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EXPEDITE
No hearing set
X Hearing is set
Date: 12/16/2016
Time: 9:00 am
Judge/Calendar: Judge Anne Hirsch

FILED

DEC 16 2016

Superior Court
Linda Myhre Enlow
Thurston County Clerk

**STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT**

EDNA ALLEN,

Petitioner,

v.

WASHINGTON STATE ATTORNEY
GENERAL,

Respondent.

NO. 15-2-02446-34

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

(Clerk's Action Required)

This matter was heard on September 23, 2016, before the above-entitled court pursuant to the Washington Administrative Procedure Act, RCW 34.05. Edna Allen was represented by Dan R. Young; the Washington State Attorney General (AGO), Manufactured Housing Dispute Resolution Program, was represented by Jennifer S. Steele, Assistant Attorney General; Dan Haugsness d/b/a Dan & Bill's RV Park (Dan & Bill's) was represented by Seth Goodstein. The Court, having reviewed the administrative record, pleadings on file, and having heard argument of counsel, and being otherwise fully advised, issued a letter ruling on October 7, 2016 (attached as Attachment 1), which is incorporated into this Order. Consistent with and supplemental to that letter ruling, the Court hereby makes the following:

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1 **I. FINDINGS OF FACT**

2 1.1 The AGO issued a Notice of Violation determining, among other things, that Dan
3 & Bill's is a manufactured/mobile home park subject to the Manufactured/Mobile Home
4 Landlord-Tenant Act, RCW 59.20. Dan and Bill's appealed the Notice of Violation to the Office
5 of Administrative Hearings.

6 1.2 Following an administrative hearing, an Administrative Law Judge from the
7 Office of Administrative Hearings ruled that Dan & Bill's was not a manufactured/mobile home
8 park subject to RCW 59.20 and thereby entered a Final Order setting aside and reversing the
9 AGO's Notice of Violation.

10 **II. CONCLUSIONS OF LAW**

11 2.1 The Court has jurisdiction over the parties and subject matter pursuant to RCW
12 59.30.040(10) and RCW 34.05.

13 2.2 Edna Allen is an aggrieved party and has standing to petition for judicial review
14 pursuant to RCW 34.05.530.

15 2.3 The AGO is an aggrieved party and has standing to petition for judicial review
16 pursuant to RCW 34.05.530.

17 2.4 Dan & Bill's is a manufactured/mobile home park subject to the
18 Manufactured/Mobile Home Landlord-Tenant Act, RCW 59.20.

19 2.5 Edna Allen is a prevailing party and is entitled to reasonable attorney fees and
20 costs pursuant to RCW 59.20.110.

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1 From the foregoing Findings of Fact and Conclusions of Law, the Court enters the
2 following:

3 **ORDER**

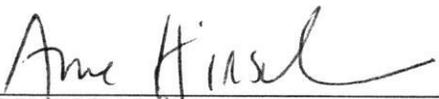
4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

5 The final order issued by the Administrative Law Judge is REVERSED.

6 The matter is REMANDED to the Office of Administrative Hearings for proceedings
7 consistent with this order and the Court's letter opinion.

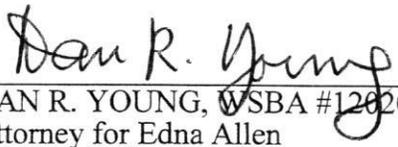
8 Dan & Bill's must pay Edna Allen's reasonable attorney fees and costs.

9
10 DATED this 16th day of December, 2016.

11
12 
13 _____
14 THE HONORABLE ANNE HIRSCH

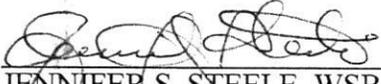
15 Presented By:

16 LAW OFFICES OF DAN R. YOUNG

17 
18 _____
19 DAN R. YOUNG, WSBA #12020
20 Attorney for Edna Allen

Approved For Entry, Notice of Presentation
Waived:

ROBERT W. FERGUSON
Attorney General

21 
22 _____
23 JENNIFER S. STEELE, WSBA #36751
24 Assistant Attorney General
25 Attorneys for State of Washington

Approved For Entry, Notice of Presentation
Waived:

GOODSTEIN LAW GROUP, PLLC

26 _____
SETH GOODSTEIN, WSBA #45091
CAROLYN LAKE, WSBA #13980
Attorneys for Dan & Bill's RV Park

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From the foregoing Findings of Fact and Conclusions of Law, the Court enters the following:

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

The final order issued by the Administrative Law Judge is REVERSED.

The matter is REMANDED to the Office of Administrative Hearings for proceedings consistent with this order and the Court's letter opinion.

Dan & Bill's must pay Edna Allen's reasonable attorney fees and costs.

DATED this _____ day of _____, 2016.

THE HONORABLE ANNE HIRSCH

Presented By:
ROBERT W. FERGUSON
Attorney General

Approved For Entry, Notice of Presentation
Waived:
LAW OFFICES OF DAN R. YOUNG

JENNIFER S. STEELE, WSBA #36751
Assistant Attorney General
Attorneys for State of Washington

DAN R. YOUNG, WSBA #12020
Attorney for Edna Allen

Approved For Entry, Notice of Presentation
Waived:
GOODSTEIN LAW GROUP, PLLC



SETH GOODSTEIN, WSBA #45091
CAROLYN LAKE, WSBA #13980
Attorneys for Dan & Bill's RV Park

CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing on the following parties via the following methods:

Edna Allen c/o Law Offices of Dan R. Young 1000 2nd Ave., Ste. 3200 Seattle, WA 98104 dan@truthandjustice.legal camille@truthandjustice.legal	<input type="checkbox"/> Legal Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email <input type="checkbox"/> E-filed with Clerk
Seth Goodstein Deena Pinckney Goodstein Law Group, PLLC 501 South G Street Tacoma, WA 98405 sgoodstein@goodsteinlaw.com dpinckney@goodsteinlaw.com	<input type="checkbox"/> Legal Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email <input type="checkbox"/> E-filed with Clerk

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 22nd day of November, 2016, at Seattle, Washington.


 P. JOSEPH DROUIN
 Legal Assistant

Superior Court of the State of Washington For Thurston County

Gary R. Tabor, *Judge*
Chris Wickham, *Judge*
Anne Hirsch, *Judge*
Carol Murphy, *Judge*
James Dixon, *Judge*
Christine Schaller, *Judge*
Erik Price, *Judge*
Mary Sue Wilson, *Judge*



2000 Lakeridge Drive SW • Building Two • Olympia WA 98502
Telephone: (360) 786-5560 Website: www.co.thurston.wa.us/superior

Indu Thomas,
Court Commissioner
Jonathon Lack,
Court Commissioner
Pamela Hartman Beyer,
Court Administrator

October 7, 2016

Dan Young
1000 2nd Ave Ste 3200
Seattle, WA 98104

Leslie Owen
711 Capitol Way S #704
Olympia, WA 985101

Jennifer Steele
800 Fifth Ave Ste 2000
Seattle, WA 98104

Seth Goodstein
501 S G St
Tacoma, WA 98405

COURT'S LETTER RULING

**Edna Allen v. State Attorney General,
Thurston County Cause No. 15-2-02446-34 consolidated with 15-2-02663-34**

Re: Defendant Motion for Interim Attorney Fees

Dear Counsel:

This court heard oral argument on this administrative law review on September 23, 2016. The court considered the entire contents of the court files, as well as the administrative record. In this letter opinion, the court reverses the final order and remands for further proceedings consistent with this opinion.

Background

Dan & Bill's RV Park is a residential setting next to the Puyallup River in Pierce County. It hosts several recreational vehicles on the grounds in exchange for monthly rent. Edna Allen resides in one RV in the park. Her RV has not been moved for years and it would be difficult to move it. Other RVs in the park could be moved within a couple of hours. From time to time, some RVs must move upland within the park due to high water and flooding conditions on the river. Some residents have lived at the park for several years, year-round, and many of the residents have installed items around their RV such as fencing, plants, stairs, and other improvements. Some residents have not moved their vehicle for years despite being in a flood plain.

Edna Allen complained about activities in the park. The Attorney General's Office issued a notice of violation and order to cease and desist to Dan & Bill's RV Park for several violations of the Manufactured/Mobile Home Landlord-Tenant Act (MHLTA), chapter 59.20 RCW. The Park allegedly did not register under that Act, did not provide written rental agreements, increased rent with only verbal warnings, and failed to comply with Pierce County codes and variances.

The matter was heard by the Office of Administrative Hearings. The administrative law judge (ALJ) issued a final order, concluding that the MHLTA did not apply to the park. This decision focused on whether the park contained two "park models" under RCW 59.20.030(14). The specific legal and factual requirements for a "park model" appears to be a novel issue of law in Washington. If the MHLTA does not apply to the park, the Attorney General's Office does not have authority to issue a violation. Thus, the ALJ did not reach the merits of whether the Notice of Violation was supported by the facts of the case.

Allen appealed under cause number 15-2-2446-34. Dan & Bill's RV Park filed an unsigned cross appeal in that case, for which it has not apparently paid a filing fee. The Attorney General's Office separately appealed under cause number 15-2-2663-34. The court consolidated the two matters. The court allowed the Northwest Justice Project to file an amicus brief.

Analysis

1. Do Edna Allen and the Attorney General's Office have Standing to Appeal?

As a threshold issue, the RV Park argues that Allen and the AGO do not have standing to appeal the final order. This court concludes that Allen is an aggrieved party under RCW 34.05.530. This court also concludes that the AGO is an aggrieved party under that statute. *See also Snohomish County v. Hinds*, 61 Wn. App. 371, 377 (1991). Those appellants have standing.

2. Is the Park Subject to the Manufactured/Mobile Home Landlord Tenant Act?

The primary issue in this appeal is whether the park is a "mobile home park." If it is, the MHLTA applies to it. If it isn't, the MHLTA does not apply and the notice of violation issued is void. This court concludes that Dan & Bill's RV Park is a mobile home park under de novo review of the law and under the facts that the ALJ found.

A. Legal Requirements

There is some confusion in this case about what qualifies as a mobile home park. A park is a "mobile home park," and thus subject to the MHLTA, if it is:

any real property that is rented or held out for rent to others for the placement of **two or more** mobile homes, manufactured homes, or **park models**, for the primary purpose of production of income, except where the real property is rented or held out for rent for seasonal recreational purposes only and is not intended for year-round occupancy.

RCW 59.30.020 (emphasis added). There is no dispute here about the majority of requirements in this statutory definition. The sole dispute is whether the park rents to two or more park models.

“Park model means a recreational vehicle intended for permanent or semi-permanent installation and is used as a primary residence.” RCW 59.30.020(11). This definition, standing alone, seems very straightforward.

The parties all agree that, under ordinary language, the vehicles that occupy Dan & Bill’s are recreational vehicles. Some of the vehicles are what we would informally call RVs, which have engines and can be driven, while others are fifth wheels or other types of trailers. Likewise, there is no dispute about whether the recreational vehicles are being used as primary residences. Some occupants have lived there for several years, year-round, with the intention to stay for the foreseeable future.

The parties discuss what “installation” means, but simply turning to the dictionary answers this question. “Install” means “to make (a machine, a service, etc.) ready to be used in a certain place.” Merriam-Webster Online Dictionary, “Install,” (www.merriam-webster.com/dictionary/install) (last visited 9/9/16). Here the recreational vehicles are installed in the premises because they are settled down there, attached to water, electrical, and sewer. They are ready to be used for their purpose (occupancy) in a certain place (Dan & Bill’s RV Park).

A problem arises, however, due to a special statutory definition of “recreational vehicle” in the MHLTA. It defines the term as:

a travel trailer, motor home, truck camper, or camping trailer that is primarily designed and used as temporary living quarters, is either self-propelled or mounted on or drawn by another vehicle, is transient, is not occupied as a primary residence, and is not immobilized or permanently affixed to a manufactured/mobile home lot.

RCW 59.30.020(12). This causes two potential conflicts.

The first potential conflict regards the residency requirement. The “park model” definitions discusses recreational vehicles and requires that it *is* used as a primary residence. But the definition of “recreational vehicle” says that it is used as “temporary living quarters” and it *is not* occupied as a primary residence. Those two phases are mutually exclusive.

The petitioners and amici in this case offer several complicated solutions to try to resolve these conflicts. The ALJ took great pains to read the two definitions in harmony. This court holds that these definitions cannot be harmonized as they relate to the residency requirement. A recreational vehicle cannot simultaneously be defined as “used as a primary residence” and “not occupied as a primary residence.” This conflict potentially exists in several statutes:

(1) “This chapter governs the eviction of mobile homes, manufactured homes, park models, and **recreational vehicles used as a primary residence** from a mobile home park.” RCW 59.20.080(3).

(2) “A county may not adopt an ordinance that has the effect, directly or indirectly, of preventing the entry or requiring the removal of a **recreational vehicle used as a primary residence** in manufactured/mobile home communities, as defined in RCW 59.20.030, unless the recreational vehicle fails to comply with the fire, safety, or other local ordinances or state laws related to recreational vehicles.” RCW 36.01.225(3).

(3) “[A] code city may not adopt an ordinance that has the effect, directly or indirectly, of preventing the entry or requiring the removal of a **recreational vehicle used as a primary residence** in manufactured/mobile home communities.” RCW 35A.21.312.

(4) “[A] city or town may not adopt an ordinance that has the effect, directly or indirectly, of preventing the entry or requiring the removal of a **recreational vehicle used as a primary residence** in manufactured/mobile home communities.” RCW 35.21.684.

(Emphases added.) These four statutes, along with the statutory definition of “park model,” conflict with the MHLTA’s statutory definition of recreational vehicle regarding the residency requirement. The statutes before the court today – the definitions of “park model” and “recreational vehicle” -- cannot be harmonized regarding the residency requirement.

“Generally, provisions of a specific more recent statute prevail in a conflict with a more general predecessor.” *Citizens for Clean Air v. City of Spokane*, 114 Wn.2d 20, 37 (1990). Here, the specific issue before the court is whether the vehicles are “park models.” It is not genuinely disputed whether the vehicles are recreational vehicles. The definition of “park models” is the more specific statute regarding the dispute in this case. Further, the law that was enacted more recently is the statutory definition of “park models.” See 1999 Laws of Washington, Ch. 359, s. 2 (enacting the definition of “park models”) and 1993 Laws of Washington, Ch. 66 s. 15 (enacting the definition of “recreational vehicles”). Thus, the definition of “park model” prevails in this conflict regarding the residency requirement. For this reason, the legal requirement that applies in this case is that the vehicle “is used as a primary residence.”

The second potential conflict relates to the permanency requirement. The “park model” definition requires that the vehicle is “intended for permanent or semi-permanent installation.” In contrast, the “recreational vehicle” definition requires that the vehicle “is not immobilized or permanently affixed to a manufactured/mobile home lot.” These provisions can be harmonized. Although there are conflicts within these two statutory definitions regarding residency, this court is required to effect and harmonize every word of the statute if possible. This can be done here.

Again, “install” means “to make (a machine, a service, etc.) ready to be used in a certain place.” Merriam-Webster Online Dictionary, “Install,” (www.merriam-webster.com/dictionary/install). Making an RV ready to be used can simply mean hooking it up to utilities and settling it down in a location. Under the statute, that installation must also be intended to be on a permanent or semi-permanent basis. However, the RV *cannot* be immobilized or permanently affixed to the lot under the definition of recreational vehicle. There is actually no conflict here – the vehicle must be installed on a permanent or semi-permanent basis, but not immobilized or permanently affixed to the lot.

B. Factual Requirements

At least two vehicles in this park meet the definition of “park model,” under the facts found by the ALJ.

The ALJ found:

Barbara Hamrick has lived in the Park since at least 2003. Ms. Hamrick lives in a recreational vehicle. It is licensed and she can drive it away anytime. At least twice a year she needs to temporarily relocate, either within the Park, or outside of the Park, to avoid flooding. It

takes Ms. Hamrick approximately two hours to prepare to relocate. She needs to disconnect from the Park's utilities and remove the blocks and jacks. Ms. Hamrick considers her recreational vehicle to be her permanent home. She resides at the Park because that is where she can afford to live.

FF 4.29 – 4.31 (citations to testimony omitted).

The ALJ also found:

Mr. Shinkle has lived at the Park for approximately five years. This is his second term of residence at the Park. Mr. Shinkle has no plans to leave the Park but he could if he wanted to. Mr. Shinkle owns his unit, which is a 40-foot travel trailer. . . . Since locating at the Park in approximately 2010, Mr. Shinkle has never relocated, not even when the lower part of the Park was threatened with flooding. Mr. Shinkle's travel trailer bears a license plate but the tabs are not current. Nevertheless, he could move the travel trailer if he purchased a trip-permit. It would take him an hour or two to prepare to move.

FF 4.41 – 4.45 (citations to testimony omitted).

There are other findings about other residents, but the findings outlined above are sufficient to prove that Dan & Bill's RV Park rents to two "park models." Both Hamrick and Shinkle use a vehicle as a primary residence. Those vehicles are intended for permanent or semi-permanent installation on the premises, and they are not immobilized or permanently affixed to the lot.

Much has been made about the flooding situation at the park and the fact that some residents had to move their vehicles as a result. This is legally irrelevant, however, because the statute discusses both permanent and semi-permanent installation. Further, simply needing to move to another space in the same park would constitute an intention to install the RV "on the premises," the premises being the park, for a permanent or semi-permanent basis.

The ALJ found that Allen's unit was the only RV that qualified as a "park model". However, Allen's unit may be immobilized and unable to move. It sits on top of cinder blocks, and it may be destroyed or severely damaged if it is moved. That error does not have any bearing on this case, though, because Allen and all residents of the park obtain rights under the MHLTA, and the park bears responsibility under the MHLTA, if it hosts two park units on its premises. It does. The final order is reversed on this ground.

3. Issues Raised by the Park

The park raises five issues that this court will address only briefly, concluding that they have no merit.

First, the park asserts that the statutes are void for vagueness because they do not give a reasonable person notice of whether it is subject to the MHLTA in this situation. The Park has not met the very high burden to show that it is vague beyond a reasonable doubt, and that the statute is so vague that persons "of common intelligence must necessarily guess at its meaning and differ as to its application." *Haley v. Medical Disciplinary Board*, 117 Wn.2d 720, 738 (1991) (quoting *Connally v. General Constr. Co.*, 269 U.S. 385, 391, 46 S.Ct. 126, 127, 70

L.Ed. 322 (1926)). Simple textual analysis, coupled with one dictionary definition, yields a straightforward result. This law is not void for vagueness.

Second, the park asserts that this court is bound by a Pierce County Superior Court decision, in the context of an unlawful detainer proceeding, finding that it was not subject to the MHLTA. The park has not briefed the doctrines of res judicata or collateral estoppel, and this court will not apply those complex doctrines in the absence of evidence.

Third, the park claims that the Attorney General's Office has violated the prohibition on conducting warrantless searches. This issue was apparently the subject of a motion in limine regarding whether certain testimony could be received, if that testimony was derived from an unlawful search. This issue was not raised by either of the appellants, Allen and the AGO. The Park did not properly file a cross appeal. The document entitled "cross appeal" is not signed, and the park did not provide a necessary filing fee to raise its own issues on appeal. Nevertheless, in an abundance of caution this court has reviewed the briefing on this issue and concludes that, had this issue been properly perfected on appeal, it has no merit. The court adopts the reasoning offered by the AGO in its briefing on this issue.

Fourth, the park asserts that the Notice of Violation improperly exceeds the scope of the complaint. This issue was not resolved by the ALJ, and can be adjudicated below on remand.

Finally, the park asserts that there is no right to appeal because Allan did not seek a stay of the final order. It provides no law for this proposition and a stay is not a legal requirement to preserve appeal rights under the APA. Each of the issues raised by the park are without merit.

4. Attorney Fees

Allen asks for attorney fees for pursuing this appeal. The prevailing party to any action arising under the MHLTA is entitled to reasonable attorney fees and costs. RCW 59.20.110. Allan is the prevailing party and is entitled to reasonable fees and costs. She should submit a declaration detailing her fees and costs and either present an agreed order or note the matter on the Court's Friday civil motion calendar.

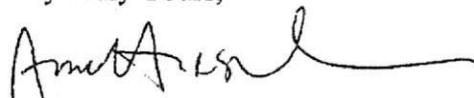
5. Conclusion

This court has been tasked with a fairly routine and straightforward legal job of engaging in statutory construction. This court must do so in an objective and neutral manner, under well-established rules, and has done so. The court would be remiss, however, if it did not acknowledge the important human interests at stake here. The Northwest Justice Project participated in this case because its clients, the poorest residents of this state, are directly affected by whether they gain protections under the MHLTA. As it explains, the ability to live cheaply in a recreational vehicle is a crucial safety net for those who would otherwise be homeless. The problems of homelessness and inadequate low income housing are major policy concerns for lawmakers, and major personal concerns for countless people living in Washington. Our Legislature was informed that people living permanently or semi-permanently in RV parks needed additional protections, and it set forth to protect them by including those living situations in the MHLTA. The Legislature may not have done a perfect job of crafting these statutes, but this court must give effect to every word that the Legislature set out in statute, unless doing so is impossible. The Legislature's intention here is clearly written into law, and that intention is that

RV parks such as Dan & Bills cannot operate as if it is hosting people on vacation. Its tenants have protection under the MHLTA because these parks are their homes.

The Court reverses the decision of the ALJ and as stated at the outset, remands for further proceedings consistent with this letter opinion. Either Allen or the State should prepare an order reflecting the ruling of the Court and note the matter for presentation on the Court's Friday civil motion calendar.

Very Truly Yours,



Anne Hirsch, Judge
Thurston County Superior Court

cc: Thurston County Clerk for Filing