

blood samples.³⁸ We rejected this argument in *State v. S.S.*³⁹ Although WAC 446-75-060 specifies procedures for blood collection, it does not expressly limit sampling to this method. Further, the legislature amended RCW 43.43.754 in 2002 and changed the term “blood sample” to “biological sample,” thus indicating that blood sampling is not the sole means of DNA extraction under the statute.⁴⁰ We hold that RCW 43.43.754 is constitutional and cheek swabbing is a lawful means of collecting DNA samples under the statute.

C. Statement of Additional Grounds for Review

¶21 Davis’s additional arguments must be rejected. First, Davis claims the guilty plea was incorrectly dated as August 28, 2002. To the contrary, the plea is dated May 22, 2003, and the date Davis refers to is the date he committed the crime. Second, Davis claims the guilty plea reflects that he was only supposed to receive a 9-to-12-month sentence. Again, he has incorrectly read the plea. It states that the standard range for his crime is 41 to 54 months, with 9 to 12 months of community confinement. Third, Davis claims he never signed the guilty plea. However, the plea has a signature on it and the transcript of the hearing indicates that he entered the plea. Finally, Davis submitted documents indicating that he has copyrighted his name. He also warned that any unauthorized use of his name during this appeal would result in a \$500,000 fee.⁴¹ These documents appear to support his belief that the superior court did not have personal jurisdiction over him because he did not volunteer his name and identity to the court. This legal argument has no merit, and must also be dismissed.

³⁸ WAC 446-75-060. RCW 43.43.759 authorizes the Washington State Patrol to adopt rules implementing the statute.

³⁹ 122 Wn. App. 725, 94 P.3d 1002 (2004).

⁴⁰ S.S., 122 Wn. App. at 728; LAWS OF 2002, ch. 289, § 2.

⁴¹ Davis also submitted a statement of account due, which indicates that King County Prosecutor Norm Maleng, the Department of Corrections, and other debtors collectively owe him four million dollars for the unauthorized use of his name on the guilty plea and judgment and sentence.

¶22 The case is remanded to the superior court for a decision on the merits of Davis’s CrR 4.2(f) motion to withdraw his guilty plea.

[No. 52135-7-I. Division One. January 3, 2005.]

LAKEMONT RIDGE HOMEOWNERS ASSOCIATION, *Respondent*, v.
LAKEMONT RIDGE LIMITED PARTNERSHIP, ET AL., *Petitioners*.

- [1] **Statutes — Construction — Question of Law or Fact — Review — Standard of Review.** The interpretation of a statute is a question of law that an appellate court reviews de novo.
- [2] **Statutes — Construction — Legislative Intent — In General.** A court’s primary objective when interpreting a statute is to ascertain and carry out the intent and purpose of the legislature. To determine legislative intent, a court first looks at the language of the statute. If the statute is plain and unambiguous, its meaning is derived from the language of the statute alone.
- [3] **Statutes — Construction — Ambiguity — What Constitutes — Different Plausible Interpretations.** A statute is not ambiguous unless it can reasonably be interpreted in two or more ways. A statute is not ambiguous simply because different interpretations are conceivable; a court is not obliged to discern any ambiguity by imagining a variety of alternative interpretations.
- [4] **Statutes — Construction — Rational Interpretation — Avoiding Absurdity.** A statute should be construed to avoid unlikely, absurd, or strained consequences.
- [5] **Vendor and Purchaser — Defect in Property — Construction Defect — Claim Notice — Statutory Provisions — Purpose.** The purpose of the construction defect claim statute (chapter 64.50 RCW) is to reduce the costs and delays associated with construction defect claims.
- [6] **Vendor and Purchaser — Defect in Property — Construction Defect — Claim Notice — Prerequisite Construction Work — Absence of Notice of Requirement.** The 45-day prelitigation claim filing requirement of RCW 64.50.020 applies to construction defect claims based on construction work performed prior to the enactment of the statute despite the fact that no notice of the claim filing requirement was provided to the claimant at the time of contracting as generally required by RCW 64.50.050 because the statute was not yet in effect.

[7] Vendor and Purchaser — Defect in Property — Construction Defect — Claim Notice — Absence — Remedy. The remedy for a homeowner's failure to serve a written notice of claim no later than 45 days before filing an action for damages for defects in the construction or substantial remodel of a residence under chapter 64.50 RCW is dismissal of the action without prejudice to the homeowner's refiling the action after complying with the prelitigation notice requirements of chapter 64.50 RCW.

BECKER, J., dissents by separate opinion.

Nature of Action: A homeowners association sought damages from several construction professionals for construction defects in the residential units represented by the association.

Superior Court: The Superior Court for King County, No. 02-2-31523-2, Suzanne M. Barnett, J., on March 10, 2003, denied the defendants' motion to dismiss the action.

Court of Appeals: Holding that the homeowners association was statutorily required to give written prelitigation notice to the defendants before filing the action for damages, the court *reverses* the denial order and *remands* the case for dismissal of the action without prejudice.

Mark F. O'Donnell and John T. Eckert (of Preg O'Donnell & Gillett, P.L.L.C.), for petitioners.

Marion E. Morgenstern; and Robert K. Goff and Daniel J. DeWalt (of Goff & DeWalt, L.L.P.), for respondent.

LEXIS Publishing™ Research References

2005 Wash. App. LEXIS 23

[As amended by order of the Court of Appeals February 22, 2005.]

¶1 BAKER, J. — Because the required prelitigation notice was not given before commencement of this construction defect claim, we hold that this action must be dismissed without prejudice.

¶2 In 2002, the legislature enacted chapter 64.50 RCW to require various steps to be undertaken prior to the filing of a lawsuit based on a claim of construction defects in the construction or substantial remodel of a residence. The procedures are triggered by the service of a written notice of claim upon the construction professional against whom the claim is made.¹ The process that follows such notice is designed to encourage resolution of the claim before the expense and delay of litigation is incurred. The chapter does not apply to tort claims for personal injury or death.²

¶3 RCW 64.50.020(1) requires a claimant to serve written notice of claim no later than 45 days before filing an action. "Claimant" is defined to include a homeowner or association,³ and includes a subsequent purchaser of a residence from any homeowner.⁴ "Residence" is broadly defined to include everything from a single-family house to a unit in a multifamily structure.⁵

¶4 If a claimant fails to give the required notice, the action is subject to dismissal without prejudice and may not be recommenced until the notice requirement has been met.⁶

¶5 The Lakemont Ridge Homeowners Association (Association) commenced this suit without giving prior written notice to defendant construction professionals, claiming damages from construction defects. Defendants moved to dismiss because prelitigation notice was not given, but the trial court denied the motion based on another section of chapter 64.50 RCW. RCW 64.50.050(1) states that construction professionals shall provide notice to homeowners "upon entering into a contract for sale, construction, or substantial remodel of a residence" of the professional's right to

¹ RCW 64.50.020(1).

² RCW 64.50.010(1).

³ RCW 64.50.010(3).

⁴ RCW 64.50.010(5).

⁵ RCW 64.50.010(6).

⁶ RCW 64.50.020(6).

offer to cure construction defects prior to any litigation. RCW 64.50.050(3) states:

This chapter shall not preclude or bar any action if notice is not given to the homeowner as required by this section.

The construction project at issue was begun and completed several years before passage of chapter 64.50 RCW, so the notice described in RCW 64.50.050 was not given. The trial court concluded that the chapter therefore did not apply, and declined to dismiss the suit. Defendant construction professionals appeal.

[1] ¶6 The interpretation of a statute is a question of law, which we review *de novo*.⁷

[2, 3] ¶7 While interpreting a statute, “the primary objective of the court is to ascertain and carry out the intent and purpose of the legislature in creating it.”⁸ To determine legislative intent, we first look to the language of the statute.⁹ If a statute is plain and unambiguous, we derive its meaning from the language of the statute itself.¹⁰ “A statute is ambiguous if it can reasonably be interpreted in two or more ways, but it is not ambiguous simply because different interpretations are conceivable.”¹¹ We are not “obliged to discern any ambiguity by imagining a variety of alternative interpretations.”¹²

¶8 The Association suggests that the interplay between the two notice provisions results in two classes of homeowners: those who contracted for the purchase, con-

⁷ *Wash. Pub. Ports Ass'n v. Dep't of Revenue*, 148 Wn.2d 637, 645, 62 P.3d 462 (2003).

⁸ *Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles*, 148 Wn.2d 224, 239, 59 P.3d 655 (2002), *cert. denied*, 538 U.S. 1057 (2003).

⁹ *Fraternal Order of Eagles*, 148 Wn.2d at 239.

¹⁰ *State v. Keller*, 143 Wn.2d 267, 276, 19 P.3d 1030 (2001), *cert. denied*, 534 U.S. 1130 (2002).

¹¹ *Keller*, 143 Wn.2d at 276.

¹² *Keller*, 143 Wn.2d at 277 (quoting *W. Telepage, Inc. v. City of Tacoma Dep't of Fin.*, 140 Wn.2d 599, 608, 998 P.2d 884 (2000)).

struction or remodel of their residences before the effective date of chapter 64.50 RCW, and those who do so after that date. The latter are required to give the prelitigation notice, and the former are not.

¶9 There are several flaws in the Association's argument. First, chapter 64.50 RCW requires that “[i]n every construction defect action brought against a construction professional,” the claimant shall give at least 45 days notice before commencing a lawsuit.¹³ The statute does not state that it is applicable only to construction projects begun after the effective date of the chapter.

[4-6] ¶10 Second, the statute unambiguously requires subsequent purchasers of residences to give a prelitigation notice,¹⁴ despite the fact that such homeowners will likely not have received any personal notice of their obligation to do so.

¶11 Third, the Association's interpretation of the chapter would mean the legislature at the time the chapter was passed intended to delay for many years the intended effect of mitigating the expense and delays of construction defect suits for all projects existing or begun before the effective date of the chapter. At that time, the statute of repose for the accrual of such claims was six years,¹⁵ and the applicable statute of limitations period thereafter was as much as six years longer.¹⁶ It is our duty to construe a statute in its entirety, avoiding interpretations that “yield unlikely, absurd or strained consequences.”¹⁷

¶12 Given the purpose of chapter 64.50 RCW to reduce the costs and delays of construction defect claims, and the clear requirement that prelitigation notice be given by the

¹³ RCW 64.50.020(1) (emphasis added).

¹⁴ RCW 64.50.010(5), .020(1).

¹⁵ RCW 4.16.310.

¹⁶ *Architectonics Constr. Mgmt., Inc. v. Khorram*, 111 Wn. App. 725, 727-28, 45 P.3d 1142 (2002), *review denied*, 148 Wn.2d 1005 (2003). The effect of the 2003 amendment codified in RCW 4.16.326(1)(g) is not at issue in this appeal.

¹⁷ *Kilian v. Atkinson*, 147 Wn.2d 16, 21, 50 P.3d 638 (2002).

substantial category of homeowners who are subsequent purchasers, we conclude that the Association's interpretation must be rejected as strained and unreasonable. Instead, we construe chapter 64.50 RCW to require the giving of a prelitigation notice by the homeowner, excepting only that category of original homeowners who enter into a contract after the effective date of the chapter without being given a notice of that requirement.

[7] ¶13 The Association argues that such a construction of the statute eviscerates the consumer protection aspect of RCW 64.50.050. Although construction professionals are not required to give notice to subsequent purchasers and homeowners who contracted before the chapter took effect, the consumer protection aspect of RCW 64.50.050 is not rendered meaningless because the chapter does not leave uninformed homeowners unprotected. If homeowners file a claim without giving notice, the remedy is dismissal of their claim *without* prejudice. Once they have followed the requirements of chapter 64.50 RCW, they may proceed once again with their claim.

¶14 The trial court erred by not granting the motion to dismiss without prejudice. We reverse and remand to the trial court to do so.

¶15 Reversed and remanded.

KENNEDY, J., concurs.

¶16 BECKER, J. (dissenting) — I respectfully dissent. The statute in question is obviously the product of a legislative compromise concerning a bill backed by the construction industry. The industry wanted to have a homeowner give written notice of a claim before filing an action. The statute fulfills that desire with its provision that an action begun without the required 45-day notice is subject to dismissal without prejudice. This provision allows the construction professional an opportunity to cure a defect before the homeowner files suit. However, the provision is unfavorable to homeowners because, as is typical with nonclaim stat-

utes, it sets up a trap for the unwary. A claimant who is unaware of the obligation to give notice of the claim, and files suit just before the statute of limitations runs, will have the suit dismissed and be barred from refileing it.

¶17 The disadvantage to the homeowner did not go unnoticed as the bill made its way through the legislative process. The House of Representatives amended the bill to add the feature now codified as RCW 64.50.050. This section provides that the construction professional must, when contracting, give conspicuous written notice to the homeowner of the homeowner's obligation to give an opportunity to cure before filing a suit. Underlining the importance of this quid pro quo is the further provision that the law "shall not preclude or bar any action if notice is not given to the homeowner as required by this section." RCW 64.50.050(3).

¶18 The majority worries that if this provision protecting homeowners is enforced, the protection for construction professionals will not go into effect right away. If so, so be it. The provision is unambiguous.

¶19 It is not at all unusual that a statute as enacted is only half a loaf as compared to what its sponsors set out to achieve. The Association's interpretation of the statute is not at all absurd or strained. By finding ambiguity where there is none, the majority rewrites the statute.

¶20 I would affirm the ruling of the trial court.

[No. 22599-2-III. Division Three. January 4, 2005.]

THE STATE OF WASHINGTON, *Appellant*, v. JAMES W. SWEENEY,
Respondent.

[1] **Criminal Law — Punishment — Sentence — Reform Act — Scope — Sentencing.** The provisions of the Sentencing Reform Act of 1981 (chapter 9.94A RCW) apply only to sentencing.