NO. 93589-1

IN THE
STATE OF WASHINGTON SUPREME COURT

WARREN E. BOHON,

Petitioner

v.

CITY OF STANWOOD,

Respondent.

RESPONDENT CITY OF STANWOOD'S ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

Respondent City of Stanwood, Defendant below, is a municipal corporation and was Petitioner's employer until he was discharged in 2006.

II. COURT OF APPEALS DECISION

On June 13, 2016, Division I of the Court of Appeals affirmed the Snohomish County Superior Court's February 5, 2015 order granting summary judgment dismissal of Plaintiff-Petitioner Bohon's claims against the City of Stanwood. *See, Appendix A (unpublished "Opinion").* On August 11, 2016, the Court of Appeals denied Petitioner's Motion for reconsideration of its order affirming dismissal. *See, Appendix B* (*Order*).

III. ISSUES PRESENTED FOR REVIEW

Petitioner lists "due process of law, equal treatment of the law, corruption of public servants, and advancement of the cause of justice" as the "issues" presented for review by the Supreme Court.[1] However, these are not the legal claims Petitioner pursued against the City of Stanwood, or the legal claims on which the trial court or the Court of Appeals ruled. Thus, they are irrelevant to this court's decision as to whether this court should accept review of the appellate decision affirming dismissal of Petitioner Bohon's claims. Petitioner fails to present any identifiable legal issue for which he seeks Supreme Court review that he claims was improperly decided by the Court of Appeals, or that satisfies the standards

[1] There are no Federal Constitutional claims at issue in this State law case.

set forth in RAP 13.4(b) required to accept review.

IV. STATEMENT OF THE CASE

Petitioner Warren Bohon ("Plaintiff") was terminated from his employment with the City of Stanwood in January 2006 for insubordination after repeatedly refusing to follow directives to move his office to City Hall, where his Planning and Community Development Department (and his supervisor) were located. CP 57-61, 66-68, 71, 76. Mr. Bohon was 59 years old when he was hired and 72 when he was discharged. CP 57-61. The City hired Jeff Foss, age 56, to replace Bohon. CP 344-346; See, also, CP 72, 86, 378.

Mr. Bohon refused directives from his Department Director (Hansen) and Mayor Herb Kuhnly, who subsequently issued a pre-termination notice. CP 93, 144, CP 161-162. In the meantime, newly-elected Mayor Dianne White took office and proceeded with the pre-termination hearing on January 9, 2006, during which Mr. Bohon described his personal disagreements with past hiring decisions at the City, and his long-held personal opinion that nearly "everyone" who had ever worked at the City was "corrupt". CP 310-343; CP 65. However, he never disputed that he refused Mayor Kuhnly and Ms. Hansen's directives to move his office to City Hall and told Mayor White that he would continue to refuse to move his office—even if she directed him to do so as his new boss. *Id.*

Ultimately, Mayor White decided to proceed with terminating Mr. Bohon's employment, issuing a January 13, 2006 notice stating in

part:

> ... the fact that you were repeatedly given a clear directive to move your office and yet willfully refused to do so and even continue to resist that directive during the pre-termination hearing, convinces me that your continued employment is not in the City's best interest.

CP 164-165. She noted that his persistent refusal to move his office, alone, constituted insubordination of a nature that could not be tolerated and was the reason she decided to terminate him. Id. Three years later, Mr. Bohon filed this lawsuit, alleging he must have been terminated because of his age. CP 74.

Mr. Bohon admitted he had no reason at the time to suspect Mayor White was motivated by an intent to discriminate or retaliate against him (based on age or any other reason) before he met with her at his pre-termination hearing, believing her to be untouched by the alleged "*rampant corruption and bias*" of which he suspected everyone else. CP 106-107. He also concedes there is no actual evidence—direct or circumstantial--suggesting that Mayor White terminated his employment due to his age other than his own unilateral conclusory allegations. CP 74 *("Q:And what leads you to believe that the decision to terminate you in 2006 was because of your age? A: Oh, there's no question that it was because of my age because there's no other reason.").*

> On review, the court of appeals summarized the factual background as follows, at *Opinion, p. 6-7:*

> Our review of the record shows that Bohon was fired for insubordination related to his repeated refusal to move his office. Bohon was not fired until he was given a full opportunity to explain his position in a pretermination hearing presided over by the newly elected Mayor Dianne White.
>
> * * *
>
> Bohon does not dispute these facts. Indeed, Bohon stated in his deposition that, "[*y*]*es, I refused to move my office.*" CP at 104. Bohon explained he felt he should not be required to move his office because, "*my record shows the building department,*" where he was located, was in his opinion the "most efficient" location. CP at 93. Later, Bohon stated "*I could have moved my office but they'd have fired me down the road sooner or later.*" CP at 96.

Opinion, p. 6-7 (App. A). Petitioner filed this lawsuit in Snohomish County Superior Court in 2009. On February 5, 2015, the trial court granted the City of Stanwood's Motion for Summary Judgment and dismissed his claims.

On appeal, Petitioner challenged the trial court's summary judgment ruling based on various evidentiary and procedural objections, and alleging questions of fact. *See, Opinion,* p. 1. In his Petition for Review, he now merely states he believes two questions of fact remain – but not questions material to his age discrimination claim. It has now been more than 11 years since Petitioner's employment with the City of Stanwood was terminated and nearly a decade since he began litigating against the City.

V. ARGUMENT WHY REVIEW SHOULD BE DENIED

Pursuant to RAP 13.4(b), 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 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.

The Petition seeks review only of the Court of Appeals unpublished decision to affirm the trial court's order granting summary judgment dismissal, which was subject to *de novo* review by the Court. *See, Keck v. Collins,* 184 Wn.2d 358, 370, 357 P.2d 1080 (2015). He does not seek review of any evidentiary or procedural rulings. Petitioner fails to establish any of these standards in RAP 13.4(b) warranting review.

A. Petitioner Fails To Establish That The Court of Appeals Decision Affirming Dismissal of His RCW Ch. 49.60 Age Discrimination Claims Involve an "Issue of Substantial Public Interest."

Petitioner fails to cite any legal authority or issue of law, thus making no attempt to establish that review may be warranted under RAP 13.4(b)(1)-(3). The Petition makes reference to "public interest safety issues (emphasis added)," perhaps in an attempt to suggest review pursuant to RAP 13.4(b)(4) as a "matter of substantial public interest." However, he still fails to identify any legal issue of substantial public

interest that presented by his case or the Court of Appeals' decision warrants review by this court.

In determining whether an issue involves a matter of "substantial public interest," the court considers factors such as: (1) whether the issue is of a public or private nature, (2) whether an authoritative determination is desirable to provide future guidance to public officers, and (3) whether the issue is likely to recur. *Paxton v. City of Bellingham*, 129 Wash. App. 439, 444, 119 P.3d 373, 375–76 (2005) (reviewing denial of writ of mandamus seeking to place public issue on election ballot), *citing Philadelphia II v. Gregoire*, 128 Wash.2d 707, 712, 911 P.2d 389 (1996) (defining State Attorney General authority to refuse to prepare ballot title for public initiative to be placed on election ballot).

Meeting this standard requires identification of an important legal issue that needs to be resolved by the State's highest Court in the interest of the greater public good. *See, e.g., In re Det. of C.M.*, 148 Wash. App. 111, 115, 197 P.3d 1233, 1235 (2009) (reviewing mental health civil commitment procedures requiring guidance to public officials for proper functioning of statewide mental health system); *In re Silva*, 166 Wn.2d 133, 206 P.3d 1240 (2009) (reviewing scope of judicial authority to incarcerate a child for contempt of court); *State v. Watson*, 155 Wash. 2d 574, 578, 122 P.3d 903, 904–05 (2005) (reviewing incorrect ruling potentially impacting every drug sentencing proceeding in the County, inviting unnecessary lawsuits, and creating confusion throughout criminal justice system); *State v. C.B.*, 165 Wash. App. 88, 93–94, 265 P.3d 951,

(2011) (lack of judicial direction regarding involuntary commitment of criminally insane is recurring issue of public concern implicating individuals' rights to refuse medical treatment and State's interest in providing effective medical treatment to those in its care), *citing Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wash.2d 791, 803, 83 P.3d 419 (2004) (petition method of annexation by cities throughout the state immediately affected significant segments of the population, and had a direct bearing on commerce, finance, labor, industry, and agriculture throughout the State of Washington).

Petitioner provides no argument or legal basis for establishing that this matter involves any issues of "substantial public interest." While he unilaterally states he views his own employment claims as "very high profile," that is not the case nor would such circumstances create an issue of substantial public interest. In reality, the legal issues and claims dismissed by the trial court and affirmed by the Court of Appeals are typical employment claims, specific to the facts and evidence of this case only, and the Court of Appeals' decision followed well-established Washington law. The case and issues are of significance only to Petitioner under the specific facts of his case.

B. The Court of Appeals Opinion Affirming Summary Judgment Dismissal of Plaintiff's Age Discrimination Claims Was Properly Decided and Did Not Involve Any Issues of Substantial Public Interest.

Considering all facts and inferences in a light most favorable to Petitioner Bohon, the Court of Appeals found summary judgment

dismissal of his RCW Ch. 49.60 age discrimination claim was proper. Petitioner provides no "substantial public interest" or other ground warranting review here. Instead, he simply continues to argue and disagree with the Court of Appeals ruling regarding the merits of his claims.

Evaluating Petitioner's RCW Ch. 49.60 age discrimination claim, the Court of Appeals properly applied the burden-shifting analysis described in *McDonnell Douglass Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973) that is employed by this court. *See, Scrivener v. Clark College*, 181 Wn.2d 439, 444, 334 P.3d 541 (2014); RCW 49.60.180(1); *see, also, Opinion, p. 5-8.*

The court properly ruled Bohon failed to establish a *prima facie* case of age discrimination sufficient to withstand summary judgment, having failed to establish he was performing satisfactory work. *Opinion, at p. 7, citing Scrivener*, at 444. The court further noted that Bohon also failed to establish that the City's non-discriminatory basis for firing him was "pretext" for age discrimination. *Id.*, p. 7. The record established he was fired for insubordination related to his repeated refusal to move his office, conduct that he never disputed and that he confirmed he would continue even under supervision of the new Mayor, stating in his deposition that, "*[y]es, I refused to move my office.*" CP at 104. *See also*, CP 164, 348-49.

The court of appeals properly ruled:

> "To prevail on summary judgment, Bohon must show that age discrimination was a substantial motivating factor in the City's

> decision to fire him or that its nondiscriminatory reason—his failure to move his office—is pretextual at best he identifies the fact that he was replaced by an employee who was 56 when hired. But beyond this, Bohon identifies no remark or actions in the record that would give rise to an inference that age factored into the City's decision. Instead, Bohon acknowledges he refused to follow concrete and specific directives from his supervisor and the Mayor to move his office. He also admitted that Mayor White had no reason to be biased against him. He persisted in doing so even at his pretermination hearing before Mayor White."

Opinion, p. 7.

Notably, even the two "questions of fact" Petitioner now identifies as a basis to preclude summary judgment are not even material to his RCW Ch. 49.60 age discrimination claims. *See, Petition*, p. 2. First, he asserts questions remain as to whether terminating him for insubordination was really "pretext" "to prevent the discovery of negligence" (not to cover up for what was really age discrimination). Second, he asserts questions of fact remain as to whether there is a "conflict of interest" between "employers" and "employees." *Id.* Nor does he identify what public "safety issues" could arise from the Court's decision upholding his termination. And this matter has never involved any legal claims related to "veteran status."

The Court of Appeals further properly noted that Bohon provided no argument to support reversal of the trial court's decision dismissing his remaining State law claims. *Opinion, p. 8*; RAP 10.3(a)(6). Nor does his

Petition for Review identify any claims beyond age discrimination for which he may be seeking review.

VI. CONCLUSION

Based on the forgoing, Respondent City of Stanwood respectfully requests the Court deny Mr. Bohon's Petition for Review.

DATED this 23rd day of November, 2016.

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By: _____

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DECLARATION OF SERVICE

I LaHoma Walker, being of lawful age, declare under penalty of perjury that on November 23, 2016, I sent out for filing with the Clerk of the State of Washington Supreme Court and for service on counsel of record, via U.S. first class mail in the above-entitled case. The envelope was plainly addressed to the following:

Attorneys for Pro se Appellant

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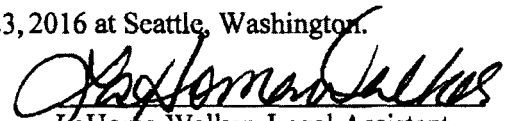
☑ E-mail ☑ United States Mail ☐ Legal Messenger

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 23, 2016 at Seattle, Washington.



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