COURT OF APPEALS DIV III OF THE STATE OF WASHINGTON

BEDREDDIN IMAN and SAMEER HATEM, Appellants,

and

MUSLIM AMERICA, Appellant,

v.

TOWN OF SPRINGDALE, Respondent

APPELLANTS' REPLY BRIEF

Bedreddin Iman
Sameer Hatem
Appellants, *pro se*

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ARGUMENT

A. Appellants acted in good faith that the operant facts were other than Findings of Fact listed in Orders.

In reply to the Town of Springdale ("Town")'s argument that "all findings are verities" on appeal, (Response Brief, p. 12-13) Appellants state the following:

Prior to the Court's signing the November 23, 2010 Findings of Fact, Conclusions of Law and Order Dismissing Applications for Writs of Prohibition and Mandamus (CP 401-405) and the January 21, 2011 Judgment and Order Granting Defendants' Motion for Award of Reasonable Expenses Including Fees of Attorney Under RCW 4.84.185, (CP 562-566) Appellants acted in good faith that the operant facts in the Superior Court's determination of its Opinion were as listed in their Memorandum in Support of Plaintiffs' Amended Application for Writ of Prohibition and Writ of Mandamus (CP 170-171 § 3-9). Appellants incorporate by reference these statements of fact. Appellants also initiated this action as individuals, unable to utilize Muslim America for the purpose of this case on the basis of a religious prohibition. (CP 123-124, 192-194). Appellants adopt by reference Argument Sections I and II of Muslim America's Opening Brief. Additionally, before the Court's signing of the

abovementioned Orders, Appellants discovered the Town had not legally adopted the Washington State Building Code prior to their implementation of Springdale Town Ordinance 343 ("Ordinance 343") against the Appellants and raised this issue in the trial court. (Appellants' Opening Brief, pp. 21-22). Appellants concluded that the cumulative sum of these facts warranted the issuance of a Writ of Prohibition arresting the Town's implementation of Springdale Town Ordinance 343 as well as the issuance of a Writ of Mandamus, commanding the Town's legal adoption and enforcement of the State Building Code, inclusive of RCW 19.27.042, the least restrictive means of furthering its interest pursuant to RCW 19.27.020 and RCW 19.27.050.

Moreover, in their Objections to Proposed Order (CP 396-400) and Objections to Proposed Judgment and Order Granting Defendant's Motion for Award of Reasonable Expenses Including Fees of Attorney Under RCW 4.84.185, (CP 551-553) Appellants raised objections to Findings of Fact alleged by the Town in their proposed orders (CP 391-395)(CP 539-543). Appellants incorporate as if set forth fully herein these objections, not as objections *per se*, but as argument.

At the time Appellants began their action, they were acting in good

faith. Appellants appeal to RAP 1.2(a) and (c), that the ends of justice may be served. Even if all findings of fact are verities, Appellants assert that (1) the Town's actions in excess of its jurisdiction, (2) the Superior Court's failure to properly apply subject matter jurisdiction, and (3) any manifest error affecting Appellants' constitutional rights may be raised for the first time on appeal. RAP 2.5(a). Failure to comply with RAP 10.3(g) and RAP 10.4(c) does not foreclose consideration of these issues.

B. The Court's dismissal of Appellants' Application for a Writ of Prohibition was incorrect and should be reversed or vacated.

1. With respect to Appellants' religious land use, the Town acted in excess of its jurisdiction or was about to do so.

At page 32 of the Town's Response Brief, the Town argues that because it did not initiate any court action against Appellants on account of their religious exercise, "[n]o infringement of their [Appellants'] religious rights occurred in this case." The Town contends that because it "never took any legal steps to impose or implement the State Building Code or the town building ordinances on the shed," Appellants' action was premature. (Resp. Br. at 33). It states that "[h]ad such an action been filed, the issue would been ripe for proper analysis, adjudication and determination," citing *First United Methodist v. Hearing Examiner*, 129 Wn.2d 238, 244-45, 916

P.2d 374 (1996). (Resp. Br. at 33). *First United*, however, undermines the Town's denial of its infringement upon Appellants' right to free exercise of religion.

First United Methodist sought declaratory relief from this Court even *before* the City adopted an ordinance that would officially designate the church as a landmark. *Id.* at 244. This Court then detailed the restrictions placed upon the church by its nomination alone, concluding that a justiciable controversy existed before it. *Id.* at 245. In the immediate case, the Town's claim that its actions do not present a justiciable controversy is similarly baseless. A statutory writ of prohibition may be issued if the Town is merely ***about*** to act in excess of its jurisdiction. *Brower v. Charles*, 82 Wn.App. 53, 58, 914 P.2d 1202 (1996).

The Town references such prohibition cases as *City of Kirkland v. Ellis*, 82 Wn. App. 819, 920 P.2d 206 (1996) and *Ex rel Moore v. Houser*, 91 Wn.2d 269, 588 P.2d 219 (1978), in which writs were directed to a *court* already presiding over an action, the province of common law writs. In the instant case, Appellants sought statutory writs directed to a *municipality*, not a court:

> Washington has also enacted a statutory writ of prohibition. RCW 7.16.290. A court's powers under the statutory writ are

> broader than under the common law writ. ... The writ may be issued where it appears the person to whom the writ is directed is **about** to act in excess of his or her jurisdiction.

County of Spokane v. Local No. 1553, American Federation of State, County and Mun. Employees, AFL-CIO, 76 Wn. App. 765, 768-769, 888 P.2d 735 (Wash. App. Div. 3 1995). (Emphasis added). Appellants asked the trial court to prohibit an enforcement action by the Town leading toward a court action, without jurisdiction and in violation of State and federal law. As such, Appellants did not have to wait until being summoned to answer a complaint before seeking relief from the wrongful actions of officials that have an adverse impact on their equitable rights other than their right to avoid wrongful prosecution.

Predicating their actions upon putting Ordinance 343 into effect, the Town has officially warned Appellants against using the cottage and it threatens them with punitive damage for so doing. (CP 356, warning)(CP 12 § 10, 11, eviction) (CP 31, remove/demolish)(CP 68, 364, notice of violation of ordinance)(CP 150, 365, infraction notice). Whether called "enforcement actions" or not, each constitutes disturbance in violation of Article I, § 11, prohibition of free exercise in violation of the First Amendment and imposition of a substantial burden upon a religious land

use in violation of 42 U.S.C. § 2000cc et seq. ("RLUIPA"). Thus, each action was undertaken without jurisdiction. *Arguendo*, even if concluded that the Town does not act in excess of its jurisdiction until filing an action in the District Court, its numerous warnings and notices prove it is ***about*** to exceed its jurisdiction with respect to Appellants' religious land use, thereby meeting the first requirement for statutory prohibition to lie.[1] This Court has found that "[l]egitimate objectives may not be pursued by means that needlessly chill the exercise of basic constitutional rights." *State v. Eide*, 83 Wn.2d 676, 682, 521 P.2d 706 (1974).

Citing *Lunsford v. Saberhagen Holdings, Inc.* 139 Wn.App. 334, 338, 160 P.3d 1089 (2007), the Town argues that Appellants' 42 U.S.C. § 1983 claim should not be heard because (1) it is being made for the first time on appeal and (2) it is not "arguably related" to any of their other claims. (Resp. Br. at 33). In *Lunsford*, however, the Appellate Court found that the issue raised for the first time on appeal was arguably related to the Appellant's pursuit of civil damages, thereby permitting the argument. *Lunsford*, as such, is inapposite. Appellants' 42 U.S.C. § 1983

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[1] The language of Conclusion of Law #3 in the November 23, 2010 Order ("***In that regard***, the Town cannot be said to be acting in excess of its jurisdiction.")(emphasis added) implies that the Town ***can*** be said to be acting in excess of its jurisdiction other than as stated therein. There would be no need for the opening clause were it otherwise.

claim unquestionably relates to the concrete, particularized and imminent adversity they face as a consequence of the Town's threats.[2] Moreover, manifest error affecting a constitutional right may be raised for the first time on appeal. RAP 2.5(a).

2. The unquestionable illegality of the Town's actions and Appellants' religious prohibition against Muslim America's participation render Appellants' remedy at law inadequate.

Quoting *City of Kirkland v. Ellis, supra* at 827, (Resp. Br. at 16) the Town's citation stops short of the discussion in *Kirkland*:

> The question of whether an appeal is an adequate remedy depends on whether: (1) the error was so clear that reversal would be "unquestioned" if the case were already before the Superior Court on a post-judgment appeal; and (2) the litigation will terminate once the error is corrected by means of interlocutory review.

Id. at 827-28. The first condition of determining the adequacy of a remedy receives further elaboration in *State v. Harris*:

> We are tempted to announce the rule that the remedy by appeal is inadequate whenever it appears inequitable to require the litigants to proceed through a lengthy, expensive trial which, if the present state of the case were allowed to continue, would mean an unquestioned reversal and termination of the entire litigation when appealed after the trial.

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[2] Appellants incorporate by reference Argument Section I of Muslim America's Opening Brief.

State v. Harris, 2 Wn. App. 272, 280, 469 P.2d 937 (1970). In the immediate case, the Town's enforcement action against Appellants would, upon analysis in a trial at law, not survive proper application of State and federal law with respect to Appellants' religious exercise. Thus, a writ of prohibition may lie to preclude unnecessarily protracted and expensive litigation.

Moreover, requiring Appellants to violate their religious prohibition against calling upon Muslim America to join this action far exceeded the standard for "hardship." It was an insurmountable obstacle that became fatal to Appellants' action in the trial court, thereby proving they had no adequate remedy at law, and it is the very "something in the nature of the action" necessitating the Court's exercise of extraordinary jurisdiction. *State ex rel. O'Brien v. Police Court*, 14 Wn.2d 340, 348, 128 P.2d 332 (1942).

During the July 9, 2010 hearing on the merits, Appellants stated that the writ of prohibition for which they applied can issue "to prevent an official from doing a wrongful act, to save ... victims of unlawful prosecution from ever having to go to court in the first place." (VRP 7/9/2010, p. 39, lines 3-6). Thus, The Town's claim that Appellants, at this

same hearing, admitted to having an adequate and speedy remedy at law is false, (Resp. Br. at 16) particularly given State decisional law as cited *supra* in *Kirkland*, *Harris* and *Local No. 1553*.

C. The Court's dismissal of Appellants' Application for a Writ of Mandamus was incorrect and should be reversed or vacated.

The Town states that it "has the affirmative **obligation** to **adopt and enforce** the 2006 International Building Code ("IBC 2006") and **all of the other codes under the State Building Code** within its jurisdiction." (Resp. Br. at 15) (Emphasis added). This is an absolute admission that the Town is obliged to adopt and enforce RCW 19.27.042 in order to facilitate Appellants' religious land use and it posits an obligation for issuance of a Writ of Mandamus compelling the Town's adoption and enforcement thereof to meet the demands of such use.[3] Ironically, throughout its implementation of Ordinance 343 against Appellants, the Town had not legally adopted the State Building Code, including the State Building Code Council's amendments to the IBC 2006. Appellants incorporate Argument Section II.C.2 of their Opening Brief (p. 21-22) in addition to Item 11 of

[3] Finding of Fact #9 in the November 23, 2010 Order mentions that Appellants sought a Writ of Mandamus "compelling the Town to adopt a discretionary exemption to the State Building Code pursuant to RCW 19.27.042." (CP 402 § 9)(emphasis added). Prior to the Superior Court's signing this Order, Appellants raised objection to this Finding, arguing, *inter alia*, that it incorrectly describes an ordinance or resolution authorized by RCW 19.27.042 as a "discretionary exemption" and plainly operates as a conclusion of law, not as a finding of fact. (CP 397 § 5).

the January 27, 2011 Affidavit of Dawud Ahmad (CP 591 § 11) as if set forth fully herein.

Citing *SEIU Healthcare 775 NW v. Gregoire*, 168 Wn.2d at 601, (Resp. Br. at 22, 23) the Town's repeats an argument it made in the trial court. (CP 315). Appellants incorporate their trial court response to this argument as set forth in Section IV, Item 11 of Plaintiffs' Response to Defendant's Request for Dismissal of Proceedings. (CP 341- 344).

The Town argues that RCW 19.27.042(1) is "clearly discretionary" as it utilizes the word "may." (Resp. Br. at 23, 24). Again, Appellants incorporate by reference their trial court response to this contention in Section IV, Item 2 of Plaintiffs' Response, *Ibid.* (CP 327-330). The Town also attempts to conflate Appellants' use of the term "permissive" with "discretionary." (Resp. Br. at 24). Appellants did not use the term "permissive" as the Town would have this Court believe. Appellants assert that the use of "may" in numerous provisions of RCW 19.27 confers upon municipalities a permission of *authority* as opposed to one of discretion.

The Town would have this Court believe that, given a genuine need for emergency housing and the availability thereof, the Legislature's intent in authoring and enacting RCW 19.27.042 was for local government to

exercise discretion as to whether a citizen might avail of said housing or remain exposed to the elements. Such an absurd conclusion has no basis in law and Appellants' requested Writ of Mandamus must lie.

D. Appellants provided clear Statements of Beneficial Interest, a detailed Prayer for Relief and Affidavits proper for issuance of the subject writs.

Not one finding of fact in either the November 23, 2010 Order of the January 21, 2011 Order states that Appellants failed to provide a statement of beneficial interest or filed improper affidavits. In fact, Appellants Ahmad, Iman and Hatem provided a clear Statement of Beneficial Interest. (CP 166). The Town claims that Appellants did not file affidavits describing the basis of their occupancy in the cottage. (Resp. Br. at 18). Mr. Ahmad described the basis of Mr. Iman's occupancy in his March 23, 2010 Affidavit.[4] Mr. Iman described his use of the cottage in his Affidavit of the same date.[5] Mr. Hatem also described the basis of the cottage's occupancy by his Affidavit.[6]

The Town asserts that individual Appellants failed to file Affidavits

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[4] "The building ... serve[s] as housing for indigent persons, and has been occupied by plaintiff IMAN, an indigent person, ..." (CP 11 § 5).
[5] "I reside in a former storage building whose character of use has been changed to housing for indigent persons, ..." (CP 15 § 9).
[6] "One building ... has, as an exercise of religion, been changed in order to provide housing for an indigent person, and has been occupied by plaintiff IMAN, an indigent person ... (CP 146 § 5).

identifying that they are beneficially interested parties in the use of Muslim America's property. (Resp. Br. at 18). The Town contends that the deposition in Appellants' Affidavits (CP 11-15, 145-148) is insufficient to establish Appellants' beneficial interest in the use of Muslim America's property. Beneficial interest, however, is not determined strictly by fee simple ownership. Appellant Ahmad was Chief Legal Officer for the community of Muslim America (CP 33 § 2) whose personal interests in the use of the property were "virtually indistinguishable from those of his corporation." *Willapa Trading Co. v. Muscanto Inc.*, 45 Wn. App. 779, 787, 727 P.2d 687 (1986). In his March 23, 2010 Affidavit, Mr. Ahmad testified that Muslim America's Board of Directors unanimously supported Mr. Iman's use of the cottage "as a mandated religious practice according to the established precepts of the religion of Islam." (CP 11 § 6). This approval constitutes an agreement between Muslim America and Mr. Iman conferring upon Mr. Iman the right to beneficial use of Muslim America's property. The Town never moved to strike this or any other portion of Mr. Ahmad's Affidavit from the record during the trial court proceedings. Thus, it provides sufficient proof of both his and Mr. Iman's beneficial interest in use of the cottage.

The Town falsely states that Appellants Iman and Hatem "failed to identify the precise activity that the Town is required to refrain or engage in if either the writ of prohibition or the writ of mandamus is issued or is fatal to their claims." (Resp. Br. at 21). In the Prayer for Relief portion of their Amended Application for a Writ of Prohibition and Writ of Mandamus, Appellants clearly identified the very activities that the Town accuses them of failing to identify. (CP 173-174).

E. The issue of Appellants' standing was raised both by Appellants and the Town at trial and The Superior Court subjected Appellants to a test of standing that demanded they violate their religious conviction to obtain relief.

The Town claims that "Appellants' entire argument regarding their standing to bring this case should be disregarded as issues of standing of parties cannot be raised on appeal in their first instance." (Resp. Br. at 37). Appellants, however, raised the issue of their standing in the Superior Court:

> Plaintiffs have Article III standing: they suffer an injury-in-fact by denial of their protected religious exercise and punitive actions on account of it, causation of that injury is in the Town's unlawful official actions, and redressability is available through the issuance and enforcement of the requested Writs.

(CP 284, lines 13-16). More importantly, the Town also raised the issue of Appellants' standing in the Trial Court. Finding #5 of the January 21, 2011

Order states "Plaintiffs Ahmad, Hatem [sic] and Iman did not have standing to apply for the writs sought." (CP 564 § 5). Thus, the Town's argument that the Court's final decision was not based on "whether or not any of the Appellants did or did not have standing to bring the action" (Resp. Br. at 37) is transparently incorrect.

Finding #3 of the same Order states that "Plaintiff Muslim America's failure to support the (writ) petition was fatal to the Plaintiffs' case from the outset," demonstrating that the Court subjected Appellants to a test of standing requiring them to violate their religious conviction in order to obtain relief. (CP 124). Such denial of standing attempts to rewrite the explicit language of both Article I, § 11 and RLUIPA:

> Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to **every individual**, and **no one** shall be molested or disturbed **in person** or property on account of religion.

State Constitution, Art. I, § 11, in pertinent part. (Emphasis added).

> No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a **person**, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution –
>
> (A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. 21C § 2000cc et seq. (Emphasis added). Appellants' unquestionable standing to seek the subject writs under these laws *as individual citizens* proves that the Superior Court's denial thereof is manifest error affecting their constitutional right to free, undisturbed exercise of religion.

F. The Town's claim that no jurisdictional issue exists in this case is incorrect.

The Town claims that "[n]o jurisdictional issue exists in this case." (Resp. Br. at 35). The Superior Court, however, flagrantly disregarded the subject matter that was the cause of Appellants' action.[7] (VRP 1/7/11, p. 21, ln. 20-25). In light of the Court's denial of Appellants' standing as explained in Argument Section E above, this disregard betrays the Court's failure to properly apply subject matter jurisdiction in the trial court proceedings *ab initio*. Lack of subject matter jurisdiction may be raised at any time. RAP 2.5(a)(1).

The Town's statement that Appellants claimed to argue or assert

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[7] The Town argues that because the Superior Court "discussed the issue of their asserted claim of interference with their right to free exercise of religion," this refutes Appellants' argument that the Court ignored evidence of deliberated official harassment. (Resp. Br. at p. 35). As Appellants use "ignore" in the sense of "to disregard willfully; to refuse to recognize; to reject as groundless" (Black's Law Dictionary, p. 512. (1991)), the Town's argument is specious.

jurisdiction during the May 19, 2010 Scheduling Conference is false. In good faith, Appellants requested a ruling on jurisdiction, which the Court, upon seeking direction from the Town, construed as a request for legal advice. (NRP 5/19/10, lines 5-13). The Town's claim that Appellants failed to properly bring the issue of jurisdiction before the Court under the civil rules is irrelevant. It cites no statutory authority that requires filing a written motion supported by authority and noted for hearing in order to receive a ruling on jurisdiction.

> Any judge of the superior court of the state of Washington shall have power, in any county within his or her district: ... (3) to decide and rule upon all motions, demurrers, issues of fact, or **other matters** that may have been submitted to him or her in any other county.

RCW § 2.08.190, in pertinent part. (Emphasis added). Thus, Mr. Ahmad's request for a ruling on jurisdiction was wholly within the purview of the Superior Court to immediately address.

Only *after* it dismissed Appellants' application for the Writs did the Court reveal that Appellants lacked standing to apply for them. Had the Court provided a ruling on May 19, 2010 that would have conclusively determined said lack of standing, this would have radically altered Appellants' course of action. The Superior Court's refusal to provide such

clarification resulted in a prodigal expenditure of time, effort and money.

G. Appellants' assertion of their equitable rights to use of Muslim America's property is permissible and does not constitute advocacy on behalf of Muslim America.

The Town accuses Appellants of presenting for the first time on appeal argument concerning their equitable right to the use of Muslim America's property.(Resp. Br. at 25). Unaccountably, Appellants presented this very same argument in Section IV, Item 3 of Plaintiffs' Response to Defendant's Request for Dismissal of Proceedings (CP 330-332). In the trial court, The Town raised no objection to this pleading, nor did it move to strike this argument. The Town states that "this argument should be stricken as it is argument on behalf of Muslim America" and Appellants are not licensed attorneys who may represent Muslim America. (Resp. Br. at 25). The Town would have this Court believe that any allusion of the Appellants to Muslim America constitutes argument or advocacy on its behalf, yet Appellants have no means of describing their equitable right to the use of Muslim America's property other than by reference to its legal right and purpose of ownership. Furthermore, the "evidence in the record" supporting the purpose for which Muslim America owns property in this action is found in the first Affidavit of Dawud Ahmad. (CP 11 § 6). The

Town never moved to strike this evidence from the trial court record and can not now contest its veracity.

The Town's argues that the term "usufruct" as used in *Zemurray Foundation v. United States of America*, 687 F.2d 97 (5th Cir. 1982) is not recognized under Washington law, yet *Zemurray* was tried in a federal Court of Appeals, where the term was recognized. The Town fails to address Professor Langdell's definition of an equitable right, (Appellants' Opening Brief, p. 32) a definition which does not differ pragmatically from that of usufruct equity. The Town presents no substantive opposition to Appellants' argument concerning their equitable rights.

H. The January 21, 2011 Judgment and Order Granting Defendant's Motion for an Order of Reasonable Expenses Including Fees of Attorney Under RCW 4.84.185 was not properly determined and should be vacated.

The Town states that "[s]ince Iman and Hatem did not assign error to any of the findings (of the January 21, 2011 Judgment and Order), they are verities." (Resp. Br. at 27). Appellants reassert their position with respect to this Order in Argument Section A above, noting that numerous "findings" therein operate as conclusions of law. (CP 551-553).

The award of reasonable expenses by the trial court is reviewed for an abuse of discretion. *Tiger Oil Corp. v. Dep't of Licensing*, 88 Wn.App.

925, 937-38, 946 P.2d 1235 (1997). The Superior Court awarded to Respondent Town costs and fees based on its holding that Appellants' case was frivolous in its entirety, being advanced without any reasonable cause. (VRP 1/7/11, p.21, ln. 10-13,)(CP 564 § 7). *Skimming v. Boxer*, 119 Wn.App. 748, 756, 82 P.3d 707, 711 (Wash. App. Div. 3 2004), provides a demanding threshold for determining such an award pursuant to RCW 4.84.185, stating that "if ***any*** of the asserted claims (in the underlying action) are not frivolous, the action is not frivolous." *Id.* (emphasis added) The Town sought an award of fees and costs predicated entirely on RCW 4.84.185. As such, should this Court find ***any one*** of the Appellants' trial court claims reasonable, the Town should not receive any award.

The Town's argument concerning Mr. Ahmad's August 4, 2010 eMail to Mayor Douglas Buche is not tenable. On page 30 of its Response Brief, the Town quotes Mr. Ahmad's comments at Oral Argument only in part, omitting relevant details. In full, it reads

> **After the Court had ruled that Muslim America was a Necessary Party**, plaintiff Ahmad wrote a letter to Mayor Buche, pointing out that had Mr. Riley filed a Motion to Dismiss for Failure to Join a Necessary Party, the Town could have saved thousands of dollars in fees. Mr. Riley did not file such a Motion, which might have been denied or made moot by a joinder of Muslim America. **But after his Motion to Join Necessary Party had been granted, the record**

demonstrates that neither would such a Motion to Dismiss have been denied, nor would it have been made moot.

(CP 535-36)(Emphasis added to omitted portions). The very comment to which the trial court gave great weight in holding Appellants' case to be legally frivolous in its entirety (VRP 1/7/11, p. 20, ln. 14 to p. 21, ln. 9) was no more than Mr. Ahmad's inference based upon the record of the trial court's consistently adverse rulings against Appellants, particularly the ruling joining Muslim America. Moreover, Finding #4 of the January 21, 2011 Order functions as conclusion of law and not as a finding of fact.

The Town also suggests Mr. Ahmad's comments at Oral Argument prove he admitted "joinder of Muslim America would be a proper action for the Court to take," (Resp. Br. at 30) yet two sentences following the abovementioned quote of Mr. Ahmad, Mr. Ahmad stated "[n]either have plaintiffs 'expressly' or in any other way remotely suggested that Muslim America was a necessary party, ..." (CP 536).

In its Memorandum in Support of Defendant's Motion for a Finding of Frivolity (CP 409-417), the Town stated that "Mr. Ahmad is a sophisticated pro se plaintiff," (CP 411) thereafter claiming that "[p]laintiffs have brought this action to harass the Town and filed multiple pleadings and motions to force the Town to incur substantial attorneys' fees and costs

of defense, ..." (CP 415-416). In spite of recognizing Mr. Ahmad's proficiency as a *pro se* plaintiff, the Town would have us believe that he threw caution to the proverbial wind in his August 4, 2010 eMail, conceding that his action was "frivolous from inception." (CP 415). The Town presents an internally contradictory argument that fails to support any legal conclusion that Appellants' action was frivolous.

The Town contends that it "had not taken any enforcement action with respect to the two notices (of infraction) and Iman and Hatem at all times made use of the shed on the Muslim America property." (Resp. Br. at 31). However, the Town has provided no assurance to Appellants that it has foresworn any intent to pursue further action against them for their religious land use. The Town's withdrawal of these Notices (CP 151, 367) occurred just two days after the Superior Court judge had been assigned to the case. (CP 69) As such, The Town's harassment segued seamlessly from police action to legal action and has continued in the courts ever since. This constitutes a wholly reasonable basis for Appellants' action and undermines the Superior Court's holding that it was legally frivolous from the outset.

I. The Town is not entitled to Attorney's Fees and Costs pursuant to RAP 18.1.

Appellants have demonstrated reasonable cause in their appeal. The Town's request that this Court sanction a frivolous appeal is therefore inapplicable. *In re Marriage of Foley*, 84 Wn.App. 839, 847, 930 P.2d 929 (1997), does not support the Town's argument. Once again, the Town's quotation of Foley stops short of the Court's discussion:

> Mr. Foley raised reasonable arguments. Thus, the appeal was not frivolous and Mrs. Foley's motion for fees is also denied.

Id. Appellants have raised reasonable arguments. Therefore, their appeal is not frivolous and the Town's motion for fees should be denied. The Town's citation to *Buchanan v. Buchanan*, 150 Wn.App. 730, 740, 207 P.3d 478 (2009), is similarly unsupportive. *Buchanan* was an appeal of damages awarded in a postdissolution decision. Quoting the Appellate Court's opinion, the Town asserts that "[a] party's intransigence at the trial level may support an award of attorneys' fees on appeal." *Id.* As per usual, the Town omits the relevant portion of *Buchanan*:

> Because Mr. Buchanan succeeded in part on appeal by reducing the damages amount and because Ms. White has not demonstrated intransigence by Mr. Buchanan before this court, her request for attorney fees on appeal is denied.

Id. No conduct of the Appellants has demonstrated "intransigence" deserving of judgment adverse to them. Because Appellants have raised reasonable arguments both in the Superior Court and in this Court, the Town's request for an award of fees and costs under RAP 18.9(a) and RCW 4.84.185 should be denied.

CONCLUSION

For the foregoing reasons, Appellants reiterate their Prayer for Relief as set forth in the Conclusion of their Opening Brief.

Dated this 16th day of November, 2012 at Springdale, Washington.

Respectfully Submitted,

BEDREDDIN IMAN
Appellant, *pro se*

SAMEER HATEM
Appellant, *pro se*

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CERTIFICATE OF SERVICE

I certify that on this day I served a copy of the foregoing **Appellants' Motion for Stay of Calendar** to the parties of this proceeding or their counsel as shown:

Jeffry Finer
West 35 Main, Suite 300
Spokane, Washington 99201

By eMail attachment to
jeffry@finer-bering.com

John McLean Riley III
Nathan Graham Smith
422 W. Riverside, Suite 1100
Spokane, Washington 99201-0302

Dated this 16th day of November, 2012.

RAQEEBAH AMATALLAH

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, November 16, 2012 3:37 PM
To: 'Bedreddin Iman'; Jeffry Finer
Subject: RE: Case No. 85417-3 Appellants' Reply Brief 111612

Received 11/16/12

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

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From: Bedreddin Iman [mailto:pen1424@earthlink.net]
Sent: Friday, November 16, 2012 3:35 PM
To: OFFICE RECEPTIONIST, CLERK; Jeffry Finer
Subject: Case No. 85417-3 Appellants' Reply Brief 111612

To The Clerk of The Supreme Court:

Enclosed is Appellants' Reply Brief in the matter of Dawud Ahmad, Bedreddin Iman, Sameer Hatem and Muslim America v. Town of Springdale, Case Number 85417-3.

Thank you for your consideration.

Respectfully,
Bedreddin Iman
(509) 385-7004
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