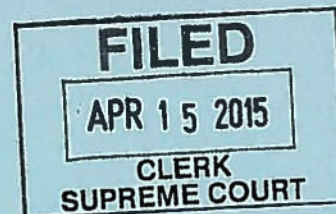


COMMONWEALTH OF KENTUCKY  
SUPREME COURT OF KENTUCKY  
CASE NO. 2014-SC-000083-D



LARRY PENIX

APPELLANT

V.

ON DISCRETIONARY REVIEW  
FROM THE KENTUCKY COURT OF APPEALS:  
NO 2011-CA-0001526-MR  
NO 2011-CA-0001529-MR  
(FROM THE MARTIN COUNTY CIRCUIT COURT)  
(CASE NO. 09-CI-00190)

BARBARA DELONG

APPELLEE

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BRIEF OF THE APPELLEE  
BARBARA DELONG

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CERTIFICATE OF SERVICE

I do hereby certify that a copy of the Brief of the Appellee, Barbara Delong, was served by depositing same in the United States Mail, first class, postage prepaid, addressed to the following: Kyle R. Salyer, Esq., Salyer Law Office, PLLC, PO Box 2213 Paintsville, Kentucky 41240; Samuel P. Givens, Jr., Esq. Clerk of the Court of Appeals, 360 Democrat Drive, Frankfort, Kentucky 40601; The Honorable John David Preston, Judge, Martin Circuit Court, 908 Third Street, Suite 217 Paintsville, Kentucky 41240, on this the 9 day of April, 2015. I do hereby further certify that the record was not removed by me from the Martin Circuit Court or the Kentucky Court of Appeals.

A handwritten signature in blue ink, appearing to read "Eric Mills".

Hon. Eric Mills, Esq.

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*Counsel for the Appellee, Barbara Delong*

## **I. INTRODUCTION**

Appellee Barbara Delong respectfully requests that this honorable Court affirm the opinion of the Court of Appeals finding Appellant liable for the unauthorized cutting of timber from Appellee's land and awarding Appellee treble damages pursuant to KRS 364.130.

## **II. STATEMENT CONCERNING ORAL ARGUMENT**

Appellee, Barbara Delong, requests oral argument. Oral argument will (i) help ensure that the Court has a complete and thorough understanding of the issues raised on appeal and (ii) afford the Court an opportunity to ask questions of the parties.

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#### IV. COUNTERSTATEMENT OF THE CASE

##### A. Introduction

The Appellee, Barbara Delong, does not accept the Statement of the Case of Appellant Larry Penix.

This Appeal is from an Opinion of The Kentucky Court of Appeals, entered January 24, 2014, affirming the judgment of the Martin Circuit Court finding that Appellant was liable for the unauthorized cutting of timber from Appellee's land, reversing the judgment of the Martin Circuit Court that Appellee was entitled only to single instead of treble damages, and remanding for determination of damages. The Opinion of the Kentucky Court of Appeals is attached as **Exhibit 1**.

Appellee Barbara Delong seeks proper enforcement and application of KRS 364.130 to compensate her for the unauthorized and wrongful cutting of timber on her land without her permission nor even knowledge. The language of KRS 364.130 is unequivocal. The intent of KRS 364.130 is even clearer when considered in light of the fact that the current language of the statute was written specifically to strengthen civil penalties for timber theft and to make it clear that intent to cut the timber of another was not a requirement for the imposition of liability for timber theft.



The relevant facts needed to decide this case under KRS 364.130 are undisputed. Timber belonging to Appellee was cut without her authorization or knowledge. The unauthorized cutting of Appellee's timber occurred as part of a logging operation on the property of Appellant, located next to the property of Appellee. Appellant did not take any of the actions specified under KRS 364.130 to mitigate the damages owed Appellee for the unauthorized cutting of Appellee's timber. By his own admission, Appellant neither received Appellee's consent for the cutting of the timber nor notified her of the timber operation commencing next door to her on Appellant's land. Appellant received the financial rewards of the timber cut from Appellee's land. Appellee has received no financial compensation for her timber that was cut. Appellant had his land surveyed in preparation for the logging operation and had his cousin show the logger the (apparently incorrect) property boundaries of his land. Appellant signed a contract with the logger stating that Appellant and Appellant alone was responsible for the boundary lines of his property and the logging operation. These facts, admitted to by Appellant, are alone enough to hold Appellant liable for treble damages for the unauthorized cutting of timber belonging to Appellee Delong.