IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF COWLITZ

ANDY & SUE WHITWORTH, Husband and Wife; DOUG & STACY YEAMAN, Husband and Wife; ROBERT & PHYLLIS NELSON, Husband and Wife, BRENT & CONNIE DAVIS, Husband and Wife; NICK & JOANN SPRINGER, Husband and Wife; KARL & MARSHA MICHELS, Husband and Wife; DOUG & YOLANDA RAUCH, Husband and Wife; HOWARD & STACEY ALLINGTON, Husband and Wife; MARVIN & HELEN TAYLOR, Husband and Wife; RANDY & JODI SPARKS, Husband and Wife; MORALL & WENDI OLSON, Husband and Wife; DAVE & CRISTA NEAL, Husband and Wife; FELIX & JOLENE HARO, Husband and Wife; JEFF & AMY HULSE, Husband and Wife; BRENDAN & ANGIE HEATH, Husband and Wife; GILBERT & CAROLEE ORNELAS, Husband and Wife; and CAROLEE ORNELAS as Trustee of the CINDY MORSE LIVING TRUST, Plaintiffs, v. DAVE'S VIEW, LLC, a Washington limited liability company; DAVE'S VIEW AT MARTIN'S BLUFF HOMEOWNERS'	NO. 08-2-01650-2 MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT

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ASSOCIATION, a Washington non-profit corporation, LYNDA S. WILSON, an individual; and CHAD WILSON, a married man, Defendants.	

I. RELIEF REQUESTED

The Plaintiffs respectfully move the Court, pursuant to CR 60, for an Order Amending the Findings of Fact and Conclusions of Law and Judgment due to a clerical error.

II. BACKGROUND FACTS

Trial on this matter was held on June 7-9, 16-17, 2011. On June 17, 2011, the Court made an oral ruling from the bench on this matter. In pertinent part the court ruled:

> THE COURT: Phase I will be responsible for forty percent (40%) – forty percent (40%) of all the common expenses in common areas. Expenses. The hooking up of the water feature is not an expense, it's a capitol improvement. But, they are responsible for forty percent (40%) of the cost of maintaining and repairing the water feature. The water bills, electricity, maintenance. The Developer is responsible for the other sixty Percent (60%) because sixty – he gets sixty percent (60%) of the benefit. He's responsible for the maintenance – what is the name of the road, the entry road?
>
> MR. PENTA: Dave's View.
>
> THE COURT: Dave's View. He's responsible for sixty percent (60%) of the cost of maintaining Dave's View in Phase I, and none of the other roads.[1]

On August 30, 2011 the Court entered Findings of Fact and Conclusions of Law. Therein, the Court found, in pertinent part, that:

> The Association shall be responsible to maintain all the common areas of Phase 1, and in addition thereto, shall be responsible for forty percent (40%) of the maintenance and repair costs associated with the front entry of the development and the common road known as Dave's View Drive.[2]

[1] *See* Verbatim Report of Proceedings, Page 15, Lines 2 – 16, attached to the Declaration of Jesse D. Conway as Exhibit A.
[2] *See* Findings of Fact and Conclusions of Law, Page 8, ¶ 6, attached to Declaration of Jesse D. Conway as Exhibit B.

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The clerical error in question is that the Findings of Fact and Conclusions of Law implied, but did not specifically state, that the Developer (aka the Defendants) were responsible for sixty percent (60%) of the maintenance and repair costs for the water feature and Dave's View Road in Phase I.

Nevertheless, a judgment was entered on August 30, 2011 and, after Plaintiffs presented a cost bill, an Amended Judgment was entered on October 11, 2011 for $166,994.84. This figure did not include any maintenance and repair costs for the water feature or the road because none of these costs had been incurred yet. A Satisfaction of Judgment was entered on March 17, 2014 for the amount of the Amended Judgment and accrued interest and fees.[3]

Beginning in January 2013, Plaintiffs sent Defendants invoices for their share of the maintenance and repair costs for the water feature and road on a monthly basis.[4] Defendants refused to pay any of these costs. The total amounted owed is $19,480.71.[5]

In preparing to Amended the Judgment to enforce collection of the outstanding balance, Plaintiff realized the above-mentioned clerical error in the Findings of Fact and Conclusions of Law. To avoid any confusion, Plaintiffs wish to amend the Findings of Fact and Conclusion of Law to better reflect the ruling in this case and to then amend the Judgment accordingly.[6]

III. ISSUES PRESENTED

Whether Plaintiffs should be allowed to amend the Findings of Fact and Conclusions of Law and Judgment to reflect the outstanding balance Defendants owes Plaintiff pursuant to the Court's ruling in this case?

IV. EVIDENCE RELIED UPON

This motion is based on the attached Declaration of Deborah Hassler and the exhibits thereto, the Declaration of Jesse D. Conway and the exhibits thereto and the records and pleadings on file with the Court.

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[3] *See* Declaration of Jesse D. Conway.
[4] *See* Declaration of Deborah Hassler, Exhibit A.
[5] *Id.*
[6] *See* Declaration of Deborah Hassler.

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V. ANALYSIS

Amendment of Findings of Fact and Conclusions of Law. The Plaintiff should be allowed to amend the Findings of Fact and Conclusions of Law and Judgment pursuant to CR 60 which states, in pertinent part:

> Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.[7]

Washington Courts have specifically held that "[a] trial court's inadvertence in failing to memorialize part of its decision does not alter or amend the judgment. Rather, it is a clerical error of omission correctable under CR 60(a)."[8] Here, the omission of a specific statement in the Findings of Fact and Conclusions of Law that the Defendants are responsible for sixty percent (60.00%) of the maintenance cost of the water feature and road is no more than inadvertence. As reflected in the verbatim transcript of proceedings, the Court's ruling was clear in that Defendants were responsible for these costs. The original Findings of Fact and Conclusions of Law implied that Defendants were responsible for these costs by stating that Plaintiffs were responsible for the other forty percent (40%) of the maintenance and repair costs of the water feature and common road. By amending this clerical error, the judgment of the court is not altered. The proposed correction merely carries forward the full ruling from the bench on June 17, 2011 into final judgment.

Pursuant to CR 60(a), such a clerical error may be corrected by the Court at any time. Washington Courts have held that delay is no defense to the correction of a clerical error, at least in the absence of a showing of prejudice.[9] The Defendants here will suffer no prejudice. The Courts ruling was clear from the beginning and Plaintiffs invoiced the Defendants immediately when repair and maintenance costs were incurred. For years, Plaintiffs were forced to bear all of these costs themselves as they were not receiving reimbursement from Defendants. Further, during that time Defendants used and benefitted from the road and water feature. Lastly, the total

[7] CR 60(a).
[8] *Marriage of Stern,* 68 Wn. App. 922, 927 (1993).
[9] *Callihan v. Dept. of Labor and Industries,* 10 Wn. App. 153, 157 (1973).

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dollar amount of maintenance and repairs costs, $19,480.71 is fairly low for a greater than three year period. In short, Defendants will not be prejudiced by an amendment to the pleadings at this time and Plaintiffs are otherwise entitled to bring this motion now under CR 60(a).

This correction shall relate back to the time of judgment "nunc pro tunc." A "nunc pro tunc" (Latin for "now for then") order allows the Court to date a record reflecting its action back to the time the action in fact occurred. A nunc pro tunc order is used to correct clerical or ministerial errors that have caused the record to not properly reflect the intention of the court at the time the original order was entered.[10] It would be an abuse of discretion for the court to change an order nunc pro tunc in order to change its mind or rectify a mistake of law. But, if it is simply a ministerial error, correction of the record to reflect the true facts is appropriate.[11] Here, the Court is simply clarifying its previous ruling from the bench. This is a clerical or ministerial error that can be corrected without altering the Court's decision. The Court is not thereby changing its mind or correcting a mistake of law. The correction should relate back to the original date of entry, June 17, 2011, nunc pro tunc.

In general, no notice is required for a motion to correct a clerical error but the Court may require "such notice, if any, as the court orders." CR 60(a). Here, no notice should be required as the requested correction does no more than carry forward the court's oral ruling on from the bench into written Findings of Fact and Conclusions of Law. However, Plaintiffs have timely notified Defendants of this motion.

Lastly, CR 60(a)(11) allows the Court to amend a judgment or an order for "any other reason justifying a relief from the operation of the judgment." If the Court does not view the above-described issue as a clerical mistake, the Court still has discretion to allow the requested amendment under CR 60(a)(11).

VI. CONCLUSION

For the reasons stated herein, the Court shall grant Plaintiffs' Motion to Amend Findings of Fact and Conclusions of Law and Judgment. A proposed order and Judgment is filed with this Motion.

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[10] *State v. Hendrickson*, 165 Wn. 2d 474, 478-479 (2009).
[11] *Id.*

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DATED this ___ day of May, 2016.

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