Supreme Court No. 94058-4
Court of Appeals No. 74360-1-I

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

MICHELLE J. KINNUCAN,

Petitioner,

vs.

CITY OF SEATTLE,

Respondent.

CITY OF SEATTLE'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION AND SUMMARY

The City of Seattle asks this Court to deny Ms. Kinnucan's Petition for Review ("Petition") because it fails to meet the criteria warranting review in RAP 13.4(b)(1) or (4)[1] because it does not conflict with any Supreme Court decisions nor does it involve an issue of substantial public interest that warrants a determination by this Court.

In an unpublished decision, the Court of Appeals interpreted the phrase "during relocation" in RCW 59.18.440(5) by using standard and well-recognized principles of statutory construction. The Court of Appeals then used that interpretation to evaluate and ultimately determine that the City of Seattle ("City") had no mandatory duty to provide an administrative hearing to Ms. Kinnucan after the City issued a tenant relocation license to her landlord under the City's Tenant Relocation Assistance Ordinance ("TRAO"). Thus, Kinnucan's writ of mandamus ("Writ") was properly denied. The Court of Appeals also held that Kinnucan had a plain, speedy and adequate remedy at law that she used — suing her landlord — which was another reason why her writ was denied.

II. IDENTITY OF THE RESPONDENT

The Respondent is the City of Seattle ("City").

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[1] Ms. Kinnucan is not requesting review under RAP 13.4(b)(2) or (3). *See* Kinnucan's Petition for Review ("Petition") at p. 7.

III. COUNTER-STATEMENT OF THE ISSUES

1. Review is appropriate when a Court of Appeals decision conflicts with Supreme Court precedent. Kinnucan relied on statutory exemption cases, but here RCW 59.18.440 contains no statutory exemptions. Has Kinnucan failed to establish the Court of Appeals decision conflicts with Supreme Court precedent?

2. Review is appropriate if an issue of substantial public interest exists. Kinnucan sought a writ of mandamus to extend the City's administrative hearing timeline under its Tenant Relocation Assistance Ordinance ("TRAO"). A writ is appropriate where a duty leaves nothing to discretion. Here the Legislature did not establish any binding hearing timeline. Has Kinnucan demonstrated an issue of substantial public interest?

3. Review is appropriate if an issue of substantial public interest exists. Kinnucan sought a writ of mandamus to extend the City's administrative hearing timeline under TRAO. A writ is only appropriate when a plain, speedy, and adequate remedy at law does not exist. Kinnucan had an adequate remedy when she sued her landlord for an inadequate tenancy termination notice. Has Kinnucan demonstrated an issue of substantial public interest?

IV. STATEMENT OF THE CASE

For purposes of answering Kinnucan's Petition, the City largely relies on the Court of Appeals statement of facts.[2]

V. ARGUMENT WHY REVIEW SHOULD BE DENIED

The Court will grant review only if one or more factors in RAP 13.4(b) are present. Kinnucan identifies two as a basis for review: (1) the Court of Appeals Decision ("Decision") allegedly conflicts with decisions of this Court,[3] and (2) the Decision allegedly involves an issue of substantial public interest requiring a determination by this Court.[4] Both claims are meritless.

A. No conflict with a Supreme Court decision exists.

This case does not qualify for review based on an alleged conflict with a Washington Supreme Court decision. Rather than argue a direct conflict, Kinnucan argues that the Court of Appeals construction of RCW 59.18.440(5) "results in a wide exception to the administrative hearings requirement" and that such "exception" is not "narrowly confined" as required by *Local 1-369 v. Washington Public Power Supply System*,[5] and

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[2] The Court of Appeals Decision ("Decision") is located at pp. A-01 – A-16 of Kinnucan's Appendix to her Petition. The facts are summarized at pp. A-02 – A-04. The procedural history is summarized in last full paragraph of p. A-04. If review is granted, the City will supplement its statement of facts.

[3] RAP 13.4 (b) (1).

[4] RAP 13.4 (b) (4).

[5] Kinnucan's Petition at p. 16.

Miller v. City of Tacoma, both of which cite *Mead Scho. Dist. No. 354, v. Mead Educ. Ass'n.*[6] These cases do not conflict with the Decision.

In each of the cases cited by Kinnucan, the Court evaluated a statutory exception to a statutory provision, which is not at issue here. In *Local 1-369,* the Court determined if the Washington Public Power Supply System was a "public utility district" under a statutory exception at RCW 41.56.170-.180. Unlike in *Local 1-369*, the statute at issue here, RCW 59.18.440, contains no "exception" language that the Court interpreted. Although both cases involved statutory interpretation using well-established rules of statutory construction,[7] there is no conflict between *Local 1-369* and the Decision.

Similarly, *Miller* involved the statutory construction of a statutory exception to the Open Public Meetings Act at RCW 42.30.010(g).[8] *Mead* also involved interpreting a statutory exception to the Open Public Meetings Act at RCW 42.30.080.[9] Here again, the Court of Appeals interpreted no "exception" language when RCW 59.18.440 contains no statutory exception. Kinnucan's attempt to create a conflict misses the mark and fails to meet the criteria in RAP 13.4(b)(1).

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[6] Kinnucan's Petition at p. 16.
[7] *See* the last paragraph of p. A-06 through A-08. In *I-369*, *see* 101 Wn.2d 24, 29 (1984).
[8] *Miller v. City of Tacoma*, 138 Wn. 2d 318, 324-325, 979 P.2d 302 (1999).
[9] *Mead Sch. Dist. No. 354 v. Mead Educ. Ass'n*, 85 Wn. 2d 140, 144-145, 530 P.2d 302 (1975).

Kinnucan's disagreement with the Court's statutory interpretation of the phrase "during relocation" at RCW 59.18.440(5) based on universally accepted principles of statutory construction is an insufficient basis for the Washington Supreme Court to grant review. While Kinnucan argues a "conflict" exists because the Court "abandoned" the principle of liberal construction"[10], her argument is based on a bare assertion.

Kinnucan does not explain how the Court of Appeals abandoned this principle. The Legislature did not define the phase "during relocation."[11] Just because the Court did not agree with Kinnucan's argument does not establish it failed to liberally construe the phrase.

Kinnucan has failed to establish that the Decision conflicts with any Washington Supreme Court decisions.

B. No issue of substantial public interest exists.

Kinnucan fails to establish that the issues raised in her Petition rise to a level of substantial public interest that warrants review by this Court. Kinnucan spends much of her Petition rearguing the merits of the issues decided by the Court of Appeals without citing to any RAP 13.4(b) criteria.[12] Kinnucan seeks review of whether: (1) the Court of Appeals properly concluded the City's TRAO administrative appeals provisions

[10] Kinnucan's Petition at p. 16.
[11] Decision at p. A-06.
[12] Kinnucan's Petition at pp. 6-15.

comply with RCW 59.18.440(5) when Kinnucan was denied an administrative hearing; and (2) the Decision erred in concluding Kinnucan had a plain, speedy and adequate remedy at law.[13] Both issues lack merit.

1. Kinnucan's claim that the Court of Appeals erred in concluding RCW 59.18.440 was satisfied does not raise an issue of substantial public interest.

The Court of Appeals correctly relied on long-recognized rules of statutory construction to interpret RCW 59.18.440(5), including using construction to best advance the statute's legislative purpose, which the Court of Appeals noted was "to address the disparate impact of rising rent on low-income individuals by providing those individuals with relocation funds. *Garneau*, 147 F.3d at 804."[14] This purpose is set forth in the statute and has been recognized previously in *Garneau v. City of Seattle*, 147 F.3d 802, 804 (9th Cir. 1998). Further, the Court of Appeals did not read the phrase out of the statute as Kinnucan argues.[15] The Court of Appeals carefully walked through its interpretation of the phrase "during relocation", which must occur before it could determine if the City had a duty to provide administrative hearings after the issuance of a tenant relocation license.[16] The Court relied on well-established case law to

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[13] Kinnucan's Petition at pp. 1-2.
[14] Decision at p. A-06.
[15] Kinnucan's Petition at p. 11.
[16] Decision at pp. A-06, last paragraph, through A-09.

conclude that while the City had a duty to adopt policies, procedures, or regulations that are consistent with the statute's requirements, the precise details of those policies or procedures are left to the discretion of the City [17] The Court properly relied on *Eugster* for the well-accepted principle that a writ of mandamus will not issue to compel a governmental entity to exercise its discretion in a particular manner.[18]

Notably, the Court of Appeals decision is unpublished. This weights toward the issues not being significant beyond Kinnucan when the Court of Appeals did not think it sufficiently important to publish the decision, and Kinnucan did not move to publish the decision.

In her Petition, Kinnucan does not discuss why the Court of Appeal's alleged error in interpreting and applying the meaning of RCW 59.18.440(5) to Kinnucan's denial of her writ has ramifications beyond the parties and the facts of her individual case. For an issue on appeal to meet the "substantial public interest" test, the petitioner should "at a minimum discuss why the particular issue has ramifications beyond the particular parties and the particular facts of an individual case. Kinnucan argues, with no citation to the record or case law that the issues raised by

[17] Decision at p. A-09.
[18] *Id.*

Kinnucan "are likely to arise again".[19] A bare recitation that a case affects the public interest is not sufficient to grant review."[20]

Kinnucan next cites the common-law doctrine of mootness, which sets forth factors a court may use to evaluate whether a moot issue is of continuing and substantial public importance that should be reviewed and decided by this Court.[21] The doctrine recognizes, however, that issues involving statutory interpretation limited to their facts are less likely to be an issue of significant public interest.[22] As already discussed, Kinnucan's issues are limited to their facts.

Finally, Kinnacan's new argument that the City of Bellevue's ordinance "does it right"[23] does not establish the issues raised in Kinnucan's Petition — which focus exclusively on Kinnucan's experience considering the City of Seattle's TRAO administrative hearing provisions — are of significant public interest. Kinnucan does not cite any evidence in the record or briefing demonstrating the public nature of the issues she is seeking review of: the desirability of an authoritative determination beyond what the Court of Appeals provided or the likelihood of future

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[19] Kinnucan's Petition at p. 18.
[20] WA. App. Practice Desk Book, Vol. IV, § 18.3(3) at p. 18-6 (4th ed. 2016).
[21] Kinnucan's Petition at pp. 17-18.
[22] Kinnucan's Petition at pp. 17-18.
[23] Kinnucan's Petition at p. 18. *See also* Kinnucan's Petition at p. 15.

recurrence. Kinnucan has failed to establish the issues related to denial of her writ of mandamus are of a substantial public interest.

2. Kinnucan's claim that the Court erred in concluding she had a plain, speedy, and adequate remedy does not raise to an issue of substantial interest.

Much like Kinnucan's first issue, her second issue, is fact-bound and applies only to Kinnucan. The Court of Appeal's denial of her writ applies only to her and was based on her failure to establish that she had no plain, adequate, or speedy remedy at law. The Court of Appeals addressed this issue in its Decision.[24] However, in her Petition, Kinnucan reargues her same points. It is undisputed in the record that Kinnucan filed suit against her landlord.[25] The court properly relied on the abuse of discretion standard; however, even if the court erred and the proper standard is *de novo*, there is adequate evidence in the record that a plain, speedy, and adequate remedy exists[26] including filing a lawsuit and filing a complaint with the City's Planning and Development Department, both of which Kinnucan did.[27] Even if Kinnucan received an administrative hearing, it is not clear to the City, nor was it clear to the Court of Appeals,

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[24] Decision at p. A-12 - A-14.
[25] P. A-13 "When Kinnucan was unlawfully evicted from her apartment she brought suit pursuant to the Residential Landlord-Tenant Act, chapter 59.18..... Kinnucan also relied on Seattle's just cause ordinance, SMC 22.206.160...."
[26] Decision at pp. A-12 and A-13.
[27] *Supra*, FN. 25.

how such a hearing would provide Kinnucan with any relief long after she had received her tenant relocation money and long after had moved to a new residence.[28] As noted above, the denial of Kinnucan's writ affects her and her alone.

VI. CONCLUSION

Because Ms. Kinnucan failed to show that denial of her writ meets either standard for granting review in RAP 13.4(b)(1) or (4), the Petition for Review should be denied.

Respectfully submitted February 17, 2017.

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[28] Decision at p. A-15. *See also* fn.2 at p. A-09.

CERTIFICATE OF SERVICE

I certify that, on this date, I caused a copy of the City of Seattle's Answer to Petitioner's Petition for Review to be delivered to the following parties as shown below:

Vanessa Soriano Power Karl F. Oles Stoel Rives vanessa.power@stoel.com karl.oles@stoel.com leslie.lomax@stoel.com	(X) Via email agreement pursuant to CR 5(b)(7)
Eric Dunn Northwest Justice Project 401 2nd Avenue South, Ste. 407 Seattle, WA 98104-3811 ericd@nwjustice.org	(X) U.S. Mail Postage Prepaid

DATED February 17, 2017

Alicia Reise

ALICIA REISE, Legal Assistant