NO. 92422-8

SUPREME COURT OF THE STATE OF WASHINGTON E. COF

No. 71611-5-I
WASHINGTON STATE COURT OF
APPEALS, DIVISION ONE

FOSS MARITIME COMPANY,

Respondent,

v.

JEFF BRANDEWIEDE and JANE DOE BRANDEWIEDE, and the marital community comprised thereof; and BRANDEWIEDE CONSTRUCTION, INC.,

Petitioners,

and

CORE LOGISTIC SERVICES; LISA LONG and JOHN DOE LONG, and the marital community comprised thereof; FRANK GAN and JANE DOE GAN, and the marital community comprised thereof,

Defendants.

ANSWER OPPOSING PETITION FOR REVIEW

John Crosetto, WSBA #36667
Miriam Woods, WSBA #45659
GARVEY SCHUBERT BARER
Eighteenth Floor
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TABLE OF AUTHORITIES

Other Authorities

IDENTITY OF RESPONDENT

The respondent is Foss Maritime Company ("Foss"), which provides marine transportation and logistics services and related technical and engineering services, including new vessel construction and vessel maintenance and repair.

CITATION TO COURT OF APPEALS DECISION

Petitioners Jeff and Jane Doe Brandewiede and Brandewiede Construction, Inc. ("Brandewiede," collectively), seek review of *Foss Maritime Company v. Brandewiede*, No. 71611-5-I, --- P.3d ---- (Wn. Ct. App. Sep. 14, 2015).

ISSUES PRESENTED FOR REVIEW

1. Under RAP 2.5(a), the Court of Appeals may deny review of issues not raised at trial. Because Brandewiede did not raise waiver in the trial court, the Court of Appeals was silent on that issue. Where a petitioner fails to raise an issue in the trial court and the Court of Appeals does not review the issue, should the petition for review to the Supreme Court of that issue be denied?

2. RAP 13.4(b)(4) states that this Court may accept review if a case raises issues of substantial public interest. Mischaracterizing the issue and the facts, Brandewiede seeks clarification of ER 502(b) such that a company would waive the attorney-client privilege by providing a former employee's publically available contact information for purposes of a deposition subpoena. Is there a public interest in making this interpretation of ER 502(b) the law?

3. RAP 3.1 states that only an aggrieved party can seek appellate review. The Court of Appeals reversed the trial court order disqualifying Brandewiede's counsel and remanded for further findings and conclusions. Is Brandewiede the aggrieved party under RAP 3.1?

STATEMENT OF THE CASE

1. Procedural Posture.

This lawsuit began on May 30, 2012, when Foss filed a complaint against Brandewiede and his alleged partners, defendants Frank Gan and Lisa Long, acting together as defendant Core Logistics Services ("CLS"). The lawsuit arises from CLS's subcontract with Foss for a major vessel renovation. CLS failed to complete the work under the contract and defrauded Foss, absconding with approximately $600,000 in funds advanced by Foss. Foss has already obtained a 1.9 million dollar default judgment against Gan, Long and CLS. The principal issue at trial is whether Brandewiede is jointly and severally liable as a partner in CLS. Brandewiede's counsel was disqualified on February 14, 2014, and the case is currently stayed.

The notice of appeal was filed on March 14, 2014, and Brandewiede submitted his opening brief on September 29, 2014, with the Court of Appeals ruling almost a year later on September 14, 2015.[1]

2. Brandewiede's counsel obtains Foss's privileged and proprietary information directly from a former employee who had misappropriated it.

Brandewiede's counsel obtained Foss's privileged communications directly from a former Foss employee, didn't tell Foss, instead reviewing

[1] Brandewiede's counsel obtained seven extensions before the Court of Appeal's could begin its review: (1) for Brandewiede's reply in support of Discretionary Review (April 14, 2014); (2) to file the clerk's papers (July 3, 2014); (3) to file the Opening Brief (August 1, 2014); (4) again to file the Opening Brief (September 15, 2014); (5) to request review of Foss's documents filed under seal and to file its Reply Brief (December 24, 2014); (6) to file Brandewiede's Reply Brief (February 2, 2015); (7) again to file the Reply Brief (due to illness of counsel) (February 13, 2015).

them, and after declining to turn over the documents to Foss, submitted some of Foss's privileged communications as a part of a proposed trial exhibit.[2]. Foss asked Brandewiede's counsel to explain how this would not result in his disqualification, but he provided none. So, Foss moved to disqualify.

The trial court reviewed briefing on both sides, reviewed the privileged documents in camera, heard oral argument, and issued an order disqualifying Brandewiede's counsel. But, on appeal, the Court of Appeals deemed the findings and conclusions in the trial court's order insufficient, and it therefore reversed and remanded for further consideration.

Brandewiede's counsel had obtained Foss's privileged communications from Van Vorwerk, a former Foss employee. Vorwerk was the project manager for the vessel renovation at issue, so Foss had of course identified him as a witness in its initial disclosures.[3]

During his employment at Foss, Vorwerk signed two company policies under which he agreed that he would neither take company documents with him after his employment ended, nor disclose to anyone the company's confidential and proprietary information:[4] (1) Foss's Business Ethics Policy, which (a) mandates that employees "may not disclose confidential

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[2] Declaration of John Crosetto in Support of Reply on Plaintiff Foss Maritime Company's Motion to Disqualify Counsel for Defendant Jeff Brandewiede and Seeking Sanctions (Appendix E) ¶ 2, Ex. 1. **[CP 414; 416 – 418]**

[3] Declaration of Lisa Sulock in Support of Motion of Plaintiff Foss Maritime Company to Disqualify Counsel for Defendant Jeff Brandewiede and Seeking Sanctions (Appendix A), ¶ 5. **[CP 49]**

[4] App. A, Ex. 1-3. **[CP 50 – 80]**

information"[5] acquired by virtue of their employment or affiliation with Foss, (b) requires employees to "safeguard proprietary information that is not generally known to the public,"[6] and (c) provides that "[t]he obligation to preserve proprietary information continues even after employment ends;"[7] and (2) Foss's Electronic Mail Policy, under which employees agree that "[m]essages sent through e-mail and the contents of any employee's computer are the sole property of the company."[8] Vorwerk acknowledged acceptance of this latter policy each and every time he accessed his company e-mail when he saw the login screen: "By using the e-mail access provided, every employee agrees that he or she is aware of this policy. . . ."[9] Accordingly, Foss took all reasonable precautions to prevent disclosure of its privileged and proprietary information.

3. Brandewiede's counsel requests Vorwerk's contact information for purposes of a deposition subpoena, but instead contacts Vorwerk directly without Foss's knowledge.

Brandewiede's counsel, John Welch, asked Foss's counsel for Vorwerk's contact information, representing that he intended to issue a subpoena to Vorwerk for deposition.[10] But rather than subpoena and depose Vorwerk, Welch instead invited Vorwerk to meet him privately for an interview. He first interviewed Vorwerk in late September of 2013, and at the meeting,

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[5] App. A at ¶¶ 3-4, Ex. 2, 3. **[CP 49; 52 – 80]**
[6] App. A Ex. 2. **[CP 52 – 78]**
[7] *Id.*
[8] App. A at ¶ 2, Ex. 1. **[CP 48; 50 – 51]**
[9] *Id.*
[10] Declaration of John R. Welch in Support of Brandewiede's Response RE: Foss's Motion to Disqualify Counsel (Appendix C), Ex. C. **[CP 150 – 157]**

Vorwerk provided Welch a grievance letter drafted after his termination.[11] The letter included copies of privileged emails with Foss's in-house counsel, as well as references to work with Foss's outside counsel for this litigation prior to his termination. The privileged emails identified in-house counsel as such on their face.[12]

Welch asked Vorwerk if he had more documents, so another meeting was arranged for late October 2013.[13] At that meeting, Vorwerk gave Welch a thumb drive containing his entire Outlook file from Foss.[14] Vorwerk even told Welch that he was not able to separate out the documents specific to the project at issue, so the thumb drive contained his entire Foss Outlook file.[15] Welch knew Vorwerk was no longer a Foss employee and that Vorwerk was not represented by counsel, but he did not ask Vorwerk if he was authorized to have the company's documents.[16]

Instead, Welch took the drive and began to review the materials. Welch did not disclose to Foss that he had obtained Vorwerk's materials until November 8, 2013—six weeks after his first meeting with Vorwerk in which

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[11] Declaration of John R. Welch in Support of Brandewiede's Response Re: Foss's Motion to Disqualify Counsel, ¶ 5. **[CP 114]**

[12] Declaration of Verna Seal on Order for In Camera Review, ¶¶ 4, 6, Ex. B. **[CP 336 – 347]**

[13] Declaration of John Crosetto in Support of Motion of Plaintiff Foss Maritime Company to Disqualify Counsel for Defendant Jeff Brandewiede and Seeking Sanctions (Appendix D), ¶ 10, Ex. 8 **[CP 83; 102 – 105]**

[14] Declaration of John R. Welch in Support of Brandewiede's Response Re: Foss's Motion to Disqualify Counsel, ¶¶ 7, 11. **[CP 115 – 116]**

[15] Declaration of John R. Welch in Support of Brandewiede's Response Re: Foss's Motion to Disqualify Counsel, ¶ 7. **[CP 115]**

[16] Declaration of John Crosetto in Support of Motion of Plaintiff Foss Maritime Company to Disqualify Counsel for Defendant Jeff Brandewiede and Seeking Sanctions (Appendix D), ¶ 10, Ex. 8. **[CP 83; 102 – 105]**

he obtained Foss's privileged communications, and over two weeks after obtaining additional confidential and proprietary information of Foss.

That same day (November 8), Foss requested that Welch immediately turn over the documents (among other things, they responsive to Foss's discovery requests for all documents related to the vessel). But Welch did not respond. Foss reiterated its request on November 12, and said the materials may contain privileged information.[17] Again, Welch did not respond, instead submitting the privileged communications (as part of Vorwerk's grievance letter) that same day as a proposed trial exhibit.

On November 15, Welch finally provided Foss a copy of the thumb drive. Foss reviewed the proposed trial exhibit and contents of the thumb drive, on which it found additional confidential, proprietary, and protected information. On November 19, Foss sent Welch a two-page letter notifying him of the privileged nature of the documents he had, explaining (with citation to case law) why the circumstances called for his disqualification, and asking for some response as to why he should not be disqualified.[18] But Welch answered simply that he intended *to continue reviewing the materials*: on November 19, he wrote to Foss, "I still have not had a chance to get through all of the information I received from Vorwerk,"[19] and three days later he wrote, "[a]rrived back in town Wednesday and wanted to take a read through

[17] App. D. at ¶¶ 3, 4, Ex. 1 to 4. **[CP 85 – 93]**
[18] App. D at ¶¶ 6 to 8. **[CP 82 – 83]**
[19] App. D, Ex. 5. **[CP 94 – 95]**

Van's post-termination letter before responding to your email. . . ."[20] Foss was left with no choice but to file its motion to disqualify Welch and his firm.[21]

The trial court reviewed the pleadings, reviewed the privileged documents in camera, heard oral argument, and ultimately disqualified Welch and his firm as counsel for Brandewiede on February 14, 2014.

4. Brandewiede fails to raise waiver with the trial court and obtains a reversal and remand on other grounds.

Brandewiede's opposition to disqualification made no mention of waiver.[22] Brandewiede argued waiver for the first time on appeal.[23] The Court of Appeals ultimately reversed and remanded to the trial court, but it did not take up the issue of waiver, as it had not been raised in the trial court.

The Court of Appeals reversed the disqualification order and remanded with instructions that the trial court decide whether to disqualify Brandewiede's counsel by analyzing four factors set forth in *In re Firestorm 1991* and *Washington State Physicians Insurance Exchange & Ass'n v. Fisons Corp.*: (1) prejudice; (2) counsel's fault; (3) counsel's knowledge of privileged information; and (4) possible lesser sanctions.[24] Brandewiede has not appealed that decision.

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[20] App. D, Ex. 8. **[CP 102 – 105]**
[21] *See* App. D, ¶ 9, Ex. 4—7. **[CP 83; 91 – 101]**
[22] *Id.*
[23] Brandewiede's Response Re: Foss's Motion to Disqualify Counsel; Brandewiede's Opening Brief at 26-28.
[24] *Foss Maritime Company v. Brandewiede*, No. 71611-5-I, --- P.3d ---- (Wn. Ct. App. Sep. 14, 2015); *In re Firestorm 1991*, 129 Wn.2d 130, 916 P.2d 411 (1996); *Washington*

The Court of Appeals' decision makes no reference to the waiver question.[25] And Brandewiede did not file a motion for reconsideration, in which he could have asked the Court of Appeals to consider the issue. Brandewiede instead petitioned this Court for discretionary review of an issue he failed to raise at trial and which the Court of Appeal properly declined to review.[26] Foss respectfully asks this Court to deny review.

ARGUMENT

This Court should deny Brandewiede's petition for review of the Court of Appeals' silence on whether Foss waived its attorney-client privilege.

I. Review should be denied under RAP 2.5(a) because Petitioners failed to raise waiver at trial and none of the rule's exceptions apply.

RAP 2.5(a) states that appellate courts may deny review of claims not raised in the trial court unless they fall within one of three exceptions not present here:

> The appellate court may refuse to review any claim of error which was not raised in the trial court. However, a party may raise the following claimed errors for the first time in the appellate court: (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right.[27]

State Physicians Insurance Exchange & Ass'n v. Fisons Corp., 122 Wn.2d 299, 858 P.2d 1054 (1993).

[25] *Id.*

[26] *Id.*

[27] RAP 2.5(a).

Rule 2.5(a) reflects a policy of encouraging the efficient use of judicial resources to avoid the time and expense of an unnecessary appeal.[28] Here, Brandewiede does not claim error with regard to jurisdiction, facts, or constitutional rights. His claim of waiver was therefore not properly before the Court of Appeals, and the Court of Appeals properly ignored the issue.[29] Brandewiede should have raised waiver in the trial court to allow the process of judicial and appellate review to work as designed.[30] The Supreme Court's review of an issue not raised in the trial court and properly ignored by the Court of Appeals would contravene the purpose of Rule 2.5(a) to encourage the efficient use of judicial resources.

II. Petitioners rely on RAP 13.4(b)(4) to request review based on public interest, but they mischaracterize the legal issue and the facts, making the issue presented wholly academic with no bearing on the case.

RAP 13.4(b) sets forth four conditions on which discretionary review by this Court is appropriate. Brandewiede says the fourth applies—that is, Brandewiede contends that this case involves an issue of substantial public interest, since the public apparently needs more clarification on how the attorney-client privilege is inadvertently waived under ER 502(b). But the

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[28] *State v. Scott*, 110 Wn.2d 682, 685, 757 P.2d 492 (1988); *see also, e.g., State v. WWJ Corp.*, 138 Wn.2d 595, 980 P.2d 1257 (1999); *State v. Fenwick*, 164 Wn. App. 392, 264 P.3d 284 (2011).

[29] *See, e.g., Scott*, 110 Wn.2d at 685.

[30] *E.g. Smith v. Shannon*, 100 Wn.2d 26, 37, 666 P.2d 351 (2001) (the failure to raise an issue before the trial court generally precludes a party from raising it on appeal); *Rapid Settlements, Ltd.'s Application for Approval of Transfer of Structured Settlement Payment Rights v. Symetra Life Ins. Co.*, 166 Wn. App. 683, 695, 271 P.3d 925 (2012) (a party waives his right to assert an affirmative defense if it is not raised at trial).

disclosure here was not made by Foss, but instead by an unauthorized third-party witness at the invitation of opposing counsel. In other words, this is not a case of inadvertent disclosure. And even if it were, none of the rules' three prongs are met here, so the facts here would make a poor case study. Since the disclosure at issue was not inadvertent and there are no facts that support the test, there can be no substantial public interest in using this case to clarify ER 502(b).

A. Petitioners submit that there is a public interest in clarifying the law of waiver by inadvertent disclosure, but Respondent did not inadvertently disclose information; the information was misappropriated and obtained directly by Petitioners.

Inadvertent waiver occurs when the party holding the privilege provides the documents to the opposing party.[31] As in *Richards v. Jain*, a case whose facts directly parallel those here, "[t]his is not a case of inadvertent disclosure during the normal discovery process that could potentially constitute a waiver. . . ."[32] Neither Foss nor Foss's counsel inadvertently disclosed privileged information. Rather, Foss's former employee who had misappropriated Foss's documents made the disclosure. The only disclosure made by Foss was Vorwerk's contact information, given in response to Brandewiede's request for issuing a subpoena for deposition. But Brandewiede chose instead to interview Vorwerk privately, and requested

[31] *See, e.g., Richards v. Jain*, 168 F.Supp.2d 1195, 1208, 1209 (W.D. Wash. 2001) (called into doubt on other grounds, *Kyko Global Inc. v. Prithvi Information Solutions Ltd.*, No. C13-1034 MJP, 2014 WL 2694236 (W.D. Wash June 13, 2014)).
[32] *Id.*

that Vorwerk provide the documents that he had misappropriated from Foss. Welch and Vorwerk's secret meetings cannot constitute waiver by Foss—inadvertent or otherwise.

Brandewiede says waiver occurred by the mere fact that Foss provided Welch with Vorwerk's contact information.[33] But that information (1) was publically available, and (2) is not privileged. Brandewiede cannot identify a single case holding anything remotely close to the proposition that the production of public, discoverable contact information of a third party witness somehow waives the privilege over materials that a witness misappropriated and gave to opposing counsel in a private interview. There is no inadvertent disclosure here on which a waiver could be based.

B. *Even if this were a case of inadvertent disclosure (which it isn't), ER 502(b) is clear, and none of its three prongs are met here.*

Under ER 502(b), a disclosure does not waive the attorney-client privilege if (1) it is inadvertent; (2) the privilege-holder took reasonable steps to prevent disclosure; and (3) the holder promptly took reasonable steps to rectify the disclosure, including, if applicable, following the procedure set forth in CR 26(b).[34] The test is clear and all three elements must be met for waiver to occur.[35]

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[33] Brandewiede's Petition for Review at 9.
[34] ER 502(b).
[35] *Id.*

1. ER 502(b) codified existing law and its language matches that of FRE 502(b), for which guidance abounds.

ER 502(b) was enacted in 2010 to codify existing law.[36] Before ER 502(b) was enacted, the Court of Appeals addressed waiver by inadvertent disclosure in *Sitterson v. Evergreen School Dist. No. 114*.[37] The court applied a five-part test also used by other courts[38] to determine whether the privilege is waived through inadvertent disclosure: (1) the reasonableness of the precautions taken to prevent disclosure; (2) the amount of time taken to remedy the error; (3) the scope of discovery; (4) the extent of the disclosure; and (5) the overriding issue of fairness. Brandewiede cites no support for the proposition that ER 502(b) or its application is ambiguous or needs clarification.

To understand ER 502(b), courts and litigants can also look to FRE 502(b), which has identical language[39]—and that is no coincidence: the drafters of ER 502(b) relied on FRE 502(b).[40] In applying FRE 502(b),

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[36] Aronson, THE LAW OF EVIDENCE IN WASHINGTON, § 9.05[7][b] (5th ed. 2014).
[37] *Sitterson v. Evergreen School Dist. No. 114*, 147 Wash. App. 576, 196 P.3d 735 (2008).
[38] *Id.* at 588, citing *Alldread v. City of Grenada*, 988 F.2d 1425 (Fifth Cir. 1996); *see also Hartford Fire Insurance Co. v. Garvey*, 109 F.R.D. 323 (N.D. Cal. 1985); *Lois Sportswear, U.S.A., Inc. v. Levi Strauss & Co.* 104 F.R.D. 103 (S.D.N.Y. 1985).
[39] *See* Fed. R. Evid. 502(b).
[40] WASH. STATE BAR ASS'N BD. OF GOVERNORS, GR 9 COVER SHEET - SUGGESTED NEW RULE – ER 502 (2010).

federal courts consider the same factors adopted in *Sitterson*. And that case law provides even more analysis on how to interpret these factors.[41]

The public interest does not require clarification of ER 502(b), as there is already a wealth of authority on inadvertent waiver in both Washington and federal courts. As discussed below, these authorities make clear that Foss did not waive its privilege.

2. None of the prongs of ER 502(b) are met here.

First, as discussed above, Foss did not inadvertently disclose anything: The disclosure was made by a third party witness who had misappropriated the information.

Second, Foss took reasonable steps to prevent disclosure. Well before any privileged communications were disclosed, Foss ensured that Vorwerk had consented to its Business Ethics Policy and its Electronic Mail Policy.[42] These policies bar employees from disclosing confidential information to outsiders and make clear that the contents of any employee's computer and all messages sent through company email belong solely to Foss.[43] These

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[41] *See, e.g., Victor Stanley, Inc. v. Creative Pipe, Inc.*, 250 F.R.D. 251, 259 (D. Md. 2008); *United States ex rel. Bagley v. TRW, Inc.*, 204 F.R.D. 170, 177-179 (C.D. Cal. 2001); *United States v. Koerber*, 2011 U.S. Dist, LEXIS 58579, at *18–*20 (D. Utah June 2, 2011); *Musso v. Excellence in Motivation*, 2010 U.S. Dist. LEXIS 120093, at *2–*3 (N.D. Ill. Nov. 12, 2010); *Ceglia v. Zuckerberg*, 2012 U.S. Dist. LEXIS 55367, at *26–*27 (W.D.N.Y. Apr. 19, 2012); *United States Fid. & Guar. Co. v. Braspetro Oil Servs. Co.*, 2000 U.S. Dist. LEXIS 7939, at *23 (S.D.N.Y. June 7, 2000).

[42] App. A, Ex. 1-3. **[CP 50 – 80]**

[43] *Id.*

precautions in ensuring Vorwerk would not disclose privileged materials were reasonable, which is all the law requires.[44]

Third, Foss promptly took reasonable steps to rectify the disclosure, and Brandewiede does not dispute this. In *United States v. Koerber* the U.S. District Court for the District of Utah found that this prong of the inadvertent-waiver test was met when the party holding the privilege informed opposing counsel both immediately and one month later that the documents were privileged, as there was no evidence of lack of notice that the documents were privileged.[45] Similarly, in *Ceglia v. Zuckerberg* the Western District of New York found that it is sufficient to request that the privileged documents be returned or destroyed within days after learning of the disclosure.[46]

Here, Foss immediately advised Brandewiede's counsel that the files contained privileged communications and instructed that they be returned.[47] After several days of silence, Foss reiterated its request. When Welch's only response was to submit Foss's privileged communications as a trial exhibit and state his intention to continue reviewing the materials, Foss moved for disqualification.

Foss also followed CR 26(b), which addresses claims of privileged information produced in discovery. CR 26(b) required Foss to notify

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[44] ER 502(b).
[45] *United States v. Koerber*, 2011 U.S. Dist, LEXIS 58579, at *18–*20 (D. Utah June 2, 2011).
[46] *Ceglia v. Zuckerberg*, 2012 U.S. Dist. LEXIS 55367, at *26–*27 (W.D.N.Y. Apr. 19, 2012).
[47] App. D at ¶¶ 6 to 8. **[CP 82 – 83]**

Brandewiede of the claim of privilege and its basis, and permitted Foss to present the privileged information in camera to the court for a determination of the claim.[48] Foss did both of these.[49]

In short, the disclosure was not inadvertent, and Foss took reasonable steps to protect the privilege and rectify Vorwerk's disclosure. Accordingly, none of the elements of ER 502(b) are met and there is no public interest in delving further into ER 502(b) under the facts of this case.

III. Brandewiede was not aggrieved by the Court of Appeals' decision, so review should be denied under RAP 3.1.

RAP 3.1 states that only an aggrieved party may seek review by the appellate court.[50] Brandewiede is not aggrieved: He sought[51] and obtained[52] a reversal and remand of the trial court's order disqualifying its attorney. And as for waiver, it was not raised in the trial court and therefore not properly before the Court of Appeals. Accordingly, Brandewiede is not entitled to review under RAP 3.1 of either issue.

IV. Foss requests an award of attorney fees under RAP 14.2 and 18.1.

Under RAP 14.2 and 18.1, a commissioner or clerk of the appellate court will award reasonable attorney fees and costs to the party that substantially

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[48] CR 26(b).
[49] *See* Foss Maritime Co.'s Response Brief at 9; Petitioners' Motion for Discretionary Review (Appendix H), App, K, Ex. E.
[50] RAP 3.1.
[51] Brandewiede's Opening Brief at 48.
[52] *Foss Maritime Company v. Brandewiede*, No. 71611-5-I, --- P.3d ---- (Wn. Ct. App. Sep. 14, 2015).

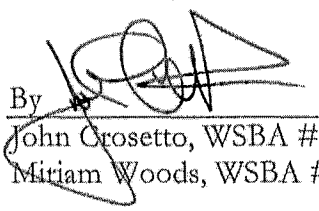
prevails on appeal, unless the court direct otherwise.[53] If this Court denies Brandewiede's petition for review, Foss respectfully asks this Court to order Brandewiede to pay Foss's attorney fees and costs as permitted under the RAPs.

CONCLUSION

For the reasons stated above, Foss respectfully asks this Court to deny Brandewiede's petition for review.

DATED this 13th day of November, 2015.

GARVEY SCHUBERT BARER



By
John Crosetto, WSBA #36667
Miriam Woods, WSBA #45659

GSB:7383102.1

[53] RAP 14.2.

NO. 92422-8

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Defendants.

CERTIFICATE OF SERVICE

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(206) 464-3939

I, Tiffany L. Armstrong, declare under penalty of perjury that on November 13, 2015, I caused true and correct copies of *Foss Maritime Company's Answer Opposing Petition for Review* and this *Certificate of Service* to be served via legal messenger upon the following parties:

Gregory M. Miller
Carney Badley Spellman
701 Fifth Avenue, Suite 3600
Seattle, WA 98104-7010

DATED this 13th day of November, 2015.

GARVEY SCHUBERT BARER

Tiffany L. Armstrong, Legal Assistant

GSB:7384047.1

OFFICE RECEPTIONIST, CLERK

To: Tiffany Armstrong
Cc: Miriam Woods; John Crosetto
Subject: RE: No. 92422-8 - Foss Maritime v. Brandewiede, et al. (WA Court of Appeals, Div. I No. 71611-5-I)

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Cc: Miriam Woods <MWoods@gsblaw.com>; John Crosetto <jcrosetto@gsblaw.com>
Subject: No. 92422-8 - Foss Maritime v. Brandewiede, et al. (WA Court of Appeals, Div. I No. 71611-5-I)

Good afternoon,

Attached are Foss Maritime Company's Answer Opposing Petition for Review and a Certificate of Service for filing in the above referenced matter.

Please let me know if you have any issues opening the attachments.

Kind regards,

Tiffany Armstrong
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