

FILED
SUPREME COURT
STATE OF WASHINGTON
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Supreme Court No. 101464-3

THE STATE OF WASHINGTON

SUPREME COURT

ERIC HOOD

Appellant

v.

CENTRALIA COLLEGE,

Respondent.

REPLY TO SECOND MOTION FOR ADDITIONAL
EVIDENCE ON REVIEW

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Case law

East Fork Hills v. Clark County, 92 Wn. App. 838, 845-46 (Wash. Ct. App. 1998) 6

Recall of Feetham, 149 Wn. 2d 860, 873 (Wash. 2003) 7

Statutes

42.56.550(4) 3, 4

Rules

RAP 9.11(a) 5, 6, 7

I. INTRODUCTION

College concedes, sub silentio, that the plain legislative language of RCW 42.56.550(4) intends that attorney fees be awarded to any person who prevails in a PRA case. *Second Motion for Addition Evidence on Review*. College's sole, non-argumentative response is that Hood has not "prevailed below, thus he would not be entitled to attorney's fees." *Answer*, p. 4.

College's response is not only irrelevant but inapplicable to the purpose of a petition for review. Whether Hood prevails below is the ultimate issue before this court. Should this Court determine that Hood prevailed on any of his claims below, *then* the issue of attorney fees is consequential to any non-attorney person, including Hood, who prevails in a PRA case. Thus, this Court's review of evidence showing that a non-attorney was granted attorney fees for doing attorney's work is merited.

II. ARGUMENT

A. Requirements of 9.11(a) are met

College conceded that the requirements of 9.11(a) (3), (4) and (6) are met. *Id.* p. 2.

Claiming that (1), (2) and (6) *id.*, have not been met, College responds that it prevailed below because the trial court said so. *Id.*, p 4-5. This is a self-serving summary, not an argument, and irrelevant to the purpose of this court's review.

The relevant focus of this Court's review for purposes of this motion, is Division II's holding that Hood is not entitled to attorney fees because he (i) did not prevail and (ii) is not an attorney. *Opinion*, p. 29-30.

The plain language of RCW 42.56.550 states that "Any person who prevails against an agency in any action in the courts [...] shall be awarded [...] reasonable attorney fees, incurred in connection with such legal action." That is, courts must first determine whether a person prevails and *then* award fees, i.e., courts must put the horse before the cart. Since this Court's review of whether should Hood prevail is *pending*, then Hood's

failure to prevail below is irrelevant to *this* motion. Thus, the only relevant decision below, for purposes of RAP 9.11(a), is that Hood is not an attorney.

Should Hood prevail, then “proof of facts” that Hood was awarded attorney fees for doing attorney’s work is obviously “needed to resolve” the issue of whether Hood is entitled to attorney fees. *Compare* RAP 9.11(a)(1) *with Opinion*, p. 29-30.

Should Hood prevail, then the relevant issue is that Hood is a mere “person” and not a special class of “person,” i.e., an attorney, which Division II apparently considers to be the only special class of “person” entitled to attorney fees. *Id.* (citing RCW 42.56.550). Thus, Hood’s evidence showing that he was awarded fees for doing the work of an attorney would “probably change the decision” (whether mere persons are entitled to attorney fees) that this Court has been asked to review. *Compare* RAP 9.11(a)(2) *with Opinion*, p. 29-30.

The College’s argument that Hood “did not prevail and was not entitled to attorney’s fees, and it is therefore equitable to decide the case without this additional evidence” (*Answer*, p. 4)

frivolously puts the cart before the horse. *Should Hood prevail*, then “it would be inequitable to decide the [issue of attorney fees] solely on the evidence already taken in the trial court.” RAP 9.11(a)(6). Rather, equitability requires this Court consider a non-attorney’s award of attorney fees in a civil matter, i.e., consider evidence not available to the trial court or to Division II. *Id.*

B. All case law cited by College is inapplicable or irrelevant

A motion for additional evidence in *East Fork Hills v. Clark County*, (*see Answer*, p. 2) was denied because:

- a County Board was not authorized to consider additional evidence;
- no Board “record” addressed the criteria of RAP 9.11(a) and Board did not consider them;
- no evidence was provided that the evidence for consideration was new.

East Fork Hills v. Clark County, 92 Wn. App. 838, 845-46 (Wash. Ct. App. 1998).

A motion for additional evidence in *Recall of Feetham* (see *Answer*, p. 2) was denied because movant's argument failed to address five of the six criteria for RAP 9.11(a) and his sole argument did "not apply." *Recall of Feetham*, 149 Wn. 2d 860, 873 (Wash. 2003)

College cites *Neighborhood All. of Spokane Cnty. v. Spokane Cnty* (p. 3) to irrelevantly and improperly argue the merits of its case in the lower court.

College cites *Germeau v. Mason Cnty.* (*id.*, p. 4) in support of its irrelevant argument about whether Hood should prevail (see section A, *supra*).

College needlessly and cited *West v. Thurston Cnty.*, to repeat what Hood already "recognizes." (*Id.*, p. 6)

In short, no cases cited by College have any relevance or application to this motion.

III. CONCLUSION

Hood's *Motion* should be granted.

Dated this 3rd day of February, 2023, by

s/Eric Hood

WORD COUNT: 783

CERTIFICATE OF SERVICE

I certify under the penalty of perjury under the laws of the State of Washington that on the below date in Langley, WA, I emailed the foregoing documents to counsel for Centralia College

By: s/ Eric Hood

Date: February 3, 2023

ERIC HOOD

February 03, 2023 - 7:26 AM

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Appellate Court Case Title: Eric Hood v. Centralia College
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