

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
9/13/2021 3:42 PM  
BY ERIN L. LENNON  
CLERK

NO. 1000774

SUPREME COURT OF THE STATE OF WASHINGTON

---

GREGORY MEYER,

Appellant/Petitioner,

v.

KING COUNTY, WASHINGTON,

Defendant/Respondent.

---

**RESPONDENT KING COUNTY'S  
ANSWER TO PETITION FOR REVIEW**

---

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

John R. Zeldenrust, WSBA No. 19797  
Senior Deputy Prosecuting Attorney  
Attorneys for Respondent King County  
King County Administration Building  
500 Fourth Avenue, Suite 900  
Seattle, Washington 98104  
(206) 296-0430  
Email: [john.zeldenrust@kingcounty.gov](mailto:john.zeldenrust@kingcounty.gov)

**TABLE OF CONTENTS**

Table of Authorities ..... iii

I. IDENTITY OF RESPONDENTS..... 1

II. COURT OF APPEALS DECISION..... 1

III. SUMMARY AND COUNTERSTATEMENT OF THE  
ISSUE ..... 1

IV. STATEMENT OF THE CASE.....3

    A. Meyer’s Employment with the Facilities  
        Management Division..... 3

    B. Meyer’s Discrimination Complaint and 2015  
        Damage Claim..... 4

    C. Meyer’s Settlement and Agreement to Resign.  
        ..... 5

    D. Three months after Agreeing to Resign, Meyer  
        Reapplies to his former position. .... 7

    E. Meyer Sues – Alleging Discrimination and  
        Retaliation based on King County’s Refusal to  
        Rehire Him – and the Trial Court Dismisses his  
        Lawsuit. .... 9

    F. The Court of Appeals affirms the Dismissal of  
        Meyer’s claims in an Unpublished Decision. . 10

V. ARGUMENT..... 11

A.	The “Context Rule” of Contract Interpretation allows Courts to Consider Extrinsic Evidence in determining the Parties’ intent regardless of any Ambiguity.....	11
B.	Meyer fails to show that the Court of Appeals’ decision raises issues of substantial Public Interest or Conflicts with this Court’s precedent. ....	12
1.	Because the Settlement Agreement and Extrinsic Evidence made Clear that Meyer was not eligible for rehire, his refusal to agree not to reapply is immaterial.....	13
2.	The Settlement Agreement and Extrinsic Evidence unambiguously show that the Parties’ Intent was that Meyer was not eligible for Rehire.....	14
VI.	CONCLUSION .....	16

## TABLE OF AUTHORITIES

### Washington Cases

<i>Berg v. Hudesman</i> , 115 Wn.2d 657 (1990) .....	1
<i>Go2Net, Inc., C I Host, Inc.</i> , 115 Wn.App. 73, 85 (2003) .....	15
<i>Gregory Meyer v. King County, Washington</i> , No. 81858-9-1, 2021 WL 3033419 (Wash. App. Div. I 7/19/2021) .....	1, 10, 11
<i>Hearst Commc'ns, Inc., v. Seattle Times Co.</i> , 154 Wn.2d 493, 503 (2005) .....	11
<i>Martin v. Smith</i> , 192 Wn.App. 527, 532 (2016) .....	12
<i>Pitell v. King County Pub. Hosp. Dist. No. 2, 4</i> Wash. App.2d 764, 774 (2018) .....	12
<i>Roats v. Blakely Island Maint. Comm'n, Inc.</i> , 169 Wn. App. 263, 274 (2012) .....	11
<i>Tanner Elec. Co-op. v. Puget Sound Power &amp; Light Co.</i> , 128 Wash.2d 656,674 (1996) .....	12, 14

### Court Rules

RAP 13.4(b)(1) .....	3, 12
RAP 13.4(b)(4) .....	3, 12
RAP 18.17 .....	16

**I. IDENTITY OF RESPONDENTS**

King County is the respondent in this case.

**II. COURT OF APPEALS DECISION**

In this unpublished decision, *Gregory Meyer v. King County*, *Washington*, No. 81858-9-1, 2021 WL 3033419 (Wash. App. Div. I 7/19/2021), the Court of Appeals ruled that under a settlement agreement between Meyer and the County resolving his employment claims, the parties intended that Meyer would not be eligible for rehire with the County following his resignation. In reaching this result, the Court of Appeals also upheld the trial court's consideration of extrinsic evidence confirming that the parties intended that Meyer was not eligible for rehire.

**III. SUMMARY AND COUNTERSTATEMENT OF THE ISSUE**

In *Berg v. Hudesman*, 115 Wn.2d 657 (1990), this Court adopted the "context rule" of contract interpretation. This rule allows courts to consider extrinsic evidence to determine the parties' intent regardless of whether contract language is ambiguous. Courts may consider extrinsic evidence to determine the parties' intent as a

matter of law where the evidence points to but one reasonable conclusion.

In this case, Gregory Meyer agreed to resign from his County position in settlement of his employment-related claims. He also agreed to waive any claims against the County for “reemployment.” In exchange, the County paid him \$100,000 and gave him three months paid administrative leave. The County further agreed to “remain silent” if asked by potential employers whether Meyer was eligible for rehire. When the County later refused to rehire Meyer based on the settlement agreement, he sued. He claimed he never agreed not to reapply for County jobs and alleged the County’s refusal to rehire him was discriminatory.

King County maintained that the settlement agreement terms – along with the “remain silent” provision – allowed for but one conclusion: that Meyer would not be eligible for rehire after resigning. The Court of Appeals agreed and upheld the trial court’s ruling dismissing Meyer’s claims on summary judgment. In reaching this result, the Court approved the trial court’s consideration of extrinsic evidence – the parties’ email communications during settlement

negotiations – in which the County told Meyer that it would not tell potential employers he was eligible for rehire because it wasn't true.

The Court of Appeals' decision rests on settled contract law stating that courts may consider extrinsic evidence to determine the parties' intent, even if a contract is unambiguous. And when the extrinsic evidence points to but one reasonable conclusion – as it does here – consideration of the evidence does not create a fact issue. This Court should therefore deny review because the Court of Appeals' unpublished decision does not conflict with any decision of the Court under RAP 13.4(b)(1), and does not raise an issue of substantial public importance under RAP 13.4(b)(4).

#### **IV. STATEMENT OF THE CASE**

##### **A. Meyer's Employment with the Facilities Management Division.**

During his tenure with King County, Meyer worked as a Security Officer in the King County Facilities Management Division (FMD), which oversees and maintains King County's real estate assets. CP 171-172. Meyer began as a Security Officer with FMD in 2004. He was promoted to Security Sergeant in June 2006 and

continued in that position until he resigned in July 2016. See CP 2; 23.

Meyer served as the day-shift Sergeant, beginning work at 5:00 a.m. and getting off at 1:00 p.m. CP 120-121. In 2013 Meyer requested a later start time to accommodate an alleged disability, and King County accommodated his request until his physician cleared him to return to work without restriction. CP 153-154. Meyer also took significant intermittent leave from work for his own medical conditions, his mother's medical conditions, and his wife's medical conditions. CP 172.<sup>1</sup> Between February 2013 and February 2016, Meyer took 457 hours of paid leave, 1,445 hours of "Leave Without Pay," donated leave, regular vacation, and regular sick leave. CP 172. King County FMD approved all of Meyer's leave.

#### **B. Meyer's Discrimination Complaint and 2015 Damage Claim**

In January 2014, Meyer filed a discrimination complaint with the Washington State Department of Labor and Industries ("L&I"),

---

<sup>1</sup>The County allowed this leave the Washington Family Medical Leave Act (WFMLA) and the Family Medical Leave Act (FMLA). See CP 172.



alleging King County discriminated against him for participating in an occupational safety and health complaint. CP 168. In August 2014, L&I determined Meyer's complaint had merit and would be forwarded to the state Attorney General's Office for litigation. *Id.* But by the time the County and Meyer settled his damage claim nearly twenty months later, the state had taken no action. CP 168.

In August 2015, Meyer filed a claim for damages against King County, which is a mandatory prerequisite to filing suit. CP 1-6; 272. He generally maintained that the County discriminated against him due to his alleged disabilities, his related leave, and his Labor & Industries complaint.

### **C. Meyer's Settlement and Agreement to Resign.**

After an unsuccessful mediation in March 2016, attorneys for Meyer and King County directly negotiated, via email, terms for a settlement. CP 168-169. King County and Meyer agreed to a written Settlement and FMD Director Wright signed the agreement on behalf of King County. CP 134-135.

Under the settlement, Meyer agreed to resign and not sue King County for any issues, known or unknown, past, present and future, relating to his employment, including reemployment. CP 70-

71. In return, King County agreed to pay Meyer \$100,000, give him three months of paid administrative leave, and remain silent if prospective employers asked if he was eligible for rehire. CP 70-71. The Settlement's provisions included a release and agreement not to sue for any present or future claims. CP 71.

The agreement was intended to resolve "any and all issues" related to Meyer's employment with King County. CP 70. In the comprehensive release provisions, Meyer expressly agreed to release King County from all employment-related claims, including any claims regarding "reemployment." CP 70-71. He also waived "any and all" statutory claims, including claims under the ADA and WLAD (CP 71), and King County promised "not to contest or respond to Meyer's application for unemployment." CP 72.

Meyer and the County negotiated a process for handling any future employment inquiries (CP 72), and agreed that if prospective employers asked if Meyer was eligible for rehire, the County would remain silent. CP 72.

FMD's Interim Director, Anthony Wright, signed the agreement with the intent that Meyer would be ineligible for rehire if he resigned. CP 140; 144; 176. The County expressed this intent

to Meyer's attorney before they finalized the agreement. CP 176. Specifically, the County told Meyer's attorney that it would not rehire him, and would not tell any prospective employer that Meyer was eligible for rehire because it was not true. CP 169.

**D. Three months after Agreeing to Resign, Meyer Reapplies to his former position.**

Right after Meyer's administrative leave ended, however, he began applying for various King County jobs – including the one he had just resigned from. CP 172-173. In all, he submitted 22 applications for 16 job postings between July 2016 and August 2019. *Id.* His applications fell into two groups: (1) applications to return to work for FMD at 11 positions, and (2) applications to work at five other County jobs. See CP 91-92.<sup>2</sup> Based on the Settlement agreement, FMD Director Wright decided that Meyer was ineligible for re-hire. For that reason, FMD did not consider Meyer's post-resignation applications for FMD positions. CP 144-145; 176; 222.

---

<sup>2</sup>In responding to King County's motion for summary judgment below, Meyer abandoned any claim of discrimination or retaliation concerning his applications to the five County jobs outside the Facilities Maintenance Division (FMD). See VRP 8/28/20 at 74.

Director Wright acknowledges, however, that his decision not to rehire Meyer based on the Settlement agreement was not “perfectly conveyed” to Meyer or lower-level FMD human resources personnel whom evaluated Meyer’s applications and corresponded with him. See CP 176. Although the Settlement agreement released the County from liability for any claims related to “reemployment,” it did not expressly state that Meyer was ineligible to be rehired (CP 346), and coding in his personnel file did not contain such a designation. CP 305.

Thus, in response to Meyer’s numerous FMD applications between July 2016 and 2018, Human Resource staff gave him a number of reasons for not acting on them, including (1) he had previously worked for FMD and the County had paid him to resign (CP 291); (2) he’d had some work-related misconduct and discipline while he was at FMD (CP 3, 155); and (3) other applicants were more competitive. CP 290.

Nonetheless, the evidence demonstrated that the reason Director Wright did not consider Meyer’s post-settlement applications was his belief that Meyer was not eligible for rehire based on the settlement. For that reason, Wright, as the “decision maker” on all

FMD hiring decisions (CP 175), instructed FMD Human Resource Manager Denise Gregory Wyatt not to consider Meyer's applications. CP 176.

**E. Meyer Sues – Alleging Discrimination and Retaliation based on King County's Refusal to Rehire Him – and the Trial Court Dismisses his Lawsuit.**

In his 2019 Complaint, Meyer generally alleged that King County's refusal to rehire him after the settlement was based on discrimination and retaliation for his conduct before he resigned – including his filing of the August 2015 claim for damages. See CP 2-6.

In July 2020, King County asked the court to dismiss Meyer's claims on summary judgment. CP 19. The County argued that Meyer had released King County for all claims arising from his employment, including reemployment. CP 33. Meyer generally responded that the settlement agreement was ambiguous, it did not expressly state that he could not be rehired, his personnel records did not have "no rehire" coding, and FMD HR staff provided him conflicting reasons for not rehiring him. See CP 214-235

The summary judgment hearing lasted nearly two hours and generated over 90 pages of transcript. See 8/28/20 VRP at 4, 91. At

the close of the hearing, the court granted King County's summary judgment motion, reasoning that the plain language of the settlement agreement "released and discharged all claims, causes of action, and demands for reemployment rights . . .". *Id.* at 88-89. Meyer appealed.

**F. The Court of Appeals affirms the Dismissal of Meyer's claims in an Unpublished Decision.**

The Court of Appeals affirmed. While the settlement agreement did not expressly state that Meyer was ineligible for rehire, the agreement's terms – and the circumstances surrounding its execution – clearly indicated the parties did not intend for Meyer to be eligible for rehire. *See Meyer*, 2021 WL 3033419 \*3. The agreement stated that the County would not respond to any potential employer's inquiry about Meyer's eligibility for rehire, and the parties' email correspondence provided context for this provision. *Id.* In that correspondence, the County made clear that it would not consider rehiring an employee that it paid to leave employment, and informed Meyer's attorney it could not tell a prospective employer otherwise because it wasn't true. *Id.*

The Court rejected Meyer’s claim that the trial court “implicitly acknowledged that the agreement was ambiguous because it considered the extrinsic evidence of the email exchange between the parties’ attorneys.” See *Meyer*, 2021 WL 3033419 \*3. The “context rule” of contract interpretation allowed the trial court to consider extrinsic even absent a determination that the contract was ambiguous. *Id.* The contract terms and extrinsic evidence made clear that the parties intended Meyer would not be eligible for rehire. Therefore, the Court of Appeals ruled that the trial court did not err in granting the County’s motion for summary judgment. *Id.*

## V. ARGUMENT

### A. The “Context Rule” of Contract Interpretation allows Courts to Consider Extrinsic Evidence in determining the Parties’ intent regardless of any Ambiguity.

The purpose of contract interpretation is to determine the parties’ intent. *Roats v. Blakely Island Maint. Comm’n, Inc.*, 169 Wn. App. 263, 274 (2012). In Washington, courts “follow the objective manifestation theory of contracts.” *Hearst Commc’ns, Inc., v. Seattle Times Co.*, 154 Wn.2d 493, 503 (2005). When interpreting an agreement, courts consider its objective

manifestations to determine the intent of the parties. *Martin v. Smith*, 192 Wn.App. 527, 532 (2016).

Courts may “consider extrinsic evidence to assist in ascertaining the intent of the parties in entering into a contract, regardless of whether the language used in the writings is deemed ambiguous.” *Pitell v. King County Pub. Hosp. Dist. No. 2*, 4 Wash. App.2d 764, 774 (2018). Courts also determine the parties’ intent by viewing the contract as a whole, the subject matter and objective of the contract, all the circumstances surrounding the making of the contract, the subsequent acts and conduct of the parties to the contract, and the reasonableness of respective interpretations advocated by the parties. *Tanner Elec. Co-op. v. Puget Sound Power & Light Co.*, 128 Wash.2d 656,674 (1996) (internal quotation marks omitted).

**B. Meyer fails to show that the Court of Appeals’ decision raises issues of substantial Public Interest or Conflicts with this Court’s precedent.**

Meyer maintains that this Court should accept review because (1) the Court of Appeals’ decision conflicts with other decisions of this court (RAP 13.4(b)(1)), and/or (2) the decision raises issues of substantial public interest (RAP 13.4(b)(4)). The



Court should reject Meyer's claims because neither prong is satisfied in this case.

1. Because the Settlement Agreement and Extrinsic Evidence made Clear that Meyer was not eligible for rehire, his refusal to agree not to reapply is immaterial.

Meyer first contends that the Court of Appeals "disregarded" that the parties' dispute during settlement negotiations centered on his refusal to waive his right to apply for open positions. Petition, at 6. He maintains that he never waived this right in the settlement agreement, that FMD human resources personnel did not classify him as ineligible for rehire, that Director Wright admitted that the settlement agreement contained no such provision, and that other settlement agreements did include such language. *Id.*

The fact that Meyer did not waive his right to *reapply* for FMD positions, however, is immaterial. The settlement agreement and extrinsic evidence made clear that the parties intended that Meyer would be *ineligible* for rehire regardless of whether he reapplied.

The "subsequent conduct" of FMD human resources personnel (in failing to tell him he was ineligible for rehire when

evaluating his applications) does not show that the parties had conflicting intentions concerning Meyer's eligibility for rehire. Petition, at 6. The actions of FMD human resources personnel are irrelevant because they were neither the contracting party nor the FMD "decision maker." Director Wright was the decision maker, and his understanding (and intent) was that Meyer would be ineligible for reemployment.

Finally, whether other settlement agreements contained "no rehire" clauses is also irrelevant. The issue is whether the settlement agreement and extrinsic evidence *in this case* reflected an intent by the parties that Meyer was not eligible for rehire, and the trial court (and Court of Appeals) correctly determined that this was the parties' intent.

2. The Settlement Agreement and Extrinsic Evidence unambiguously show that the Parties' Intent that Meyer was not eligible for Rehire.

Meyer cites *Tanner Elec. Coop. v. Puget Sound Power & Light Co*, 128 Wn.2d 656, 674 (1996), for the proposition that "Interpretation of a contract provision is a question of law only when (1) the interpretation does not depend on the use of extrinsic evidence, or (2) only one reasonable inference can be drawn from

the extrinsic evidence.” Petition, at 7. He argues that because more than one interpretation can be drawn from the extrinsic evidence in this case, discerning the parties’ intent in the settlement agreement is a fact question. Petition, at 7.

In support of this claim, Meyer recites many of the same facts addressed above. As previously noted, (1) Meyer’s refusal to agree not to *reapply* for County positions does not undermine the parties’ clear intent that he would be *ineligible* regardless of whether he reapplied; and (2) regardless of what FMD HR personnel thought about Meyer’s rehire eligibility, their alleged intent is not relevant because they were not parties to the settlement agreement.

Meyer further claims that his numerous post-resignation applications shows that he did not believe the agreement precluded his eligibility for rehire. But his subjective, unilateral beliefs do not control. See *Go2Net, Inc., C I Host, Inc.*, 115 Wn.App. 73, 85 (2003) (when considering circumstances leading up to and surrounding a writing, court does not rely on unilateral or subjective purposes and intentions).

Finally, Meyer contends that the omission of a “no rehire” clause in the settlement agreement renders it ambiguous, and that the Court of Appeals “failed to consider” this ambiguity and erroneously interpreted it against him. Petition, at 9-10. Again, however, the agreement taken as a whole is unambiguous. Meyer waived any claim for “reemployment,” and the County directly told him it would not tell prospective employers he was eligible for rehire because it was not true. The only reasonable interpretation of this evidence is that Meyer was ineligible for rehire.

## **VI. CONCLUSION**

For the foregoing reasons, King County asks this Court to deny Gregory Meyer’s Petition for Review.

*This document contains 2,835 words, excluding the parts of the document exempted from the word count by RAP 18.17.*

DATED this 13<sup>th</sup> day of September, 2021.

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By: /s/ John R. Zeldenrust  
JOHN R. ZELDENRUST, WSBA #19797  
Senior Deputy Prosecuting Attorney  
Attorney for Defendant King County

**CERTIFICATE OF FILING & SERVICE**

I hereby certify that on the 13<sup>th</sup> day of September, 2021, I caused a copy of the foregoing document to be e-filed with the Supreme Court of the State of Washington using the Washington State Appellate Court's Electronic Filing portal and further certify that I e-served a copy of the same to the following:

Susan B. Mindenbergs, WSBA #20545  
Law Office of Susan B. Mindenbergs  
705 Second Avenue, Suite 1050  
Seattle, WA 98104  
susanmm@msn.com

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 13<sup>th</sup> day of September, 2021.



\_\_\_\_\_  
HELEN FUNG  
Civil Litigation - Legal Secretary  
King County Prosecuting Attorney's Office

**KING COUNTY PROSECUTING ATTORNEYS OFFICE CIVIL DIVISION**

**September 13, 2021 - 3:42 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 100,077-4  
**Appellate Court Case Title:** Gregory Meyer v. King County

**The following documents have been uploaded:**

- 1000774\_Answer\_Reply\_20210913153328SC422415\_6284.pdf  
This File Contains:  
Answer/Reply - Answer to Petition for Review  
*The Original File Name was 2021-09-13 KC Ans to PFR.pdf*

**A copy of the uploaded files will be sent to:**

- donna.bond@kingcounty.gov
- hfung@kingcounty.gov
- mark.stockdale@kingcounty.gov
- shanna.josephson@kingcounty.gov
- susanmm@msn.com

**Comments:**

---

Sender Name: Helen Fung - Email: hfung@kingcounty.gov

**Filing on Behalf of:** John Robert Zeldenrust - Email: john.zeldenrust@kingcounty.gov (Alternate Email: )

Address:  
516 3rd avenue Room W-400  
Seattle, WA, 98104  
Phone: (206) 263-5974

**Note: The Filing Id is 20210913153328SC422415**