NO. 89674-7

SUPREME COURT
OF THE STATE OF WASHINGTON

COURT OF APPEALS NO. 309029-III

MICHAEL HENNE,

Plaintiff/Respondent,

v.

CITY OF YAKIMA, a Municipal Corporation,

Defendant/Petitioner.

DEFENDANT/PETITIONER'S REPLY BRIEF

SENT ON 1/15/14 VIA E-MAIL FOR FILING IN SUPREME COURT OF THE STATE OF WASHINGTON

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A. INTRODUCTION

Plaintiff's answer to the City's petition for review raises an issue as to the mootness of the City's appeal. That argument continues to mischaracterize the record below and should be rejected. No reasonable person could believe that the City acquiesced to removal of the offending allegations as a way of avoiding the motion to strike. The City unequivocally objected to any attempt by Plaintiff to eschew the effect of the anti-SLAPP statute by amendment/dismissal of portions of the Complaint. Therefore, the Court should find that the City's petition for review is properly before it.

Plaintiff's cross-petition asks this Court to ignore longstanding rules of statutory construction in order to hold that the City is not an entity within the terms of the anti-SLAPP statute, RCW 4.24.525. That is not appropriate. This Court's primary duty in interpreting any statute is to discern and implement the intent of the Legislature based upon the statute's plain language and ordinary meaning. The law is clear that

unambiguous statutes do not require judicial construction. The anti-SLAPP statute could not be more unambiguous as to its scope. It unequivocally and broadly states that its procedural protections apply to "corporations" and "any other . . . legal entity". There is no dispute the City of Yakima is a municipal corporation and a legal entity, and therefore the protections of RCW 4.24.525 are available to it. Accordingly, the Court of Appeals properly held that the City was a "person" for purposes of the anti-SLAPP statute and consequently had standing to bring the motion to strike. Because Plaintiff has not satisfied any of the criteria justifying review under RAP 13.4, this Court should deny his cross-petition.

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B. ARGUMENT IN REPLY TO PLAINTIFF'S ANSWER

1. PLAINTIFF MISCHARACTERIZES THE RECORD; THE CITY DID IN FACT OPPOSE PLAINTIFF'S ATTEMPT TO BYPASS THE ANTI-SLAPP STATUTE BY AMENDING THE COMPLAINT AND DISMISSING CERTAIN ALLEGATIONS

Plaintiff argues the City's appeal is moot because it "acquiesced" to and allowed the amended complaint. (Pl's. Answer 5 ¶ 1). That is the same argument Plaintiff made to the Court of Appeals. (Resp. Br. 6-8). This argument is incorrect and mischaracterizes the trial court record.

The record is clear the City vehemently objected to Plaintiff's attempt to bypass the anti-SLAPP statute by removing the offending allegations, and pointed out to the trial court in its initial and reply memoranda that the law forecloses that tactic. (CP 26, 171-181). At oral argument, the City did not oppose the motion to amend subject to the reservation of its right to argue that the Motion to Strike could not be avoided by such amendment or dismissal. (CP 364). It is plain from the

record that the City preserved that objection at the hearing. When discussing the motion to amend, the trial court asked counsel for the City if he had any objections "other than wanting to preserve the City's claim for attorney's fees, penalties and so on . . . ." (CP 364) (emphasis added).

The City specifically pointed out to the trial court that it wanted an order entered notwithstanding the amendment because it was unclear whether any offending allegations remained after the amendment. (CP 294-96, 364). Also, Plaintiff asserted for the first time in the amended complaint allegations that the City breached its policies and procedures. (CP 146 ¶¶ 3.18, 3.20; CP 148-49 ¶¶ 4.5-4.7; CP 174). Thus, based on the trial court's qualification, the amendment allowed Plaintiff to assert these new causes of action while preserving the City's right to attorney's fees and the statutory penalty. Hence, the City urged the trial court at the time of the hearing to enter its proposed order granting the motion to strike to cover any claims remaining in the vague provisions of the amended

complaint that were based on the internal investigations of Plaintiff. (CP 294-296, 364).

Further, Plaintiff's position ignores the fact that the City unequivocally argued to the trial court that a party cannot avoid the effect of the anti-SLAPP statute through the artifice of dismissal/amendment of the complaint to remove the claims implicating the statute. (CP 26). The City pointed out that the law bars such stratagems. (CP 177-179). It is clear that the City did not agree that the allowance of the amended complaint vitiated its motion to strike.

C. ARGUMENT IN ANSWER TO PLAINTIFF'S CROSS-PETITION FOR REVIEW

1. STANDARD OF REVIEW

RAP 13.4(b) states that a petition for review will be accepted by this 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 another decision of the Court of Appeals; or

> (3) If a significant question of law under the Constitution of the State of Washington or of 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.

Plaintiff's cross-petition does not satisfy, nor even address, any of these criteria. As noted below, there is no issue as to the plain meaning of the anti-SLAPP statute and consequently there is no conflict among the Courts of Appeal or with this Court's prior decisions. Moreover, Plaintiff does not even argue his cross-petition raises any issues of substantial public interest or of significant constitutional magnitude.

2. THE PLAIN LANGUAGE OF RCW 4.25.525 APPLIES TO MUNICIPAL CORPORATIONS SUCH AS THE CITY

Plaintiff's cross-petition rests on a single argument: the City is not a "person" for purposes of the anti-SLAPP statute because the "government" (*i.e.*, the City) is not part of the "public" (*i.e.*, citizens) the statute was intended to protect. (Pl's. Answer 8-12). Plaintiff asks this Court to construe RCW

4.24.525 so that its protections apply only to persons seeking redress against the government. (Id.). But Plaintiff's attempts to eschew the impact of the anti-SLAPP statute are unconvincing. There is no reason for this Court to even address this issue because the language in RCW 4.24.525 is clear and unequivocally applies to the City as a municipal corporation and legal entity.

Washington has longstanding, well-defined rules regarding statutory construction. The Court's "primary duty in interpreting any statute is to discern and implement the intent of the legislature". Nat'l Elec. Contractors Ass'n v. Riveland, 138 Wn.2d 9, 19, 978 P.2d 481 (1999). "Our starting point must always be 'the statute's plain language and ordinary meaning.'" State v. J.P., 149 Wn.2d 444, 450, 69 P.3d 318 (2003) (quoting Riveland, 138 Wn.2d at 19)).

The initial principle of statutory interpretation is that courts do not construe unambiguous statutes. "In judicial interpretation of statutes, the first rule is 'the court should

assume that the legislature means exactly what it says. Plain words do not require construction.'" Davis v. State ex rel. Dep't of Licensing, 137 Wn.2d 957, 963-64, 977 P.2d 554 (1999) (quoting State v. McCraw, 127 Wn.2d 281, 288, 898 P.2d 838 (1995)). "When the plain language is unambiguous—that is, when the statutory language admits of only one meaning—the legislative intent is apparent, and we will not construe the statute otherwise." J.P., 149 Wn.2d at 450. "Just as we 'cannot add words or clauses to an unambiguous statute when the legislature has chosen not to include that language,' we may not delete language from an unambiguous statute." Id. (quoting State v. Delgado, 148 Wn.2d 723, 727, 63 P.3d 792 (2003).

The plain language of RCW 4.24.525 demonstrates that it applies to municipal corporations such as the City. There is no ambiguity. RCW 4.24.525 states that its procedural protections apply to any "person" as that term is defined within the statute. RCW 4.24.525(1)(c). The statute then broadly defines the term "person" to mean "an individual, corporation, business trust,

estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity . . . ." RCW 4.24.525(1)(e) (emphasis added). Broader language could not have been used.

This expansive definition clearly encompasses municipal corporations. Courts must "presume the legislature says what it means and means what it says". State v. Costich, 152 Wn.2d 463, 470 (2004). On its face RCW 4.24.525 is plain and unambiguous. It does not allow for differing meanings; its meaning and language are plain and clear. Thus it does require construction. Sidis v. Brodie/Dohrmann, Inc., 117 Wn.2d 325, 329, 815 P.2d 781 (1991) ("Plain words do not require construction."). The Legislature clearly included "corporations" and "any other . . . legal entity" in the definition of "person," and did not exclude municipal corporations (or any other type of entity) from that definition. "It is not the role of the judiciary to second-guess the wisdom of the legislature . . . ." Rousso v. State, 170 Wn.2d 70, 75, 239 P.3d 1084 (2010).

There is no dispute in this case that the City is a municipal corporation and a legal entity. Thus, under the plain language of the statute, it is entitled to the anti-SLAPP procedural protections. Nothing in the statute or in the authorities Plaintiff cites suggests that the anti-SLAPP statute does not apply to governmental agencies. The only way Plaintiff's argument is persuasive is if the Court ignores the plain, ordinary meaning of the statute.

Plaintiff mistakenly relies on the legislative intent of an entirely different (and earlier enacted) statute, RCW 4.24.510. RCW 4.24.510 is a statute that creates immunity from civil liability for persons who make certain communications to state, federal, or local agencies.

Importantly, RCW 4.24.510 is significantly narrower than the later enacted RCW 4.24.525. The most crucial distinction between the two statutes is that RCW 4.24.510 does not contain the expansive definition of "person" found in RCW 4.24.525 that specifically encompasses all legal entities. In fact,

RCW 4.24.510 does not define the term "person" at all. RCW 4.24.525, on the other hand, provides a clear definition. RCW 4.24.525 is the more recent statute (enacted in 2010) and more specific. RCW 4.24.510 is therefore irrelevant to this discussion. Hallauer v. Spectrum Properties, Inc., 143 Wn.2d 126, 146, 18 P.3d 540 (2001) (generally the more specific statute will prevail, unless there is legislative intent that the more general statute controls).

Because RCW 4.24.525 is unambiguous, it does not require construction. This Court should give effect to the plain, ordinary language of RCW 4.24.525 and affirm the decision of the Court of Appeals that the City is a person for purposes of the anti-SLAPP statute. Consequently, it should deny Plaintiff's cross-petition.

D. CONCLUSION

This Court should grant the City's petition for review, reverse the dismissal of the appeal, and remand this case for further proceedings consistent with this Court's Opinion. This

Court should also deny Plaintiff's cross-petition for review. Plaintiff has not met any of the criteria justifying review set forth in RAP 13.4. Plaintiff has raised no issues of substantial public interest or of constitutional import. Moreover, the Court of Appeals' decision does not conflict with the lower courts or with this Court as to the meaning and application of RCW 4.24.525. Consequently, review of the Court of Appeals' decision that the City is a "person" for purposes of the anti-SLAPP statute is not merited.

RESPECTFULLY SUBMITTED this 15th day of January, 2014.

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SUPREME COURT
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MICHAEL HENNE,	)
	) **NO. 89674-7**
	) **COURT OF APPEALS NO. 309029-III**
Plaintiff/Respondent,	)
	) **CERTIFICATE OF SERVICE**
vs.	)
	) **SENT ON 1/15/14 VIA E-MAIL FOR**
CITY OF YAKIMA,	) **FILING IN SUPREME COURT**
a Municipal Corporation,	) **OF THE STATE OF WASHINGTON**
	)
Defendant/Appellant.	)
	)

The undersigned declares under penalty of perjury under the laws of the State of Washington that the following is true and correct:

On the 15th day of January, 2014, I both e-mailed and deposited in the mails of the United States Postal Service a properly stamped and addressed envelope containing a copy of the **DEFENDANT / PETITIONER'S REPLY BRIEF** to the following:

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DATED this 15TH day of January, 2014, at Yakima, Washington.

Deanna Boss

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Dear Clerk:

Please find attached for fling Defendant / Petitioner's Reply Brief. If you have any questions or problems with the attachment please contact me immediately. Thank you for your assistance in this matter.

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