FILED
NOVEMBER 26, 2019
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

JOHN L. CORRIGAN, Sr., Appellant, v. GRANT COUNTY, a municipal Corporation; D. ANGUS LEE; PATRICK SCHAFF; JANIS WHITENER-MOBERG; BRIAN D. BARLOW; JOHN A. ANTOSZ, and TIMOTHY KRON, Respondents.	)	No. 36244-2-III UNPUBLISHED OPINION

LAWRENCE-BERREY, C.J. — John Corrigan appeals the trial court's CR 12(b)(6) order dismissing his amended complaint. Because the trial court considered matters outside the pleadings, we review the trial court's order as if it were a CR 56 order granting summary judgment. Applying that standard, we affirm.

FACTS

In April 2011, John Corrigan sped by Trooper Timothy Kron on Interstate 90. Trooper Kron activated his emergency lights and followed Corrigan for eight miles until another trooper joined. At that point, Corrigan pulled over. Corrigan was cited for

speeding and failing to stop for a police officer. The speeding ticket was dismissed, but Corrigan was convicted for failing to stop. The conviction was later overturned by the superior court and dismissed without prejudice.

On March 25, 2013, Corrigan brought a 42 U.S.C. § 1983 suit in federal court against Trooper Kron, Grant County, and others, alleging violations of Corrigan's civil rights, malicious prosecution, and negligence stemming from his earlier arrest and prosecution.

On July 3, 2013, Grant County refiled charges against Corrigan for failing to stop. Corrigan was reconvicted of that charge.

On December 10, 2013, the federal court granted the defendants' motion for summary judgment dismissing all of Corrigan's claims. Corrigan appealed to the Ninth Circuit, but the Ninth Circuit denied it, finding the appeal "so insubstantial as to not warrant further review." Clerk's Papers (CP) at 174.

On September 15, 2016, Corrigan brought suit in Kittitas County Superior Court against Grant County, various Grant County employees, and Trooper Kron. In that suit, he asserted a 42 U.S.C. § 1983 claim, and claims for abuse of process, malicious prosecution, and negligence. The case was removed to federal court.

Trooper Kron brought a FED. R. CIV. P. 56 motion for summary judgment dismissal. The federal court granted that motion, and Trooper Kron was no longer a party to that action.

Grant County and its employees brought a FED. R. CIV. P. 12(b)(6) motion to dismiss. The federal court dismissed Corrigan's suit against Grant County and its employees. Somewhat contradictorily, it also afforded Corrigan leave to amend his complaint.

Corrigan filed an amended complaint, which asserted only State law claims. Although Trooper Kron was no longer a party to that action, Corrigan informally e-mailed Trooper Kron the amended complaint instead of formally serving him. Corrigan's amended complaint alleged: (1) negligence by Grant County and the prosecutor's office, (2) abuse of process against Grant County for the recharge and retrial after Corrigan's conviction was overturned and after he filed a § 1983 action, (3) a fair trial violation against Grant County and Judge Whitener-Moberg, and, (4) malicious prosecution against Grant County and Trooper Kron. Corrigan moved to remand the case, and the federal court remanded it back to Kittitas County Superior Court.

On April 23, 2018, Grant County moved to dismiss Corrigan's amended complaint pursuant to CR 12(b)(6). Among many other arguments, Grant County argued that Corrigan's claims were outside the three-year statute of limitations.

Trooper Kron also filed a motion to dismiss pursuant to CR 12(b)(6). Among many other arguments, Trooper Kron argued insufficient service of process under CR 12(b)(5).

The trial court agreed with the defendants' many arguments and granted their motions for dismissal. Corrigan timely appealed to this court.

ANALYSIS

A. ADEQUATE RECORD

Corrigan contends statements from various parties, including the trial court, are missing from the verbatim report of proceedings. He argues this error requires reversal. We disagree.

As explained below, we review the trial court's rulings de novo. This means we review the same documents that the trial court considered. The trial court's questions and the parties' answers during argument of their motions are irrelevant to our review. Because we review only the written record, we are satisfied the record is sufficient for our review.

B. STANDARD OF REVIEW

CR 12(c) provides in relevant part:

> If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in rule 56 . . . .

Because the trial court considered matters outside Corrigan's amended complaint, we review the trial court's order under CR 56.

On review of a summary judgment order, we engage in the same inquiry as the trial court. *Wash. State Major League Baseball Stadium Pub. Facilities Dist. v. Huber, Hunt & Nichols-Kiewit Constr. Co.*, 165 Wn.2d 679, 685, 202 P.3d 924 (2009). All facts and reasonable inferences are considered in a light most favorable to the nonmoving party. *Berger v. Sonneland*, 144 Wn.2d 91, 102-03, 26 P.3d 257 (2001). Summary judgment is appropriate only when there are no disputed issues of material fact and the prevailing party is entitled to judgment as a matter of law. CR 56(c).

C. GRANT COUNTY'S MOTION TO DISMISS

Corrigan contends the trial court erred by granting Grant County's motion to dismiss on his claims of malicious prosecution, abuse of process, negligence, and his causes of action against the various judges. We disagree.

1. Malicious prosecution

A plaintiff asserting malicious prosecution must establish various elements, including that the proceedings terminated on the merits in favor of the plaintiff. *Hanson v. City of Snohomish*, 121 Wn.2d 552, 558, 852 P.2d 295 (1993). Here, Corrigan was reconvicted of failure to stop. He cannot establish that the proceedings terminated on the merits in his favor. The trial court did not err in dismissing this claim.

2. Abuse of process and negligence: Statute of limitations

A plaintiff asserting abuse of process or negligence must bring suit within three years of when the cause of action accrued. *See* RCW 4.16.080(2); *see also Nave v. City of Seattle*, 68 Wn.2d 721, 724, 415 P.2d 93 (1966) (abuse of process); *Washington v. Boeing Co.*, 105 Wn. App. 1, 17, 19 P.3d 1041 (2000) (negligence). Generally, a cause of action accrues when the party has the right to apply to a court for relief. *Deegan v. Windermere Real Estate Center-Isle, Inc.*, 197 Wn. App. 875, 892, 391 P.3d 582 (2017). A party has the right to apply to a court for relief when the party can establish each element of the action. *Shepard v. Holmes*, 185 Wn. App. 730, 739, 345 P.3d 786 (2014).

Here, Corrigan's claims for abuse of process and negligence centered around Grant County's and its employees' decision to refile criminal charges against him. If refiling the charges was wrongful, this is when Corrigan had a right to apply for judicial

relief. The criminal charges were refiled on July 3, 2013. Corrigan's September 15, 2016 original complaint was, therefore, outside the three-year limitation period. Even if his amended complaint related back to the filing of his original complaint, it too was late.

Corrigan argues that his September 2016 complaint was timely because he was *convicted* in November 2013. But being convicted of a crime is not an element of abuse of process or negligence, and is thus irrelevant to when he had a right to apply for judicial relief. We conclude that his conviction date is not when his abuse of process and negligence claims began to accrue.

3. Judicial immunity

"Under common law, judges are absolutely immune from suits in tort that arise from acts performed within their judicial capacity." *Lallas v. Skagit County*, 167 Wn.2d 861, 864, 225 P.3d 910 (2009). "[J]udicial immunity applies to judges only when they are acting in a judicial capacity and with color of jurisdiction." *Id.* at 865.

Here, Corrigan's claims against the various judges all occurred while they were acting within their judicial capacity. Therefore, judicial immunity extends to their actions, and Corrigan's claims fail.

D. TROOPER KRON'S MOTION TO DISMISS

Corrigan contends the trial court erred by finding Trooper Kron was not properly served and, thus, was not a party to the action. We disagree.

Whether service was proper is a question of law that this court reviews de novo. *Goettemoeller v. Twist*, 161 Wn. App. 103, 107, 253 P.3d 405 (2011). Under FED. R. CIV. P. 4(e)(1)-(2), service must occur: (1) on the individual personally, (2) on the individual's dwelling or usual place of abode with someone of suitable age who resides there, (3) on the individual's agent authorized by law to receive process, or (4) any method allowed by state law in the state where the district court is located or where service is made. Under Washington law, service must occur through: (1) personal service, (2) on the individual's usual place of abode with a person of suitable age who resides there, (3) on the individual's usual place of abode with a person of suitable age who resides there, a proprietor, or an agent, and then mailing a copy by first class mail to the person at their usual mailing address, (4) by publication when the defendant cannot be found, or (5) by certified mail when the court determines it is just as likely to give actual notice. *See* CR 4(d); RCW 4.28.080(16), (17); RCW 4.28.100.

Here, Corrigan does not assert that he served Trooper Kron in compliance with any of the aforementioned ways. He merely asserts that electronic service of his amended

complaint on Trooper Kron was sufficient. We disagree. Electronic service is not permitted under federal or state law. The trial court properly dismissed Corrigan's claims against Trooper Kron for insufficient service of process.[1]

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Lawrence-Berrey, C.J.

WE CONCUR:

Siddoway, J.

Pennell, J.

[1] Because of our disposition of these arguments, we need not address the various other bases for which we might affirm the trial court's dismissal of Grant County, its employees, and Trooper Kron.

FILED
DECEMBER 31, 2019
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

JOHN L. CORRIGAN, Sr.,	)	**No. 36244-2-III**
	)	
Appellant,	)	
	)	
v.	)	**ORDER DENYING MOTION FOR RECONSIDERATION**
	)	
GRANT COUNTY, a municipal corporation; D. ANGUS LEE; PATRICK SCHAFF; JANIS WHITENER-MOBERG; BRIAN D. BARLOW; JOHN A. ANTOSZ, and TIMOTHY KRON,	)	
	)	
Respondents.	)	

The court has considered appellant's motion for reconsideration and is of the opinion the motion should be denied. Therefore,

IT IS ORDERED the motion for reconsideration of this court's decision of November 26, 2019, is denied.

PANEL: Judges Lawrence-Berrey, Siddoway, and Pennell

FOR THE COURT:

Lawrence-Berrey, C.J.
ROBERT LAWRENCE-BERREY
CHIEF JUDGE

SUPERIOR COURT OF WASHINGTON
FOR KITTITAS COUNTY

JOHN L. CORRIGAN, Sr., Plaintiff, v. GRANT COUNTY, a municipal corporation; D. ANGUS LEE; PATRICK SCHAFF; JANIS WHITENER-MOBERG; BRIAN D. BARLOW; JOHN A. ANTOSZ; and TIMOTHY KRON, Defendants.	NO. 16-2-00254-7 **ORDER GRANTING DEFENDANTS GRANT COUNTY, D. ANGUS LEE, PATRICK SCHAFF, JANIS WHITENER-MOBERG, BRIAN D. BARLOW, AND JOHN A. ANTOSZ'S MOTION FOR DISMISSAL PURSUANT TO CR 12(b)(6)**

THIS MATTER came before the above-titled Court on Defendants Grant County, D. Angus Lee, Patrick Schaff, Janis Whitener-Moberg, Brian D. Barlow, and John A. Antosz's Motion for Dismissal pursuant to CR 12(b)(6), the Court being fully apprised, and after reviewing Defendants' Motion For Dismissal Pursuant to CR 12(b)(6) and Plaintiff's Amended Complaint; AFTER hearing the argument of Plaintiff and Defendants' Counsel, and determining that there is no grounds for relief in the Amended Complaint, the Court being fully advised in the premises,

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NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Defendants Grant County, D. Angus Lee, Patrick Schaff, Janis Whitener-Moberg, Brian D. Barlow, and John A. Antosz's motion for dismissal pursuant to CR 12(b)(6) is hereby GRANTED and this complaint, and all of the claims set forth therein, brought against said Defendants shall be and the same are DISMISSED with prejudice.

SO ORDERED on ~~June~~ July 11, 2018.

HONORABLE RICHARD BARTHELD, Visiting Judge
YAKIMA COUNTY SUPERIOR COURT

Presented By:

JERRY MOBERG & ASSOCIATES, P.S.

Brian A. Christensen, WSBA No. 24682
Attorney for Defendants Grant County,
D. Angus Lee; Patrick Schaff, Janis Whitener-
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STATE OF WASHINGTON
KITTITAS COUNTY SUPERIOR COURT

JOHN L. CORRIGAN, Sr.; Plaintiff, v. GRANT COUNTY, a municipal corporation; D. ANGUS LEE; PATRICK SCHAFF; RYAN J. ELLERSICK; DOUGLAS R. MITCHELL; JANIS WHITENERMOBERG; BRIAN D. BARLOW; TIMOTHY KRON; TOM JONES; SCOTT PONOZZO; and JOHN A. ANTOSZ; Defendants.	NO. 16-2-00254-7 **ORDER GRANTING DEFENDANT TIMOTHY KRON'S MOTION FOR DISMISSAL**

THIS MATTER came before the above-titled Court on Defendant Timothy Kron's Motion for Dismissal pursuant to CRs 12(c), 12(b)(6), and 12(b)(5), the Court being fully apprised, and after reviewing Defendant's Motion for Dismissal and Plaintiff's Amended Complaint; after hearing the argument of Plaintiff and Defendant Kron's counsel and determining that there is no grounds for relief in the Amended Complaint, the Court being fully advised in the premises,

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Defendant Timothy Kron's motion for dismissal pursuant to CRs 12(c), 12(b)(6), and 12(b)(5)

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is hereby GRANTED and this complaint, and all of the claims set forth therein, brought against said Defendant shall be DISMISSED with prejudice.

SO ORDERED this 11th day of ~~June~~ July, 2018.

HONORABLE RICHARD BARTHELD,
Visiting Judge
YAKIMA COUNTY SUPERIOR COURT

Presented by:

ROBERT W. FERGUSON
Attorney General

FRIEDA K. ZIMMERMAN, WSBA #46541
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THE SUPREME COURT OF WASHINGTON

JOHN L. CORRIGAN SR., Petitioner, v. GRANT COUNTY, et al, Respondents.	No. 98133-7 **ORDER** Court of Appeals No. 36244-2-III

Department II of the Court, composed of Chief Justice Stephens and Justices Madsen, González, Yu, and Whitener, considered at its April 28, 2020, Motion Calendar whether review should be granted pursuant to RAP 13.4(b) and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the petition for review is denied.

DATED at Olympia, Washington, this 29th day of April, 2020.

For the Court

Stephens, C. J.
CHIEF JUSTICE

second suit. He filed the second suit in Kittitas County Superior Court and named Grant County and a number of other defendants, some of which were named in the 2013 lawsuit, but he also added some other named defendants in this case. That case was then removed to the United States District Court for the Eastern District and on summary judgment Judge Mendoza dismissed the causes of action against the defendant in the case and found that the prosecutor and Judges were protected by qualified or absolute immunity and that Trooper Kron was dismissed as a result of the theory of res judicata.

Judge Mendoza allowed Mr. Corrigan to file an Amended Complaint which would -- well, actually, it did allow you file the Amended Complaint. That Amended Complaint was filed in this particular case and it looks like it was filedin the United States District Court on September 7, 2017, and again, Mr. Corrigan named Timothy Kron but he dropped some of the defendants but added some new defendants. He included prosecutor Angus Lee and Patrick Schaff and then the three Judges involved in this case, Judge Whitener-Moberg, Judge Barlow, and Judge Antosz and it added Timothy Kron, excuse me, in the amended lawsuit.

The issue that comes before this Court is whether or not the plaintiff has stated claims upon which relief can be granted as a matter of law. I do note that there was a motion to stay discovery pending the motion to dismiss. Judge

Federspiel, by order dated April 2, 2018, indicated that discovery would be stayed so long as the Court was able to rule on the CR 12 motion without resorting to a CR (unintelligible), and when additional facts remain to be supplemented, the Court can convert a CR 12 motion to a CR 56 summary judgment motion if necessary. The Court finds in this case that there has not been a supplementation of facts in this case, that this matter was actually properly brought before this Court on a CR 12 motion.

The motion to dismiss in this case I'm going to address motion to dismiss all of the defendants, with the exception of Trooper Kron, the plaintiff claims that Grant County was negligent and the negligence arises out of the acts of its Judges and prosecutors. The plaintiff asserts that Grant County failed to train, supervise, instruct, or implement policies and procedures that violated his right to due process and to a fair trial.

First of all, the Court knows of no circumstances and no circumstances have been alleged that Grant County or any other County in the State of Washington must train, supervise, instruct, and implement policies and procedures for Judges, especially Superior Court Judges --

(INTERRUPTION BY TELEPHONE SYSTEM.)

THE COURT: -- for (unintelligible) State of Washington (unintelligible)

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

John L. Corrigan, Sr.,

Appellant,

V.

GRANT COUNTY, A Municipal Corporation; D. Angus Lee; Patrick Schaff; Janis Whitener-Moberg; Brian D. Barlow; John A. Antosz, and Timothy Kron,
Respondents.

No. 36244-2-III

Appellant's Motion For Reconsideration

COMES NOW, John L. Corrigan, Sr., Appellant pro se, pursuant to RAP 12.4(c) and respectfully requests this Court reconsider its Unpublished Opinion filed November 26, 2019 in the above entitled cause. Basically, this Court mistakenly converted the trial court's CR 12(b)(6) order into a CR 56 order and granted summary judgment.

This Court abused its discretion and committed fraud on the court by not remanding to the trial court for proper treatment of a CR 56 motion.

This Court abused its discretion by claiming Kron was improperly served and therefore was exempt from the lawsuit.

This Court abused its discretion in converting from a CR 12(b)(6) motion to dismiss to a CR 56 summary judgment motion.

This Court is violating Appellant's Sixth Amendment right to a fair trial under the U.S. Constitution and his Fifth Amendment right to due process under the U.S. Constitution– both through the Fourteenth Amendment to the U.S. Constitution.

ARGUMENT

A. This Court Abused Its Discretion And Committed Fraud On The Court By Not Remanding To The Trial Court For Proper Treatment Of A CR 56 Motion.

INTRODUCTION

This Court was required to remand due to the fact that Appellant was denied discovery and the only legitimate way of opposing a summary judgment motion is through discovery. The trial court had a mandatory, not discretionary, duty to convert the motion to dismiss if matters outside the pleading are presented to and not excluded by the trial court. The trial court's actions are reversible error and this Court abused its discretion by not remanding to the trial court.

Further, this Court's insistence on pushing the summary judgment through the appellate court without Appellant discovery – is a fraud on the court.[1]

> Early summary judgment motions (those filed at the time the lawsuit is commenced or otherwise before, or during, discovery) are clearly permitted, unless foreclosed by local rules or scheduling orders. Such early filings, though consistent with some prior case law, seem at odds with the ***Supreme Court's admonition in 1986 that summary judgment should be granted only after the nonmoving party had an "adequate time for discovery."*** [Citations omitted] [Emphasis added]

Federal Civil Rules Handbook 2019 (Handbook), © Thomson Reuters/West 2019, pp. 1131-1132

[1] In Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985), the court stated "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. . . . It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function --- thus where the impartial functions of the court have been directly corrupted."

ANALYSIS

CONVERSION

> Both motions to dismiss and motions for judgment on the pleadings are pleadings-based attacks. Rule 12(d) respects this essential attribute by requiring that such motions be re-cast into summary judgment requests when materials outside the pleadings are examined, thereby ensuring that the distinct policies of pleadings challenges (i.e., testing the pleaded allegations) and factual challenges (i.e., testing the existence of supporting evidence) are honored.
>
> When, while considering a Rule 12(b)(6) or 12(c) motion, a court is presented with materials outside the pleadings, and does not exclude them, the court is obligated to "convert" the pleadings challenge into a summary judgment motion. ***To do so, the court must give all parties notice of the conversion and an opportunity to both be heard and to present further materials in support of their positions on the motion.*** Following conversion, and upon a proper request by the parties, the court typically ensures that the parties have a reasonable opportunity for discovery prior to ruling on the converted motion. ***(Ordinarily, conversion (and the consideration of extrinsic materials) is not appropriate when discovery has not yet occurred.)*** The court then proceeds to evaluate the motion as a request for summary judgment under Rule 56.
>
> Although this conversion procedure is mandatory, not discretionary, ...
>
> The required notice of conversion may be either actual or constructive. ...
>
> Because they are unlikely to appreciate the consequence of a conversion to summary judgment procedures, *pro se* litigants will ordinarily be entitled to notice of that conversion and its meaning. [Citations omitted] [Emphasis added]

Handbook, Rule 12(d) – Presenting Matters Outside the Pleadings, pp. 480-483. See also, WA Civil Rules, Rule 12(b) ("... the motion shall be treated as one for summary judgment and disposed of as provided in rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56.")

- Conversion by the trial court is mandatory;
- There was no opportunity to be heard;
- There was no opportunity to present further materials in support of summary judgment;
- Appellant was never given the opportunity for discovery;
- No notice of the actual conversion was provided; and
- Appellant, as a *pro se,* was not afforded special notice of the conversion or its meaning.

The trial court had a mandatory duty to convert the Rule 12(b)(6) motion to a rule 56 motion for summary judgment if, as this Court claims, that materials outside the pleadings were presented. The trial court's actions are reversible error and this Court abused its discretion by not remanding to the trial court for full consideration under Rule 56.

B. This Court Abused Its Discretion And Committed Fraud On The Court By Claiming Defendant Kron Was Improperly Served And Therefore Was Exempt From The Lawsuit.

ANALYSIS

> Although Trooper Kron was no longer a party to that action, Corrigan informally e-mailed Trooper Kron the amended complaint instead of formally serving him.

Unpublished Opinion, p. 3. This is disingenuous. Trooper Kron's motion for summary judgment was granted – that does not mean that he was no longer a party to that action. Options were still available to Corrigan like his amended complaint or appeals to a higher court.

Also, Corrigan did not "informally" e-mail Trooper Kron the amended complaint instead of formally serving him. Trooper Kron's amended complaint was "formally" served to his counsel, Carl Warring, through the US District Court, Eastern District of Washington using the CM/ECF system.

This is a ludicrous and frivolous issue presented by Defendant Kron. This Court by giving it credence is committing a fraud on the court.

Finally, it is not up to this Court to weigh the evidence or find the facts.

> In ruling on a motion for summary judgment, ***the court will never weigh the evidence or find the facts***. Instead, the court's role under Rule 56 is narrowly limited to assessing the threshold issue of whether a genuine dispute exists as to material facts requiring a trial. Thus, ***the evidence of the non-moving party will be believed as true, all evidence will be construed in the light most favorable to the non-moving party, and all doubts and reasonable inferences will be drawn in the non-moving party's favor.*** [Citation omitted] [Emphasis added]

Handbook, pp. 1124-1125. This Court can assess the issue of whether or not Trooper Kron was properly served. However, this Court is improperly weighing the evidence and finding the facts in the moving party's favor. This is an abuse of discretion.

C. This Court Abused Its Discretion In Converting From A CR 12(B)(6) Motion To Dismiss To A CR 56 Summary Judgment Motion.

ANALYSIS

1. Trial Court Was Limited To A Motion To Dismiss.

A trial court hearing was conducted in which it was determined that Respondents' motion for summary judgment and motion to stay discovery could not both be granted. That is, summary judgment would be considered but only upon a denial of the stay of discovery, and vice versa. Respondents' opted for a stay of discovery only on their assurance that they would seek a motion to dismiss under CR 12(b)(6). Converting the motion to dismiss into one of summary judgment by this Court was a violation of the stay of discovery condition established by the trial court. Verbatim Report of Proceedings from an Audio File (Verbatim Report), June 18, 2018, p. 14-15.

Further, the trial court judge specifically stated that "there has not been a supplementation of facts in this case, that this matter was actually properly brought before this Court on a CR 12 motion." Id., at 15.

2. This Court Did Not Establish Justification For Conversion.

This Court alleges that "because the trial court considered matters outside the pleadings, we review the trial court's order as if it were a CR 56 order granting summary judgment. Applying that standard, we affirm." Unpublished Opinion, p. 1. This Court cannot "affirm" the trial court's

summary judgment motion – because the motion was never properly before the trial court. The trial court and all party's were all responding to a motion to dismiss.

However, this Court did not identify what matters outside the pleadings were considered as required by RAP 9.12.

> On review of an order granting or denying a motion for summary judgment the appellate court will consider only evidence and issues called to the attention of the trial court. The order granting or denying the motion for summary judgment shall designate the documents and other evidence called to the attention of the trial court before the order on summary judgment was entered. Documents or other evidence called to the attention of the trial court but not designated in the order shall be made a part of the record by supplemental order of the trial court or by stipulation of counsel.

RAP 9.12 Special Rule for Order on Summary Judgment.

This Court is claiming that the trial court considered matters outside the pleadings, when the trial court is claiming that "there has not been a supplementation of facts in this case."

> The issue that comes before this Court is whether or not the plaintiff has stated claims upon which relief can be granted as a matter of law. I do note that there was a motion to stay discovery pending the motion to dismiss. Judge Federspiel, by order dated April 2, 2018, indicated that discovery would be stayed so long as the Court was able to rule on the CR 12 motion without resorting to a CR (unintelligible) [CR 56], and when additional facts remain to be supplemented, the Court can convert a CR 12 motion to a CR 56 summary judgment if necessary. ***The Court finds in this case that there has not been a supplementation of facts in this case***, that this matter was actually properly brought before this Court on a CR 12 motion.

Verbatim Report, pp. 14-15.

3. RAP 9.12 Special Rule for Order on Summary Judgment.

In order to properly support this Court's summary judgment motion, this Court is required to satisfy RAP 9.12 even if it has to certify by supplemental certificate and indicate precise matters considered in ruling on motion.

Appeal should not have been dismissed for appellants' failure to have trial judge specifically designate documents he considered in ruling on motion for summary judgment, ***but trial court should have been directed to certify by supplemental certificate and indicate precise matters considered in ruling on motion.*** Millikan v. Board of Directors of Everett School Dist. No. 2, 92 Wash. 2d 213, 595 P.2d 533 (1979). [Emphasis added]

2A Wash. Prac., Rules Practice RAP 9.12 (8th Ed.), Washington Practice Series TM August 2018 Update.

Also, in order to properly evaluate RAP 9.12 requirements this Court must recognize the exceptions to the "Conversion" requirements.

> Various exceptions to the conversion procedure have been recognized. First, no conversion is required when the court considers exhibits attached to the complaint (unless their authenticity is questioned); documents that the complaint incorporates by reference or are otherwise integral to the claim (provided they are undisputed); information subject to judicial notice; matters of public record (including orders and other materials in the record of the case); and concessions by plaintiffs made in their response to the motion. ...
>
> Second, no conversion is usually required if only a portion of a document is attached as an exhibit to the complaint, and the moving party submits remaining portions with the motion.
>
> Third, a party may waive any objection to a failure to properly convert by failing to timely contest it.
>
> Fourth, even if not waived, a failure to properly convert may be deemed harmless if the non-moving party had an adequate opportunity to respond and was not otherwise prejudiced. [Citations omitted]

Handbook, pp. 482-483.

D. This Court Is Violalting Appellant''s Sixth Amendment Right To A Fair Trial Under The U.S. Constitution And His Fifth Amendment Right To Due Process Under The U.S. Consttitution – Both Through The Fourteenth Amendment To The U.S. Constitution.

ANALYSIS

Based on the foregoing actions by this Court relating to violations of CR 12(b)(6) and CR 56, Appellant is denied a fair trial and a right to due process under the Fifth and Sixth Amendments to the U.S. Constitution applicable to the states under the Fourteenth Amendment.

CONCLUSION

Based on the foregoing actions by this Court, this Court should remand to the trial court for a proper CR 56 summary judgment disposition; that is – "disposed of as provided in rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56." See CR 12(b).

DATED this 16th day of December, 2019.

s/ John L. Corrigan
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Email: jcorrigan25@outlook.com

FedExOffice

September 28, 2020 10:42 Page: 1
Receipt #: 5180534830
VISA #: XXXXXXXXXXXX8725
2020/09/28 10:31

Qty	Description	Amount
1	PNG B&W S/S 8.5x11 & 8.5x14	0.13
1	PNG B&W S/S 8.5x11 & 8.5x14	0.13
21	PNG B&W S/S 8.5x11 & 8.5x14	2.73
18	PNG Color S/S 8.5x11 & 8.5x14	10.80
7	PNG B&W S/S 8.5x11 & 8.5x14	0.91

SubTotal	14.70
Taxes	1.33
Total	16.03

The Cardholder agrees to pay the Issuer of the charge card in accordance with the agreement between the Issuer and the Cardholder.

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