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Upton v. Goff, No. 27948-7-H, 2003 Wash. App. LEXIS 1744 (Wash. Ct. App. Aug. 5, 2003)

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of their violation of constitutional rights claim because the County acted under color of state law when it used its power to divert water onto the Tollefsons' property in an unduly oppressive manner. The County replied that the Tollefsons failed to show a policy or custom, causation or deprivation as required for a constitutional claim. However, the Tollefsons countered that by ignoring the expert recommendations, the County followed a policy of deliberate indifference. The court concluded that the County had no clear duty to the Tollefsons, who failed to provide evidence that an official sanctioned the decision not to follow the recommendations. Additionally, the court found "no evidence showing a causal connection between the alleged policy and a deprivation of the Tollefsons' constitutional rights." Accordingly, the court of appeals affirmed the summary judgment decision of the trial court.

Brian M. Forbush

Upton v. Goff, No. 27948-7-II, 2003 Wash. App. LEXIS 1744 (Wash. Ct. App. Aug. 5, 2003) (holding that: (1) neither water certificates nor other real estate transaction documents conveyed ownership interests of subdivision's water system to the lot owners; (2) water system did not transfer with the land, but was personal property; and (3) intent of the developer could determine if the water system qualified as a real property fixture).

The Uptons commenced a lawsuit against Goff and five other lot owners in the Superior Court of Clallam County, Washington. The Uptons sued to quiet title to the subdivision's water system, enjoin the lot owners from interfering with the water system, and for trespass and conversion damages. The superior court concluded no issue of material fact existed, the Uptons owned the water system, and the lot owners could not interfere with the Uptons' ownership of the water system. Thus, the superior court granted summary judgment in favor of the Uptons. The lot owners appealed the superior court's grant of summary judgment to the Uptons and the denial of their cross-motions for summary judgment. The Washington Court of Appeals affirmed the superior court's decisions.

In 1994, Cascade Investment Properties ("Cascade") recorded an eight-lot subdivision plat, which included six residential lots. Additionally, Cascade created a lot owners' association and granted the lot owners an easement. Cascade developed and owned the water system along the easement. When Cascade sold the six residential lots, water certificates issued to the buyers. In December 2000, Cascade sold the subdivision's water system to the Uptons for \$2000. The Uptons then sued the lot owners after the lot owners denied the Uptons access to the water system.

On appeal, the lot owners first relied on the word "share" in the

water certificates to assert that the certificates granted the lot owners fractional water system ownership interests. Conversely, the Uptons maintained the water certificates conveyed no ownership interest and only permitted each lot to receive water from the system. The court concluded the lot owners misused the term "share," and the water certificate did not suggest or imply a transfer of partial ownership interest in the water system. Furthermore, the court found that no other documents involved in the lot sales transferred any type of water system ownership. Therefore, the court held the water certificates and the other real estate documents did not transfer ownership interests to the lot owners.

The lot owners also claimed the water system improved the property and thus passed with title to each lot. In opposition, the Uptons asserted personal property ownership of the water system. The Uptons also argued that Cascade created an easement by implication to operate the water system. The court stated a three prong test for deciding whether a fixture to real property permanently follows the title: (1) actual annexation to the property, (2) application to the use or purpose to which that part of the property with it is connected is appropriated, and (3) the intention of the party making the annexation to make a permanent accession to the freehold. The court listed several facts showing the developer's lack of intention to transfer water system ownership with the title: lack of sales documents referencing a conveyance, agreements which suggested that the developer considered himself the water system's owner, public documents identifying the developer as the owner, lot owner interest in purchasing the water system from the developer, and lot owners' payment to the developer of a monthly fee for use of the water system. While finding some evidence of annexation and use of the water system by the lots, the court ultimately found that the developer lacked intent to transfer ownership interests. Accordingly, the court held the Uptons owned the water system as personal property and the water system did not attach to the property as a fixture.

Further, the court determined the water system represented a typical community water system created to deliver water to each lot. Because the components of the water system did not improve the lot owners' property, the court held the water system did not qualify as an improvement that runs with the land.

Finally, the Uptons raised the doctrine of equitable estoppel on appeal. However, the court refused to address the equitable estoppel issue, since the court had already granted summary judgment in favor of the Uptons.

Susan Curtis