

February 08 2021 8:30 AM

KEVIN STOCK
COUNTY CLERK
NO: 19-2-07054-0

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2 THE HONORABLE TIMOTHY L. ASHCRAFT
3 Hearing Date: Friday, February 19, 2021
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7 SUPERIOR COURT OF THE STATE OF WASHINGTON
8 PIERCE COUNTY

9 ANNA F. DANIELI,

Case No.: 19-2-07054-0

10 Plaintiff,

11 v.

12 KING COUNTY, a municipal corporation;
13 CITY OF BELLEVUE, a municipal
14 corporation; KING COUNTY HEARING
15 EXAMINER; REGIONAL ANIMAL SERVICES
16 OF KING COUNTY; GENE EDWARD
17 MUELLER, and marital community; TIM
18 ANDERSON, and marital community; and
19 DOES 1-10,

Defendants.

PLAINTIFF'S MOTION FOR LEAVE
TO FILE SECOND AMENDED
COMPLAINT

20 I. RELIEF REQUESTED

21 COMES NOW Plaintiff, Anna F. Danieli ("Danieli"), and moves the Court for an
22 Order Granting Leave for the Filing of her Second Amended Complaint, as
23 authorized under Washington Civil Rule 15. Having previously provided the
24 Defendants with notice of Danieli's new claims, the Parties have stipulated to the
25 Date of February 5, 2021 for Danieli to file her current Motion. Since this Court last
26 issued orders in this matter, the Parties have engaged and are still in the midst of

1 intense discovery proceedings, which has included tens of thousands of pages of
2 documents and emails produced by the Defendants, as well as interviews and
3 depositions of various witnesses of the case.

4 During the course of the discovery proceedings, new facts have come to the
5 attention of the Plaintiff concerning the extent to which Defendant, Gene Mueller
6 (“Manager Mueller”), the head of the Regional Animal Services of King County
7 (“RASKC”) was involved with the various cases involving Danieli’s cat Miska. And the
8 role that this involvement likely had in the intensity of constant and overboard
9 prosecution of Danieli and her cat. Manger Mueller, a neighbor of Danieli appears
10 to have used his role as RASKC Manager in ways that have impacted Danieli’s
11 constitutional civil rights. This newly discovered evidence warrants an amendment
12 to Danieli’s Complaint.

13 II. STATEMENT OF FACTS

14 Procedural Background

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17 On April 12, 2019, Plaintiff filed an initial Summons and Complaint against
18 the Defendants, seeking, among others, Declaratory and Injunctive relief with
19 respect to the King County Hearing Examiner’s authority to hear animal
20 enforcement cases involving civil infractions from the City of Bellevue. On October
21 7, 2019 the Plaintiff filed her First Amended Complaint, which in addition to the
22 existing claims for Declaratory and Injunctive Relief, added tort claims against the
23 Government Defendants.

24 On September 25, 2020, Plaintiff and several Government Defendants filed
25 four separate Motions for Summary Judgment: The Plaintiff’s Motion for Partial
26 Summary Judgment sought the Court’s ruling on the Plaintiff’s Declaratory and

1 Injunctive Relief contained in its First Amended Complaint; the other three Motions
2 for Summary Judgment from several Defendants sought dismissal of all of Plaintiff's
3 claims. A Hearing was held on October 23, 2020, where the Court by oral ruling
4 granted Plaintiff's Motion for Partial Summary Judgment on Declaratory and
5 Injunctive Relief. On November 13, 2020, the Court entered its written Order
6 granting Plaintiff's Declaratory and Injunctive Relief, which included a finding that
7 the King County Hearing Examiner had no authority to hear animal enforcement
8 cases involving civil infractions from the City of Bellevue and that Danieli was the
9 prevailing party as to these Declaratory and Injunctive causes of action contained
10 in her First Amended Complaint.

11 **Plaintiff's Investigation and Discovery Efforts**

12 During the above time period, Danieli and her attorneys commenced an
13 investigation to further learn the circumstances and individuals' actions
14 surrounding RASKC's and Danieli's neighbors' constant complaints and
15 investigations against Danieli and her cat Miska. Danieli's discovery investigation
16 included reviewing thousands of King County and RASKC documents, interviews of
17 former and current RASKC employees and other witnesses. Danieli's investigation
18 was further supported by the discovery obtained in this case, which included
19 Plaintiff serving the different Defendants with her First Interrogatories and
20 Requests for Production, depositions of several key witnesses and reviewing the
21 Defendants' answers and their tens of thousands of produced documents.

22 Danieli's efforts revealed numerous new facts that were unknown to her at
23 the time of filing of her First Amended Complaint.

24 First, it became known to Danieli that the head of RASKC, Defendant Gene
25 Mueller, who lives in the same vicinity as Danieli, was personally involved in the
26 filing of a complaint with RASKC regarding Miska. Mueller later admitted this fact in

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1 his Declaration in support of King County Defendants' Motion for Summary
2 Judgment. Mueller was also involved in the investigation of other alleged violations
3 by Danieli's cat.

4 It was also revealed in an interview that Mueller had taken an unusual
5 interest in the violations of Danieli's cat and expressed to other RASKC employees
6 that he would be happy to see Miska shot; showing staff members at RASKC a
7 photograph on his phone of what he said was his wife holding a rifle of some kind
8 and indicating that this would be a solution to the problems with Danieli's cat.

9 Based on evidence gathered to date, it appears that RASKC employees, under
10 the direction of Mueller, took a proactive approach and strongly encouraged
11 Danieli's neighbors to constantly document and photograph Miska's whereabouts
12 and report to RASKC through emails, as well as to file multiple formal complaints
13 against Miska. RASKC employees also revealed to these neighbors personal
14 information related to Danieli and her cat, including her alleged past violations and
15 amounts of fines imposed on her by RASKC, as well as discussions regarding Miska's
16 alleged particular breed.

17 In addition, it became apparent that after RASKC's and Danieli's neighbors'
18 continued pursuit of Miska, she went missing in July 2019, a few months following
19 the filing of the lawsuit. Merely a month after Miska went missing, and much before
20 Danieli's search efforts were exhausted, Danieli's neighbors acquired new pets to
21 roam their yards. These same neighbors previously told RASKC they would not
22 purchase new outdoor pets as long as Miska was able to roam free in the
23 neighborhood.

24 These actions, among others, are the basis to the new causes of actions
25 included in Danieli's proposed Second Amended Complaint that is attached to the
26 Possinger Declaration in support of this Motion as Exhibit A.

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III. STATEMENT OF ISSUES

Whether Danieli should be granted leave to file its Second Amended Complaint pursuant to Civil Rule 15.

IV. EVIDENCE RELIED UPON

Danieli relies on the Declaration of Counsel, Jeffrey Possinger and its Exhibits, which includes the proposed Second Amended Complaint, as well as all other papers and pleadings on file with the Court.

V. LEGAL AUTHORITY AND ARGUMENT

A. Leave to Amend is to be freely given under the plain terms of Civil Rule 15(a)

Civil Rule 15 provides that “a party may amend the party’s pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires”; accord *Sanwick v. Puget Sound Title Ins. Co.*, 70 Wn.2d 438, 445, 423 P.2d 624 (1967) (“leave to amend shall be freely given when justice so requires, and accordingly, the rule is liberally applied”); 3 J. Moore, FEDERAL PRACTICE § 15.02 (2d ed. 1989). Under CR 15(c), parties may generally amend pleadings to relate back to the date of original filing if the amendment relates to conduct, transactions, or occurrences in the original pleading. *Watson v. Emard*, 165 Wn.App. 691, 698, 267 P.3d 1048 (2011). For the reasons set forth below, Danieli meets that standard.

B. The Defendants Will Not Suffer Any Prejudice Due to Plaintiff’s Second Amended Complaint Because the Second Amended Complaint Relies on the Same Events and Because Defendants Were Given Early Notice of the Second Amended Complaint

1 Allowing Danieli to file a Second Amended Complaint will not prejudice any of the
2 Defendants because the additional causes of actions rely on the same circumstances
3 detailed in the First Amended Complaint.

4 Washington law generally permits amending a complaint to assert new legal
5 theories based on the same circumstances:

6 *"Appellate decisions permitting amendments have*
7 *emphasized that the moving parties in those cases were*
8 *merely seeking to assert a new legal theory based upon*
9 *the same circumstances set forth in the original*
10 *pleading.*

11 ...

12 *The judicial preference for those amendments based on*
13 *the underlying circumstances set forth in the original*
14 *complaint as compared with amendments raising new*
15 *claims based on new factual issues is consistent with the*
16 *policies behind CR 15. When an amended complaint*
17 *pertains to the same facts alleged in the original*
18 *pleading, denying leave to amend may hamper a*
19 *decision on the merits."*

20 *Herron v. Tribune Publ'g Co.*, 108 Wn.2d 162, 166-167, 736 P.2d 249 (1987).

21 Furthermore, no prejudice will occur to the Defendants because Plaintiff has
22 given them early notice of her intent to amend her First Amended Complaint and
23 incorporate additional causes of actions. See Plaintiff's counsel's November 23,
24 2020 letter to the Court, attached to the Possinger Declaration in support of this
25 Motion as Exhibit B.

26 Since providing the notice, Plaintiff's and Defendant's counsel have been
27 communicating on the proper time for Plaintiff to file her Motion for Leave to
28 Amend her Complaint and stipulated to the date of filing.

VI. CONCLUSION

1 Accordingly, the court should grant leave to amend so Danieli will be permitted to
2 assert all relevant legal theories against the Defendants. The proposed Second
3 Amended Complaint, attached to the Possinger Declaration, meets the requirements
4 of Civil Rule 15.

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Respectfully submitted, this February 5, 2021

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POSSINGER LAW GROUP, PLLC

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/s/ Jeffrey Possinger

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Jeffrey Possinger

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