

**RECEIVED
SUPREME COURT
STATE OF WASHINGTON
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Nov 18, 2016, 1:33 pm

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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

NO. 93567-0

Court of Appeals No. 331946-III

CONSERVATION NORTHWEST and
METHOW VALLEY CITIZENS COUNCIL,

Appellants,

v.

OKANOGAN COUNTY,

Respondent.

APPELLANTS' MOTION TO STRIKE

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ORIGINAL

I. IDENTITY OF MOVING PARTY.

Conservation Northwest (“CNW”) and Methow Valley Citizens’ Council (“MVCC”), appellants, hereby request the relief sought in Part II.

II. STATEMENT OF RELIEF SOUGHT.

CNW and MVCC move to strike Okanogan County’s Reply to Appellants’ Answer to Petition for Discretionary Review (Nov. 16, 2016). CNW and MVCC also move this Court to require Okanogan County to pay sanctions for failing to comply with the Rules of Appellate Procedure, pursuant to RAP 18.9(a).

III. FACTS RELEVANT TO THIS MOTION.

On June 16, 2016, the Court of Appeals, Division III, issued its decision ruling in favor of CNW and MVCC. The Court of Appeals held that CNW and MVCC had standing and that Okanogan County had failed to make its “threshold decision” under the Washington State Environmental Policy Act based on adequate information, contrary to the Act’s requirements.

On September 7, 2016, Okanogan County filed a petition for discretionary review with this Court. In its sometimes rambling and disjointed petition, the County presented two issues for review:

A. Whether the Court of Appeals erred in holding RCW 43.21C.075 provides the Trial Court appellate jurisdiction to review the denial of an administrative appeal of a SEPA Determination of Nonsignificance on the record with the benefit of a Writ of Review or LUPA appeal invoking the appellate jurisdiction of the Court.

B. Whether the Court of Appeal erred in affirming standing and concluding an administrative decision affirming SEPA DNS was clearly erroneous on Summary Judgment held under CR 56 when the record contained contested facts.

Okanogan County Pet. at 1-2. Okanogan County raised a myriad of arguments, only some of which address the four factors this Court considers under RAP 13.4(b) in reviewing a petition for discretionary review.

On October 10, 2016, CNW and MVCC filed an answer to Okanogan County's petition for discretionary review, pursuant to RAP 13.4(d). CNW and MVCC did not request review of any issue. Instead, the answer was limited strictly to the issues raised by Okanogan County in its petition, as best as the appellants could discern them, and argued that review should not be granted as to any issue.

On November 16, 2016, Okanogan County filed a reply to CNW and MVCC's answer, citing RAP 13.4 as its authority. The County does not assert that MVCC and CNW are seeking Supreme Court review of any issues in this case. Instead, the County asserted that CNW and MVCC

attempted to “change” or “recharacterize” the issues the County presented to the Court. Reply at 1.

IV. GROUNDS FOR RELIEF AND ARGUMENT.

Okanogan County’s reply in support of its petition for review is not permitted under RAP 13.4(d) and, therefore, this Court should strike the reply. RAP 13.4(d) places very specific limitations on when a party may file a reply to an answer for a petition for discretionary review: “A party may file a reply to an answer **only if the answering party seeks review of issues not raised in the petition for review.** A reply to an answer should be limited to addressing only the new issues raised in the answer.” (Emphasis supplied).

Here, Okanogan County does not argue that CNW and MVCC are seeking Supreme Court review of any issue. Instead, the County asserts that CNW and MVCC have attempted to “change” or “recharacterize” the issues the County presented to the Court. Reply at 1. The fact remains that no matter how the issues raised by the County are characterized, the answering parties do not seek review of any issue.

Okanogan County might be disappointed to see its arguments characterized as what they really are—flimsy and without merit—but it cannot claim that CNW and MVCC are requesting the Supreme Court to

review any issue. The Answer simply seeks to have this Court deny the petition and thus decline to review any issue.

Okanogan County has blatantly violated the Rules of Appellate Procedure by filing a reply when the answering party is not seeking review of any issues. Therefore, this Court should strike the County's reply and impose sanctions on the County pursuant to RAP 18.9(a). Okanogan County should be ordered to pay CNW and MVCC for the attorneys' fees and expenses incurred in preparing this motion to strike.

Dated this 18th day of November, 2016.

Respectfully submitted,

BRICKLIN & NEWMAN, LLP

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v.

OKANOGAN COUNTY

Defendants/Respondents,

NO. 93567-0

Court of Appeals
No. 331946 - III

DECLARATION OF SERVICE

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I, ANNE BRICKLIN, under penalty of perjury under the laws of the State of Washington, declare as follows:

I am the legal assistant for Bricklin & Newman, LLP, attorneys for plaintiffs Conservation Northwest and Methow Valley Citizens Council herein. On the date and in the manner indicated below, I caused Appellants' Motion to Strike to be served on:

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DATED this 18 day of November 2016, at Seattle, Washington.


ANNE BRICKLIN