

MARION COUNTY COURTS

DATE: 9/18/06
TO: Maria Fredrickson
FAX #: 503-947-4792
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COMMENTS:



CIRCUIT COURT OF OREGON
THIRD JUDICIAL DISTRICT
MARION COUNTY COURTS
P.O. Box 12889
SALEM, OREGON 97309-0889

JAMESE RHOADES
Circuit Court Judge
(503) 588-7950

September 12, 2006

Juanita and T.J. Schaffer
P.O. BOX 457
TURNER OR 97392-0457

Scott Norris
Marion County Legal Counsel
PO BOX 14500
SALEM OR 97309

ENTERED

SEP 12 2006

Marion County Circuit Court

STATE OF OREGON
MARION COUNTY COURTS
SEP 12 2006

FILED
#32

Re: Schaffer v. Marion County, et al, Case No. 05C21655

Dear Counsel and Mr. And Mrs. Schaffer:

This matter came before the Court on May 5, 2006, for oral argument on Defendants' motions to dismiss. Plaintiff appeared through counsel, Wallace Lien, on 05C16991 and *pro se* on 05C 21655 and Defendant appeared through counsel Scott Norris. Additional time was granted for both parties to submit supplemental briefing on 05C 21655. All pleadings were due July 12, 2006, and the matter, being fully submitted, was taken under advisement on that date.

Discussion

The Court adopts the previous legal and factual conclusions in the Court's letter opinion dated June 21, 2006 filed in Marion County Case 05C16991.

Legal and Factual Conclusions Case No. 05C21655

As to any claims contained in this action relating to the DLCD's order, they are untimely because they were not brought within 60 days of July 6, 2005, the date the order was served, as required by ORS 183.484(2).

On October 14, 2005, the County revoked Order No. 05-62 and substituted Order No. 05-136. To the extent this action challenges the County's findings in Order No. 05-136, it is timely because it was brought within 60 days of the date of that decision. *See* ORS 34.030.

Both Mr. and Mrs. Schaffer are named as plaintiffs in this action.

As to Mr. Schaffer, the action must be dismissed because, for the same reasons discussed in 05C16991, Mr. Schaffer is not a real party in interest to this action. *See* ORCP 21 A(6); ORCP 26

To: Mr. Lien, Ms. Staley & Mr. Norris
Re: Schaffer v. Marion County, et al, Case No. 05C16991 & 05C21655
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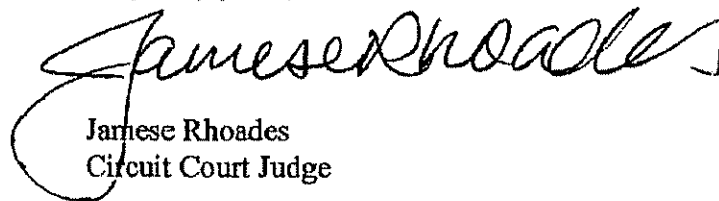
A; ORS 34.040(1). Any analogy to divorce law is simply that, an analogy. As between Mr. And Mrs. Schaffer, Mr. Schaffer may have an interest in the property or the value of the property. As to the outside world, Mr. Schaffer transferred all right, title and interest to the property to Mrs. Schaffer; they are not tenants by the entirety as in *U.S. v. Craft*, 535 US 274 (2002).

As to Mrs. Schaffer, the action must be dismissed because she fails to include a verification by an attorney that the attorney "has examined the process or proceeding, and the decision or determination therein, and that it is erroneous as alleged in the petition." See ORS 34.030. This is a requirement that must be fulfilled before the circuit court may issue the writ. The failure to include the verification means that this court cannot issue the writ, and therefore, that it cannot review the proceeding. See *Shevchynski v. City of Eugene*, 157 Or App 355, 970 P2d 237 (1998) (court has no authority to issue writ of review until statutory requirements are met, and cannot review the proceeding until it has issued the writ of review); *Shipp v. Multnomah County*, 133 Or App 583, 588-89, 891 P2d 1345 (discussing procedure for issuing writ and making the review), *rev den*, 321 Or 246 (1995). Mrs. Schaffer's failure to fulfill this mandatory requirement means that this court cannot issue the writ. However, this court grants Mrs. Schaffer leave to amend her complaint if done within 20 days of the date of this letter, to include the attorney verification, as well as the mandatory undertaking (see ORS 34.050), if it was not already given.¹

Conclusion

This court adheres to its previous ruling in the letter opinion dated June 21, 2006 and grants the County's motion to dismiss as to Mr. Schaffer without leave to amend, and as to Mrs. Schaffer with leave to amend as stated above. Mr. Norris will kindly prepare the appropriate form of general judgment of dismissal as to Mr. Schaffer and a form of order regarding Mrs. Schaffer.

Very truly yours,



Jamese Rhoades
Circuit Court Judge

JLR:nl

¹The Court notes that the 20 day deadline for amendment was previously given in its letter opinion dated June 21, 2006, however, given the additional time allowed for briefing in 05C21655, the Court will allow 20 days from the date of this letter.