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No. 70500-8-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

KEITH L. HOLMQUIST and KAY BURDINE HOLMQUIST, f/k/a
KAY BURDINE, husband and wife; and FREDERICK A.
KASEBURG, a single man,

Respondents,

vs.

KING COUNTY, a political Subdivision of the State of Washington,
And CITY OF SEATTLE, a municipal corporation,

Appellants.

APPEAL FROM THE SUPERIOR COURT
FOR KING COUNTY
THE HONORABLE MONICA BENTON

RESPONDENTS' ANSWER TO BRIEF OF AMICUS CURIAE

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. ARGUMENT 1

 A. Amici’s factual assertions lack any support, and
 are contradicted by the record. 1

 B. Amici’s equitable arguments have never been
 raised in this case..... 4

III. CONCLUSION 6

TABLE OF AUTHORITIES

CASES

<i>Northwest Steelhead & Salmon Council of Trout Unlimited v. Washington State Dep't of Fisheries</i> , 78 Wn. App. 778, 896 P.2d 1292 (1995)	1
<i>Protect the Peninsula's Future v. City of Port Angeles</i> , 175 Wn. App. 201, 304 P.3d 914, <i>rev. denied</i> , 178 Wn.2d 1022 (2013)	5
<i>Ruff v. King County</i> , 125 Wn.2d 697, 887 P.2d 886 (1995)	5

I. INTRODUCTION

Respondents Keith and Kay Holmquist and Fred Kaseburg submit this answer to the Brief of Amicus Curiae of Friends of Cedar Park Neighborhood and Seattle Sea Kayak Club (“the organizations”).

II. ARGUMENT

A. **Amici’s factual assertions lack any support, and are contradicted by the record.**

Amici assert “equitable” claims never asserted below – which may explain (but does not justify) why they are made with absolutely no support in the record. (Amicus Br. 3) Respondents do not question the sincerity of amici in asserting their interest in obtaining access to “the area’s lakes and saltwater.” However, the organizations’ bare assertion that its members have “openly” used (Am. Br. 3, 5) or maintained (Am. Br. 12) the property at issue here lacks any support in the record. This court should disregard it for that reason alone. *See Northwest Steelhead & Salmon Council of Trout Unlimited v. Washington State Dep’t of Fisheries*, 78 Wn. App. 778, 786 n.2, 896 P.2d 1292 (1995) (rejecting amici’s attempt to supplement record).

The only evidence in the record establishes that adjacent property owner Holmquist maintained the property the property on a regular basis, (CP 90-92), and not unnamed organization members. Similarly, there is no evidence in the record that the County, the City, the organizations, or the “general public” “believed that Seattle was the park’s owner,” as amici assert. (Am. Br. 6) To the extent that any members of the public thought about it at all, it is equally likely that they believed the property to be privately owned. There is simply no evidence in the record supporting any “community” interest in Holmquist’s and Kaseburg’s property.

The County vacated the street end on June 27, 1932 (CP 268), five years after respondents’ predecessors Shotwell and Muller took possession of the adjoining property under their real estate contracts from Puget Mill. (CP 259-61, 270-71) (Resp. Br. 3-5) The County’s files contained an undelivered quit claim deed from Muller and Shotwell to a “Cedar Park Community Club,” but there is no evidence in the record that such a community group ever became a functioning entity. (CP 114-15)

In 1935, Puget Mill executed a quit claim deed to King County backdated to 1932 for any interest it had in the vacated NE

130th street right of way, but this occurred after Puget Mill delivered to Muller and Shotwell their fulfillment deeds. (CP 295) Even if the missing 1932 deed had been properly signed and delivered, it post dates by several years Muller's and Shotwell's possession of the property under their contracts.

Amici's contention that Holmquist and Kaseburg kept the City and the public "in the dark" is similarly meritless. (Amicus Br. 4) Holmquist and Kaseburg brought this action to quiet title against the County because the County vacated the street end in 1932. They opposed the City's intervention because the City could not establish any bona fide claim to title and its own published documents reflect that there was never any public street access to the vacated portion of NE 130th St. (CP 163-64, 174)¹ There is nothing in the record supporting the implication that respondents surreptitiously filed this suit and then attempted to keep it secret from anyone, let alone these amici.

¹ The sign posted by the City following its intervention, quoted by amici, succinctly summarizes the City's dubious claim to title "after several decades." (Am. Br. 7 n.6, citing CP 486)

B. Amici's equitable arguments have never been raised in this case.

Amici's unsupported facts are, in any event, irrelevant because the parties themselves never raised the unspecified "equitable concerns" that amici seek to interject into this appeal. (Am. Br. 8) Holmquist and Kaseburg did not make an equitable claim to title or assert an adverse possession claim based on their (undisputed) longstanding use and maintenance of the property. (Am. Br. 12-13) To the contrary, they asserted a claim to title based on a simple legal principle – that upon the County's vacation of the adjacent street, title vested in the adjoining landowners. (Resp. Br. 26)

Neither the City nor the County below asserted the principal equitable argument now raised by amici – that Holmquist and Kaseburg "wait[ed] 77 years to make their claim of ownership." (Am. Br. 8) The City never even uttered the word "equity" in responding on summary judgment that the claims lacked any "legal or factual foundation." (CP 330) (emphasis added) The County asserted only that it would be "inequitable" to quiet title to more property than Holmquist's and Kaseburg's predecessors "bargained for" when purchasing from Puget Mill. (CP 304) This Court should

reject Amici's arguments because the "equitable" issues they raised were never addressed by the parties. See *Ruff v. King County*, 125 Wn.2d 697, 704 n. 2, 887 P.2d 886 (1995); *Protect the Peninsula's Future v. City of Port Angeles*, 175 Wn. App. 201, 217, 304 P.3d 914, rev. denied, 178 Wn.2d 1022 (2013) ("this court does not consider new issues raised for the first time in an amicus brief.").

In any event, equity does not favor Amici, the City of Seattle, or King County. The City has considered numerous alternative waterfront street end sites for possible development as parks, including the waterfront street end at NE 135th Street, located only several hundred yards north of NE 130th Street. (CP 409) Unlike the instant property, NE 135th Street was never vacated and has the public street access that is lacking at the property adjoining Holmquist's and Kaseburg's residences. (CP 85-86) The City has stated that it will develop an alternative site for the benefit of the Cedar Park community should this judgment stand. (CP 506)

Contrary to amici's hyperbole, this decision has nothing to do with depriving the public of beach access in this neighborhood. Amici's vague appeals to "equity" can in no event overcome the longstanding law that vested the vacated NE 130th street right of way in the adjacent property owners.

III. CONCLUSION

This Court should reject amici’s reliance of unspecified and unsupported principles of “equity” that are neither part of the record nor raised by the parties to this appeal.

Dated this 11th day of April, 2014.

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on April 11, 2014, I arranged for service of the foregoing Respondents' Answer to Brief of Amicus Curiae, to the court and to the parties to this action as follows:

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DATED at Seattle, Washington this 11th day of April, 2014.



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