

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**YAKIMA COUNTY, a political Subdivision of ) No. 28497-2-III**  
**the State of Washington, )**

**Respondent, )**

**v. )**

**ALFRED C. RIDDLE and NORMA RIDDLE, )**  
**a/k/a NORMA B. RIDDLE, husband and wife; )**  
**DOUGLAS S. RIDDLE as his separate estate; )**  
**DARRELL S. RIDDLE and KELLI J. )**  
**RIDDLE, husband and wife; DONALD C. )**  
**RIDDLE and JANELLE L. RIDDLE, husband )**  
**and wife, )**

**Division Three**

**Appellants, )**

**ILENE THOMSON, YAKIMA COUNTY )**  
**TREASURER, as tax assessment collection )**  
**agent for Yakima County, Soil Conservation )**  
**District No. 2, Weed Control District No. 2, )**  
**Horticulture Pest and Disease Control District, )**  
**Drainage District No. 33; PACIFICORP, d/b/a )**  
**PACIFIC POWER & LIGHT COMPANY, )**  
**A foreign corporation; RALPH D. CRAIG and )**

**GERALDINE CRAIG, husband and wife;** ) **UNPUBLISHED OPINION**  
**FRANK KEZELLE and WANDA** )  
**KEZELLE, husband and wife; CALVIN** )  
**LANTIS a/k/a CALVIN L. LANTIS and`** )  
**MARGARET LANTIS, husband and wife;** )  
**HAROLD P. CARLTON and SUSAN L.** )  
**CARLTON, husband and wife; THOMAS W.** )  
**KELLOUGH and JOY E. KELLOUGH,** )  
**husband and wife,** )  
 )  
 )  
**Defendants.** )

Korsmo, J. — Alfred and Norma Riddle, Donald and Janelle Riddle, Darrell and Kelli Riddle, and Douglas Riddle (the Riddles) seek review of the superior court order adjudicating public use and necessity and finding Yakima County had given proper notice to all necessary parties in condemnation proceedings. The Riddles only challenge the failure to serve the condemnation petition on named, deceased easement holders. We conclude that the trial court did not err by concluding that all necessary parties had been properly notified. We affirm.

#### FACTS

In 2006, Yakima County passed a resolution to acquire rights-of-way to improve a portion of the South Naches Road. Notice of this resolution was published and also was served on all affected property owners. The county acquired, via negotiation, the necessary property for the road improvement project, except for a portion of Lots 9 and

10 of the Wenonah Orchard & Development Co., Inc., Tracts 2. This property is owned by Douglas Riddle.

In March 2009, the county filed a condemnation petition to acquire 40 feet of land to accommodate the road improvement project over a portion of Lots 9 and 10. This property is burdened with an access easement (roadway) consisting of a gravel road. The petition named various recorded interests relating to Lots 9 and 10. Douglas Riddle is the fee owner. Alfred, Norma, Donald, Janelle, Darrell and Kelli Riddle have easement interests in the property. Other parties with easement interests in these lots are Ralph and Geraldine Craig, Frank and Wanda Kezelle, Calvin and Margaret Lantis, Harold and Susan Carlton, Thomas and Joy Kellough, and Pacific Power & Light Company. All listed parties were served with the petition, except for Calvin and Margaret Lantis, Wanda Kezelle, Ralph and Geraldine Craig, and Harold Carlton. The Lantis and the Craigs are all deceased. Mrs. Kezell and Mr. Carlton are both deceased; the county served their respective surviving spouses.

Yakima County presented testimony that the beneficiaries of the existing roadway easement would not be affected by the condemnation or by the county's construction of the new road. Their easement interests will be preserved.

In April 2009, after taking evidence, the trial court orally ruled that all necessary

parties related to the taking were served and properly before the court. The court entered an order adjudicating public use and necessity and setting the matter for trial. The Riddles timely appealed.

#### ANALYSIS

The Riddles challenge only the trial court's service ruling. They contend the county did not comply with RCW 8.08.030 because the deceased easement holders were not served and thus the trial court did not have authority to issue the order of "public use and necessity." They do not challenge the finding of public use and necessity. We agree with the trial court that all proper parties were served.

The interpretation and meaning of a statute is a question of law subject to *de novo* review. *Castro v. Stanwood Sch. Dist. No. 401*, 151 Wn.2d 221, 224, 86 P.3d 1166 (2004). "Procedural errors, such as lack of proper notice, are questions of law reviewed *de novo*." *Cent. Puget Sound Reg'l Transit Auth. v. Miller*, 156 Wn.2d 403, 412, 128 P.3d 588 (2006). As the challenger, the Riddles bear the burden of proof that notice was defective. *Id.*

RCW 8.08.030 requires the county to give personal notice when commencing the three-step condemnation process. *Yakima County v. Evans*, 135 Wn. App. 212, 219, 143 P.3d 891 (2006). RCW 8.08.030 provides:

A notice, stating the time and place when and where such petition shall be

presented to the court or the judge thereof, together with a copy of such petition, *shall be served on each and every person named therein as owner or otherwise interested therein*, at least ten days previous to the time designated in such notice for the presentation of such petition. Such notice shall be signed by the prosecuting attorney of the county wherein the real estate or property sought to be taken is situated, and may be served in the same manner as a summons in a civil action in such superior court is authorized by law to be served.

(Emphasis added.) The Riddles do not challenge their personal notice of the condemnation proceedings. They challenge notice to named deceased individuals who hold a roadway easement interest across a portion of Lots 9 and 10.

Condemnation is an action *in rem*, involving the property itself. *Port of Grays Harbor v. Bankr. Estate of Roderick Timber Co.*, 73 Wn. App. 334, 338, 869 P.2d 417 (1994); *Gasaway v. City of Seattle*, 52 Wash. 444, 447, 100 P. 991 (1909); *In re Petition of City of Seattle to Acquire Land*, 56 Wn.2d 541, 544, 353 P.2d 955 (1960). “Only those with an estate or interest at law or in equity may share in a condemnation award.” *Port of Grays Harbor*, 73 Wn. App. at 338; *Swanson v. United States*, 156 F.2d 442, 445 (9th Cir. 1946), *cert. denied sub nom.*, *Spokane Portland Cement Co. v. Swanson*, 329 U.S. 800, 67 S. Ct. 492, 91 L. Ed. 684 (1947); *State ex rel. Suksdorf v. Superior Court In & for Klickitat County.*, 169 Wash. 195, 200, 13 P.2d 460 (1932).

“Persons who might suffer only collateral economic consequences are not entitled to participate.” *Port of Grays Harbor*, 73 Wn. App. at 339; *State v. Evans*, 96 Wn.2d

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119, 126-127, 634 P.2d 845, 649 P.2d 633 (1981) (condemnee who improved adjacent lands under an oral, unenforceable lease need not be compensated for any economic loss suffered on such lands); *Public Util. Dist. No. 1 v. Kottsick*, 86 Wn.2d 388, 545 P.2d 1 (1976) (adjacent property owners had no standing to intervene); *City of Pullman v. Glover*, 73 Wn.2d 592, 594, 439 P.2d 975 (1968) (lessee whose interest would not be “materially affected”); *In re Leary Ave.*, 72 Wash. 617, 622-623, 131 P. 225 (1913) (property owners whose property may be assessed to pay for contemplated improvement have no legal right to appear in condemnation action).

RCW 8.08.040 states in relevant part:

At the time and place appointed for hearing said petition, or to which the same may have been adjourned, *if the court or judge thereof shall have satisfactory proof that all parties interested in the land, real estate, premises or other property described in said petition have been duly served with said notice as prescribed herein*, and shall be further satisfied by competent proof that the contemplated use for which the lands, real estate, premises, or other property sought to be appropriated is a public use of the county, the court or judge thereof may make and enter an order adjudicating that the contemplated use is really a public use of the county.

(Emphasis added.) The trial court did not err in determining the county had complied with the notice requirements and that all interested persons had been served.

The record establishes that Douglas Riddle is the only person who has an estate interest in the property. Although appellants contend the county should have served every individual who was a named party to the roadway easement, the record also

establishes the beneficiaries of the roadway easement will not be affected by the condemnation or by the county's construction of the new road. We do not believe that the county was required to personally serve the easement holders under the facts of this case. The easement was not being diminished or "materially affected." *Glover*, 73 Wn.2d at 594. The *Glover* case is instructive. There the United States government had a leasehold interest in land that the City of Pullman was attempting to acquire. The United States was not a named party. *Id.* at 592. The Supreme Court concluded that the United States was not a necessary party because its interest was not being diminished or condemned. *Id.* at 594.

We believe the same result follows here. The easement is not being diminished or taken. As in *Glover*, the easement holders are not necessary parties. The trial court correctly determined that failure to serve the deceased easement holders was of no moment.<sup>1</sup>

Affirmed.

A majority of the panel has determined this opinion will not be printed in the

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<sup>1</sup> We invited the parties to address RCW 8.25.290(3), which provides in part that a final action is void against a party to a condemnation proceeding that does not receive proper notice, but is valid for parties that do receive notice. In light of that provision, we question whether the Riddles have standing to speak for the deceased easement holders. The Riddles, in turn, argue that the provision is inapplicable to this stage of the proceedings. Since we agree with the trial court's resolution of this matter, we do not need to address this statute.

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Washington Appellate Reports, but it will be filed for public record pursuant to RCW  
2.06.040.

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Korsmo, J.

WE CONCUR:

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Kulik, C.J.

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Brown, J.