

FILED
SUPREME COURT
STATE OF WASHINGTON
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No. 101822-3

Court of Appeals, Division III No.: 38234-6-III

IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

IRWIN LAW FIRM, INC., a Washington State Legal Entity;
JAMES F. IRWIN; and CHRISTAL OLIVIA IRWIN, J.D.,

Appellants,

vs.

FERRY COUNTY; NATHAN DAVIS, Ferry County
Commissioner; MICHAEL BLANKENSHIP, Ferry County
Commissioner; JOHNNA EXNER, Ferry County
Commissioner; and KATHRYN ISABEL BURKE, personally
and in her official capacity as Ferry County Prosecuting
Attorney,

Respondents.

APPEAL FROM THE SUPERIOR COURT FOR
OKANOGAN COUNTY

Hon. Brian Huber
Cause No.: 19-2-00380-24

RESPONDENT KATHRYN BURKE'S ANSWER TO
PETITION FOR REVIEW

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I. INTRODUCTION AND IDENTITY OF RESPONDENTS

Respondent Kathryn Burke respectfully requests that this Court deny the petition for review. There is no basis under RAP 13.4(b)—nor do Petitioners allege any valid basis—for this Court to accept review.

II. COUNTERSTATEMENT OF THE CASE

In 2015, petitioner James Irwin (“Mr. Irwin”) entered into a contract with the Ferry County Board of Commissioners (“FCBC”) to provide public defense services. Mr. Irwin’s contract with FCBC did not allow for assignment or transfer of the contract.

In April 2016, Mr. Irwin informed the FCBC that his wife, Christal Irwin (“Ms. Irwin”), who worked with him at the Irwin Law Firm, would be taking over his contract with FCBC while Mr. Irwin took a job with the prosecutor’s office. FCBC did not consent to this assignment.

When FCBC refused to allow Ms. Irwin to take over Mr.

Irwin's contract, Ms. Irwin first protested and then, when that failed, applied for a new indigent defense contract with Ferry County and then a deputy prosecutor position with Ferry County Prosecuting Attorney Kathryn Burke. Ms. Irwin was not awarded the contract and was not hired for the prosecutor position.

Petitioners then brought an action against Respondents alleging, among other things, tort claims, breach of contract, and violations of the Open Public Meetings Act.

After failing to timely respond or appear at the hearing for the defendants' dispositive motions, the trial court granted Respondents' motions and Petitioners' Complaint was dismissed. On appeal, the court affirmed the dismissal.

Petitioners now seek reconsideration, alleging that the lower court decisions were influenced by implicit and explicit bias against Ms. Irwin.

III. ARGUMENT

There are no grounds for review under RAP 13.4(b), which provides as follows:

A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or if the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Petitioners acknowledge this standard in their petition, but they do not provide any supported argument as to how those standards are met here. *See* Petition at 22.

A. No conflict with decisions of this Court

Although Petitioners state that “the decision of the Court of Appeals is in conflict with several decisions of the Supreme Court,” petitioners do not identify any conflicting decisions.

B. No conflict with decisions of the Court of Appeals

Petitioners do not contend that the decisions in this matter are in conflict with any published decisions of the Court of Appeals.

C. No question of law under the United States or Washington constitutions

Petitioners do not identify any significant question of law under the United States or Washington constitutions.

D. No issue of substantial public interest identified

Although Petitioners argue that their “petition involves an issue of substantial public interest that should be determined by the Supreme Court,” they do not actually identify the supposed public interest at issue. Petitioners devote the majority of their petition to arguing that the lower court decisions were biased, and will likely argue that bias is the “substantial public interest” contemplated in RAP 13.4(b). But Petitioners do not link bias to the RAP 13.4(b) factors, and the majority of Petitioners’ argument about bias focuses on the trial court decisions, not that of the appellate court.

Nor do Petitioners address the reasoning set forth in the initial denial of their appeal, wherein the court provided a firm rationale for upholding the lower court’s decision entirely

unrelated to bias: the settlement agreement that Petitioners sought to enforce was unsigned; Petitioners' evidence used in support of their summary judgment motion was inadmissible; several claims were barred due to statutes of limitations and failure to make a tort claim notice; the contract at issue was governed by the plain meaning of the contract language; issues with timeliness; and Petitioners' failure to comply with the rules regarding continuances.

IV. CONCLUSION

Petitioners do not establish that the opinion conflicts with any prior decision by the court of appeals or this Court, nor does the petition raise any issue of substantial public interest. This Court should decline review.

I certify that this answer is in 14 point Times New Roman font and contains 741 words, in compliance with the rules of Appellate Procedure. RAP 18.17(b).

Dated: April 12, 2023

SCHWABE, WILLIAMSON & WYATT,
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CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct: That on the 24th day of April, 2023, I arranged for service of the foregoing DEFENDANT KATHRYN BURKE'S ANSWER TO PETITION FOR REVIEW to the parties to this action as follows:

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/s/ Rosa Ostrom
Rosa Ostrom, WSBA #55933

SCHWABE WILLIAMSON & WYATT, P.C.

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Transmittal Information

Filed with Court: Supreme Court
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Appellate Court Case Title: Irwin Law Firm, Inc., et al. v. Ferry County, et al.
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