a landlord brought after successfully prosecuting an unlawful detainer action to judgment. *Munro v. Irwin*, 163 Wash. 452, 458, 1 P.2d 329 (1931). Because the damages sought in the second action were based on the breach that led to the first action, the initial judgment was res judicata as to the damages claim. *Munro*, 163 Wash. at 458. By not seeking damages in the initial unlawful detainer action, the landlord waived his right to recover those damages and was limited to the relief he had obtained earlier. *Munro*, 163 Wn. at 457-48; see *Caine & Weiner v. Barker*, 42 Wn. App. 835, 840, 713 P.2d 1133 (1986) (citing *Munro* in stating that judgment contains final word on all points that could have been raised and adjudicated in the action) (Williams, J. concurring).

The Doyles requested damages and attorney fees in their complaint for unlawful detainer but did not pursue that request during the show cause hearing. That hearing resulted in a final judgment that did not address damages, attorney fees, or costs, or reserve any claim for such relief. See *Chambers v. Hoover*, 3 Wash. Terr. 20, 21, 13 P. 905 (1887) (order awarding writ of restitution is final judgment). In their postjudgment motion, the Doyles sought to recover the unpaid rent damages that had prompted their initial complaint. Because they could have pursued this relief and their related request for attorney fees and costs during the initial show cause hearing but failed to do so, their request for postjudgment relief was barred by principles of res judicata and waiver. See *West v. Gregoire*, 184 Wn. App. 164, 171, 336 P.3d 110, 113 (2014) (when a party asserts a claim in pleadings but does not press the claim in any way at trial, the party abandons the claim).

This is not a case where the postjudgment motion was simply an attempt to clarify the earlier judgment, as was the case in *Excelsior Mortgage Equity Fund II, LLC v. Schroeder*, 171 Wn. App. 333, 287 P.3d 21 (2012), review denied, 177 Wn.2d 1005 (2013). The motion at issue

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in *Excelsior Mortgage* sought approval of a procedure whereby the purchaser could effectuate the judgment to which it had already proved it was entitled: a judgment for restitution of the premises. 171 Wn. App. at 344. The trial court had authority to grant the postjudgment motion and to thereby enforce its existing judgment. *Excelsior Mortgage*, 171 Wn. App. at 345.

The Doyles' motion sought to obtain a new judgment rather than enforce an existing one. Because they waived the right to recover the damages, attorney fees, and costs they requested in their postjudgment motion, we must remand so that the awards for unpaid rent and trial court attorney fees and costs can be stricken from the judgment.

B. APPELLATE FEES AND COSTS

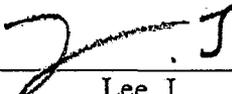
Goughnour also contends that the trial court erred in entering a judgment for the Doyles' appellate attorney fees and costs. Our review of this legal question is again de novo. *City of College Place*, 110 Wn. App. at 845-46.

We retain the power to make discretionary awards of attorney fees and costs on appeal, even after the mandate issues. RAP 12.7(c); *Thompson v. Lennox*, 151 Wn. App. 479, 488-89, 212 P.3d 597 (2009). After the mandate issued in the earlier appeal, the commissioner granted the Doyles an extension of time to file their request for attorney fees and costs and awarded them appellate attorney fees and costs of \$5,795.95. We rejected Goughnour's motions to modify these rulings, and the Supreme Court denied Goughnour's motion for discretionary review. Goughnour's challenges having been rejected, and the trial court was authorized to enforce our award of appellate attorney fees and costs. RAP 18.1(h), RAP 14.6(c).

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We reverse the award of damages for unpaid rent and the award of trial court attorney fees and costs, affirm the award of appellate attorney fees and costs, and remand for correction of the judgment accordingly.

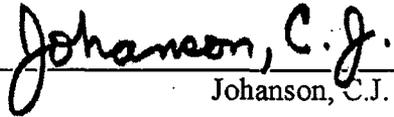
A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.



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Lee, J.

We concur:



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Johanson, C.J.



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Maxa, J.