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SUPREME COURT OF THE STATE OF WASHINGTON

File No. 76142-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

GREGORY and JANETTE KOVSKY,

Appellants,

v.

ROBERT FANFANT and MELANIE BISHOP, and KING COUNTY,

Respondents.

RESPONDENTS ROBERT FANFANT AND MELANIE BISHOP'S ANSWER TO APPELLANTS KOVSKYS' PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Regulations

Revised Code of Washington

King County Code

Court Rules

I. INTRODUCTION

On July 7, 2015, King County issued building permit number NONB15-0014 (Permit) to Respondent Robert Fanfant for the installation of an 89-foot residential amateur radio tower. In accordance with the King County Code, King County posted notice of the Permit on its website.

On February 22, 2016, more than seven months after the Permit was issued, Appellants Gregory Kovsky and Janette Kovsky filed a Complaint and Petition for Land Use Review (LUPA Petition) in King County Superior Court. The Kovskys' LUPA Petition alleged that the Antenna was illegally constructed because Mr. Fanfant did not obtain a conditional use permit for his Antenna.

On cross motions for summary judgment, the trial court found that it did not have jurisdiction over the Kovskys' claims because the Kovskys failed to file suit within 21 days of the issuance of the Permit as required under LUPA. The Kovskys appealed the trial court's ruling.

The Court of Appeals, Division I, unanimously affirmed the trial court's ruling, holding both that the Kovskys' claims were time barred under LUPA and that the Antenna was exempt from King County's extensive pre-application process and conditional use permit requirements.

The Kovskys do not dispute that King County issued the Permit on

July 7, 2015 or that King County posted notice of the Permit on its website. However, the Kovskys now argue, for the first time, that notice of the Permit was inadequate, thereby depriving the Kovskys of due process.

II. RESPONSE TO ASSIGNMENT OF ERROR

Fanfant and Bishop respond to the Kovskys' issues presented for review as follows:

1. The Court of Appeals correctly found that the Kovskys' claims are time barred by LUPA's 21-day statute of limitations.

2. The Kovskys failed to challenge the Permit within 21-days of receiving actual notice of the Permit.

3. The Court of Appeals properly held that the King County Code exempts licensed amateur radio from regulation as a communication facility.

III. RESTATEMENT OF THE CASE

A. Permitting and Installation of the Antenna.

In January 2015, Robert Fanfant and Melanie Bishop became the owners of property located at 21422 N.E. 79th Street in Redmond. CP 68. Mr. Fanfant, a recent retiree, wanted a home large enough so that his children and future grandchildren could visit. CP 69. Above all, as a lifelong licensed amateur radio operator, Mr. Fanfant wanted a home on several acres in an area where the local zoning ordinance permitted the construction of an 89-foot antenna support structure with antenna (Antenna)

so that he could engage in amateur radio communications. CP 69-76. The requirement that the applicable zoning ordinance allow Mr. Fanfant to construct his Antenna was so essential that, as a precondition for the purchase of the property, Mr. Fanfant negotiated the ability to withdraw from the sale if he was unable to obtain a permit to accommodate his Antenna. CP 69. To ensure zoning and permitting would not be an issue, Mr. Fanfant visited the office of King County Department of Environmental Review and Permitting (King County) in Snoqualmie, Washington. CP 69-70. Mr. Fanfant was informed that the county's zoning ordinance permitted the construction of the Antenna as long as he obtained a necessary building permit. CP 70. Shortly thereafter, Mr. Fanfant closed on the purchase of his home. CP 70-71.

After purchasing his home, Mr. Fanfant worked closely with King County on his application for a building permit. CP 71. As part of the application process, King County determined that as a licensed amateur radio station, Mr. Fanfant's Antenna was exempt from the zoning regulations governing communication facilities, stating on the permit application: "OK to submit. Exempt from wireless provisions per 21A.26.020.G." CP 78-79, 168-169. King County also determined that the Antenna was "Exempt from height per 21A.12.180[.]" CP 79, 169. Based on King County's thorough review process and assurances, Mr. Fanfant

submitted a completed building permit application for his Antenna on May 29, 2015. CP 71, 107, 124, 166.

On **July 7, 2015, King County issued construction permit NONB15-0014 (Permit) for the construction of an 89-foot residential Amateur Radio tower**. CP 8-9, 71, 109-110, 166, 321 (Row 423), 325, 328, 373, 388-389, 391-392. After approving the Permit, pursuant to KCC 20.20.062, **King County posted notice of the Permit on its website.** CP 124, 166, 277. *See generally* CP 288-322.

King County's issuance of the Permit encompassed its determination that no conditional use permit (CUP) was required. CP 166. King County did not apply the development standards for minor communication facilities to the Antenna because, as a licensed amateur radio station, the Antenna is exempt from the regulations governing all communication facilities pursuant to KCC 21A.26.020(G). CP 79, 166, 169.

With Permit in hand, from July 2015 to August 2015, Mr. Fanfant installed his Antenna. CP 71-72. During the installation, the Kovskys "observed a significant number of old growth tress being removed from the Fanfant and Bishop property . . . ." CP 39. Following the removal of the trees, the Kovskys admit they saw that Mr. Fanfant "**began constructing a metal structure on the property in the second half of 2015**." CP 39 (bold

added). Despite observing the activity on Mr. Fanfant's property, the Kovskys took no action in 2015. CP 39-40.

By **January 26, 2016**, it is undisputed that the Kovskys had "actual notice" of the Permit. CP 434, 443. With actual notice of the Permit, the Kovskys filed a complaint with King County Code Enforcement (Code Enforcement) that same day. CP 419.

By the time the Kovskys filed a code enforcement complaint, Code Enforcement had already performed an investigation of the matter and, after a comprehensive review, determined the Antenna was properly permitted because licensed ham radio stations are exempt from the development standards for communication facilities, including minor communication facilities, pursuant to KCC 21A.06.020(G). CP 419. Thus, in response to their code enforcement complaint, King County informed the Kovskys that Mr. Fanfant's Antenna did not need a CUP and was properly permitted. CP 419.

With full knowledge of the Permit, and having filed a complaint with Code Enforcement, the Kovskys still failed to file a petition to challenge the Permit within 21 days of receiving actual notice. *See* CP 1-9 (LUPA Petition dated February 22, 2016). It was not until **February 22, 2016—more than seven months after Mr. Fanfant's Permit was issued, and 27 days after the Kovskys received actual notice of the Permit—**

that the Kovskys filed a Complaint and Petition for Land Use Review (LUPA Petition) in King County Superior Court. CP 1-6.

B. The Kovskys File an Untimely LUPA Petition in King County Superior Court.

The Kovskys' LUPA Petition alleged, among other things, that the Permit was issued illegally because Mr. Fanfant's Antenna constitutes a "minor communications facility" for which Mr. Fanfant should have applied for and obtained a CUP. CP 1-9. The Kovskys LUPA Petition did not raise a due process argument. *See* CP 1-9.

In the trial court, all parties moved for summary judgment. *See generally* CP 17-231. In support of their motion, the Kovskys argued that the Antenna is a minor communications facility and therefore required a CUP. CP 10-48, 191-205, 215-229, 372-411. The Kovskys further argued and took the position that they were "**not challenging the issuance of the building permit. LUPA's 21-day limit for challenging *that* land use decision is not relevant.**" CP 35 (bold added). Kovskys affirmed that they were not challenging the Permit in their response to Mr. Fanfant and King County's motions for summary judgment: "Fanfant and King County are correct that LUPA bars any challenge at this point to the building permit because the 21-day statute of limitations *for that permit* has already passed." CP 194. The Kovskys did not raise a notice or due process argument on

summary judgment. *See* CP 17-36; 191-205; 215-226.

After oral argument on the cross motions for summary judgment, the Kovskys filed a motion to supplement the trial court record with evidence King County posted notice of the Permit on its website. CP 230-234. The Kovskys did not argue that notice was inadequate or violated their due process rights. *See* CP 230-234. Instead, the Kovskys argued that accessing notice of the Permit was cumbersome. *See* CP 230-234.

In response to the Kovskys argument, Fanfant and Bishop provided authority on the issue of notice under LUPA and what is required to satisfy due process. CP 266-274. In reply, the Kovskys moved to strike that portion of Fanfant and Bishop's response addressing notice and due process, arguing **"[a]t no point in the Kovskys' motion to supplement the record did we use the words 'due process' or claim that notice provided for the Fanfant building permit was deficient**." CP 349 (bold added). The trial court admitted the additional evidence from both parties into the record. CP 353-354.

On November 30, 2016, the trial court issued its Order, granting summary judgment in favor of all defendants and dismissing the Kovskys' claims. CP 355-357. The trial court determined LUPA controlled and the court lacked jurisdiction to address the Kovskys' claims because the Kovskys failed to challenge the Permit within the statutorily required 21-

days. CP 357. The Kovskys appealed. CP 360-361.

C. The Court of Appeals Unanimously Affirms the Trial Court.

On appeal, the Kovskys again argued that they were not challenging the Permit: "The Kovskys are not challenging the building permit **issued by King County on July 7, 2015**." Appellants' Opening Brief at 32 (bold added). Additionally, the Kovskys affirmatively stated that to the extent they had previously challenged the Permit, they had "**abandoned their claim that the building code permit was issued in error early in the litigation**." Reply Brief of Appellants at 8 n. 2 (bold added).[1] Just as in the trial court, the Kovskys did not raise a constitutional due process argument in the Court of Appeals. *See generally* Appellants' Opening Brief; Reply Brief of Appellants.

On February 12, 2018, the Court of Appeals issued its Opinion unanimously affirming the trial court's dismissal of the Kovskys' claims and awarding Fanfant and Bishop their attorney fees and costs under RCW 4.84.370. Opinion at 10-11 (February 12, 2018).

The Kovskys filed a motion for reconsideration arguing that a scrivener's error in the Court's Opinion resulted in a "skewed" analysis and

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[1] The Kovskys made a similar argument in opposing Fanfant and Bishop's request for fees at the Court of Appeals, stating the following: "Because the Kovskys did not pursue a claim alleging that the building code permit had been issued, conditioned or denied in error, no award of fees is authorized regardless of the outcome of this case." Reply of Appellants at 29 (quotations omitted).

that the Court of Appeals misapplied RCW 4.84.370 in awarding fees. *See generally* Appellants' Motion for Reconsideration. In addition, the Kovskys asked the Court of Appeals to consider a brand new theory briefly raised by the Kovskys' counsel during oral argument on the issue of whether the relevant portions of the King County Code applied only to the antenna or also encompassed antenna support structures. *See generally* Appellants' Motion for Reconsideration. **Again, the Kovskys did not challenge the notice of the Permit or raise a due process argument.** *See* Appellants' Motion for Reconsideration

After calling for an answer to the Kovskys' motion, on April 16, 2018, the Court of Appeals issued an Order on the Kovskys' motion, granting the motion only as to the request to correct the scrivener's error in the Opinion, which Fanfant and Bishop had not opposed. The Court denied the motion on all other grounds. The Court of Appeals filed an amended Opinion on April 16, 2018.

IV. ARGUMENT

A. The Kovskys Are Judicially Estopped From Challenging the Permit and Affirmatively Abandoned Any Claim Related to the Adequacy of Notice.

1. The Kovskys' new challenge to the issuance of the Permit is inconsistent with the position they took in the trial court and at the Court of Appeals.

In the trial court and at the Court of Appeals the Kovskys took the

position that they were not challenging the Permit. CP 35. As articulated by the Kovskys:

> Fanfant and King County are correct that LUPA bars any challenge at this point to the *building permit* because the 21-day statute of limitations for *that permit* has already passed. . . . The Kovskys are bringing this challenge solely on the basis that Fanfant failed to obtain a *conditional use permit.*

CP 194.

The Kovskys took the same position in the Court of Appeals, conceding that, to the extent the Kovskys previously sought to challenge the Permit, they had "abandoned their claim that the building code permit was issued in error early in the litigation." Reply Brief of Appellants at 8 n. 2. The Kovskys argument on appeal was that **LUPA did not apply** because no land use decision had been made with respect to a CUP. Now, however, the Kovskys' entire basis for seeking review of the Court of Appeals' decision is the claim that the "Kovskys did not receive effective notice of the building permit issued for the Fanfant tower." Petition for Review at 13.

Judicial estoppel focuses on three factors: (1) whether a later position is clearly inconsistent with an earlier position, (2) whether acceptance of the later inconsistent position would create the perception that either the first or the second court was misled, and (3) whether the assertion of the inconsistent position would prejudice the opposing party. *Anfinson*

v. FedEx Ground Package Sys., Inc., 174 Wn.2d 851, 861, 281 P.3d 289 (2012) (citations and quotation marks omitted). These factors require the application of estoppel in this case. First, the Kovskys' position that notice of the Permit was ineffective or inadequate is inconsistent with their position in the trial court and in the Court of Appeals that they were not challenging the Permit. The Kovskys affirmatively stated they had "abandoned their claim that the building code permit was issued in error early in the litigation." Reply Brief of Appellants at 8 n. 2. Only now do the Kovskys argue that they "did not receive effective notice of the building permit issued for the Fanfant tower[]" thereby depriving them of due process. Petition for Review at 13. Their position is in direct contradiction to the position they took in every other court and proceeding.

Second, by taking this new position, the Kovskys appear to have misled the trial court, the Court of Appeals, and appear to be attempting to mislead *this* Court. The record demonstrates that the Kovskys affirmatively abandoned any challenge to the Permit, including the adequacy of notice, arguing that LUPA's applicability to this case and due process considerations are not relevant to the issuance of the Permit. *See* CP 349. It is only before this Court, in hopes it will advance their objective to overturn LUPA completely, that the Kovskys now challenge the Permit and raise due process arguments.

Finally, Fanfant and Bishop would be prejudiced if the Court allows the Kovskys to take this new position. Although the Kovskys' new argument fails as a matter of law, Fanfant and Bishop would be prejudiced if the Court allows the Kovskys to change theories as they will not have been provided with the opportunity to conduct discovery related to the Kovskys' new theory. Further, Fanfant and Bishop will be forced to incur tremendous expense in defending a claim the Kovskys never argued below. The Kovskys are judicially estopped from challenging the Permit.

2. The Kovskys abandoned any claim to insufficient notice of the Permit.

The Kovsky filed this lawsuit on February 22, 2016, and have been given ample opportunity to pursue a challenge to the Permit or the argument that notice was insufficient. Instead, they strategically "abandoned their claim that the building code permit was issued in error early in the litigation." Reply Brief of Appellants at 8 n. 2. This argument was consistent with one they took at the trial court: that issuance of the Permit and due process considerations were not relevant to the issuance of the Permit. CP 349. Thus, the Kovskys waived, or in their own words, "abandoned," their claim relating to the adequacy of notice by not to presenting it in the trial court or before the Court of Appeals.

B. LUPA Does Not Require That A Party Receive Individualized Notice.

1. The Kovskys seek to change established law by requesting this Court adopt an actual, individualized notice standard for LUPA actions.

The Kovskys urge this Court to grant review in order to "clarify the case law" regarding the notice requirements under LUPA and find that individual notice is required before the 21-day statute of limitations begins to run. Petition for Review at 15. In the alternative, the Kovskys argue review is warranted to allow this Court to hold LUPA unconstitutional. Petition for Review at 15. The Kovskys seek to upend established precedent and the Legislature's stated purpose of LUPA.

The Land Use Petition Act (LUPA), chapter 36.70C RCW, governs judicial review of land use decisions. *Durland v. San Juan County*, 182 Wn.2d 55, 62, 340 P.3d 191 (2014); RCW 36.70C.030. The purpose of LUPA is to provide uniform and expedited appeal procedures for judicial review of land use decision made by local jurisdictions. *Habitat Watch, 155* Wn.2d 397, 406, 120 P.3d 56 (2005); RCW 36.70C.010. "To serve the purpose of timely review, LUPA provides stringent deadlines, requiring that a petitioner file a petition for review within 21 days of the date of the land use decision." *Asche v. Bloomquist*, 132 Wn. App. 784, 785, 133 P.3d 475 (2006), *as amended* (Apr. 4, 2006). *See* RCW 36.70C.040(3) (a petition is

timely "if it is filed and served on all parties . . . within twenty-one days of the issuance of the land use decision.")

By statute, the date on which a land use decision is "issued" is generally determined as either (1) three days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available; (2) the date the legislative body passes the ordinance or resolution if the land use decision is made by ordinance; or (3) the date the decision is entered into the public record. RCW 36.70C.040(4)(a)-(c). As this Court has explained: "even illegal decisions must be challenged in a timely, appropriate manner." *Habitat Watch*, 155 Wn.2d at 407 (holding LUPA's 21-day appeal period barred a citizens' group challenge to a construction project despite the fact the county failed to provide notice regarding hearing on permit extensions). *See also Durland*, 182 Wn.2d at 68.

This Court has previously addressed the issue of notice under LUPA and held that individual notice is not required stating that "LUPA does not require that a party receive individualized notice of a land use decision in order to be subject to the time limits for filing a LUPA petition." *Samuel's Furniture,* 147 Wn.2d at 462. Rather, as this Court has made clear, "LUPA seems to merely require that a local jurisdiction provide general public notice by virtue of publication of the land use decision." *Samuel's*

Furniture, 147 Wn.2d at 462.

Here, the KCC requires published notice of Type 1 decisions, such as building permits:

> Not later than January 1, 2013, the department shall provide public notice of Type 1 decisions for which a notice of application is not otherwise required under K.C.C. 20.20.060. The public notice may be provided electronically. The notice provided under this section shall be considered supplementary to any other notice requirements and shall be deemed satisfactory despite the failure of one or more individuals to receive notice.

KCC 20.20.062. The Kovskys agree that the Permit was issued on July 7, 2015 (CP 373), and that King County posted notice on its website that the Permit had been issued (CP 230-265). Therefore, the Kovskys concede that the Permit was issued and that King County provided notice to the general public that King County issued the Permit. However, the Kovskys argue that they were entitled to individualized notice of the Permit before the 21 days began to run. The Court of Appeals was correct to reject this argument.

The Kovskys' argument that the statute of limitations does not start to run until a party receives individual notice would require this Court to create a dangerous new standard. Under the Kovskys' theory, a land use decision would be subject to challenge indefinitely by any person who claims he/she/they did not receive individual notice. Such an outcome has the potential to result in never-ending litigation and will undermine the

stated purpose of LUPA:

> The purpose of this chapter is to reform the process for judicial review of land use decisions made by local jurisdictions, by establishing uniform, expedited appeal procedures and uniform criteria for reviewing such decisions, in order to provide consistent, predictable, and timely judicial review.

RCW 36.70C.010. *See Durland*, 182 Wn.2d at 59-60 (stating the Supreme Court "has faced numerous challenges to statutory time limits for appealing land use decision and has repeatedly concludes that the rules must provide certainty, predictability, and finality for land owners and the government.")

Actual, individual notice of a land use decision is not required under LUPA, and the Supreme Court has unequivocally rejected challenges claiming otherwise. *See Habitat Watch,* 155 Wn.2d at 408-09; *Samuel's Furniture*, 147 Wn.2d at 462. The Kovskys' request to change established law and create a new standard should be rejected.

2. Even if this Court were to overrule established precedent and hold LUPA requires individual notice, the outcome of this case would be unchanged as the Kovskys failed to file their LUPA Petition within 21-days of receiving actual notice.

Even if the Court is inclined to consider the Kovskys' notice argument and restrict the running of the 21-day statute of limitations to the date from which the Kovsky had actual notice of the Permit, the Kovskys' claims are still barred.

It is undisputed that by January 26, 2016 the Kovskys had actual notice of the Permit. CP 434, 443. The Kovsky filed a code enforcement complaint that day, only to learn that Code Enforcement had already investigated the matter and determined the Antenna was "allowed and all required permits and approvals were obtained." CP 419. Despite having this information, the Kovskys waited until February 22—**27 days receiving actual notice of the Permit**—to file a LUPA Petition. CP 1-6. **Even if the Court applies an actual notice standard, the Kovskys argument still fails because they failed to challenge the Permit and King County's decision not to require a CUP within 21 days of receiving actual notice.** As the Court of Appeals properly held, the Kovskys' claims are time barred.

C. King County's Zoning Ordinance Exempts Licensed Amateur Radio Stations from the Development Standards of "Communication Facilities."

Finally, separate and apart from the application of LUPA's 21-day statute of limitations, the Kovskys' entire due process argument is based upon the faulty premise that the King County zoning ordinance required Mr. Fanfant to obtain a CUP for his Antenna. The Kovskys misinterpret the King County Code which carefully and unambiguously exempts licensed amateur radio stations from the CUP process. *See* KCC 21A.26.020(G).

Title 21A of the KCC regulates zoning. *See generally* KCC 21A. Chapter 21A.26 regulates "towers and antennas" associated with ALL

"communication facilities." *See* KCC 21A.26.030 ("All communication facilities that are not exempt under K.C.C. 21A.26.020 shall comply with this chapter . . . .") As set forth at the beginning of 21A.26.010:

> **The purpose of this chapter** is to establish guidelines for the siting of **towers and antennas.** (Emphasis added).

All "communication facilities" identified within **Title 21A,** including minor communication facilities, are initially subject to regulation under chapter 21A.26. *See* KCC 21A.26.030.

Under KCC 21A.26.020(G), "Licensed amateur (Ham) radio stations" are exempt from the provisions regulating "towers and antennas," and Ham radio stations are "permitted in all zones." KCC 21A.26.030 then sets forth the applicability of KCC 21A.26:

> Applicability. The standards and process requirements of this chapter [regulating towers and antennas] supersede all other review process, setback or landscaping requirements of this **title**. All communication facilities **that are not exempt** under K.C.C. 21A.26.020 shall comply with this chapter as follows...

KCC 21A.26.030 (bold added). Consistent with King County's interpretation, the Court of Appeals properly found that the exemption in KCC 21A.26.020(G) exempts a "tower and antenna" for licensed amateur radio from regulation under Title 21A. Opinion at 8. The Court determined that "while Ham radio towers are two-way radio facilities, they are specifically excluded from the regulations for minor communication

facilities." Opinion at 8. The Court concluded that "[c]ompliance with the standards of chapters 21A.26 and 21A.27 KCC applies only to communication facilities that are *not* exempt under KCC 21A.26.020." Opinion at 9. The Court of Appeals further concluded that "[a]s an exempt facility, Ham radio stations are not required to comply with the standards for minor communication facilities outlined in KCC 21A.26.030(D)." Opinion at 9.

However, the Kovskys continue to argue that the exemption under KCC 21A.26.020(G) only applies to provisions of KCC chapter 21A.26 and that Fanfant was required to comply with the development standards for a "tower and antenna" associated with a minor communication facility under chapter 21A.27. The Court *expressly rejected* this argument stating "this argument ignores the language of 21A.26.030." Opinion at 9.

The Kovskys' desire to change the King County Code, and their hypothetical argument that King County could approve a tower over 500 feet, is an issue for the Kovskys to address with the King County Counsel, not this Court. The Court of Appeals correctly applied the law to the facts of this case in holding Mr. Fanfant's Antenna was exempt from regulation as a minor communication facility.

D. Fanfant and Bishop Request An Award Of Attorney Fees.

Pursuant to RAP 18.1(j), "[i]f attorney fees and expenses are

awarded to the party who prevailed in the Court of Appeals, and if a petition for review to the Supreme Court is subsequently denied, reasonable attorney fees and expenses may be awarded for the prevailing party's preparation and filing of the timely answer to the petition."

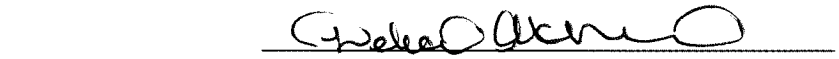
Fanfant and Bishop prevailed at the trial court and at the Court of Appeals. Pursuant to RCW 4.84.370(1), the Court of Appeals awarded Fanfant all fees incurred on appeal. If this Court denies the Kovskys' Petition for Review, Fanfant and Bishop request an award of attorney fees.

V. CONCLUSION

The Court of Appeals applied the law to the facts of this case and was correct to affirm the trial court's Order granting summary judgment to Fanfant. The Court should deny the Kovskys' Petition for Review.

RESPECTFULLY submitted this 15th day of June, 2018.

HELSELL FETTERMAN LLP



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CERTIFICATE OF SERVICE

I, SARAH DAMIANICK, hereby declare and state as follows:

1. I am over the age of majority, competent to testify and make the following statements based upon my own personal knowledge and belief.

2. I am now and at all times herein mentioned employed by the offices of Helsell Fetterman, LLP, 1001 4th Avenue, Suite 4200, Seattle, WA 98154.

3. In the appellate matter of Kovsky v. Fanfant, et al., I did on the date listed below, (1) cause to be filed with this Court RESPONDENTS ROBERT FANFANT AND MELANIE BISHOP'S ANSWER TO APPELLANTS KOVSKYS' PETITION FOR REVIEW ; and (2) to be delivered via Electronically Filing with Court of Appeals and e-mail to David A. Bricklin, Bricklin & Newman, LLP, who are counsel of record for Appellants; Jina Kin, Deputy Prosecuting Attorney, who are counsel of record for Respondent King County; Shellie McGaughey, McGaughey, Bridges, Dunlap, PLLC, who are counsel of record for Respondents Fanfant and Bishop.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

DATED: June 15, 2018.

s/Sarah Damianick
SARAH DAMIANICK

HELSELL FETTERMAN LLP

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