FILED
SUPREME COURT
STATE OF WASHINGTON
7/19/2018 2:22 PM
BY SUSAN L. CARLSON
CLERK

Supreme Court No. 96096-8
Court of Appeals No. 76653-8 -I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

RICHARD THOMPSON, Plaintiff/Respondent,

v.

STEVEN T. LYNCH, Defendant/Counterclaimant/Appellant,

and

DOES 1-30, Defendants

APPEAL FROM THE KING COUNTY SUPERIOR COURT
The Honorable Veronica Alicea Galvan, Trial Judge

DEFENDANT/COUNTERCLAIMANT/APPELLANT'S AMENDED PETITION FOR REVIEW WITH APPENDIX

JOHN R. MUENSTER
Attorney at Law, WSBA No. 6237
MUENSTER AND KOENIG
14940 Sunrise Drive N.E.
Bainbridge Island, WA 98110
Telephone: (206)501-9565
Email: jmkk1613@aol.com
Attorneys for Steven T. Lynch, Defendant/Appellant

TABLE OF CONTENTS		

A. IDENTITY OF PETITIONER	1
B. COURT OF APPEALS DECISION	1
C. ISSUES PRESENTED FOR REVIEW	3
D. STATEMENT OF THE CASE	5
E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.	6
F. CONCLUSION	18

TABLE OF AUTHORITIES	
CASES	
Butler v. Caldwell, No. 48931-3-1, 2002 Wash. App. LEXIS 622 (Division One, 2002)	4, 8
Favors v. Matzke, 53 Wash.App. 789, 770 P.2d 686 (1989)	13, 14
Hearst Commcns Inc. v. Seattle Times, 154 Wash.2d 493, 115 P.3d 262 (2005)	9
Knipscheid v. C-J Rec, 74 Wash.App. 212, 872 P.2d 1102(1994)	8, 9
Washington Federal v. Gentry and cases cited therein, 179 Wash.App 470, 319 P.23d 823 (Division One, 2004), *review granted*, 180 Wash. 2d 1021, *affirmed and remanded sub. nom. Wash. Fed. v. Harvey*, 182 Wash. 2d 335, 340 P.3d 846 (2015)	1, 7, 17
OTHER AUTHORITIES	
RAP 1.2(a)	2, 3, 4, 14, 15
RAP 9.2	2, 3, 4, 10, 11, 12, 13
RAP 9.10	2, 3, 4, 12, 13, 15, 17

RAP 13.4(b)(2), (4)	8, 9, 13, 15, 17

NOTES

NOTES

A. IDENTITY OF PETITIONER

Steven T. Lynch, Counterclaimant and Appellant, (hereinafter "Mr. Lynch") asks this Court to accept review of the Court of Appeals decision designated below.

B. COURT OF APPEALS DECISION

Mr. Lynch seeks review of the Court of Appeals decision affirming the trial court's judgment, filed April 30, 2018, 2018 Wash.App. Lexis 1033 (Division One, 2018).[1]

Mr. Lynch's appeal challenges the trial court's interpretation of the language of written agreements and resulting findings.[2] Appellate review is *de novo*.[3] The

---

[1] A copy of the slip opinion is reproduced in the Appendix, Appendix pages A-23 to A-25. Mr. Lynch moved for reconsideration. Reconsideration was denied by order entered June 7, 2018. A copy of the order denying reconsideration is reproduced in the Appendix, page A-26.

[2] A copy of the transcript of the trial court's oral findings n is reproduced in the Appendix, pages A-3A through A-A-16. A copy of the trial court's post trial email to counsel is reproduced in the Appendix at pages A-17 through A-22.

[3] *See Washington Federal v. Gentry*, 179 Wash.App. 470, 490, 319 P.3d 823 (Division One, 2014), *review granted*,

appellate panel felt that "substantial evidence" was the standard. Slip Opinion, page 2. We respectfully disagree.

This Court should grant review, enter an order (with or without an opinion) vacating the 3-page decision of the panel, and remand the case to the panel for decision on the merits under RAP 1.2(a). Undersigned counsel complied with the rules in arranging for the record for *de novo* review. RAP 9.2 (a), (b). and (c).[4] Undersigned counsel acted in good faith. *See* RAP 9.10.

Had opposing counsel asked for additional portions of the transcript, undersigned counsel would have arranged for the same, as required by the rule. RAP 9.2(c). Opposing counsel made no request.

If this Court or the panel on remand feels that the testimony of witnesses from the bench trial is necessary,

---

180 Wash. 2d 1021, *affirmed and remanded*, *Wash. Fed. v. Harvey*, 182 Wash.2d 335, 340 P.3d 846 (2015).

[4] Appellant filed and served a statement of arrangements pursuant to RAP 9.2(c) setting forth the issues and advising that a partial verbatim report of proceedings had been prepared. In this appeal, appellant provided the transcript of the trial court's oral decision interpreting the written agreements, the clerk's papers, and trial exhibits, which included the agreements at issue.

undersigned counsel will supplement the report of proceedings.

The relief requested here would fulfill the remedial purposes of RAP 9.10. It would promote justice and facilitate the decision of this case on the merits. RAP 1.2(a).

C. ISSUES PRESENTED FOR REVIEW

Mr. Lynch urges the Court to grant review on one or more of the following issues:

(1) Whether the standard of appellate review of a trial court's interpretation of the language of the written agreements is *de novo* or "substantial evidence".

(2) If the standard of review is *de novo*, whether an appellant must provide a complete verbatim report of proceedings of trial testimony in a contract interpretation case under RAP 9.2(a) and (b), even though the respondent does not object to appellant's statement of arrangements for a partial transcript under RAP 9.2(c).

(3) If the standard of review is *de novo*, whether an appellant must provide a complete verbatim report of proceedings of trial testimony in a contract interpretation case under RAP 9.2(a) and (b), even if the respondent does

not file a designation of additional parts of the verbatim report of proceedings under RAP 9.2(c).

(4) Whether an appellant's filing of a statement of arrangements in compliance with the provisions of RAP 9.2 (a) and (c), as well as submission of the clerk's papers, exhibits and transcript of the trial court's findings, constitutes *prima facie* evidence of good faith as that term is used in RAP 9.10.

(5) If evidence of an appellant's good faith is present, whether an appellate court should ordinarily permit the supplementation of the record if needed to permit a decision on the merits, as provided for in RAP 9.10, rather than dismiss the appeal or affirm.

(6) If evidence of an appellant's good faith is present, whether the appellate court should liberally interpret the provisions of RAP 9.10 in light of RAP 1.2(a) and permit supplementation of the record in order to promote justice and facilitate a decision of the case on the merits.

(7) Whether the panel's affirmance of the judgment without reaching the merits was supported by "compelling circumstances where justice demands" as required by RAP 1.2(a).

(8) Whether Mr. Thompson's action was a "suit required to collect on the promissory notes" under the parties' written

Buy-Sell Agreement, where Mr. Lynch, not Mr. Thompson, was the beneficiary of the notes.

D. STATEMENT OF THE CASE

This is a dispute over the amount of funds owed to defendant/counterclaimant/appellant Steven Lynch. Mr. Lynch is the founder and majority owner of an underground utilities business, STL Inc., and CRS LLC.[5] In 2003, 2004 and 2005, Mr. Lynch received pay/draw checks which were timely ledgered in the ordinary course of business and reported on tax returns. The plaintiff, Mr. Lynch's business partner, knew of the disbursements. He received similar checks himself.

Years later, in 2014, plaintiff Thompson falsely claimed, for the first time, that Steve Lynch was not entitled to five draws he had earned and received years earlier (2003, 2004 and 2005) when he founded the company and kept it going. This meritless lawsuit followed.

Mr. Lynch timely answered Mr. Thompson's complaint and asserted a counterclaim. CP 1-24, 25-33. At trial, agreements signed by the parties and the contemporaneous

---

[5] Hereinafter "STL", "CRS" and/or "the business".

business records demonstrated that Mr. Lynch was correct. Nonetheless, the trial judge erroneously ruled in favor of Thompson as to three of Mr. Lynch's pay/draw checks. This appeal was timely filed. CP 153-166.

This is a documents case. Four key agreements were signed by the parties: (1) the "Action by Unanimous Consent of the Shareholders", CP 19-22, Defense Exhibit 112, Pl. Ex 6; (2) the $170,000 promissory note to Mr. Lynch, CP 17, Defense Trial Exhibit 122, Pl. Ex.2; (3) the Buy-Sell Agreement, CP 10-16, Defense Trial Exhibit 123, Pl. Ex. 1; and (4) the Addendum A, CP 23-24, Defense Trial Exhibit 112, Pl.Ex.6.

The business check ledger gives us the contemporaneous record of transactions. Exhibit G to the *Documents Declaration*, CP 79-86; Defense Trial Exhibit 125.

These documents tell the story. As the trial court noted: "The agreements speak for themselves." RP (3-2-2017) 4, line 14.

E. <u>ARGUMENT WHY REVIEW SHOULD BE ACCEPTED</u>

1. <u>Issue One: De novo review</u>. Our appeal is based upon the language of the agreements between the parties and

the contemporaneous business records. The legal principles and standard of review were recently summarized by this Court as follows:

> This court reviews de novo a trial court's interpretation of the language of a contract. [footnote citation omitted]
>
> . . . .
>
> Courts focus on the "objective manifestations of the agreement, rather than on the unexpressed subjective intent of the parties." [footnote citation omitted].
>
> > "[W]hen interpreting contracts, the subjective intent of the parties is generally irrelevant if the intent can be determined from the actual words used." [footnote citation omitted]
>
> This court does not "interpret what was intended to be written but what was written." [footnote citation omitted].

Washington Federal v. Gentry, 179 Wash.App. 470, 490, 319 P.3d 823 (Division One, 2014), *review granted*, 180 Wash. 2d 1021, *affirmed and remanded*, *Wash. Fed. v. Harvey*, 182 Wash.2d 335, 340 P.3d 846 (2015). The cases cited in the footnotes above in *Gentry*, 179 Wash.App. at 490, are incorporated by reference herein as though fully set

forth.

In its "findings of fact" and "conclusions of law" the trial court rewrote the terms of the agreements between the parties.[6] This was beyond its authority. *Gentry, supra*; *Butler v. Caldwell*, No. 48931-3-I, 2002 Wash.App. LEXIS 622, *1, *11 (Division One, 2002). We properly assigned error to the "rewriting" findings and conclusions. We explained the defects therein in our opening and reply briefs.

Our challenge to the trial court's findings/conclusions is not a "sufficiency of the evidence" challenge. The panel's importation of the "sufficiency" issue into this case is error.[7] It demonstrates that this Court should grant review under RAP 13.4(b)(1) and (4). The panel decision conflicts with decisions of the Court of Appeals holding that review of the construction of a contract is *de novo*. *See Gentry, supra; Knipscheid v. C-J Rec*, 74 Wash. App. 212, 215, 872 P.2d 1102 (1994).

---

[6] The order contains an interchangeability provision for the "findings" and "conclusions". ¶19, CP 149.

[7] None of the cases cited by the panel on page 2 of its slip opinion involve an appellate challenge to a trial court's interpretation of a written business agreement, as does our case. None of them discuss the *de novo* standard of review in such cases. None of them are apposite.

The decisions of this Court seem to go in different directions. *See, e.g.,* the discussion in *Hearst Commcns Inc. v. Seattle Times*, 154 Wash.2d 493, 501-504, 115 P.3d 262 (2005). This Court has often granted review to discuss the rules of contract interpretation. Our case seems to be a clear case where the trial court interpreted the language of the agreements to make its decision. Period. The clarity of the record makes this case a good one in which to declare a clear rule. The number of appellate contract interpretation cases demonstrates that this is an issue of substantial public interest that should be determined by this Court. RAP 13.4(b)(4).

Under the agreements, Mr. Lynch should prevail. STL issued a promissory note to Mr. Lynch in the amount of $170,000, "an amount equal to the excess value of *equipment and cash heretofore paid, loaned or contributed by Lynch* to STL."[8]

This language did not cover the three pay/draw checks issued (Nos. 2832, 3213 and 3737) because they were not

---

[8] *Action by Unanimous Consent Agreement*, ¶ 1, page 1, CP 19, Defense Trial Exhibit 121, Pl. Ex 3; Exhibit A to the *Documents Declaration of John Muenster* (hereinafter "*Documents Declaration*"), CP 45(italics supplied).

reimbursements for "equipment or cash heretofore paid, loaned or contributed" by Mr. Lynch.

The trial court erred by construing the Action Agreement to limit the total Mr. Lynch could receive, for any reason, to $170,000. *See* RP 5, lines 5-25; RP 6, lines 1-12. By doing so, the trial court rewrote the agreement. This was error.

2. Issues Two, Three, Four and Five: Good Faith under RAP 9.10.

As authorized by RAP 9.2(c), undersigned counsel filed and served an Appellant's Statement of Arrangements advising that a partial report of proceedings had been ordered. The statement provided in pertinent part:

> Pursuant to RAP 9.2(c), Appellant plans to present the following issues to the Court of Appeals for its consideration:
>
> This contractual dispute between two former business partners was tried to the Superior Court sitting without a jury. The case concerned several documents signed by the parties and entries in the business check ledger made more than a decade ago. The words used in the documents are plain on their face. Despite this clarity, we believe the trial judge created her own erroneous interpretations of the documents in her ruling. We respectfully contend that the trial judge erred.

Appellant's Statement of Arrangements, May 4, 2017. We served and filed a copy of the report of proceedings on June 13, 2017.

Under the rule, if Mr. Thompson wished to add to the verbatim report of proceedings, he had the opportunity to file and serve on all other parties and the court reporter or authorized transcriptionist a designation of additional parts of the verbatim report of proceedings and file proof of service with the appellate court, within 10 days after service of the statement of arrangements. RAP 9.2(c). He did not do so.

As discussed above, *de novo* review of this documents case by this Court is appropriate. The "findings" by the trial court are not entitled to deference. This is not a "sufficiency of the evidence" appeal. It is a contract interpretation appeal. No additional transcript is required.

Undersigned counsel complied with the rules in arranging for the record. RAP 9.2 (a), (b). and (c). Had opposing counsel asked for additional portions of the transcript, undersigned counsel would have arranged for the same, as required by the rule. RAP 9.2(c). Undersigned counsel relied on these facts going forward.

Given these circumstances, the Court should take this case and hold that an appellant's compliance with RAP 9.2(a) and (c) is *prima facie* evidence of good faith for purposes of RAP 9.10. That rule provides:

RAP 9.10
CORRECTING OR SUPPLEMENTING RECORD

> If a party has made a good faith effort to provide those portions of the record required by rule 9.2(b), the appellate court will not ordinarily dismiss a review proceeding or affirm, reverse, or modify a trial court decision or administrative adjudicative order certified for direct review by the superior court because of the failure of the party to provide the appellate court with a complete record of the proceedings below. If the record is not sufficiently complete to permit a decision on the merits of the issues presented for review, the appellate court may, on its own initiative or on the motion of a party (1) direct the transmittal of additional clerk's papers and exhibits or administrative records and exhibits certified by the administrative agency, or (2) correct, or direct the supplementation or correction of, the report of proceedings. The appellate court or trial court may impose sanctions as provided in rule 18.9(a) as a condition to correcting or supplementing the record on review. The party directed or permitted to supplement the record on review must file either a designation of clerk's papers as provided in rule 9.6 or a statement of arrangements as provided in rule 9.2 within the time set by the appellate court.

RAP 9.10

RAP 9.10 applies here. Undersigned counsel acted in good faith.

This is an important and recurring issue worthy of this Court's review. RAP 13.4(b)(4). In each appeal, appellant's counsel must decide what issues to raise, determine the standard of review, and designate the record accordingly. In this case, it was and is reasonable to conclude that the trial court's decision is one of interpretation of the words of the written agreements. The appellate record was designated accordingly. A decision from this Court on the issue of good faith under RAP 9.10 would benefit the lower courts and appellate counsel.

The appellate panel apparently felt that the entire trial transcript should have been submitted. The panel's opinion is silent as to what, if anything, could be retrieved from the verbal testimony that would pertain to the interpretation of the agreements. As the trial court noted: "The agreements speak for themselves." RP (3-2-2017) 4, line 14.

In this regard, this Court should consider adopting the analysis and holding in *Favors v. Matzke*:

> RAP 9.2 requires the party seeking review to provide an appeal record

> containing all evidence necessary and relevant to the issues to be reviewed. The responding party, if dissatisfied, may obtain additional parts of the trial record and request that appellant be ordered to pay for same.
>
> The Favorses argue that some testimony, admitted during trial, is missing from the verbatim report of proceedings. However, they are unable to apprise the court of the significance of such missing testimony in relation to the issues on appeal nor have they obtained the additional record as provided by RAP 9.2.
>
> We believe the record submitted contains all evidence necessary for a consideration of the issues raised and that respondents have failed to demonstrate any prejudice from an incomplete record.

Favors v. Matzke, 53 Wash.App. 789, 794, 770 P.2d 686 (1989).

3. <u>Issues Six and Seven: RAP 9.10, RAP 1.2(a) and the resolution of cases on the merits</u>.

RAP 1.2(a) provides:

> (a) Interpretation. These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the

> merits. Cases and issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands, subject to the restrictions in rule 18.8(b).

RAP 1.2(a) is one of the most important rules in the book. The commitment of our appellate justice system to decisions on the merits in the absence of compelling circumstances to the contrary must be protected. This case is an excellent vehicle for this Court to provide guidance for practitioners and courts considering RAP 9.10 issues in light of the liberal interpretation policy of RAP 1.2(a).

There were no "compelling circumstances" under RAP 1.2(a) requiring the panel's disposition here.

If the Court (or the panel on remand) feels that the trial testimony is necessary, undersigned counsel will supplement the record with the testimony. The appeal can then proceed to the merits. An opinion by this Court resulting in this outcome would benefit lower courts and counsel. See RAP 13.4(b)(4).

4. <u>Issue Eight: Attorney's Fees</u>

Mr. Thompson's action was not a "suit required to collect on the promissory notes" under the parties' written Buy-Sell Agreement, where Mr. Lynch, not Mr. Thompson, was the beneficiary of the notes.

In our briefing, we assigned error to the trial court's interpretation of the Buy-Sell Agreement to provide for attorney's fees to Mr. Thompson. We argued that Mr. Thompson was not entitled to fees under §3.B.iii of the Agreement. The panel did not analyze §3.B.iii in its decision.

The trial judge erred in its interpretation that "*by the terms of Buy-Sell Agreement*, Lynch is the defaulting shareholder." Finding of Fact 51, CP 160 (emphasis added). The Buy-Sell Agreement's attorney's fees provision, §3.B.iii, does not apply to Mr. Thompson here.

The Buy-Sell agreement provides in pertinent part as follows:

> In the event that suit shall be *required to collect on the promissory notes above referred to*, the defaulting Stockholder or the Corporation shall pay for attorney fees, and court costs, incurred in this action.

Buy-Sell Agreement, §3.B.iii., page 3, Defense Exhibit 123, Pl. Ex.1; Exhibit C to the Documents Declaration, CP 55.

In this case, the phrase "promissory notes above referred to" applies to the $170,000.00 note from STL, Inc, to Mr. Lynch, described in Section 1 of the Buy-Sell Agreement, and to a promissory note (if any) executed by STL to pay Mr. Lynch $250,000.00 for his shares of STL.[9] Mr. Lynch is the beneficiary of the $170K promissory note. He is the seller of the shares of STL. Mr. Thompson did not bring this lawsuit "to collect on the promissory notes above referred to." Mr. Lynch is not a "defaulting stockholder" under §3.B.iii of the *Buy-Sell Agreement*. The trial court erred in finding otherwise.

As with Issue One, review of the trial court's interpretation of the language of the Buy-Sell Agreement is *de novo*. *Gentry, supra*. The trial court did not have authority to rewrite the attorney's fees provision.

If the standard of review is otherwise, we request relief under RAP 9.10 to supplement the record on the same grounds as are discussed above. We urge the Court to grant review of this issue. RAP 13.4(b)(1), (4)

---

[9] See Buy-Sell agreement, Section 1, Section 2.D, and Section 3.B.i.

F. **CONCLUSION.**

For the reasons stated, this Court should grant review, enter an order (with or without an opinion) vacating the 3-page decision of the panel, and remand the case to the panel for decision on the merits under RAP 1.2(a), with supplementation of the record under RAP 9.10, or grant such other and further relief as the Court sees fit.

Dated this 6th day of July, 2018.

Respectfully submitted,
MUENSTER & KOENIG

By: S/ John R. Muenster
JOHN R. MUENSTER
Attorney at Law
WSBA No. 6237
Of Attorneys for
Defendant/Counterclaimant/
Appellant Steven T. Lynch

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on or about the 6th day of July, 2018, I electronically filed a true and correct copy of the foregoing document with the Clerk of the Court. I requested e-service on counsel for

plaintiff/respondent. I also served a copy on opposing counsel via email.

S/ John R. Muenster
Muenster & Koenig

Supreme Court No. __________
Court of Appeals No. 76653-8 -I

RICHARD THOMPSON, Plaintiff/Respondent, v.
STEVEN T. LYNCH, Defendant/Counterclaimant/Appellant,

APPENDIX TABLE OF CONTENTS

Document	Page
Defendant/Appellant's Statement of Arrangements	A-1
Verbatim Report of Proceedings, Court's Oral Findings and Conclusions of Law, 3-2-2017	A-3A
Post-Trial Email from Plaintiff's Counsel to Trial Judge And Judge's Reply	A-17
Decision of the Court of Appeals panel	A-23
Order Denying Appellant's Motion for Reconsideration	A-26
RAP 1.2(a)	A-27
RAP 9.2	A-28
RAP 9.10	A-29

1
2
3
4
5
6
7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING
8
9

RICHARD THOMPSON, Plaintiff-Respondent, v. STEVEN T. LYNCH, Defendant-Appellant, and DOES 1-30, Defendants.	King Co Case # 16-2-04736-0 Division I Case # 76653-8-I DEFENDANT/APPELLANT'S STATEMENT OF ARRANGEMENTS **CLERK'S ACTION REQUIRED**

10
11
12
13
14
15
16
17
18
19
20
21 TO: Clerk, Division One of the Court of Appeals, and to
22 King County Superior Court Clerk, and to
23 Michael Boswell, counsel for plaintiff Thompson
24
25 John R. Muenster, attorney for defendant/appellant Steven Lynch, states
26 that on or about March 8, 2017, I ordered transcription of the original and one
27
28

MUENSTER & KOENIG
14940 SUNRISE DRIVE NE
BAINBRIDGE ISLAND, WASHINGTON 98110
(206) 501-9565
EMAIL: JMKK1613@AOL.COM

copy of the verbatim report of proceedings held on March 2, 2017 (the trial judge's decision on the case) from the transcriptionist(s) named below and arranged to pay the cost of transcription as follows: PAID.

Hearing date	Judge	Court Reporter/Transcriptionist
March 2, 2017	Alicia-Galvan	Flygare and Associates

The partial report has been ordered and completed. Pursuant to RAP 9.2(c), Appellant plans to present the following issues to the Court of Appeals for its consideration:

This contractual dispute between two former business partners was tried to the Superior Court sitting without a jury. The case concerned several documents signed by the parties and entries in the business check ledger made more than a decade ago. The words used in the documents are plain on their face. Despite this clarity, we believe the trial judge created her own erroneous interpretations of the documents in her ruling. We respectfully contend that the trial judge erred.

Dated this the 4th day of May, 2017.

Respectfully submitted:
MUENSTER AND KOENIG

By: S/ John R. Muenster
John R. Muenster, WSBA #6237
Of Attorneys for Defendant-Appellant
Steven Lynch

MUENSTER & KOENIG
14940 SUNRISE DRIVE NE
BAINBRIDGE ISLAND, WASHINGTON 98110
(206) 501-9565
EMAIL; JMKK1613@AOL.COM

1
2
3 CERTIFICATE OF SERVICE
4
5 The undersigned hereby certifies that on or about the 4th day of May, 2016, a true and correct copy of the foregoing document was filed with the Clerk of the Superior Court via ECF, filed with the Clerk of Division One of the Court of Appeals via hand delivery, and served via email and first class mail on opposing counsel. The transcript has been completed and will be filed with the clerk's office.
6
7
8
9 S/ John R. Muenster
10 Muenster & Koenig
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MUENSTER & KOENIG
14940 SUNRISE DRIVE NE
BAINBRIDGE ISLAND, WASHINGTON 98110
(206) 501-9565
EMAIL: JMKK1613@AOL.COM

A-3

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

RICHARD THOMPSON,	)	
Plaintiff,	)	Cause No: 16-2-04736-0 KNT
v.	)	
STEVEN LYNCH	)	
Defendant.	)	

Official record of proceedings
Held before the Honorable
Judge Veronica Alicea Galvan
Held on March 2, 2017
In Kent, Washington

Roger G. Flygare, CRR #2248
Flygare & Associates, Inc.
1715 South 324th Place, Suite 250
Federal Way, WA 98003
(253) 661-2711

A-3A

1

2 APPEARANCES

3

4 FOR THE PLAINTIFF:

5 Michael Allen Boswell, Attorney at Law

6 SWIGART LAW OFFICES PS

7 329 E. Main Street

8 Auburn, Washington 98002-5540

9 (253) 939-4556 Ext 0

10 mike@swigartlaw.com

11

12 FOR THE DEFENDANT:

13 John Rolfing Muenster

14 MUENSTER & KOENIG

15 14940 Sunrise Drive NE

16 Bainbridge Island, Washington 98110-1113

17 (206) 501-9565

18 Jmkk1613@aol.com

19

20

21

22

23

24

25

A-4

1 AUDIO BEGINS

2 * * * * *

3 JUDGE GALVAN: Okay, thank you, you may be seated.
4 Okay, this Court will enter Findings of Fact and
5 Conclusions of Law as follows:

6 The Court notes that there are, in this instance, five
7 checks that are at issue. There are the checks from
8 January of 2003 in the amount of $14,000 some odd dollars
9 and 86 cents. A subsequent April 13th of 2003 check
10 #2533 of $5,487.14. The two add up to $20,000. Also at
11 issue, is check number #2832, a $72,000, as well as
12 checks #3213 for $50,000 and #3737 for $50,000. And, how
13 these monies that were paid to Mr. Lynch should be
14 treated.

15 The Court finds that the CRS Limited Liability
16 Corporation was established in 1999. Let me make sure I
17 have the right --

18 Madame Bailiff, I left the books back there. Could
19 you possibly get those for me?

20 In 1999. That CRS was owned as 51% by a company or
21 corporation called STL as well as 49% by Mr. Richard
22 Thompson.

23 The Court further finds that on the day that CRS was
24 formed, STL Corporation was owned 100% by Mr. Steven
25 Lynch.

A-5

1 On September 11th of 2003, Mr. Thompson and Mr. Lynch,
2 in his capacity as an individual owner of STL, entered
3 into an agreement. That agreement is entitled action by
4 unanimous consent of shareholders of STL Incorporated, a
5 Washington Corporation.
6 Additionally, they entered into a shareholder by sell
7 agreement on the very same day. And attached to the
8 action by shareholders was -- were two exhibits. Exhibit
9 A, a promissory note, and Exhibit B, an amortization
10 schedule outlining payments that were to be made to Mr.
11 Lynch under the agreement.
12 The signatories, again, to those agreements were Mr.
13 Richard Thompson and Mr. Steven Lynch.
14 The agreements speak for themselves. The Court finds
15 that the agreement entitled action by unanimous consent
16 of shareholders states in pertinent part under paragraph
17 one:
18 "That a promissory note in an amount equal to the
19 excess value of equipment and cash heretofore paid,
20 loaned or contributed by Lynch to STL. The note
21 shall be payable in monthly payments of $5000, and
22 that the note, a trust and correct -- true and
23 correct copy -- (It says trust and correct, but --)
24 A trust and correct copy of the form of said note is
25 attached as Exhibit A to -- hereto. Since this plan

A-6

1 of capital withdrawals from STL was commenced in the
2 year 2002, and is ongoing, the original note balance
3 is calculated to show the amount remaining to be
4 paid."
5 Therefore, the Court finds that based upon that
6 language, the promissory note effective September 11th of
7 2003, that it was intent of the parties that effective
8 that date, $170,000 was outstanding.
9 The Court notes that the -- that this refers to
10 ongoing payments that were made in 2002, but the Court
11 knows that the amount of $170,000 according to the
12 language in this document indicates that the -- it is in
13 an amount equal to the excess value of equipment and cash
14 paid, loaned, or contributed by Lynch.
15 Based upon that, this Court finds that the November,
16 2003 payment to Mr. Lynch is and should have been applied
17 to that promissory note.
18 The parties agreed on September 11th of 2003 that the
19 outstanding balance owed and due to Mr. Lynch in writing
20 was $170,000, regardless of whatever capital had been
21 withdrawn before.
22 Furthermore, the Court notes that paragraph six, again
23 in reference to the note, while referring to less any
24 capital withdrawals by Lynch from either STL or CRS since
25 December 31st of 2002, that it -- it doesn't -- it's

A-7

1 contrary to the other paragraph that says that both
2 parties agree that $170,000 is owing on September 11th of
3 2003.
4 The Court's going to find that on September 11 --
5 again, September 11, 2003, $170,000 was owed to Mr. Lynch
6 inclusive of any outstanding loans, any outstanding
7 monies that were due to him, any outstanding equipment
8 value.
9 So, therefore, those payments of $72,000 are
10 applicable to that promissory note. The Court further
11 finds that the payments made of $50,000 in 2004 were also
12 applicable. And in 2005, were also applicable.
13 However, the Court cannot ignore the subsequent
14 addendum that was executed by the parties in which the
15 parties in 2006 agreed to certain terms. Specifically,
16 that the terms of sale from the contract amount of $5000
17 monthly would be reduced to $2,500 monthly, but that that
18 2,500, it was essentially guaranteed to Mr. Lynch through
19 June of 2015.
20 There is no evidence before this Court that that has
21 actually occurred. The evidence before this Court
22 indicates that payments of $2,500 a month may have
23 stopped in 2014. But, it is very clear from this
24 addendum that there was an agreement at least to pay him
25 through 2015.

A-8

1 That changes the terms of the original agreement via
2 this new writing.
3 What was the intent of the parties? Well, according
4 to the addendum the intent was to have him have a golden
5 parachute through June of 2015. Which means that we have
6 to recalculate what exactly has been paid in light of
7 this.
8 If the Court adds the $72,000 and the $50,000 and the
9 $50,000, it's $172,000 that was paid to Mr. Lynch. But,
10 the Court would also note that there is monies owing from
11 the failure to pay him from 2014 to 2015 at a rate of
12 $2,500 a month. So, those need to be reconciled.
13 I have not reconciled those numbers. I will reconcile
14 them in my written ruling. But, I wanted to let the
15 parties know where we stand.
16 So, just so that we're clear that the two checks in
17 January and April of 2003, the Court is not considering
18 as part of the payment on the promissory note. The Court
19 finds that the promissory note began with $170,000 on
20 September 11th, but all subsequent draws of capital from
21 CRS to Mr. Lynch were towards that promissory note.
22 And, that there was an agreed addendum that guaranteed
23 payment to Mr. Lynch from -- through -- through June of
24 2015 of $2,500 a month.
25 Questions?

A-9

1 MR. MUENSTER: The promissory note provided for
2 interest. Should we calculate that?
3 JUDGE GALVAN: At 2.92%.
4 MR. MUENSTER: Right. Starting from the time of
5 promissory note and --
6 JUDGE GALVAN: Well, if those payments were made, then
7 interest should be certainly calculated. But obviously,
8 it goes down significantly.
9 MR. MUENSTER: Okay.
10 JUDGE GALVAN: Because, the promissory note was paid
11 off pretty quickly.
12 MR. MUENSTER: Okay.
13 JUDGE GALVAN: If we look at the $72,000 that was
14 initially taken in November, plus the additional payments
15 on the list.
16 MR. MUENSTER: Okay. And, the start date -- just in
17 terms of your findings -- the start date on the Addendum
18 A, the time the Addendum A was signed in 2006.
19 JUDGE GALVAN: Correct.
20 MR. MUENSTER: Okay. So, we got $2,500 a month each
21 year until June, 2015. Correct?
22 JUDGE GALVAN: Correct.
23 MR. MUENSTER: Okay, I get it. We'll work on it then,
24 counsel and I will work on it, see what we can come up
25 with. And, I'll --

A-10

1 JUDGE GALVAN: And, the Court will work on it as well.
2 But, just so that we are clear, I show payments of
3 $72,000. The parties conceded payments of $25,000 will
4 be made towards the promissory note. $15,000 were made
5 towards the promissory note. $20,000 were made to the
6 promissory note. So, the promissory note which was the
7 one that was the interest driven note.
8 MR. MUENSTER: Right.
9 JUDGE GALVAN: Was paid off rather quickly. So,
10 interest on that would probably be very minimal.
11 MR. MUENSTER: Okay. And another question: The
12 $20,000 that was repaid, that was repaid to Steve in 2003
13 was the return of capital, owner initial investment.
14 JUDGE GALVAN: The Court did not consider that as
15 return of capital owner initial investment payment on the
16 promissory note.
17 MR. MUENSTER: Okay, so that --
18 JUDGE GALVAN: The Court considered any payments after
19 September 11th of 2003. Any withdrawal of capital after
20 September 11th of two -- the Court found that the
21 promissory note was $170,000 at the time of the execution
22 of the agreement.
23 MR. MUENSTER: Okay.
24 JUDGE GALVAN: Pursuant to the language of the
25 agreement. So, the $20,000 was paid before that.

A-11

1 MR. MUENSTER: Right.

2 JUDGE GALVAN: So, that is not being construed against

3 the promissory note.

4 MR. MUENSTER: Okay, one more, maybe it's a dumb

5 question. But, the second $50,000, Mr. Hawthorpe

6 (phonetic) testified, $5,000 -- or $5,500 went to Mr.

7 Lynch, and $44,500 was allocated towards payment of the

8 promissory note. Is the Court?

9 JUDGE GALVAN: The Court finds that all $50,000 are

10 payment towards the promissory note.

11 MR. MUENSTER: Okay.

12 JUDGE GALVAN: Based upon this: Any capital

13 withdrawal pursuant to language of the agreement is a

14 payment.

15 MR. MUENSTER: So, you're adding the 72, the 50, --

16 JUDGE GALVAN: And the 50.

17 MR. MUENSTER: And the 50. And, the -- and then,

18 we'll -- we'll, I guess we'll figure out whether the 44-5

19 has already been credited or not.

20 JUDGE GALVAN: Correct.

21 MR. MUENSTER: Okay, so 44-5 has already been

22 credited. What your finding is that 72 plus 50 plus

23 5,500 emanates from the promissory note obligation. And

24 then, there's an obligation that we need to determine

25 that arises from Addendum A.

A-12

1 JUDGE GALVAN: Yes.

2 MR. MUENSTER: Okay.

3 JUDGE GALVAN: But it may be -- there may have been,

4 in terms of some of the monies prior -- so, yes, you need

5 to figure that out.

6 MR. MUENSTER: Right. And there are, as you can see,

7 there are regular payments stretching out to, what, 2014

8 and so forth. Some of them are 2,500, some are smaller,

9 some are larger. So, it looks like we'll get our

10 calculators out and work it out.

11 JUDGE GALVAN: Yeah, I was going to get mine out, but

12 I didn't want to keep you any longer.

13 MR. MUENSTER: Okay.

14 JUDGE GALVAN: So, --

15 MR. MUENSTER: Okay, thank you, for that, Your Honor.

16 JUDGE GALVAN: The Court will be -- so, if you -- I'm

17 going to ask the parties to calculate it. Of course the

18 Court will be calculating it as well in terms of what is

19 owed.

20 MR. MUENSTER: One more dumb question: What timeframe

21 would you like us to confer and, I guess, set a dead --

22 date for the answer of findings.

23 JUDGE GALVAN: How about next Wednesday. Does that

24 work for people?

25 MR. MUENSTER: I was wondering if we could put it back

A-13

1 longer, because this kind of puts a different light on
2 things. And, maybe we can save some time. Because, I
3 don't -- I'm not sure how -- who comes out ahead,
4 actually, with this.
5 JUDGE GALVAN: You may all come out in the wash. But,
6 one of the other things that has to happen is: The Court
7 also finds, based upon this, that Mr. Thompson now is the
8 owner of STL under the terms of the agreement. And there
9 should be specific performance in terms of the stock
10 transfer of that.
11 MR. MUENSTER: Okay. Okay. Okay, well that's
12 important for us to know. And, I'd ask for two weeks
13 out.
14 JUDGE GALVAN: Two weeks out? That works for the
15 Court.
16 MR. MUENSTER: Like on a Friday, maybe. Do you --
17 when do you hear --
18 JUDGE GALVAN: Summary judgments?
19 CLERK: We can do Friday the 7th at 8:30.
20 JUDGE GALVAN: Okay.
21 MR. MUENSTER: Friday the 7th at 8:30.
22 JUDGE GALVAN: Yeah, St. Patrick's Day.
23 MR. BOSWELL: At 8:30?
24 JUDGE GALVAN: 8:30.
25 CLERK: 8:30 a.m. A half hour (inaudible)?

A-14

1 JUDGE GALVAN: Um-huh.

2 MR. MUENSTER: Okay. 8:30, and thank you, Your Honor.

3 JUDGE GALVAN: Thank you.

4 MR. MUENSTER: And thank you for your patience.

5 JUDGE GALVAN: We'll see you then, thank you, all,

6 ditto.

7

8 * * * * *

9 AUDIO ENDS

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1A-15

1
2 IN RE: Richard Thompson, v. Steven Lynch
3 Cause No. 16-2-04736-0 KNT
4
5
6
7
8
9 AFFIDAVIT
10 I, Roger G. Flygare, do certify that the audio recording
11 provided to Roger G. Flygare & Associates, Inc. of the
12 proceedings held before the Honorable Judge Veronica Galvan
13 in The Superior Court Of Kent for King County, Washington,
14 was transcribed under my direction to the best of our
15 ability.
16
17
18
19
20
21
22 Roger G. Flygare, CCR #2248
23 Exp. 2/27/18
24
25

A-16

Hon. Veronica Alicia-Galván

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

RICHARD THOMPSON, Plaintiff, v. STEVEN T. LYNCH, and DOES 1 through 30, Defendants.	NO. 16-2-04736-0 KNT POST-TRIAL EMAIL FROM PLAINTIFF'S COUNSEL TO TRIAL JUDGE AND JUDGE'S REPLY

Two weeks after trial and the Court's oral decision in the case, counsel for plaintiff Thompson emailed the trial judge. The trial judge replied 30 minutes later. A copy of the exchange, March 15, 2017, is attached hereto as Appendix A and by this reference incorporated herein.

Dated this the 1st day of May, 2017.

Respectfully submitted,

MUENSTER & KOENIG
By: S/John R. Muenster
Attorney at Law, WSBA # 6237
Of Attorneys for Steven Lynch

MUENSTER & KOENIG
14940 SUNRISE DRIVE NE
BAINBRIDGE ISLAND, WASHINGTON 98110
(206) 501-9565
EMAIL: JMKK1613@AOL.COM

A-7

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on or about the 1st day of May, 2017, a true and correct copy of the foregoing document was served on opposing counsel via email and first class mail.

S/ John R. Muenster
Muenster & Koenig

A-18

MUENSTER & KOENIG
14940 SUNRISE DRIVE NE
BAINBRIDGE ISLAND, WASHINGTON 98110
(206) 501-9565
EMAIL: JMKK1613@AOL.COM

Appendix A

A-19

From: Court, Galvan <Galvan.Court@kingcounty.gov>
To: Michael Boswell <mike@swigartlaw.com>; swigartlaw <swigartlaw@hotmail.com>; John Muenster <jmkk1613@aol.com>
Cc: Smoter, Janie <Janie.Smoter@kingcounty.gov>
Subject: RE: Thompson v Lynch
Date: Wed, Mar 15, 2017 2:54 pm

Hello,

Judge Galvan states: "The court finds that the terms of the parties' original agreement was that $170,000 plus $250,000 was to be paid by Mr. Thompson to Mr. Lynch. The addendum entered into by the parties essentially changed the terms of the agreement so instead of $250,000 being paid, the addendum calls for $255,000 to be paid, that is monthly payments for 8 years and 6 months beginning in January 2007. The court did not find that the addendum was an agreement to pay an additional $255,000, and at no time did the parties negotiate such terms. The addendum, however did change the original amount from $250,000 to $255,000. Since September 2003 payments totaling $478,000 have been paid towards these agreements. The court found that any payments prior to September 2003 were not payments toward the agreement of the parties. Mr. Thompson owes no monies to Mr. Lynch and the terms of the agreement have been satisfied. Additionally, Mr. Lynch is responsible for reimbursement of any funds overpaid to him by Mr. Thompson through CRS. At this time the court calculates that overpayment to be $53,000."

Please submit your word orders as soon as possible. The Court will take proposals on any outstanding interest that had been owed as well.

Thank you!
Jaymie Bennett
Bailiff for Judge Veronica Alicea Galván
King County Superior Court W-764

From: Michael Boswell [mailto:mike@swigartlaw.com]
Sent: Wednesday, March 15, 2017 2:24 PM
To: swigartlaw@hotmail.com; John Muenster <jmkk1613@aol.com>; Court, Galvan <Galvan.Court@kingcounty.gov>
Subject: RE: Thompson v Lynch

Good Afternoon:

This is a follow up with the Court regarding her oral findings of fact and conclusions of law from the bench. In her findings, the Court found that Mr. Thompson was now the owner of STL under the terms of the agreement and there should be specific performance terms of the stock transfer in the written ruling. The Court stated from the bench that it had not reconciled the numbers, but presumably, because of the Court's finding that Mr. Thompson is now the owner of the shares, that the Court's preliminary findings regarding the amounts paid had shown that Mr. Lynch had been paid in full, thus calling for the transfer of the stock. If the Court could clarify as to whether the amounts paid to Mr. Lynch and added by the Court in its findings, Check # 2832 - $72,000.00, Check # 3213 - $50,000.00, Check # 3737 -

A-20

$50,000.00, and the remaining checks which are not disputed and issued after the signing of Addendum A in December of 2006, in the amount of $166,500.00, for a total of $338,500.00, were sufficient to meet the obligations between the parties as it relates to any interest owed under the Promissory Note and Addendum A ($2,500.00 x 8 years, 5 months = $252,500.00), and that no other payments were required to be made to Mr. Lynch.

If you could relay this question to the Court for clarification, it would be appreciated.

Thank you.

Mike Boswell

SWIGART LAW OFFICES, P.S

Michael A. Boswell, Esq

329 East Main Street
Auburn, Washington 98002
Phone - 253) 939-4556
Fax - 253) 939-4559

The information in this email message may be protected by the attorney-client privilege, work-product doctrine, or other confidentiality protection. It is intended for the use of the recipient named above (or the employee/agent responsible for delivering it to the intended recipient). If you received this communication in error, you are notified that any dissemination, distribution, or copying of this communication is strictly prohibited. Please notify the sender by telephone at 253-939-4556 ext. 0, and delete the message immediately if you received this message in error. Thank You.

TAX ADVICE NOTICE: IRS Circular 230 requires us to advise you that if this communication or any attachment contains any tax advice, the advice is not intended to be used and cannot be used for the purpose of avoiding federal tax penalties. A taxpayer may rely on professional advice to avoid federal tax penalties only if the advice is reflected in a comprehensive tax opinion that conforms to stringent requirements. Please contact us if you have any questions about Circular 230 or would like to discuss our preparation of an opinion that conforms to IRS rules.

On March 15, 2017 at 2:07 PM "Court, Galvan" <Galvan.Court@kingcounty.gov> wrote:

Hello,

I don't see that I have received these, can you please email them to me ASAP?

Thank you!

A-21

Jaymie Bennett

Bailiff for Judge Veronica Alicea Galván

King County Superior Court W-764

From: Court, Galvan
Sent: Wednesday, March 08, 2017 8:33 AM
To: 'John Muenster' <jmkk1613@aol.com>; mike@swigartlaw.com; swigartlaw@hotmail.com
Subject: Thompson v Lynch

Hello,

Please submit all proposed orders to me in WORD format.

Thank you!

Jaymie Bennett

Bailiff for Judge Veronica Alicea Galván

King County Superior Court W-764

A-22

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON

2018 APR 30 AM 11: 13

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

RICHARD THOMPSON, Respondent, v. STEVEN T. LYNCH Appellant, and DOES 1 through 30, Defendants.	No. 76653-8-I DIVISION ONE UNPUBLISHED OPINION FILED: April 30, 2018

TRICKEY, J. — Richard Thompson sued Steven Lynch for breach of contract. The trial court found in Thompson's favor, and Lynch appeals. Because Lynch submitted an incomplete record and violated the Rules of Appellate Procedure (RAP), we affirm.

FACTS

Lynch and Thompson were business partners who signed agreements[1] to restructure and transfer ownership of their businesses. Thompson subsequently sued for breach of contract. Following a bench trial, the trial court found that Lynch had been overpaid and had failed to comply with the terms of the agreements.

[1] The parties signed two agreements, the "SHAREHOLDER AGREEMENT (BUY-SELL AGREEMENT)" and the "ACTION BY UNANIMOUS CONSENT OF SHAREHOLDERS." Clerk's Papers (CP) at 10-16, 19-22.

Lynch was ordered to reimburse Thompson for the excess payment and transfer ownership as agreed.

Lynch appeals.

ANALYSIS

Lynch argues that the trial court erred in many of the findings of fact. But Lynch has provided an incomplete record for review on appeal. Specifically, he failed to designate the testimony and evidence from the bench trial, as required by RAP 9.2(b).

The incomplete record compromises the ability of the appellate court to review the trial court's findings of fact for substantial evidence. In re Custody of A.F.J., 161 Wn. App. 803, 806 n.2, 260 P.3d 889 (2011), aff'd, 179 Wn.2d 179, 314 P.3d 373 (2013). Furthermore, when an appellant fails to designate a complete record for review,[2] the trial court's findings are treated as verities on appeal. See A.F.J., 161 Wn. App. at 806 n.2; Happy Bunch, LLC v. Grandview N., LLC, 142 Wn. App. 81, 90, 173 P.3d 959 (2007).

Here, Lynch only provided the trial court's oral ruling, failing to designate the three days of trial testimony. As a result of the incomplete record before us,

---

[2] Lynch contends that a full transcript was not required for de novo review of a document based contract dispute. Lynch has challenged 33 of the trial court's 51 findings of fact. Findings of fact are reviewed for substantial evidence. Sunnyside Valley Irr. Dist. v. Dickie, 149 Wn.2d 873, 879, 73 P.3d 369 (2003). Therefore, Lynch's challenges to the trial court's findings of fact are subject to review for substantial evidence, rather than de novo review.

Lynch also argues that he submitted a statement of arrangements designating a partial transcript and, therefore, Thompson could have ordered the additional reports of proceedings if desired. "The party presenting an issue for review has the burden of providing an adequate record to establish such error." State v. Sisouvanh, 175 Wn.2d 607, 619, 290 P.3d 942 (2012); see RAP 9.2(b). Thus, Lynch had the burden of providing the reports of proceedings necessary to review his alleged errors, and Thompson was not required to order additional records.

the trial court's findings of fact are verities on appeal. Therefore, Lynch's factual arguments have no merit.

Lynch also assigns errors to several of the trial court's conclusions of law. But Lynch fails to make legal arguments in support of these challenges as required by RAP 10.3(a)(6). Without citations to authority and reasoned legal argument, these claims are insufficient to merit judicial consideration. Joy v. Dep't of Labor & Indus., 170 Wn. App. 614, 629, 285 P.3d 187 (2012). Therefore, we decline to reach the merits of Lynch's challenges to the trial court's conclusions of law.

Thompson requests his reasonable attorney fees and costs on appeal under the terms of the shareholder agreement between the parties. The trial court determined that Thompson was the prevailing party and entitled to attorney fees under the terms of the shareholder agreement. Thompson is again the prevailing party because Lynch has not raised meritorious arguments on appeal. We award Thompson his reasonable attorney fees and costs on appeal.

Affirmed.

Trickey, J

WE CONCUR:

Spearman, J.

Becker, J.

FILED
6/7/2018
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON DIVISION ONE

RICHARD THOMPSON, Respondent, v. STEVEN T. LYNCH Appellant, and DOES 1 through 30, Defendants.	No. 76653-8-I ORDER DENYING MOTION FOR RECONSIDERATION

The appellant, Steven T. Lynch, has filed a motion for reconsideration. The court has taken the matter under consideration. A majority of the panel has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

FOR THE COURT:

Trickey, J

A-26

RULE 1.2
INTERPRETATION AND WAIVER OF RULES BY COURT

(a) Interpretation. These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. Cases and issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands, subject to the restrictions in rule 18.8(b).

RAP 9.2

VERBATIM REPORT OF PROCEEDINGS

(a) Transcription and Statement of Arrangements. If the party seeking review intends to provide a verbatim report of proceedings, the party should arrange for transcription of and payment for an original and one copy of the verbatim report of proceedings within 30 days after the notice of appeal was filed or discretionary review was granted. The party seeking review must file with the appellate court and serve on all parties of record and all named court reporters or authorized transcriptionists a statement that arrangements have been made for the transcription of the report and file proof of service with the appellate court. The statement must be filed within 30 days after the notice of appeal was filed or discretionary review was granted. The party must indicate the date that the report of proceedings was ordered, the financial arrangements which have been made for payment of transcription costs, the name of each court reporter or authorized transcriptionist preparing a verbatim report of proceedings, the hearing dates, and the trial court judge. If the party seeking review does not intend to provide a verbatim report of proceedings, a statement to that effect should be filed in lieu of a statement of arrangements within 30 days after the notice of appeal was filed or discretionary review was granted and served on all parties of record.

(b) Content. A party should arrange for the transcription of all those portions of the verbatim report of proceedings necessary to present the issues raised on review. A verbatim report of proceedings provided at public expense should not include the voir dire examination or opening statements unless appellate counsel has reason to believe those sections are relevant to the appeal or they are requested by the client for preparing a Statement of Additional Grounds. If the party seeking review intends to urge that a verdict or finding of fact is not supported by the evidence, the party should include in the record all evidence relevant to the disputed verdict or finding. If the party seeking review intends to urge that the court erred in giving or failing to give an instruction, the party should include in the record all of the instructions given, the relevant instructions proposed, the party's objections to the instructions given, and the court's ruling on the objections. Unless the parties agree that a cost bill will not be filed under RAP 14.2, the party claiming indigency on appeal should include in the record all portions of the trial court proceedings relating to all trial court decisions on indigency and relating to any trial court decisions on the offender's current or likely future ability to pay discretionary legal financial obligations.

(c) Notice of Partial Report of Proceedings and Issues. If a party seeking review

arranges for less than all of the verbatim report of proceedings, the party should include in the statement of arrangements a statement of the issues the party intends to present on review. Any other party who wishes to add to the verbatim report of proceedings should within 10 days after service of the statement of arrangements file and serve on all other parties and the court reporter or authorized transcriptionist a designation of additional parts of the verbatim report of proceedings and file proof of service with the appellate court. If the party seeking review refuses to provide the additional parts of the verbatim report of proceedings, the party seeking the additional parts may provide them at the party's own expense or apply to the trial court for an order requiring the party seeking review to pay for the additional parts of the verbatim report of proceedings.

RAP 9.10
CORRECTING OR SUPPLEMENTING RECORD

If a party has made a good faith effort to provide those portions of the record required by rule 9.2(b), the appellate court will not ordinarily dismiss a review proceeding or affirm, reverse, or modify a trial court decision or administrative adjudicative order certified for direct review by the superior court because of the failure of the party to provide the appellate court with a complete record of the proceedings below. If the record is not sufficiently complete to permit a decision on the merits of the issues presented for review, the appellate court may, on its own initiative or on the motion of a party (1) direct the transmittal of additional clerk's papers and exhibits or administrative records and exhibits certified by the administrative agency, or (2) correct, or direct the supplementation or correction of, the report of proceedings. The appellate court or trial court may impose sanctions as provided in rule 18.9(a) as a condition to correcting or supplementing the record on review. The party directed or permitted to supplement the record on review must file either a designation of clerk's papers as provided in rule 9.6 or a statement of arrangements as provided in rule 9.2 within the time set by the appellate court.

[Originally effective July 1, 1976; amended effective September 1, 1994; September 1, 1998; September 1, 2015.]

MUENSTER & KOENIG

July 19, 2018 - 2:22 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	96096-8
Appellate Court Case Title:	Richard Thompson v. Steven Lynch, et al.
Superior Court Case Number:	16-2-04736-0

The following documents have been uploaded:

- 960968_Letters_Memos_20180719141705SC886510_6835.pdf
  This File Contains:
  Letters/Memos - Other
  The Original File Name was Letter to Supreme Court clerk re amended petition with appendix.pdf
- 960968_Other_20180719141705SC886510_5334.pdf
  This File Contains:
  Other - Amended Petition for Review with Appendix
  The Original File Name was STL Amended Petition for Review.pdf

A copy of the uploaded files will be sent to:

- doug@dgandassociates.com

Comments:

Sender Name: John Muenster - Email: jmkk1613@aol.com
Address:
14940 SUNRISE DR NE
BAINBRIDGE ISLAND, WA, 98110-1113
Phone: 206-501-9565

Note: The Filing Id is 20180719141705SC886510