

FILED
SUPREME COURT
STATE OF WASHINGTON
9/24/2021 1:25 PM
BY ERIN L. LENNON
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No. 100014-6
SUPREME COURT
OF THE STATE OF WASHINGTON

DAVID M. VINES,

Appellant,

v.

CITY OF BLACK DIAMOND, JAMEY KIBLINGER, RYAN KELLER,
MICHAEL HENRICH AND BRIAN LYNCH,

Respondents.

RESPONDENTS' OBJECTION TO THE APPELLANT'S MOTION TO
ALLOW EVIDENCE

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Attorney for Respondents

COMES NOW, Respondents, by and through their attorney of record, Patrick McMahon, of Carlson & McMahon, PLLC, and hereby submits this Objection to Appellant's Motion to Allow Evidence.

I. FACTS

The superior court in this matter dismissed the Plaintiff's Complaint following a Summary Judgment Motion. The Summary Judgment dismissal was based upon the Plaintiff receiving two (2) voluntary non-suits pursuant to CR 41 in prior litigation. The Plaintiff had already had a prior dismissal with prejudice of all of the causes of action outlined in the Complaint. The Plaintiff has appealed the Summary Judgment Motion. The Court of Appeals affirmed the dismissal.

II. ARGUMENT

The Appellant in this matter continues to ignore the legal basis of the dismissal of the underlying cause of action and continues to attempt to argue factual issues for trial. There is no basis for this court to grant Plaintiff's Motion to allow further evidence. "On review of an order for summary judgment, we performed the same inquiry as the trial court and we 'consider only evidence and issues called to the attention of the trial court.'" Gatner, Inc. v. Dep't of Revenue, 11 Wn.App.2d 765, 777 (2020), *citing* RAP 9.12 and Solvay Chems., Inc. v. Dep't of Revenue, 4 Wn.App.2d 918, 922 (2018). In this case, the evidence considered by the


superior court is currently before this court. (See Clerk's Papers). The Plaintiff has offered no justifiable basis to expand the record on appeal to include any further factual evidence. Moreover, the Plaintiff has yet to identify what additional factual evidence he is seeking to add to the record on appeal, or how the additional evidence has any relevance to the current appeal.

III. CONCLUSION

Since the factual evidence considered by the superior court is currently before this court, there is no basis to justify adding evidence to the appellate record. As such, this court should deny the Appellant's request for additional evidence, especially given that he has failed to identify the specific evidence he wishes to add to the appellate record.

RESPECTFULLY SUBMITTED this 24th day of September, 2021.

CARLSON & McMAHON, PLLC

By 

PATRICK McMAHON, #WSBA 18809
Attorneys for Respondents City of Black Diamond,
Jamey Kiblinger, Ryan Keller, Michael Henrich and
Brian Lynch

CERTIFICATION OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date give below I caused to be served in the manner noted a copy of the listed document on counsel below: RESPONDENTS' OBJECTION TO THE APPELLANT'S MOTION TO ALLOW EVIDENCE .

David M. Vines
32600 5th Avenue
Black Diamond, WA 98010

Via Federal Express
 Via Hand Delivery
 Via Fax
 Via U.S. Mail
 Via Electronic Mail

SIGNED this 24th day of September 2021 at Wenatchee, WA.


CARRIE M. FRANKLIN

CARLSON & MCMAHON, PLLC

September 24, 2021 - 1:25 PM

Transmittal Information

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Appellate Court Case Number: 100,014-6
Appellate Court Case Title: David M. Vines v. City of Black Diamond, et al.

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