

Sep 15, 2016, 10:34 am

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SUPREME COURT OF THE STATE OF WASHINGTON

CAUSE NO. 93598.0

(Court of Appeals Case No. 47034-9-II)

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DONALD R. EARL,

Appellant,

vs.

XYZPRINTING, INC.,

Respondent.

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XYZPRINTING, INC.'s ANSWER TO  
PETITION FOR REVIEW

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 ORIGINAL

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## **I. PARTY OPPOSING REVIEW**

Respondent XYZprinting, Inc. manufactured a \$600 Da Vinci 3D printer that Petitioner Mr. Earl purchased from an online reseller. After using the printer for about a week, Mr. Earl submitted a support request, refused to comply with support directions, demanded a refund, and threatened XYZprinting with “spending half a million dollars on attorney fees” to defend against his lawsuit.<sup>1</sup> He is making good on this threat, but presents no legal authority for continued judicial proceedings.

## **II. FACTS APPLICABLE TO WHY REVIEW SHOULD BE REJECTED**

Mr. Earl resides in Jefferson County. He filed an affidavit of prejudice against Jefferson County Superior Court Judge Keith C. Harper, a judge he had previously sued.<sup>2</sup> Because Judge Harper is the only superior court judge in Jefferson County, the affidavit of prejudice required a visiting judge to handle this case.

XYZprinting and Mr. Earl both moved for summary judgment. Jefferson County Superior Court informed the parties that the hearing could not occur on the original hearing date in Jefferson County, but

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<sup>1</sup> CP 74-75 (emails between Mr. Earl and XYZprinting support).

<sup>2</sup> See *Earl v. Jefferson County Superior Court, Judge Keith Harper and Judge Craddock Verser*, Washington Supreme Court Case No. 875499 (2012).

offered to schedule a special setting in Clallam County on the same date.<sup>3</sup> Mr. Earl replied that his concern about potential traffic delays or foul weather prevented him from making the forty-seven-mile trip.<sup>4</sup>

Noting that the next visiting judge trade would be in December, Jefferson County then offered to special set the hearing for November 10, 2014: “Parties would appear in the Jefferson County Superior Court and the Clallam County judge would either appear in person or telephonically.”<sup>5</sup>

Mr. Earl knew that Clallam County Superior Court Judge Melly would conduct the hearing telephonically by at least November 7, 2014, three days prior to the hearing.<sup>6</sup> Mr. Earl made no objection regarding the hearing date, time, or telephonic appearances. At the hearing, Mr. Earl did not object to Judge Melly appearing telephonically; he did not question Judge Melly’s identity, complain or note any difficulty in hearing the judge or counsel for XYZprinting.<sup>7</sup> At no time did Mr. Earl raise any difficulty understanding what was being said.<sup>8</sup> His contrary arguments on

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<sup>3</sup> CP 305-6 (emails with Jefferson County Superior Court).

<sup>4</sup> *Id.*

<sup>5</sup> CP 309 (letter from Jefferson County Superior Court).

<sup>6</sup> CP 302-3 at ¶¶ 5-6.

<sup>7</sup> CP 393 at ¶ 7.

<sup>8</sup> *Id.*

appeal are belied by the record.

**III. ARGUMENT AGAINST REVIEW WHERE PETITIONER FAILED TO ARGUE OR CITE ANY CRITERIA FROM RAP 13.4(b)**

Mr. Earl fails to rely on appropriate authority for review when he argues that appeal is justified by RAP 13.5(b)(3), a standard that applies to discretionary review from an interlocutory decision. He fails to present authority and argument in support of his petition for review of the decision at issue: a decision by the Court of Appeals terminating review. *See* RAP 13.4 (addressing review of a decision terminating review); RAP 13.4(c)(7) (petition for review should include a statement of the reason why review should be accepted under section (b), with argument). XYZprinting cannot respond or reply to arguments concerning the proper criteria in RAP 13.4(b), because there are none. This alone supports denial. Mr. Earl failed to show that any appropriate criteria are met.

XYZprinting offers additional reasons that this case is not suitable for review.

**A. As the Court of Appeals correctly concluded, Mr. Earl failed to preserve any issue regarding the telephonic hearing (Issues 1 & 2).**

Regarding Issues 1 and 2, Mr. Earl failed to preserve any error. Jefferson County Superior Court offered Mr. Earl the opportunity to attend the hearing of the cross-motions for summary judgment in Clallam

County. Mr. Earl refused. He chose to participate in a conference call from his Jefferson County location knowing that Judge Melly would be in Clallam County. He has waived any issue concerning the procedure by his conduct and appearance, and he has failed to preserve any error. His objections only surfaced after his own motion practice was unsuccessful. In other words, only after he lost his motion did he decide the procedures were unsatisfactory. This Court should decline review.

**B. As the Court of Appeals correctly concluded, Mr. Earl failed to provide argument or authority or even identify assignments of error regarding his appeal of the denial of his cross-motion for summary judgment (Issue 3).**

Regarding Issue 3, review is not justified by Mr. Earl's complaints that the Court of Appeals did not adequately consider his appeal concerning denial of his motion for summary judgment. The Court of Appeals correctly found his appellate briefing inadequate. RAP 10.3(a)(6) requires that appellants must do more than point to voluminous summary judgment pleadings and assume the Court will *sua sponte* identify errors. Appellants must provide argument and authorities in support of the issues presented for review. RAP 10.3(a)(6), (g). Mr. Earl did neither before the Court of Appeals.

Mr. Earl offers no reason for this Court to review the Court of Appeals' decision that he failed to meet the requirements of RAP

10.3(a)(6) in support of his appeal. These deficiencies support denial of review by this Court.

C. **As the Court of Appeals correctly concluded, Mr. Earl asked the superior court to rule as a matter of law, undercutting his current argument that judgment should not have been entered before additional discovery occurred (Issue 4).**

Regarding Issue 4, Mr. Earl failed to explain to the Court of Appeals why his representations to the superior court that the case was ready for summary judgment rulings did not support the timing of the rulings. Mr. Earl brought a cross-motion for summary judgment, stating that the case was sufficiently well developed to warrant filing a motion for summary judgment. He made no objection that the cross-motions were not ripe or should be heard after further discovery. The superior court ruled against him. Mr. Earl now complains that he should have been permitted to conduct additional discovery, but fails to substantiate his position based on the record or the law. Review is unwarranted.

#### IV. CONCLUSION

Mr. Earl's lawsuit is vexatious, as has been the case in many of his lawsuits.<sup>9</sup> His grounds for discretionary review are unarticulated,

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<sup>9</sup> See, e.g., CP 458, *Donald R. Earl v. Menu Foods Income Fund and The Kroeger Company*, Washington Supreme Court Case No. 824657 (2009), stating:

Mr. Earl's pleadings to this court are legally frivolous. If Mr. Earl



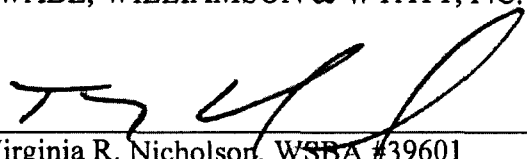
unsupported and unconvincing.

This Court should decline review for failure to argue or substantiate any of the standards set forth in RAP 13.4(b).

Respectfully submitted on this 15<sup>th</sup> day of September, 2016.

SCHWABE, WILLIAMSON & WYATT, P.C.

By:



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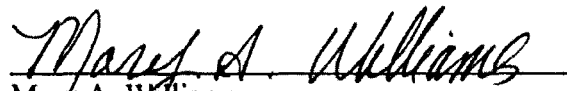
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continues his campaign of frivolous filing that requires the attention of opposing counsel and this court, the court will impose sanctions.

**CERTIFICATE OF SERVICE**

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct: That on the 15<sup>th</sup> day of September, 2016, I arranged for service *via Email as agreed by the parties, with a courtesy copy sent via U.S. Mail*, of the foregoing XYZPRINTING, INC.'S ANSWER TO PETITION FOR REVIEW to the party to this action as follows:

Donald R. Earl  
3090 Discovery Road  
Port Townsend, WA 98368  
Email: [don.earl@olympen.com](mailto:don.earl@olympen.com)

  
\_\_\_\_\_  
Mary A. Williams

PDX\127694\199088\VN\19021013.5

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**Cc:** 'don.earl@olyphen.com'; Greenfield, Troy D.; Nicholson, Virginia R.  
**Subject:** RE: Supreme Court No. PENDING/CoAll No. 47034-9-II - Filing Answer to Petition for Review

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**Subject:** Supreme Court No. PENDING/CoAll No. 47034-9-II - Filing Answer to Petition for Review

Dear Clerk:

Attached please find XYZPRINTING, INC.'S ANSWER TO PETITION FOR REVIEW to be filed with the Court.

Thank you,


Mary

**Schwabe Williamson & Wyatt**

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