Appellate Court # 73195-5

Superior Court # 93598-1

93589-1

SUPREME COURT OF WASHINGTON STATE

WARREN E. BOHON

APPELLANT,

V.

CITY OF STANWOOD

RESPONDENTS,

PETITION FOR REVIEW TO SUPREME COURT

Requesting review of Court of Appeals Unpublished Opinion

WARREN E. BOHON

881 Port Susan Terrace

Camano Island, Wa 98282

(425) 463-8460

A. IDENTITY OF PETITIONER

I, Warren E. Bohon, appellant Pro Se, asks this court to

B. Requesting review of Court of Appeals Unpublished Opinion.

Date of order denying a Motion for reconsideration Dated June 13, 2016

NO. 73195-5-1

C. Issues Presented for Review.

Declaration of Plaintiff: Warren E. Bohon

Requesting review of Court of Appeals Unpublished Opinion

All of Warren Bohon Deposition to be entered into court for review.

1. Due Process of Law

2. Equal treatment under Law

3. Corruption of Public Servants

4. Advancement of the Cause of Justice it also is relevant to a Seattle

5. Post Intelligencer Article Dated Wednesday, April 26, 2006 by Guest Columnist ROBERT UTTER AND FAITH IRELAND titled "Big Money threatens Court." As it affects the Cause of Justice Article attached Mentioned above

PETITION FOR REVIEW

ARGUMENT

Subject case is a Very High Profile Public Interest Case involving Highly positioned and deeply tenured previous Officials and Employees.

Previously employed at the City of Stanwood when it was said to be the fastest growing town, comparatively to others in the United States after 1992 for many years. It involves Veterans Protected Employment Status, i.e. (AGEISM), and is a Complex Case that covers several levels of Public Employment. As such it's Litigation process to ultimate resolution should prove educational to "Public Interest Safety" issues.

There is a Question of Material issue fact in the case. Was the reason given for my termination a Pretext claim that I was insubordinate of a direct order or was that a Scope goat reason to prevent the discovery of Negligence

In the failure of my accusers to do an investigation that would prove I was in fact not insubordinate because the Accusers were in themselves insubordinate of duty. Which can be proven if The Supreme Court will accept Review and allow the request of additional time pending decision in your court conditioned on receipt of this petition for review.

There is a question of Material fact as to whether there is a Conflict of Interest between Myself and eight other City of Stanwood employees and City taxpayers "Combined" interest" versus the City Officers/Agents who failed to do the Investigation that would make possible as to the true answer to the question of fact

in the case.

Myself and at least eight other employees requested of the City Mayors Herbert Kuhnly 2004, 2005 and Mayor Dianne White Mayor in 2006 and Council person in 2004, and 2005 and also my boss at the time Stephanie Hanson Cleveland.

It is on Record as of 6/25/04 that eight other Employees Wrote to the Mayor And City Council persons requesting an investigation that if done promptly at the time as City of Stanwood promised in Personnel Manuals and Collective Bargaining Documents this case would have never been started as it was.

A copy of the 6/25/04 letter is included with this petition for review.

Herbert Kuhnly, Dianne White, Stephanie Hansen Cleveland, Grant Weed, and Jayne Freeman are all aware of the 6/25/04 Letter Eight.

There is a request for a 90 day extension to file a Request for Petition of Review by this Court. D00861, May 11, 2004 To Whom it May Concern: August 1, 2004

CONCLUSION

I believe if this Court will allow that extension that a settlement discussion between myself and City of Stanwood Counsel might stand a good chance of Occurring.

The requested time extension approval would make it possible I believe for me to obtain an attorney to assist in a settlement consultation.

I have to believe that is worth a try and request your approval in the regard.

Respectful

Warren Bohon

Warren Bohon

Appellate Court # 73195-5

October 27, 2016

No. Superior Court # 93598 -1

Warren E. Bohon

881 port Susan Terrace

Camano Island Wa 98282

(425) 463-8460

Warren Bohon (

Warren E. Bohon

PETITION FOR REVIEW

73195-5
93598-1

PROOF OF SERVICE

I. STATEMENT

The undersigned states:

I am over the age of 18 yrs old

I served Jayne Freeman

with the following documents: Warren Bahon petition for review of Court of Appeals Unpublished Opinion

Date, time and place of service:

Date: 10-27-16 Time: _____

Address: 800 5th Ave #4141, Seattle, WA 98104

Service was made as indicated below:

_____ By delivery to respondent by a peace officer.

__X__ By delivery to respondent by the undersigned, who is not a party in this action, who is over the age of 18 and who is competent to be a witness in this action.

_____ By mailing _____Regular _____ Certified

II. CERTIFICATE OF STATEMENT

I certify under penalty of perjury under the Laws of the State of Washington that the foregoing statement is true and correct. (RCW 9A.72.085)

Dated at Snohomish (City), Washington, on 10-27 (Date), 2016.

Marisa Bean
(Signature)

The Honorable Mayor H.W. Herb Kuhnly
City of Stanwood
6/25/04

We, the employees of the Stanwood Public Works Department, have three grievances with the City all having to do with the questionable behavior of Leslie Anderson, the City's Superintendent of Public Works. Not included in those grievances has been a deeply seated concern among employees from the start of Anderson's employment about the questionable practice in which Leslie Anderson was selected for the position under the authority of Mayor McCune.

1. A very serious issue is "favoritism" that Les Anderson has practiced toward one specific employee. Anderson has allowed that employee to break rules and engage in wrong behavior with impunity. The rule governing bereavement leave was compromised. The most serious offense was the employee intentionally did not record correctly water meters to favor himself when assigned to read water meters for the City. When caught by staff that employee was given no reprimand. The office employee who caught the deception was reprimanded and now fears for her personal reputation.
2. Les Anderson is a "bully" type leader, who attempts to manage employees through the practice of intimidation as opposed to applying simple firm, positive leadership skill.
3. As a group, the employees of the Public Works Department have witnessed Les Anderson often talk in a demeaning way about other employees and tax paying citizens in the community as well behind their backs. Les Anderson does not characterize the model expected of a "public servant" paid by the taxpayers to "serve" the community.
4. As a group, we know from experience that Leslie Anderson is not qualified to be the Superintendent of Public Works. He exhibits carelessness about knowing what has to be done and that what has to be done be done well.
5. Under his supervision, Leslie Anderson has created a hostile environment among employees due to several acts of poor performance in handling his duties and then placing the blame on employees caused by his own failures to perform or incompetence.
6. We have had numerous other issues directly pertaining to Leslie Anderson which continue to reflect on the bargaining unit's confidence in his abilities to remain as a supervisor.
7. A vote on the above issues resulted in an eight to one in favor of "no confidence" in Leslie Anderson remaining as Superintendent of Public Works for the City of Stanwood. The eight employees who so voted wish the "no confidence" results to be taken seriously by management by a serious investigation into Leslie Anderson's conduct which will likely lead to his replacement as Superintendent of Public Works. We as a bargaining unit are fully prepared to carry out the results of this vote to the highest level.

It should be pointed out that only in the last three years have we had such numerous issues and grievances in the Department of Public Works. Some of us have been with the City for quite a number of years and have a clear understanding of what a "public servant" is and how well the Department operates when managed competently. We strongly request that you review these matters and seriously consider terminating Leslie Anderson's employment as a public servant for the City of Stanwood.

Sincerely,

City of Stanwood
Public Works Department
Local 231

Big money threatens court

GUEST COLUMNISTS

ROBERT UTTER
AND FAITH IRELAND

As the Seattle P-I has reported, a big money political action committee has been formed to elect to the Washington Supreme Court and state Court of Appeals judicial candidates seemingly committed to their political agenda ("Spending cap may backfire," March 23).

As former justices of the Washington Supreme Court, we are gravely concerned about this ominous development that threatens the independence of the judiciary, the cornerstone of our separation-of-powers doctrine. The judicial oath of office commits a judge to faithfully and impartially perform the duties of office. The requirement of impartial performance is unique. It is necessary in reality and appearance, if the public is to maintain faith in our courts. And it is here that this misguided effort by powerful interests is so dangerous.

Judges cannot be or appear to be beholden to those who raise the most money in support of their candidacy. To extend the political lobbying culture, so prevalent in Washington, D.C., to our judicial elections is destructive of public faith in impartial justice. Those big-money interests with a decided political agenda must learn to respect the very institutions they seek to politicize.

The recent creation of a state PAC, backed by powerful corporate and other special interests, is mirrored on the national level by the U.S. Chamber of Commerce's Institute for Legal Reform. Since the 2000 elections, it has intervened with massive amounts of money to help elect its handpicked candidates for state Supreme Court races.

The U.S. Chamber's "aggressive voters education campaign" was exposed in Washington state in 2004 when it surreptitiously supplied $1.5 million to a local front group to support a last-minute media buy attacking a statewide candidate. Opposition to this tactic was fierce and included the local chambers of commerce, which resented not being consulted about the expenditure. King County Superior Court Judge Richard Jones recently ruled that the ad was illegal under state laws, noting that the voters' right to know who is funding campaign advertising is of fundamental importance.

The independence of the judiciary is vital to our democracy. Our citizens rely upon a fair and impartial determination of the issues brought to court. The civil justice system is designed to provide a level playing field for all parties. Even the appearance of impropriety or bias of the court erodes public support for our court system and the rule of law. Those with a political agenda must keep their hands off of our judiciary.

The only true agenda of any court and judge is justice. Justice involves the impartial application of well-established legal principles enshrined in the Constitution and the law to the facts and legal dispute brought before it by party litigants. Electing judges based upon a political agenda would interject politics into the impartial and even-handed dispensation of justice in any particular case.

We are not alone in expressing this concern. The American Judicature Society, both on a local and national level, has come out strongly against the politicization of judicial elections. Consumer organizations such as Public Citizen and the Center for Justice and Democracy have exposed the way powerful interests have improperly sought to exert predominant influence in state judicial elections.

We call upon the voters of the state of Washington to reject out of hand any attempt to politicize our courts.

Retired Washington Supreme Court Justice Robert Utter is a past national chairman of the American Judicature Society. Retired Washington Supreme Court Justice Faith Ireland is a past president of the Washington chapter of the American Judicature Society.

HW-NO 2 1/11-P

Stephanie Cleveland Hansen

From: Mayor [mayor@ci.stanwood.wa.us]
Sent: Monday, January 09, 2006 1:56 PM
To: Stephanie Cleveland
Cc: 'Lynda Jeffries'
Subject: Warren

Steph: Warren called me at home and wanted to meet and call off today's meeting. I told him no on both counts.
Dianne

59

1/9/2006

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

CITY OF STANWOOD, Respondent, v. WARREN E. BOHON, Appellant.	)	NO. 73195-5-I DIVISION ONE UNPUBLISHED OPINION FILED: June 13, 2016

VERELLEN, C.J. —Warren Bohon appeals from the summary judgment order dismissing his claims against his former employer, the City of Stanwood. He argues that summary judgment was improper because (1) the City failed to provide timely notice of the summary judgment hearing, (2) the trial court rejected his summary judgment materials without considering the Burnet factors and denied his motion for a continuance, (3) the trial court relied on unsigned affidavits and should have considered his entire deposition testimony, and (4) there were material questions of fact precluding summary judgment. We affirm.

FACTS[1]

In 1992, the City of Stanwood hired Warren Bohon at the age of 59 to work as a part-time code enforcement officer in the Community Development Department. Eventually, Bohon worked as a building inspector.

During Bohon's tenure with the City, he claimed that he "blew the whistle" on corruption in his department. In particular, he disagreed with the City's decision to hire Les Anderson, the Public Works Director, and Bill Beckman, the City Administrator, and claimed those decisions were based on corruption.

In 2001, Stephanie Cleveland Hansen was hired as the Community Development Director and became Bohon's immediate supervisor.

Four years later, in November 2005, Hansen directed Bohon to move his office from the Public Works Department building, known as the "Lagoon Building," to City Hall, where she and the rest of Bohon's department worked.

Bohon refused. On December 1, he sent a memorandum to Hansen and, although she had not yet assumed office, newly elected Mayor Dianne White. The memorandum was entitled "[r]elocation of office of Warren Bohon" and included Bohon's statement that he was "claiming all the protections afforded a 'WHISTLEBLOWER' provided in Federal, State and City laws." Clerk's Papers (CP) at 139. Bohon described his belief that Beckman "unduly influenced" Mayor Kuhnley for a promotion and that he was unqualified. He described how he had organized a meeting

[1] Bohon's recitation of facts includes citations to documents appended to his opening brief, but not included in our appellate record. Our discussion of the facts is limited to the record on appeal of the evidence before the trial court on summary judgment.

for "City employees to present our objections to continuing the 'Abuses of Authority' and the [g]ross waste of Public Funds [] that inherently would associate with such an act by the Mayor." CP at 139. Finally, he claimed that a different employee, Les Anderson, "took steps" to force his move to City Hall after Bohon refused to let him use his office chair. CP at 140.

On December 7, 2005, Mayor Herb Kuhnly directed Bohon in writing to move his office by December 12 or face disciplinary action. Mayor Kuhnly indicated that the City would provide assistance if Bohon had any physical limitations. Again, Bohon refused.

On the day Bohon was required to report to his new office, he called in sick and failed to appear for scheduled building inspections. He later requested that Hansen sign several leave forms and submitted a handwritten memorandum explaining his vacation request.

On December 13, Bohon wrote another letter to Hansen and Mayor White. White still had not assumed office. Bohon alleged that he was "seeking protection against retaliation for reporting improper governmental action." CP at 145. He continued, "Stephanie, you are aware of my age. It is important that you, as an involved party, ensure that Mayor Kuhnly and Bill Beckman are aware of it. To terminate a person of my age is the severest act an employer can do to an employee. If the City of Stanwood proceeds to terminate my employment I will be fully justified in seeking the severest of penalties to be assessed against all relevant parties." CP at 147. Bohon concluded that for "the City to disturb or relocate my office during the time I am away and/or to terminate my employment given the existing circumstances will be further proof of illegal, pretextual acts done in BAD FAITH." CP at 148.

On December 20, 2005, Hansen recommended the Mayor terminate Bohon's employment. Hansen cited violations of the personnel policy manual as grounds for the disciplinary action, including:

> 9.1.6 Loitering after completing day's work, which results in the disruption of the City's business or the work efforts of other employees.
> 9.1.10 Making malicious, false, or derogatory statements that are intended or could reasonably be expected to damage the integrity or reputation of the city or our employees, on or off premises.
> 9.1.11 Insubordination, including a refusal or failure to perform assigned work.

CP at 161. Hansen stated that "[m]ost recently [Bohon] has refused to relocate his work space to City Hall per both my and the Mayor's direct orders." CP at 161.

On January 9, 2006, Mayor White, now in office, presided over Bohon's pre-termination hearing. At the hearing, Bohon focused on his disagreement with the City's hiring decisions over the years. Specifically, his concerns were based on his belief that Anderson and Beckman were not qualified for their jobs. But Bohon admitted that he refused to move his work space to City Hall because he believed his current space was more efficient.

Mayor White asked if Bohon would also refuse her order to move his office. According to Mayor White, Bohon stated that "he would continue to resist any directive to move and work at City Hall, even if it came from me, the current Mayor of the City." CP at 349. In his later deposition, Bohon similarly recalled the interaction:

> Somebody in there asked me, "Who do you think has the authority to"—I'm paraphrasing it now. I can't—I'm not saying this is verbatim what I said or what they said, but somebody asked me who I thought had the authority to tell me to move my office, and I believe I pointed to her, Dianne White, and said, "Well, I believe she does," or whatever. But they don't have my opinion of—this wasn't on the record then—but my opinion is she did not have the authority at that time. None of them had the

> authority because they had abused their oath of office in a felony situation and they had forfeited their right."

CP at 108.

On January 13, 2006, Mayor White notified Bohon that the City was terminating his employment. Mayor White explained that each of the reasons cited in Hansen's letter could serve as a basis for termination. But she identified Bohon's refusal to move his office as the critical factor:

> While any one of the reasons cited for your termination standing alone is a sufficient basis to take this action, the fact that you were repeatedly given a clear directive to move your office and yet willfully refused to do so and even continued to resist that directive during the pre-termination hearing, convinces me that your continued employment is not in the city's best interest.

CP at 164.

Bohon was 72 at the time he was fired. The City hired Jeff Foss, 56, to replace him.

In 2007, Bohon, acting on his own behalf, sued the City in federal district court. Bohon voluntarily dismissed his claims without prejudice.

In 2009, Bohon, refiled his claim in Snohomish County Superior Court. His complaint alleged age discrimination, wrongful discharge, disparate treatment, unlawful harassment, willful withholding of wages, negligent and intentional infliction of emotional distress, and breach of contract.

In 2010 and 2013, the court ordered Bohon to show cause as to why his case should not be dismissed for failure to prosecute. In each case, Bohon retained attorneys to argue against dismissal.

The parties eventually set a trial date in December 2013, but this date was continued to March 2014 due to scheduling problems. Bohon then asked for additional time to prepare and the parties jointly requested a continuance. The court set the new trial date for February 2, 2015.

Over the following year, the City attempted to clarify whether Bohon had retained counsel, reminded him several times of the upcoming trial, and informed him it intended to move for summary judgment. For instance, on October 7, 2014, the City wrote:

> As I have indicated for some time now, the City plans to file a motion for summary judgment in this matter. Enclosed please find a Note for Motion setting the hearing on the motion for Tuesday, November 25, 2014 in Snohomish County Superior Court. I am sending this to you nearly two months in advance of the hearing to give you plenty of time to plan for it. The City will file its motion later this month in accordance with the civil rules.

CP at 300-01.

Due to scheduling conflicts, the City later notified Bohon that it was striking the November motion and would re-note the motion before trial in February.

On December 19, 2014, the City filed its motion for summary judgment and scheduled the hearing for January 16, 2015. That day, the City mailed copies of the motion to Bohon's Camano Island address. United States Postal Service tracking information indicates that the package was left on Bohon's front porch on December 20, 2014.

The City also e-mailed Bohon the summary judgment materials at the address he had used to correspond with the City throughout the litigation.

In addition, the City attempted to personally serve Bohon by legal messenger at his Camano Island home. The messenger was unable to locate Bohon at home and made additional unsuccessful service attempts on December 20, 21, 22, and 26.

On January 15, Bohon called the court to request a continuance due to illness. The court continued the hearing to February 5, 2015.

On January 26, the City wrote Bohon to advise him of the continuances and stated that "[y]ou already have copies of the City's Motion for Summary Judgment and related pleadings, which were served on you on December 19, 2014." CP at 480. Bohon did not respond.

On January 27, Bohon contacted the City's attorney to confirm that the hearing would proceed on February 5.

On February 5, Bohon claims to have appeared at the hearing with a box of documents he believes would have defeated summary judgment. The documents were never filed. The court denied Bohon's motion to continue the matter and granted summary judgment for the City.

Bohon appeals.

ANALYSIS

Timeliness of Service

Bohon claims he was not timely served with the City's summary judgment materials before the hearing. The City argues that Bohon waived this issue by not raising it below and, even considering the claim, service was proper. We agree with the City.

It is undisputed that Bohon did not raise the sufficiency of service below, and he makes no argument as to why he should be entitled to raise the issue for the first time

on appeal. Thus, we need not consider it here. See RAP 2.5(a); State v. McFarland, 127 Wn.2d 322, 332-33, 899 P.2d 1251 (1995) ("As a general rule, appellate courts will not consider issues raised for the first time on appeal.").

Even so, however, the record is clear that Bohon was properly served. Under CR 5(b)(2)(A), service by mailing is considered complete three days after being placed in the mail:

> [Service] shall be deemed complete upon the third day following the day upon which they are placed in the mail, unless the third day falls on a Saturday, Sunday or legal holiday, in which event service shall be deemed complete on the first day other than a Saturday, Sunday, or legal holiday, following the third day.

"The motion and any supporting affidavits, memoranda of law, or other documentation shall be filed and served not later than 28 calendar days before the hearing." CR 56(c).

Once mailed, a rebuttable presumption attaches that the document has been received by the addressee in the usual time. Neuson v. Macy's Dep't Stores Inc., 160 Wn. App. 786, 793, 249 P.3d 1054 (2011). To invoke the presumption of receipt under the common law mailbox rule, proof of mailing must be shown. Olson v. The Bon, Inc., 144 Wn. App. 627, 634, 183 P.3d 359 (2008). Proof may include a dated receipt or other evidence of mailing. Olson, 144 Wn. App. at 634.

The record shows that the summary judgement materials were placed in the mail on December 19, 2014, and delivered to Bohon's front porch the following day. Bohon claims the fact that the City's legal messenger service was unable to also deliver the materials—noting there was "[n]o answer at door, no noise inside, no movement inside and no lights"—rebuts the presumption that he received the mailing. CP at 36. It does

not. The fact that Bohon did not respond to a legal messenger attempting personal service does not prove he did not receive his mail.[2]

Bohon argues that even assuming delivery under CR 5(b)(2), the presumed delivery date would be December 22, less than the required notice of 28 days. But Bohon calculates the notice based on the original January 16 hearing date. In fact, the hearing was not held until February 5. Calculation of CR 56 notice applies to the date on which the hearing actually occurred. Cole v. Red Lion, 92 Wn. App. 743, 749, 969 P.2d 481 (1998). Indeed, the summary judgment materials were served on Bohon more than 28 days before the summary judgment hearing.

Failure to Consider Burnet[3] Factors

Bohon next contends that the trial court failed to consider the Burnet factors before rejecting his summary judgment materials. He states he "asked the trial court to accept that evidence or in the alternative to accept it and grant a continuance to allow such materials to have been deemed timely filed." Br. of Appellant at 24.

In general, a trial court's failure to consider the Burnet factors before excluding untimely filed declarations and materials opposing summary judgment is an abuse of discretion. Keck v. Collins, 184 Wn.2d 358, 357 P.3d 1080 (2015). But here, the record

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[2] Bohon improperly supports his factual arguments on this issue by citation to materials included in the appendix to his briefing. The appendix materials are not in our appellate record and thus not properly before us on appeal. We do not consider them here.

[3] In Burnet v. Spokane Ambulance, 131 Wn.2d 484, 494, 933 P.2d 1036 (1997), our Supreme Court held that the trial court must consider certain factors on the record before imposing one of the "harsher" remedies under the discovery rules, including whether a lesser sanction would suffice.

does not show that Bohon filed or otherwise called the court's attention to the specific materials he now claims were improperly excluded.

An appellant bears the burden of complying with the Rules of Appellate Procedure and perfecting the record on appeal so that we have before us all the evidence necessary to decide an issue. Rhinevault v. Rhinevault, 91 Wn. App. 688, 692, 959 P.2d 687 (1998). We "may decline to reach the merits of an issue if this burden is not met." Rhinevault, 91 Wn. App. at 692. Specifically, RAP 9.12 requires that Bohon provide an official appellate record of all documents called to the attention of the trial court on summary judgment.

Bohon provides no verbatim report of the summary judgment hearing,[4] and nothing in the record indicates Bohon offered summary judgment materials to the trial court. Nor does the record indicate the court excluded documents without consideration of the Burnet factors. The record reflects only that a summary judgment hearing was held on February 5, the court granted summary judgment for the City, and denied Bohon's motion for a continuance. We conclude that the record does not support Bohon's claim.

In regard to Bohon's motion for a continuance, the minute entry for the summary judgment hearing states only that "[p]laintiff's motion for continuance: denied. The court finds this motion was not timely noted on the calendar." CP at 474. We review the denial of a motion for a continuance for a manifest abuse of discretion. In re Dependency of V.R.R., 134 Wn. App. 573, 580-81, 141 P.3d 85 (2006). On this record,

[4] If no verbatim report of proceedings was available, Bohon was authorized to file a narrative report of proceedings under RAP 9.3.

Bohon does not establish that the court abused its discretion by denying Bohon's motion for his failure to timely note the motion.

Summary Judgment

Bohon contends that considering all facts and inferences in a light most favorable to him, summary judgment was improper. We disagree.

We review summary judgment orders de novo, considering the evidence and all reasonable inferences in the light most favorable to the nonmoving party, in this case Bohon. Keck, 184 Wn.2d at 370. "Summary judgment is appropriate only when no genuine issue exists as to any material fact and the moving party is entitled to judgment as a matter of law." Keck, 184 Wn.2d at 370.

At the outset, Bohon contends that the trial court improperly relied on two unsigned declarations submitted by the City—one from Mayor Dianne White and another from Bohon's former supervisor, Stephanie Hansen—in support of its motion for summary judgment. Yet Bohon cites no legal authority and provides no meaningful analysis of this issue. We do not consider arguments unsupported by citations to legal authority. RAP 10.3(a)(6); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). Furthermore, because Bohon failed to object to the affidavits or bring a motion to strike below, he waives any objection to the deficiency in the affidavit on appeal. Podbielancik v. LPP Mortg. Ltd., 191 Wn. App. 662, 666, 362 P.3d 1287 (2015) ("If a party fails to object to an affidavit or bring a motion to strike improper portions of an affidavit, any error is waived.").

Bohon contends that the trial court should have considered his entire deposition rather than the excerpts provided by the City. He argues he "wished to introduce other

portions of his transcript." Br. of Appellant at 31. Again, the record does not support this claim. Under ER 106,

> When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the party at that time to introduce any other part, or any other writing or recorded statement, which ought in fairness to be considered contemporaneously with it."

Likewise, under CR 32(a)(4), a party offering deposition excerpts may be required to introduce other portions of the deposition if they should "in fairness" "be considered with the part introduced." Bohon cites nothing in the record, and our review reveals nothing to suggest he moved under ER 106, CR 32(a)(4), or any other authority to compel introduction of other portions of his deposition testimony. His claim fails.

We turn to the merits of Bohon's claim. Under the Washington Law Against Discrimination, an employer may not take an adverse employment action against an employee who is over the age of 40. Scrivener v. Clark College, 181 Wn.2d 439, 444, 334 P.3d 541 (2014); RCW 49.60.180(1). At trial, the plaintiff bears the ultimate burden of showing that the protected characteristic was a significant motivating factor in the employer's decision. Scrivener, 181 Wn.2d at 444. But to overcome summary judgment, the plaintiff need only show the protected characteristic, in this case age, was a substantial motivating factor in the adverse employment decision. Scrivener, 181 Wn.2d at 444.

Where a plaintiff lacks direct evidence, we employ 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). Under this approach, the "plaintiff bears the initial burden of establishing a prima facie case of discrimination, which creates a presumption of discrimination. Once the plaintiff establishes a prima facie case, the burden of

production shifts to the employer to articulate a legitimate, nondiscriminatory reason for the adverse employment action." Scrivener, 181 Wn.2d at 446 (citation omitted). If the defendant satisfies this burden, the plaintiff must establish that the employer's claimed nondiscriminatory reason is a pretext. Scrivener, 181 Wn.2d at 446.

To satisfy the pretext prong, the plaintiff must offer sufficient evidence to create a genuine issue of material fact showing either, (1) that the defendant's reason is pretextual, or (2) that although the employer's stated reason is legitimate, discrimination nevertheless was a substantial factor motivating the employer. Scrivener, 181 Wn.2d at 446-47.

To establish a prima facie case for age discrimination sufficient to prevail on summary judgment, Bohon must show he was (1) over 40, (2) discharged, (3) doing satisfactory work, and (4) replaced by a significantly younger person. Becker v. Wash. State Univ., 165 Wn. App. 235, 252, 266 P.3d 893 (2011). The fourth factor merely requires Bohon show he was replaced by someone significantly younger, not necessarily that the replacement was outside the statutorily protected class. Griffith v. Schnitzer Steel Indus., Inc., 128 Wn. App. 438, 446-47, 115 P.3d 1065 (2005).

Bohon's core claim is that he was fired and replaced by younger worker, while other younger workers who he claims committed "criminal and fraudulent acts" were not terminated. See, e.g., Br. of Appellant at 41.

Arguably, Bohon fails to establish a prima facie case because he identifies nothing in the record demonstrating he was performing satisfactory work. See Scrivener v. Clark College, 181 Wn.2d at 444. Without citation to the record, Bohon argues he "received only positive performance evaluations during [his employment]."

Br. of Appellant at 37. He claims it is undisputed "the City did not provide evidence of any previous disciplinary actions against him or any unfavorable evaluations." Br. of Appellant at 37. But it is Bohon's burden to provide at least some evidence to support each element of a prima facie case for age discrimination. On the record before us, he fails to do so.

Even assuming Bohon established a prima facie case for age discrimination, he fails to show the City's non-discriminatory basis for firing him was pretext.

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. Mayor White described how at the meeting Bohon focused on the City's hiring decisions and refused to move his office:

> [Bohon] admitted he refused to move his work space to City Hall as directed by his supervisor (Ms. Hansen) and the Mayor (Herb Kuhnly). He disagreed that moving his desk and work space to City Hall where the rest of his Department was located was warranted by the operational needs or interests of the City.

CP at 348.

Mayor White described how Bohon refused even her request to move his office:

> I asked Mr. Bohon if he would still refuse to move his office to City Hall even if I directed him as the new Mayor. He said he would not move and would continue to resist any directive to move and work at City Hall, even if it came from me, the current Mayor of the City.

CP at 348-49.

Mayor White's letter terminating Bohon relied on his refusal to follow several requests from his supervisor, as well as herself, to move his office:

> While any one of the reasons cited for your termination standing alone is a sufficient basis to take this action, the fact that you were repeatedly given a clear directive to move your office and yet willfully refused to do so and even continued to resist that directive during the pre-termination hearing, convinces me that your continued employment is not in the city's best interest.

CP at 164.

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.

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.

Nor are we persuaded by Bohon's analogy to Rice v. Offshore Systems, Inc., 167 Wn. App. 77, 272 P.3d 865 (2012). In that age discrimination case, the plaintiff identified numerous age related remarks by his supervisor leading up to his termination.

The employer also gave inconsistent reasons justifying the termination and the plaintiff disputed the factual account given by the employer. None of these circumstances are present here. Bohon's claim for age discrimination fails.

As to Bohon's remaining claims, he simply argues "[t]he City devoted little attention to the breach of contract and emotional distress claims in its motion, focusing instead on the age discrimination claims. The Court should not have granted summary judgment, as the trial court did, on all of Mr. Bohon's claims." Br. of Appellant at 41. Bohon cites no authority in support of this argument. Nor does he explain how the City's briefing or argument below relieves him of his obligation support his appeal with argument or citation to authority. We do not consider conclusory arguments unsupported by analysis or legal authority. RAP 10.3(a)(6); Cowiche Canyon, 118 Wn.2d at 809.

Attorney Fees

Bohon requests attorney fees as a prevailing party. Because he has not prevailed, we deny his request.

CONCLUSION

For the reasons discussed above, we affirm the trial court's summary judgment dismissal of Bohon's claims.

WE CONCUR:

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Thursday, October 27, 2016 4:31 PM
To: 'teresab1567@yahoo.com'
Subject: RE: Warren Bohon V City of Stanwood 73195-5-1

Received 10-27-16.

Supreme Court Clerk's Office

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From: teresab1567@yahoo.com [mailto:teresab1567@yahoo.com]
Sent: Thursday, October 27, 2016 4:19 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Re: Warren Bohon V City of Stanwood 73195-5-1

I have one more file to send on Warren Bohon case I just noticed I missed a paper;

No 73195-5-1

On Tuesday, October 18, 2016 4:36 PM, "OFFICE RECEPTIONIST, CLERK" <SUPREME@COURTS.WA.GOV> wrote:

Mr. Bohon:

According to our docket, your filing fee for a petition for review was received on 9/14/2016. The docket also notes that a petition for review is due by October 27, 2016. Please see the highlighted areas from the docket below.

For future reference you can also see the docket online at http://www.courts.wa.gov/

CASE EVENTS # 731955			
Date	**Item**	**Action**	**Participant**

09/16/2016	Letter ***Comment:*** *PRV rec'd and assigned case #93598-1*	Received by Court	SUPREME COURT
09/13/2016	Court of Appeals case file (pouch) ***Comment:*** *1 coa pouch*	Sent by Court	
09/09/2016	Petition for Review **Service Date:** 2016-09-09 ***Comment:*** *w/ $200.00 check*	Filed	

CASE EVENTS # 935891

Date	Item	Action	Participant
10/27/2016	Petition for Review ***Comment:*** *Petition for review (filed directly with SC)* *73195-5-I*	Due	
09/19/2016	Answer to motion **Service Date:** 2016-09-19 ***Comment:*** *Respondent City of Stanwood's Answer and Opposition to Plaintiff's Request for Extension of time for filing a Petition for Review to the Supreme Court*	Filed	FREEMAN, JAYNE LYN
09/15/2016	Letter ***Comment:*** *The Petitioner's "Request for a 90 day extension of time to file a request for review ", which will be treated as a motion for extension of time to file a petition for review, was received and filed on September 14, 2016. The matter has been assigned the Supreme Court cause number indicated above. A copy of the motion is enclosed for the Respondent. It is noted that the $200 filing fee (check #4770) was received with the motion. The parties are advised that no ruling is being made at this time on the Petitioner's motion for an extension of time to file a petition for review. However, when a ruling is made if the Court does not grant the motion for an extension of time to file, any untimely filed petition for review will not be considered by the Court. Should the Court grant the motion for an extension, then the Court would proceed to consider any untimely filed petition for review. Accordingly, if the Petitioner wishes to seek review of the Court of Appeal opinion which was filed on June 13, 2016, the Petitioner must file a petition for review in this Court by not later than October 27, 2016, see RAP 13.4. The content and style of the petition should conform with the requirements of RAP 13.4(c). I have enclosed for Petitioner a copy of Forms 9, 5, 6, and part F of Form 3 from the appendix to the rules. The motion and petition for review will be*		

	considered by a Department of the Court without oral argument on a yet to be determined date. However, due to the Petitioner's failure to file a timely petition for review, the Court will only consider the petition for review if it first decides to grant the motion for extension of time. A motion for extension of time to file is normally not granted; see RAP 18.8(b). If the members of the Department do not unanimously agree on the manner of the disposition, consideration of the matter will be continued for determination by the En Banc Court. The Respondent may serve and file an answer to the motion and file an answer to the petition for review within 30 days after service of a copy of the petition for review upon the Respondent. The petition is considered served whether served by the Court or the petitioner, whichever occurs first. If the Respondent wants to raise an issue that is not raised in the petition for review, the Respondent must raise the new issue in the answer. A reply to any answer should be filed within 15 days after service on the Petitioner of such answer and may only be filed if the answer raises a new issue; see RAP 13.4(d). As to reproduction and service of the petition, answer or reply, the parties should refer to RAP 13.4(g). It is noted that once the petition for review is received, a date will be established for consideration of the petition and the motion for an extension of time. Failure to file a petition for review by October 27, 2016, may result in dismissal of this matter.

Thank you,

Supreme Court Clerk's Office

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From: teresab1567@yahoo.com [mailto:teresab1567@yahoo.com]
Sent: Monday, October 17, 2016 5:01 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>; OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Warren Bohon V City of Stanwood 73195-5-1

Hello

We asked for the Superior Court to look at our case for a appeal to Superior Court we have not heard anything back and we need to know if there is a deadline that we need to meet?

Could you please advise we did pay the fee to have this case looked at by Superior Court.

Thank You for your time on this matter.

Warren Bohon