

FILED
SUPREME COURT
STATE OF WASHINGTON
8/15/2022 1:22 PM
BY ERIN L. LENNON
CLERK

NO. 101092-3

THE SUPREME COURT
STATE OF WASHINGTON

KENNETH TAYLOR CURRY,

Appellant,

v.

VANCOUVER HOUSING
AUTHORITY et al.,

Respondents.

Clark County Superior Court
Case No. 19-2-03380-06

Court of Appeals No. 55431-3-II

**ANSWER BY RESPONDENTS
RE: PETITION FOR
DISCRETIONARY REVIEW;
and FEE WAIVER**

Charles A. Isely, WSBA #34130
Charles A. Isely, Attorney at Law, P.C.
205 E 11th St., Suite 102
PO Box 61983
Vancouver, WA 98666-1983
(360) 993-1200 (p) / (360) 567-0165 (f)
charles@iselylaw.com
Attorney for Respondents, Vancouver Housing
Authority; and Roy Johnson

Table of Contents

	<u>Page</u>
Table of Authorities	ii
I. Introduction	1
II. Statement of the Case	2
III. Argument	6
A. Fee Waiver Request	6
B. Appellant Fails to Assert a Basis for Discretionary Review Under RAP 13(b)	6
IV. Conclusion	7
Word Count Certification	8

Table of Authorities

Statutes

Wash. Rev. Code § 4.84.185 5

Rules of Civil Procedure

CR 11 1, 5

Rules of Appellate Procedure

RAP 13(b) 2, 6

I. Introduction

Appellant contends Respondents improperly terminated him from the Vancouver Housing Authority's Section 8 Housing Voucher Program and denied his request for reasonable accommodation – in December 2014. In 2016, Appellant brought suit against Respondents in federal court. The court granted Respondents' motion for summary judgment. The United States Court of Appeals for the Ninth Circuit affirmed the trial court's decision. The United States Supreme Court denied review.

Subsequent to the conclusion of the federal case, Appellant filed suit in state court, based upon the same facts, alleging virtually the same causes of action except for a newly asserted breach of contract claim. The trial court dismissed the case, with prejudice, based upon the statute of limitations and the doctrine of res judicata. The trial court also imposed CR 11 sanctions. The Court of Appeals affirmed the trial's court's decision. Appellant now seeks discretionary review of the decision by the Court of Appeals and a fee waiver.

The following issues are before this Court:

A. Should the Supreme Court waive the customary fee for Appellant’s petition for discretionary review? Respondents will defer to this Court as to whether a fee waiver should be granted.

B. Does the Appellant raise an issue that would warrant review under RAP 13(b)? Appellant raises no issue that warrants review under RAP 13(b).

II. Statement of the Case

On November 2, 2016, Appellant filed an Amended Complaint in the United States District Court for the Western District of Washington at Tacoma [Case No. C16-5784-RBL] (hereinafter “Federal Case”) against Defendants Vancouver Housing Authority and Roy Johnson. CP 11 at pp. 24 – 27 [Amended Complaint filed in the Federal Case].

The Defendants in the Federal Case are the same Defendants in this matter.

In the Federal Case, Appellant alleged Respondents improperly terminated his participation in the Section 8 Housing Voucher Program and denied his request for reasonable accommodation. *Id.*

All of Respondents' acts which provided the basis for Appellant's claims occurred prior to December 31, 2014. *Id.*

On May 7, 2018, the Honorable Ronald B. Leighton for the United States District Court for the Western District of Washington at Tacoma issued an order Granting Defendants' Motion for Summary Judgment which dismissed Appellant's Amended Complaint with prejudice. CP 11 at pp. 28 – 41. [Order Granting Defendants' Motion for Summary Judgment; Judgment of Dismissal with Prejudice].

Judge Leighton ruled Respondent Vancouver Housing Authority's decision to terminate Appellant's participation in the Section 8 Housing Voucher Program complied with federal regulations; that Appellant was afforded due process to challenge his termination from the

program; and that Appellant was not denied due process in his request for a reasonable accommodation. *Id.*

Judge Leighton denied Appellant's Motion for Reconsideration. *Id.* at pp. 43 – 44 [Order Denying Motion for Reconsideration]. The United States Court of Appeals for the Ninth Circuit affirmed Judge Leighton's decision. *Id.* at pp. 46 – 47 [Memorandum, affirming trial court decision]. The United States Supreme Court denied review. *Id.* at p. 50.

On November 12, 2019, Appellant then filed suit, in state court [i.e., these proceedings], against the same Defendants as in the Federal Case, alleging “breach of contract,” civil rights violations and disability discrimination (hereinafter the “2019 Suit”). CP 5.

Respondents' counsel sent Appellant correspondence, dated November 19, 2019, warning Appellant that Respondents would seek CR 11 sanctions for filing the 2019 Suit. Respondent's attorney specifically

cited the doctrine of res judicata as barring the 2019 Suit. CP 11 at p. 5.

Appellant refused to dismiss the 2019 Suit. On September 4, 2020, Respondents filed a Motion for Summary Judgment and Sanctions against Appellant. CP 12.

The trial court granted Respondents' Motion, holding that res judicata and the statute of limitations required dismissal of the 2019 Suit with prejudice. CP 18; and CP 36. The trial court also entered judgment against Appellant, granting Respondents' attorney fees, pursuant to CR 11 and Wash. Rev. Code § 4.84.185. CP 28.

By a decision, dated Jun 14, 2022, the Court of Appeals held the state of limitations barred all of Appellant's causes of action – except for any alleged breach of contract claim. Nevertheless, the Court of Appeals affirmed dismissal of Appellant's breach of contract claim on the basis of res judicata. The Court of Appeals also determined the appeal was frivolous.

III. Argument

A. Fee Waiver Request.

Respondents take no position on Appellant's request for a fee waiver, and they shall defer to the Court's decision on this issue.

B. The Appellant Fails to Assert a Basis for Discretionary Review Under RAP 13(b).

RAP 13(b) outlines four (4) categories of cases which warrant discretionary review – and this case implicates none of them.

The June 14, 2022 decision by the Court of Appeals:

1. Does not conflict with any decision of the Supreme Court;
2. Does not conflict with any published decision of the Court of Appeals;
3. Does not raise a significant question of law under the Constitution of the United States or the State of Washington; and

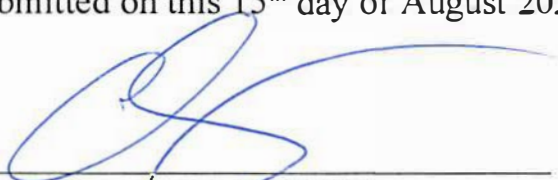
4. Does not involve an issue of substantial public interest that should be determined by the Supreme Court.

IV. Conclusion

Appellant had a full and ample opportunity to litigate his claims in the Federal Case. He lost. As recently affirmed by the Court of Appeals, the trial court properly dismissed Appellant's 2019 Suit pursuant to the doctrine of res judicata and because the 2019 Suit was not filed before expiration of the applicable three (3) year statute of limitations.

Respondents respectfully ask the Supreme Court to deny Appellant's petition for discretionary review.

Submitted on this 15th day of August 2022 by:




Charles A. Isely, WSBA #34130
Attorney for Respondents, Vancouver Housing Authority
and Roy Johnson
Charles A. Isely, Attorney at Law, P.C.
Attn: Charles A. Isely
205 E 11th St., Suite 102
PO Box 61983
Vancouver, WA 98666-1983
(360) 993-1200 (p) / (360) 567 - 0165 (f)
charles@iselylaw.com

WORD COUNT CERTIFICATION

Based upon the word count function of Microsoft Word used to prepare the preceding Answer, the Answer contains 966 words, beginning with the Introduction on page one (1) and concluding with the Conclusion on page eleven (7).

Submitted on this 15th day of August 2022 by:



Charles A. Isely, WSBA #34130
Attorney for Respondents, Vancouver Housing Authority
and Roy Johnson
Charles A. Isely, Attorney at Law, P.C.
Attn: Charles A. Isely
205 E 11th St., Suite 102
PO Box 61983
Vancouver, WA 98666-1983
(360) 993-1200 (p) / (360) 567 - 0165 (f)
charles@iselylaw.com

CERTIFICATE OF SERVICE

I hereby certify that on **August 15**, I served the foregoing
Answer RE: Petition for Discretionary Review and Fee Waiver on:

Mr. Kenneth Taylor Curry
1208 NE 143rd Avenue
Vancouver, WA 98684

- Facsimile communication device.**
- First-class mail, postage prepaid.**
- Hand-delivery.**
- Overnight courier, delivery prepaid.**

s/ Charles A. Isely

Charles A. Isely, WSBA No. 34130
205 E 11th St., Suite 102
PO Box 61983
Vancouver, WA 98666-1983
(360) 993-1200 (p) / (360) 567-0165 (f)
charles@iselylaw.com
*Attorney for Respondents, Vancouver
Housing Authority; and Roy Johnson*

CHARLES A. ISELY, ATTORNEY AT LAW, P.C.

August 15, 2022 - 1:22 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 101,092-3
Appellate Court Case Title: Kenneth Taylor Curry v. Vancouver Housing Authority, et al.
Superior Court Case Number: 19-2-03380-4

The following documents have been uploaded:

- 1010923_Answer_Reply_20220815132228SC306337_8868.pdf
This File Contains:
Answer/Reply - Answer to Motion for Discretionary Review
The Original File Name was 20220815AnswerCurryVHA.pdf

Comments:

Sender Name: Charles Isely - Email: charles@iselylaw.com
Address:
PO BOX 61983
VANCOUVER, WA, 98666-1983
Phone: 360-993-1200

Note: The Filing Id is 20220815132228SC306337