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NO. 93173-9

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

JOHN WORTHINGTON,

Appellant/Petitioner,

v.

CITY OF BREMERTON, ET AL.

Respondent.

ON DISCRETIOANRY REVIEW FROM
THE COURT OF APPEALS, DIVISION II
Court of Appeals No. 46364-4-II

RESPONDENT KITSAP COUNTY'S ANSWER
TO PETITION FOR REVIEW

TINA R. ROBINSON
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This brief was served, as stated below, via U.S. Mail or the recognized system of interoffice communications, or, if an email address appears to the left, electronically. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.
DATED June 21, 2016, Port Orchard, WA *Batuei*
Original e-filed at the Supreme Court; Copy to pro se Appellant listed at left.

 ORIGINAL

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I. IDENTITY OF RESPONDENT

The respondent is Kitsap County. The answer is filed by Kitsap County Chief Deputy Prosecuting Attorney IONE S. GEORGE.

II. COURT OF APPEALS DECISION

The Respondent Kitsap County respectfully requests that this Court deny review of the Court of Appeals unpublished decisions in *John Worthington v. Kitsap County, et. al.* (No. 46364-4-II) (April 12, 2016 and April 29, 2016), copies of which are attached to the petition for review.

III. COUNTERSTATEMENT OF THE ISSUES

Because the Petitioner did not present evidence on the statute of limitations nor did he present argument that it had not expired, the Court of Appeals appropriately affirmed the trial court's dismissal of the petitioner's action, pursuant to CR 12(b)(6) for having been filed nearly three years after the expiration of the Statute of limitations.

The question presented is thus whether this Court should decline to accept review because none of the criteria set forth in RAP 13.4(b) are met, because:

1. The Court of Appeals decision does not conflict with any decision of this Court or the Court of Appeals; and

2. The decision fails to present a significant question of law under the Constitution of the State of Washington and of the United States; and

3. The petition fails to present any issue of substantial public interest that should be determined by this Court.

IV. STATEMENT OF THE CASE

A. *PROCEDURAL HISTORY*

The procedural history as set forth in the Brief of Respondent Kitsap County is hereby adopted and incorporated by reference.

B. *FACTS*

The facts as set forth in the Brief of Respondent Kitsap County are hereby adopted and incorporated by reference.

V. ARGUMENT

A. *THIS COURT SHOULD DENY REVIEW OF THE COURT OF APPEALS DECISION BECAUSE THE PETITIONER RAISES ISSUES THAT WERE NOT PRESENTED TO THE COURT OF APPEALS*

The petitioner raises a number of arguments/issues in his Petition for Review that were not presented to or ruled upon by the Court of Appeals. Accordingly, these matters are not properly before this Court, nor do they form a proper basis for acceptance of review. Specifically,

Worthington's Petition for Review to the Supreme Court, Section C, entitled "Issues Presented for Review", paragraph no.'s 1, 2, 5 and 7 each set forth a unique issue that was not identified by the petitioner's assignments of error (See, Appellant John Worthington's Amended Opening Brief), nor were they addressed by the Court of Appeals.

This Court has declared that an issue not raised or briefed in the Court of Appeals will not be considered by this court. State v. Halstien, 122 Wash. 2d 109, 130, 857 P.2d 270, 282 (1993). For that reason, matters raised in paragraphs 1, 2, 5 and 7 of Petitioner's Issues Presented for Review should not be considered by this court, and do not form a proper basis for this court's acceptance of review.

B. THIS COURT SHOULD DENY REVIEW OF THE COURT OF APPEALS DECISION BECAUSE THE COURT OF APPEALS PROPERLY AFFIRMED THE TRIAL COURT'S ORDER OF DISMISSAL AND THIS CASE PRESENTS NONE OF THE CONSIDERATIONS GOVERNING ACCEPTANCE OF REVIEW SET FORTH IN RAP 13.4(B).

1. None of the considerations governing acceptance of review set forth in RAP 13.4(b) support acceptance of review.

RAP 13.4(b) sets forth the considerations governing this Court's acceptance of review:

A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision by the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a decision of another division of the Court of

Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

The remaining matters addressed by the Petitioner's request for review seek this Court's review of the Court of Appeals': affirmation of the trial court's dismissal of this action for violation of the statute of limitations; affirmation of the imposition of sanctions for the filing of a frivolous action; and, failure to consider an assignment of error (request for evidentiary hearing) because it was raised for the first time on appeal.

Authority and facts on each of these issues are fully set forth in the Brief of Respondent Kitsap County (*John Worthington v. Kitsap County, et. al.* (No. 46364-4-II)) and in the unpublished decision of the Court of Appeals (April 12, 2016), and are incorporated herein by reference.

The petitioner has failed to establish that the Court of Appeals' decision regarding the Statute of Limitations, imposition of sanctions or waiver of right to appeal is in conflict with any Supreme Court decision, or the decision of any other division of the Court of Appeals. Neither has the petitioner established that these basic principles of law give rise to a significant question of law under either the United States' or Washington State Constitution, nor that they give rise to a matter of substantial public

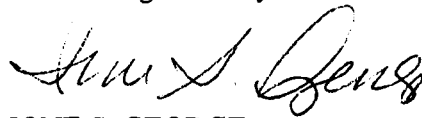
interest such that they should be determined by the Supreme Court

VI. CONCLUSION

Based upon the foregoing, Kitsap County respectfully submits requests that the petition for review be denied.

DATED June 21, 2016.

TINA R. ROBINSON
Prosecuting Attorney

A handwritten signature in cursive script, appearing to read "Ione S. George".

IONE S. GEORGE
WSBA No. 18236
Chief Deputy Prosecuting Attorney

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From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, June 21, 2016 3:54 PM
To: 'Batrice Fredsti'
Cc: Ione S. George; Carrie A. Bruce
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From: Batrice Fredsti [mailto:bfredsti@co.kitsap.wa.us]
Sent: Tuesday, June 21, 2016 3:38 PM
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Cc: Ione S. George <lGeorge@co.kitsap.wa.us>; Carrie A. Bruce <CBruce@co.kitsap.wa.us>
Subject: Email Filing for Worthington v. City of Bremerton, et al., Case No. 93173-9 - Kitsap County's Answer to Petition for Review

Good afternoon,

Attached for filing with the court is Kitsap County's Answer to Petition for Review (prepared by Ione S. George, WSBA No. 18236) for the following case:

John Worthington v. City of Bremerton, et al., Supreme Court No. 93173-9

Please let us know if you have any questions.

Please Note: We will mail 12 copies for the panel of judges reviewing the case. They will be sent to the court in today's mail.

Sincerely,

Batrice Fredsti
Legal Assistant to Ione George,
Christy Palmer, and Laura Zippel
Kitsap County Prosecuting Attorney's Office

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