

FILED
SUPREME COURT
STATE OF WASHINGTON
2/1/2023 1:07 PM
BY ERIN L. LENNON
CLERK

NO. 101464-3

SUPREME COURT OF THE STATE OF WASHINGTON

ERIC HOOD, an individual,

Appellant,

v.

CENTRALIA COLLEGE, a public agency,

Respondent.

**RESPONDENT CENTRALIA COLLEGE'S ANSWER TO
APPELLANT'S SECOND MOTION FOR ADDITIONAL
EVIDENCE ON REVIEW**

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I. INTRODUCTION

This Court should deny the Second Motion for Additional Evidence on Review (Motion). The underlying issue in this case is the appropriateness of Centralia College's (College) response to a public records request. The additional evidence the Appellant seeks to introduce is evidence from a Superior Court case, presumably concerning a breach of contract, in which the Appellant prevailed. Appellant did not prevail in the present public records lawsuit, and his request for attorney fees was properly denied. Appellant's request to present a superior court decision from his unrelated lawsuit as new evidence does not satisfy the requirements of RAP 9.11 and should be denied.

II. FACTS RELEVANT TO THIS MOTION

For purposes of this motion response only, the College does not dispute the facts asserted by Appellant in Part IV of his Motion.

III. ARGUMENT

The Motion should be denied because the facts do not satisfy all six of the requirements for consideration of additional evidence in RAP 9.11(a):

- (1) additional proof of facts is needed to fairly resolve the issues on review,
- (2) the additional evidence would probably change the decision being reviewed,
- (3) it is equitable to excuse a party's failure to present the evidence to the trial court,
- (4) the remedy available to a party through postjudgment motions in the trial court is inadequate or unnecessarily expensive,
- (5) the appellate court remedy of granting a new trial is inadequate or unnecessarily expensive, and
- (6) it would be inequitable to decide the case solely on the evidence already taken in the trial court.

Allowing new evidence on appeal is an extraordinary remedy.

See, East Fork Hills Rural Ass'n v. Clark Cnty., 92 Wn. App. 838, 845, 965 P.2d 650 (1998), *as amended* (Nov. 13, 1998). Each of the six RAP 9.11 requirements must be met. *See, In re Recall Charges Against Feetham*, 149 Wn.2d 860, 872, 72 P.3d 741 (2003) (*en banc*). While Appellant alleges all requirements of RAP 9.11 are satisfied, in

fact the Motion fails to satisfy three of the requirements, specifically, RAP 9.11(a)(1), (2), and (6).

First, the Motion fails because the proposed evidence is not relevant to the issue on review. As a result, the evidence is not “needed to fairly resolve the issue” and would not “probably change the decision being reviewed.” RAP 9.11(a)(1). The issue on review is the appropriateness of the College’s response to a public records request. *See, Neighborhood All. of Spokane Cnty. v. Spokane Cnty.*, 172 Wn.2d 702, 719–20, 261 P.3d 119 (2011). The fact that the Appellant prevailed in a non-PRA case against a non-agency party is not relevant to the analysis of the College’s actions in this case, and would not impact the outcome here. Further, the judgement presented by Appellant seems to pertain to a breach of contract matter, and is not an interpretation or application of the PRA’s attorney fee statute in RCW 42.56.550 or any other attorney fee statute. Instead, the trial court in Appellant’s breach of contract case apparently granted fees because the “contract provides the Defendant is responsible for

attorney fees in case of default” and the debtor in that case “produced no evidence during this case or during these hearings.” *See*, Appellant’s Second Motion for Additional Evidence on Review p. 25. For these reasons alone, the Motion fails to meet RAP 9.11(a)(1) and (2), and should be denied.

Additionally, there exists enough evidence in the record to show that the College responded adequately to Appellant’s request, meaning that Appellant did not prevail and was not entitled to attorney’s fees, and it is therefore equitable to decide the case without this additional evidence. “[A] person prevails against an agency only when that agency wrongly withheld documents.” *Germeau v. Mason Cnty.*, 166 Wn. App. 789, 811, 271 P.3d 932, 944 (2012). The trial court stated the evidentiary basis for its decision in its ruling, citing to the reasons as to why the College’s response was adequate. *See*, Appendix 1 to Respondent Centralia College’s Answer to Appellants’ Motion for Additional Evidence on Review, pg. 3. No documents were wrongfully withheld. The record contains these statements, as

well as several affidavits and hundreds of pages of supporting documentation and related information, which are sufficient to support the finding that the College conducted a statutorily adequate response. Appellant's Motion does nothing to show that he prevailed below, thus he would not be entitled to attorney's fees, regardless of his arguments or admission of judgment from a contract dispute. But assuming *arguendo* that Appellant had prevailed in this public records case, the fact that this additional evidence is not relevant, for the reasons previously stated, demonstrates that it would not be inequitable for the court to decide this case solely on the evidence already taken in the trial court. For these reasons, the Motion fails to meet RAP 9.11(a)(6) and should be denied.

Finally, Appellant's argument can safely be rejected, as it is inconsistent with appellate case law regarding attorney's fees under the Public Records Act. As Appellant recognizes, Division II has already held that a *pro se* Plaintiff in a PRA action "is not an attorney and, thus... neither earned attorney fees nor is

entitled to such an award under the PRA.” *West v. Thurston Cnty.*, 168 Wn. App. 162, 195, 275 P.3d 1200, 1218 (2012). Appellant’s attempt to introduce and cite to a Superior Court order from a non-PRA case does nothing to upset this established precedent. Appellant is not an attorney and has presented no evidence of attorney’s fees being incurred in connection with this matter. Thus, the Motion can safely be denied.

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IV. CONCLUSION

The Appellant has failed to satisfy the requirements of RAP 9.11(a)(1), (2), and (6). Therefore, the College respectfully requests that the Motion be denied.

CERTIFICATE OF COMPLIANCE

This document contains 958 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 1st day of February,
2023.

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/s/Justin Kjolseth
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DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be served via electronic mail on the following:

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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.

DATED this 1st day of February 2023, at Olympia, Washington.

/s/ Justin Kjolseth
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Assistant Attorney General

ATTORNEY GENERAL'S OFFICE-EDUCATION DIVISION

February 01, 2023 - 1:07 PM

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Appellate Court Case Title: Eric Hood v. Centralia College
Superior Court Case Number: 20-2-02234-6

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