NO. 100620-9

SUPREME COURT OF WASHINGTON

On Appeal from the Court of Appeals Division I, #80968-7

CHRISTOPHER LARSON and ANGELA LARSON,

Appellants,

v.

SNOHOMISH COUNTY *et al.*,

Respondents.

ANSWER TO PETITION FOR DISCRETIONARY REVIEW

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I. INTRODUCTION

In 2018, Christopher and Angela Larson ("the Larsons") began a series of a related lawsuits designed to forestall the non-judicial foreclosure sale of their residential property. The Larsons did not seek to enjoin the sale within the foreclosure action. Instead, the Larsons attempted to deprive the Court of jurisdiction or otherwise invalidate the note holder's interest by filing a Torrens registry application and then suing Snohomish County and its judicial officers, Washington's Governor and Attorney General, and various private entities with a financial interest in the property. Applying this Court's precedent, and the plain language of RCW 61.24.127(2), the Court of Appeals correctly ruled that the Larsons failure to enjoin the sale of their property barred their quiet title claims. The Court of Appeals also correctly rejected the Larsons constitutional challenges to the non-judicial foreclosure actions.

Furthermore, the Court of Appeals concluded that the Snohomish County Superior Court, either directly or through an

appointed visiting judge, impartially and appropriately adjudicated the Larsons claims. This is the only basis upon which the Larsons' now appeal.

Discretionary review of the Court of Appeals opinion is not warranted, as the Larsons fail to establish any legal error or substantial impact from the opinion. The Court of Appeals opinion correctly applied the law on judicial recusal and necessity. This Court should deny review where the Larsons fail to meet the criteria of RAP 13.4(b) for review.

II. COUNTERSTATEMENT OF THE CASE AND DECISION

The Court of Appeals opinion sets forth, in detailed fashion, the lengthy factual history of the Larsons' purchase and loss of their residential property, located in Snohomish County.[1]

[1] The Larson's Petition for Review is replete with mischaracterizations of the record. For example, the Larsons' claim that Skagit County Superior Court Judge Stiles recused himself because "disqualification of Skagit County Judges was also required by RCW 2.28.030." Brief of Petitioner at 5. The record, however, clearly indicates that Judge Stiles recused himself simply because the Larsons filed an affidavit of disqualification, as was their right under RCW 4.12.050. CP

See Larson v. Snohomish Cty., 499 P.3d 957, 966-967 (2021). Because the Larsons appear to have abandoned any appeal of the underlying foreclosure action or their lawsuit for damages based on the Torrens Act and focus only on judicial recusal, the Snohomish County Respondents will not repeat those facts here. For purposes of this petition for review, the relevant fact is the Court of Appeals dismissed the Larsons' arguments on judicial recusal based on the doctrine of necessity, while also noting that the Larsons had failed to provide any evidence that the Superior Court judges had a sufficient financial interest in the outcome of the foreclosure.

III. ARGUMENT WHY REVIEW SHOULD BE DENIED

Discretionary review is available only in limited circumstances. RAP 13.4(b). Because the Larsons rely on RAP 13.4(b)(1), (3) and (4) they must show that the Court of Appeals decision conflicts with a decision of the Supreme Court, involves

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3615-17. The County will provide additional argument regarding this, and other mischaracterizations, if the Court grants review.

"a significant question of law under the Constitution of the State of Washington or of the United States is involved," or "the petition involves an issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b)(1), (3) and (4). None of those circumstances are present here as discussed in detail below.

a. The Court of Appeals Opinion Does Not Conflict with Washington Supreme Court Precedent

i. The Rule of Necessity

The rule of necessity "simply stated, means that a judge is not disqualified to try a case because of his personal interest in the matter at issue if there is no other judge available to hear and decide the case." *Atkins v. United States*, 214 Ct. Cl. 186, 556 F.2d 1028 (1977). The rule of necessity has been applied numerous times in state and federal courts. *Id.,* at 1036–38 (1977) (setting forth the history of the rule of necessity in this country); *see also Larson,* 499 P.3d at 982 *citing U.S. v. Will*, 449 U.S. 200, 213, 101 S. Ct. 471, 66 L. Ed. 2d 392 (1980) (quoting

F. POLLACK, A FIRST BOOK OF JURISPRUDENCE 270 (6th ed. 1929)). Pursuant to the rule of necessity, a judge is not disqualified to try a case because of a personal interest in the matter at issue if "the case cannot be heard otherwise." *Will*, 449 U.S. at 213.

ii. The Court of Appeals Application of the Rule of Necessity is Consistent with Washington Supreme Court Precedent

Application of the "rule of necessity" is clearly called for here, where the Larsons allege that no judge in the state is capable of hearing their case.

The Larsons allege that because no county in Washington had appropriately implemented a Torrens Act system, no superior court judge may hear their Torrens Acts claims. See CP 3471. The Larsons also allege that judicial retirement accounts are invested in mortgage-backed securities, in support of which judicial officers are "unconstitutionally incentivized to approve foreclosures outside of equity." *Larson.*, at 982. The retirement accounts of Supreme Court Justices, Court of Appeals Judges,

and Superior Court Judges are all managed according to chapter 2.12 RCW. Combined, the Larsons' arguments effectively eliminate all judicial officers in Washington from adjudicating their claims.[2] This is precisely the circumstance where the rule of necessity applies.

The Larsons claim that the "Court of Appeals' interpretation [of the rule of necessity] conflicts with this Court's interpretation in the rule in *Kennett v. Levine,* 50 Wn.2d 212, 219-20, 310 P.2d 244, 249 (1957*)*." Brief at 19. Instead of supporting the Larson's position however, *Kennett* affirms the principle expressed by the Court of Appeals here that where a

[2] The Larsons' failure to demand the recusal of all Washington Court of Appeals judges and Supreme Court justices – because of their participation in the judicial retirement system – simply highlights the insincerity of their argument. If the Larsons truly believed in this principle, they would demand that this Court recuse itself, which would lead to the appropriate invocation of the doctrine of necessity. Their failure to raise that point in the Court of Appeals below or in their petition to this Court shows that this argument is simply a last-ditch effort to continue a case where they lost conclusively on the underlying merits.

body is the only tribunal with power to act, disqualification will not be permitted to destroy its review.

Kennett involved an administrative proceeding before the Seattle City Council to determine whether David Levine's removal from office as a member of the transit commission should be confirmed. Mr. Levine argued that a majority of the city council should be prohibited from proceeding with the hearing because they were prejudiced against him and would not give him a fair hearing. *Id.,* at 50 Wn. 2d 218–19. Assuming the truth of the allegation of prejudice, this Court applied the rule of necessity and found that "to disqualify a majority of the city council defeats the purpose of the charter provision, and makes the appellant's removal for whatever cause an impossibility." This Court found that no member of the City Council was required to recuse.

Here, the Court of Appeals correctly found that there was no requirement for Judges Svaren or Okrent to recuse themselves from the proceedings. The Superior Court is vested with the

jurisdiction to hear and determine "all cases at law which involve the title or possession of real property." RCW 2.08.010. If the Court held, as requested by the Larsons, that every judge in Washington is disqualified from hearing every foreclosure action, the result would be to permanently stall any proceedings whereby lenders seek to recover their interest in real property. Accordingly, application of the "rule of necessity" is clearly appropriate where, as here, the Larsons allege that no judge in the state is capable of hearing their case.

b. The Court Of Appeals Opinion Does Not Address A Significant Question Of Law Under The Washington Or US Constitution

The Larsons argue that the Due Process clause and the Fourteenth Amendment required judicial officers from Skagit and Snohomish County to recuse themselves from hearing their cases. Brief at 22.

A judicial officer "shall not act as such in a court of which he or she is a member in any ... action, suit, or proceeding to which he or she is a party, or in which he or she is directly

interested." RCW 2.28.030. "Due process, appearance of fairness and Canon 3(D)(1) of the Code of Judicial Conduct require a judge to recuse himself where there is bias against a party or where impartiality can be questioned." *Larson.,* at 982 citing *State v. Leon*, 133 Wn. App. 810, 812, 138 P.3d 159 (2006). "A judicial proceeding satisfies the appearance of fairness doctrine if a reasonably prudent and disinterested person would conclude that all parties obtained a fair, impartial, and neutral hearing." *Id.* at 24 (citing *Tatham v. Rogers*, 170 Wn. App. 76, 96, 283 P.3d 583 (2012)). "The party must produce sufficient evidence demonstrating actual or potential bias, such as personal or pecuniary interest on the part of the judge; mere speculation is not enough." *Id.* (citing *In re Pers. Restraint of Hayes*, 10 Wn. App. 366, 377 n. 23, 996 P.2d 637 (2000)).

The Larsons did not present sufficient evidence that Judge Svaren or Okrent had a "personal or pecuniary interest" in the outcome of their claims. The allegation that a judge cannot be fair because a ruling in the Larsons favor would necessarily

reflect badly on the judge's county, or impact the judge's retirement, is speculative. The Court of Appeals correctly found that the "Larsons have alleged no facts indicating that either judge has control over the state retirement plans or that their decisions regarding the Torrens Act will have any impact whatsoever on the value of securities in which the retirement plans are invested." *Larson.,* at 983.

Accordingly, the Larsons have not raised an issue of constitutional weight which warrants review by this Court.

c. The Court of Appeals Opinion Does Not Involve Matters of Substantial Public Interest

The Larsons argue last that this case involves a matter of substantial public interest. This Court will accept a petition for review if the petition involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b)(4). A substantial public interest exists, for example, regarding the confinement of individuals during a global

pandemic (*Matter of Williams*, 197 Wn. 2d 1001, 484 P.3d 445 (2021)).

Here, there is no substantial public interest. The Larsons certainly have substantial *personal* interest in litigating issues related to the foreclosure of their property, but there is no *public* interest implicated in Larsons' request for review of the Court of Appeals' application of the rule of necessity, which involves applying long standing precedent to the specific facts in this case.

In sum, the issues presented by the Larsons for this Court's review involve routine application of a well-established doctrine by the Court of Appeals, not novel issues of widespread public importance that need be determined by this Court.

IV. CONCLUSION

For the foregoing reasons, Snohomish County respectfully request that this Court deny the Larsons' Petition for Review.

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V. CERTIFICATE OF COMPLIANCE

I certify that the number of words contained in the Response to Plaintiff-Appellant's Petition for Discretionary Review, exclusive of words contained in the appendices, title sheet, table of contents, table of authorities, certificate of compliance, signature blocks, and pictorial images, is ***1,871 words***.

Respectfully submitted on March 17, 2022.

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PROOF OF SERVICE

I am a resident of the State of Washington, over the age of 21 years and not a party to this action. On the 17th date of March, 2022, I caused to be served, via the Washington State Appellant Court's Portal System, a true and correct copy of the foregoing document upon the parties listed below:

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

Signed in Everett, WA this March 17, 2022.

Cindy Ryden, Legal Assistant

SNOHOMISH COUNTY PROSECTUOR'S OFFICE, CIVIL DIVISION, TORT

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Transmittal Information

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Appellate Court Case Title:	Christopher E. Larson, et ano. v. New Century Mortgage, et al.
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Comments:

Respondent Snohomish County's Answer to Petition for Discretionary Review

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