SUPREME COURT NO. 94486-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Court of Appeals No. 74367-8-I

DEBI O'BRIEN,

Petitioner,

v.

LEONARD CARDER AND JANE DOE CARDER, and the marital community thereof, and the corporations ABM INDUSTRIES ("ABMI") and ABM PARKING SERVICES (d/b/a "Ampco" and "ABM Onsite Services West"),

Respondents.

ANSWER TO AMENDED PETITION FOR REVIEW

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I. INTRODUCTION

This case involves a standard employment law dispute in which there are no issues meet the criteria for acceptance of review under Rules of Appeal (RAP) 13.4(b). Petitioner Debi O'Brien ("O'Brien") is a former employee of Respondent ABM Parking Services ("ABM"). After she was laid off from employment during a reduction-in-force in 2013, O'Brien filed suit against ABM and the other Respondents, alleging, among other claims, that she suffered retaliation for engaging in protected activity, that her employer failed to accommodate a disability, and that her termination from employment was due to retaliation and age discrimination. The superior court awarded Rule 11 sanctions against O'Brien and her attorneys for bringing claims against individual supervisors that were not grounded in law or fact, but instead were used for the improper purpose of forum shopping. After almost two years of litigation in federal and state court, the superior court found that she had failed to provide evidence sufficient to support of her claims, and thus dismissed them on summary judgment.

In an unpublished opinion issued on April 3, 2017, the Court of Appeals affirmed on all grounds. Although Petitioners do not agree with these rulings, they do not raise any of the grounds listed in RAP 13.4(b) for which this Court accepts review. Specifically, the unpublished opinion does not conflict with a decision of the Supreme Court. RAP 13.4(b)(1). Nor are there any issues of substantial public interest. RAP 13.4(b)(4).

Instead, this case involves only the application of established Washington employment laws and Rule 11 authority to the specific facts of this case, with issues that are of significance only to the parties involved.

Procedural reasons also support a denial of the Amended Petition for Review. Petitioners failed to raise their first issue regarding the "reasonable woman standard" in the lower courts, and thus did not preserve this issue for review. Three of the issues raised are untimely, as Petitioners raised them for the first time in their untimely "corrected" May 8 Petition for Review. Thus, none of the issues presented in the Petition for Review are properly before the Court. For all these reasons, which are discussed more fully below, Respondents request that the Court deny Petitioners' Amended Petition for Review.

II. COUNTERSTATEMENT OF THE ISSUES

1. With regards to the Petitioners' first issue presented for review –whether Washington courts should adopt the federal Ninth Circuit's "reasonable woman" standard – should the Court deny the petition because Petitioners never raised this issue in the lower courts, and thus did not preserve the issue for review? Yes.

2. With regards to Petitioners' issues numbered two through four, should the Court reject review of these issues as untimely because they were not raised until after the May 3, 2017 deadline for filing a petition for review? Yes.

3. With regards to Petitioners' issues numbered one through four, should the Court deny review because these issues fail to satisfy any of the grounds for review under RAP 13.4(b)? Yes.[1]

III. COUNTERSTATEMENT OF THE CASE

A. FACTUAL BACKGROUND

1. O'Brien's Employment at ABM.

Respondent ABM provides parking management services nationwide. CP 694. O'Brien was hired by ABM in 2007 to perform human resources coordination and operations management for the Seattle/Bellevue branch. CP 723-25, 742, 784. In 2009, ABM Senior Branch Manager Hugh Koskinen asked O'Brien in her role as Human Resources Coordinator to investigate a complaint made by an employee named Melody Dillon regarding sexually inappropriate conduct by two ABM parking valets. CP 744-47, 797, 432, 779-81. After the investigation, O'Brien was asked to discipline the valets for their conduct, which she did. CP 432-33, 781.

In 2010, as part of customer service initiative, Koskinen and ABM's Regional Vice President, Respondent Leonard Carder, asked O'Brien to conduct regular walk-through inspections of parking locations in order to identify any needed improvements. CP 435. Although other branch and location managers also performed walk-through inspections.

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[1] Petitioners offer no argument in support of their third issue regarding the superior court's denial of their motion for a continuance under CR 56(f). The lack of any supporting argument is grounds for denying acceptance of review of this issue.

(CP 834-35), O'Brien felt that doing "walk-throughs" of the parking locations managed by ABM was retaliatory because she considered it unsafe. CP 434-36.

In 2012, Carder and ABM's new Assistant Branch Manager for the Seattle/Bellevue branch, Matt Purvis, asked O'Brien in her role as Operations Manager to investigate accounting concerns at one of their client's parking locations, the Pacific Place Garage (PPG). CP 807, 838-40, 812-15. O'Brien found several issues with PPG's operations, including outstanding balances, which she was instructed to collect. CP 750-52, 757-59. She ultimately failed to do so. CP 757-59.

In August 2012, as part of its annual practice, ABM assigned a group of salaried employees, including O'Brien to assist with parking at the Spokane Fair. CP 698. O'Brien sent an email to Paulette Ketza, manager of ABM's operations at the Spokane Fair, to express her apprehension about the assignment, explaining that she was "not young anymore" and that "[t]he older I get the more issues I get with standing long hours." *Id.;* CP 765-66. Ketza responded that ABM hoped to avoid the long shifts of prior years by increasing staffing. CP 842-45. O'Brien thanked her, replying, "[A]ll of my needs have been met!" *Id.* At the fair, O'Brien did not communicate any additional concerns and, afterward, explained only that she was tired when she got back. CP 768.

2. ABM's Decision to Downsize.

Starting in 2012, ABM experienced a decrease in revenues, including the loss of the PPG contract (worth $20,000 a month).

CP 704-05, 819. In addition, advances in automation decreased the need for employees in the field. CP 803. Rod Howery, the new Regional Vice President, determined that the Seattle/Bellevue branch should eliminate two positions to reduce costs. CP 695-96. One of those positions was O'Brien's position, because her human resources responsibilities could be assumed by the larger human resources department at the San Francisco branch and her operations duties could be absorbed by location employees. CP 696-97, 727, 730-31. Howery discussed the position elimination with Madeline Kwan, ABM's Human Resources Director, and they decided in October 2012 to proceed with the layoff. CP 697-98, 731-33. Because of travel schedules and the wish to avoid the holidays, Kwan and Howery ultimately waited until early February 2013 to meet with O'Brien and the other employee to inform them of the layoff. *Id.* As planned, ABM did not hire replacement employees. CP 698.

B. PROCEDURAL EVENTS

1. The Original Lawsuit.

In October 2013, O'Brien filed suit against ABM and Respondent ABM Industries Incorporated (ABMI) in superior court. KCSC, Case No. 13-2-35546-9. The case was removed to federal district court on diversity grounds. *Id.*; CP 851-57. After removal, O'Brien attempted to defeat diversity by seeking to add Carder as a defendant. *See* CP at 503-11. The federal district court denied this attempt (CP 516-20), and the parties engaged in discovery for a year and a half. During that time, O'Brien

requested and received two trial continuances. CP 402-04, 1432-33, 1436. When the defendants were poised to seek summary judgment dismissal of her claims, and with less than a month of discovery left, O'Brien moved to voluntarily dismiss her claims, telling the federal court that she had discovered grounds to bring an action in state court against several of ABM's individual managers and supervisors. CP 859-68.

2. O'Brien's Use of Individual Defendants for Improper Forum Shopping Results in Sanctions.

In the same month that she moved to dismiss the federal suit against ABM and ABMI, O'Brien filed a new lawsuit in King County Superior Court against five individuals associated with ABM, along with their marital communities. CP at 1-13. Shortly after she filed, the individual defendants notified O'Brien that her claims against Lawson and Koskinen were time-barred, her claims for breach of contract and promissory estoppel lacked legal merit, and that they intended to seek CR 11 sanctions unless she withdrew these claims. CP at 594-95. O'Brien responded by denying the arguments and by amending her complaint to add two more individuals and their marital communities. CP at 597-98. The seven individual defendants filed a motion to dismiss. CP 600-14.

After the federal court dismissed the claims against ABM and ABMI, O'Brien moved to amend her new state court complaint to add ABM and ABMI as parties. CP 34-51. Five days after being granted leave to do so, O'Brien dismissed all claims against six of the individual

defendants (Koskinen, Lawson, Purvis, Howery, Smith, and Ketza), leaving Carder as the remaining, non-diverse defendant. CP 616, 618-19.

The individual defendants moved for sanctions based on O'Brien's conduct in asserting meritless claims against them for the improper purpose of forum shopping. CP 470-82. The superior court granted the motion for sanctions, finding that O'Brien never submitted any factual allegations or legal analysis to support her assertion that the claims against the dismissed defendants were made in compliance with CR 11. CP 655-57. The superior court also found that the fact that O'Brien dismissed the individual defendants days after she was granted permission to add ABM and ABMI as defendants supported the conclusion that O'Brien had sued the individual defendants for the improper purpose of forum shopping. *Id.* O'Brien first offered the court legal arguments in support of the challenged claims against the individual defendants in a motion for reconsideration, which was denied. CP 1290-1303, 1382-83.

3. The Superior Court Dismisses O'Brien's Claims on Summary Judgment.

O'Brien made no effort to conduct discovery in state court, even after the defendants' motions for summary judgment were pending for two months. CP 2023. Despite over two years of litigation, O'Brien moved for a continuance so that she could conduct additional discovery. *See* CP 2130-34. After oral argument, the superior court denied O'Brien's motion and granted the defendants' summary judgment motions, finding that

O'Brien had only insufficient evidence and unsubstantiated allegations to support her claims. *Id.*

4. The Appeal.

O'Brien appealed, raising three main issues: (1) whether the superior court's award of Rule 11 sanctions against her and her attorneys was appropriate; (2) whether the superior court erred in denying O'Brien's request for a continuance pursuant to CR 56(f); and (3) whether the trial court erred when it granted the defendants' motions for summary judgment. Opening Brief of Appellants at 2-5, *O'Brien, et al. v. ABM Industries, Inc., et al.,* No. 74367-8-I (Aug. 25, 2016). In an unpublished opinion dated April 3, 2017, the Court of Appeals upheld the superior court's award of Rule 11 sanctions, finding that the superior court did not abuse its discretion in awarding sanctions where O'Brien had failed to provide factual or legal justification for suing the individual defendants, and where there was a tenable basis for finding that O'Brien's "actual purpose for initially suing the individual defendants was forum shopping and was thus improper." Unpub. Op. at 14. The Court of Appeals also ruled that the superior court did not abuse its discretion in denying O'Brien's request for a continuance given that the related litigation had been pending for over two years. *Id.* at 16-17.

The Court of Appeals also affirmed the superior court's granting of the defendants' motions for summary judgment as to all of O'Brien's remaining claims. *Id.* at 17. As to O'Brien's hostile work environment claim, the Court agreed that O'Brien had failed to establish that the

allegedly harassing conduct was sufficiently severe or pervasive so as to alter the terms of her employment, especially in light of the fact that her assignments to inspect ABM's client locations and assist with the Spokane Fair were within the scope of her duties. *Id.* at 20.

The Court found that O'Brien's retaliation claim was properly dismissed because O'Brien had not produced any evidence that the individuals who terminated her employment (Howery and Kwan) had any knowledge of her prior alleged protected activity (assisting with the investigation of Dillon's complaint regarding the valets). *Id.* at 21.

With regards to O'Brien's age discrimination claim, the Court of Appeals applied established Washington law, including the burden-shifting scheme used for employment discrimination cases. Accordingly, to survive summary judgment on an employment discrimination claim when an employer produces a legitimate, nondiscriminatory explanation for the adverse employment action, the employee must show that the stated reason for the adverse action was pretext. *Id.* at 22 (citing *Dumont v. City of Seattle,* 148 Wn. App. 850, 862, 200 P.3d 764 (2009)). Because O'Brien failed to provide any evidence that ABM's legitimate reason for terminating her employment was, in fact, a pretext, or evidence of a discriminatory motive, the court concluded that O'Brien's claim was properly dismissed. *Id.* at 22-23.

With regards to O'Brien's claim that ABM failed to accommodate her alleged disability while she was working at the Spokane Fair, the Court agreed that O'Brien failed to show that ABM had failed to

accommodate her, as O'Brien had responded that "all of my needs have been met!" *Id.* at 24. Thereafter, O'Brien did not request any other accommodation. *Id.*

The Court of Appeals upheld dismissal of O'Brien's breach of contract claim based on ABM's Code of Business Conduct (Code) because the Code contained a clear and conspicuous disclaimer *Id.* at 24-25.

Finally, the Court of Appeals upheld dismissal of O'Brien's hostile work environment and retaliation claims against Carder. *Id.* at 25-27. O'Brien claimed that Carder retaliated against her for her role in investigating Dillon's complaint by creating a hostile work environment, and fired her in retaliation for speaking with a newspaper about accounting irregularities at PPG. However, O'Brien failed to rebut Carder's declaration stating that he was not aware of a complaint by Dillon. *Id.* at 25-26. The court also agreed that O'Brien failed to present evidence to rebut ABM's proof that Carder did not participate in the lay-off decision. *Id.* at 26-27.

IV. ARGUMENT FOR DENIAL OF PETITION FOR REVIEW

A. Three of Petitioners' Issues Are Untimely.

Three of Petitioners' proposed issues for review should be rejected because Petitioners failed to timely present them for review. As detailed below, they tried to expand the list of issues presented after the petition deadline by submitting them in the guise of a "corrected" brief. As no

extraordinary circumstances prevented Petitioners from timely presenting these issues for review, they should be rejected.

A petition for review must be filed within 30 days after the Court of Appeals decision is filed. RAP 13.4(a). The Rules of Appellate Procedure allow for an untimely petition for discretionary review "to serve the ends of justice" if there are "extraordinary circumstances" present. RAP 1.2(c); RAP 18.8(b). On the other hand, this Court rejects issues that are not properly raised in a petition. *See State v. Korum,* 157 Wn.2d 614, 625, 141 P.3d 13, 19 (2006) (declining to consider an issue because the party did not properly "raise" the issue).

On May 3, 2017, the last day for filing a petition for review, Petitioners filed an overlength Petition for Review (the "May 3 Petition"). While Petitioners identified six trial court and court of appeals decisions for which they were seeking review, the May 3 Petition presented only two issues for review:

> 1. Should Washington Adopt the "Reasonable Woman" Test Enunciated by the Federal Courts Under Title VII?
>
> 2. Is there a substantial public interest at stake which warrants acceptance of review under RAP 13.4(b)(4)?

May 3 Pet. at 4-6. The argument section of the May 3 Petition clarified that the two issues were, in fact, one: Petitioner argued only that the question of whether the "reasonable woman" test should have been applied to her claims presented an issue of substantial public interest. May 3 Pet. at 39-46.

On May 8, 2017, five days after the deadline for filing a petition for review, without seeking leave, Petitioners filed another overlength Petition for Review (the "May 8 Petition"). Petitioners included three new issues in the untimely May 8 Petition, as well as entirely new arguments with respect to those issues. May 8 Pet. at 4, 36-41. Respondents objected to the inclusion of untimely new issues and argument in the May 8 Petition. Resp'ts' Opp. to Appellants' Mot. for Overlength Pet. at 4-6 (May 16, 2017). In a May 18, 2017 letter, the Supreme Court's Deputy Clerk rejected both the May 3 and May 8 Petitions because they were overlength and granted Petitioners leave to file a shorter petition.

On May 30, 2017, Petitioners filed an "Amended Petition for Review" ("May 30 Amended Petition"). As with the untimely May 8 Petition, the May 30 Amended Petition also asserts three new issues (issues 2 through 4), as well as argument on these issues, that were not included in the original, timely May 3 Petition. Because Petitioner has not provided any justification, much less "extraordinary circumstances," for raising untimely issues, Respondents respectfully asks the Court to reject issues 2 through 4.

B. Petitioner Did Not Raise Her "Reasonable Woman" Argument (Issue One) In the Lower Courts.

It is well established that, except for a few exceptions that do not apply here[2], an issue that was not raised in the lower courts cannot be grounds for a petition for review. *See State v. Halstien*, 122 Wn.2d 109, 130, 857 P.2d 270 (1993) ("An issue not raised or briefed in the Court of Appeals will not be considered by this court."); *Fisher v. Allstate Ins. Co.*, 136 Wn.2d 240, 252, 961 P.2d 350 (1998) ("This court does not generally consider issues raised for the first time in a petition for review.").

O'Brien did not raise her "reasonable woman" argument before either the superior court or the Court of Appeals; rather, this argument appeared for the first time in O'Brien's May 8 Petition. *See* Opening Brief of Appellants, *supra* p.8, at 46-48. Because the "reasonable woman" argument is a new issue that neither the trial court nor the Court of Appeals had a chance to consider, the issue is not preserved for appeal and this Court should decline to accept review of this issue.

Should the Court choose nevertheless to consider O'Brien's "reasonable woman standard" argument, her assertion that it might have saved her hostile work environment claim under Washington's Law Against Discrimination, RCW 49.60.180 ("WLAD"), is based on a misunderstanding of the basis for the trial court's conclusion that the claim

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[2] The limited exceptions are where issues pertain to jurisdiction, right to maintain an action, illegality, invasion of fundamental constitutional rights, and lack of claim of relief. *State v. Laviollette*, 118 Wn.2d 670, 680, 826 P.2d 684, 689 (1992) (overruled on other grounds as recognized by *State v. Calle*, 125 Wn.2d 769, 778, 888 P.2d 155, 159 (1995).

lacked sufficient evidence to survive summary judgment. The event to which she argues the standard should apply (her inspection of garages), Amended Pet. at 25, was not rejected as harassing because a "reasonable man" or "reasonable person" would not find the assignment sufficiently severe or pervasive so as to alter the terms and conditions of her employment. Rather, the evidence was rejected as insufficient because the assignment was "reasonably within the scope of her duties as an operations manager." Unpub. Op. at 20. In other words, the lower courts found that being asked to inspect parking garages when you work as an operations manager for a parking management company is not harassment. Because the "reasonable woman standard" is irrelevant to the defects in her harassment claim, the alleged failure of the lower courts to consider it raises no substantial public interest meriting review by this Court.

C. O'Brien's Challenge Regarding the Substantial Factor Rule (Issue Two) Does Not Merit Review.

O'Brien's second issue for review stems from her disagreement with the superior court's finding that she did not present sufficient evidence to support her WLAD claims. Specifically, O'Brien asserts that the superior court did not correctly follow the standard for establishing pretext as set forth in *Scrivener v. Clark Coll.*, 181 Wn.2d 439, 446–47, 334 P.3d 541, 546 (2014). O'Brien is mistaken.

In *Scrivener*, this Court clarified the pretext element of the *McDonnell Douglas* burden-shifting framework, which Washington courts apply to employment discrimination claims arising under the WLAD.

Scrivener, 181 Wn.2d at 445 (citing *McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 802-04, 93 S. Ct. 1817, 36 L.Ed. 2d 668 (1973)). Under the framework, a plaintiff bears the initial burden of establishing a prima facie case of discrimination, which creates a presumption of discrimination. *Id.* at 446. The burden of production then shifts to the employer to articulate a legitimate, nondiscriminatory reason for the adverse employment action. *Id. (*citing *Grimwood v. Univ. of Puget Sound, Inc.,* 110 Wn.2d 355, 363-64, 753 P.2d 517(1988)). "If the Defendant meets this burden, the third prong of the *McDonnell Douglas* test requires the Plaintiff to produce sufficient evidence that Defendant's alleged nondiscriminatory reason for [the employment action] was a pretext." *Id. (*quoting *Hume v. Am. Disposal Co.,* 124 Wn.2d 656, 667, 880 P.2d 988 (1994)).

This Court in *Scrivener* advised that an employee may satisfy the pretext prong by offering sufficient evidence to create a genuine issue of material fact either (1) that the defendant's stated reason is pretextual; or (2) that although the employer's stated reason is legitimate, discrimination nevertheless was a substantial factor motivating the employer. *Id.* at 446-47. Accordingly, "[a]n employee does not *need* to disprove each of the employer's articulated reasons to satisfy the pretext burden of production." *Id.* at 447 (emphasis in original). Rather, "the plaintiff may also satisfy the pretext prong by presenting sufficient evidence that discrimination nevertheless was a substantial factor motivating the employer." *Id.* at 448.

The decisions of the superior court and the Court of Appeals were entirely consistent with this standard. As the Court of Appeals explained,

with regards to her claim for age discrimination, O'Brien failed to show either that ABM's stated legitimate reason (the workforce reduction) was a pretext or to provide any other evidence that age was a reason for her termination. Unpub. Op. at 22-23 (quoting *Domingo v. Boeing Employees' Credit Union,* 124 Wn.App.71, 85, 98 P.3d 1222 (2004)) ("Indeed, O'Brien offers no evidence to support her claim other than her own speculation that age was the reason for her termination. Such statements are 'not enough to survive summary judgment.'"). Similarly, with respect to her retaliation claim, O'Brien failed to show that either decision maker was even aware that she had engaged in the alleged protected activity. Unpub. Op. at 21. Thus, the Court of Appeals made it clear that O'Brien's claims were properly dismissed because she had failed to establish the pretext prong by *either* raising questions about ABM's stated legitimate reason or by offering evidence that discriminatory intent was a "substantial factor." Therefore, the decision is entirely consistent with the standards set forth in *Scrivener.*

D. Petitioners Do Not Appear to Be Pursuing Their Challenge to the Trial Court's Denial of Their CR 56(f) Continuance Request (Issue Three), Which Likewise Does Not Meet the Court's Criteria for Accepting Review.

Petitioners offer no argument as to why this Court should accept review of their third stated issue regarding the superior court's denial of O'Brien's request for a continuance under CR 56(f). Thus, it appears they are not pursuing this issue.

There are no grounds for accepting review. As the Court of Appeals correctly explained, "[w]hether a motion for continuance should be granted or denied is a matter of discretion with the trial court, reviewable on appeal for manifest abuse of discretion." Unpub. Op. at 16 (*quoting Trummel v. Mitchell,* 156 Wn.2d 653, 670, 131 P.3d 305 (2006)). The Court of Appeals found that superior court's decision to deny the continuance was tenable given that O'Brien's litigation had been pending for over two years through both the dismissed federal action and the subsequent state action, and because O'Brien had been granted two continuances in the federal action. *Id.* This routine application of standards does not raise any issues under RAP 13.4(b).

E. Petitioners' Challenge to the Imposition of Sanctions (Issue Four) Is Not Appropriate For Review.

Petitioners offer no persuasive reason as to why this Court should accept review of the superior court's CR 11 decision. The lower courts correctly applied settled standards governing CR 11 to undisputed facts, and no substantial public interest is raised by the imposition of sanctions for asserting claims that are legally and factually baseless, for the purpose of forum shopping.

A superior court's decision to award sanctions is reviewed for abuse of discretion. *Wash. State Physicians Ins. Exch & Ass'n v. Fisons Corp.,* 122 Wn.2d 299, 338, 858 P.2d 1054 (1993). "Whether an attorney has made a reasonable inquiry is to be judged by an objective standard. Subjective belief or good faith alone no longer shields an attorney from

sanctions under the rules." *Id.* at 343. Although Petitioners disagree with the superior court's decision, they offer no grounds for finding that the superior court's ruling was "manifestly unreasonable or based on untenable grounds." *Id.* at 338.

Petitioners disagree that their conduct could be construed as improper forum shopping because, they argue, even without the other individual defendants, Carder was a resident of Washington, thus defeating diversity. Amended Pet. at 26. As a result, they argue that the sanctions decision chills an employee's right to sue her manager under the WLAD. *Id.* Petitioners ignore the facts the lower courts found compelling: (1) Petitioners had previously tried to use Carder to defeat diversity jurisdiction in the federal action, but the federal district court prevented them from doing so; and (2) in order to obtain a voluntary dismissal without prejudice, the Petitioners represented to the federal court that they had discovered grounds for a state court action against other supervisors and managers. Unpub. Op. at 13-14. Only after they accomplished the federal dismissal and asserted essentially the same claims against ABM and ABMI in state court did they immediately drop the individual defendants other than Carder. *Id.* at 14. The trial court noted that in response to the sanctions motion, "there has not been offered any way in which these individuals can have been found liable . . . ." *Id.* The trial court's imposition of sanctions is consistent with the purpose behind CR 11, as articulated by this Court: "'to deter *baseless* filings and to curb abuses of the judicial system.' " Biggs *v. Vail,* 124 Wn.2d 193,

197, 876 P.2d 448, 451 (1994) (quoting *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d at 219, 829 P.2d 1099 (1992)).

Petitioners also argue that sanctions should not have been imposed because they ultimately voluntarily dismissed the challenged claims, which they contend is contrary to this Court's holding that an offending party should be given notice and the opportunity to mitigate a sanction by withdrawing baseless claims. Amended Pet. at 26 & n.30 (citing *Biggs v,* 124 Wn.2d at 198). They fail to acknowledge that despite being warned through a Rule 11 letter, they refused to drop their claims until *after* the individual defendants were forced expend time and money preparing a motion to dismiss. CP 483-486, 593-621. Moreover, they only dismissed the baseless claims *after* they had successfully brought ABM and ABMI into the state lawsuit. *Id.* They received notice required by this Court, but failed to promptly take advantage of the opportunity to avoid sanctions. The extent there is any public policy impact from the unpublished opinion, it may appropriately dissuade other attorneys from similarly using individuals as pawns in their improper litigation strategy.

Finally, Petitioners argue that the imposition of sanctions would have a chilling effect on parties and their attorneys who argue in good faith for the extension of existing law. Amended Pet. at 26-27. Again, Petitioners offered no objectively reasonable legal or factual basis for their claims in response to the motion for sanctions. Unpub. Op. at 14. Up to the point at which the superior court issued its sanctions order, O'Brien never actually made its argument that it was seeking to extend the law or

took any other steps to ask the court to rule on its legal theory. *Id.* at 15. Under these facts, the superior court's decision to award sanctions was not manifestly unreasonable, and there are no issues of substantial public interest meriting review.

V. CONCLUSION

Respondents respectfully request that the Supreme Court deny review of the Unpublished Decision because there are no grounds for review under RAP 13.4(b).

DATED this 28th day of June, 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury according to the laws of the State of Washington that on this date she caused to be served a copy of the foregoing ANSWER TO AMENDED PETITION FOR REVIEW ***via Email*** on the following:

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DATED this 28th day of June, 2017.

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