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Supreme Court Case No. 99071-9
Court of Appeals Case No. 36508-5-III

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

CHRIS WILLIAMS,

Respondent,

v.

CITY OF SPOKANE and AMERICAN TRAFFIC SOLUTIONS, INC.,

Appellants.

APPELLANTS' ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

The Petition for Review filed by Respondent Chris Williams ("Williams") should be denied because it does not – and cannot – meet any test for discretionary review under RAP 13.4(b). The Court of Appeals applied long-standing Washington precedent in holding that (a) Williams must bring a request for a refund of a traffic fine to the municipal court; (b) Williams lacked standing for the equitable claims; and (c) the trial court erred in denying Appellants the City of Spokane ("Spokane") and American Traffic Solutions, Inc.'s ("ATS") motion for summary judgment. The Court of Appeals ruling is sound and does not warrant further review.

II. STATEMENT OF THE CASE

The pertinent facts of this case are set forth on pages 1-5 of the Court of Appeals' Opinion, which Spokane and ATS accept. Williams has also asserted additional facts in his Statement of the Case. That recitation is incorrect in the following respects:

First, Williams filed a *putative* class action. No class was certified. Indeed, Williams never filed a motion to certify a class. As such, Williams' repeated references to the "class action" and "thousands of motorists" and "millions" of dollars in fines are an improper attempt to mislead the Court and not part of the record. This case concerns one

plaintiff, Williams, who was ticketed in 2016 for speeding in one school zone, and a $234 fine paid by Williams.

Second, the record is clear that Spokane conducted the requisite traffic and engineering investigation to lawfully establish the Longfellow Elementary School Speed Zone. *See* Appellants' Amended Opening Brief, Appx. pp. 36-39. This on-site investigation was conducted by Spokane's senior traffic engineer prior to establishment of the school zone. The engineer's testimony provides that he considered various factors including, safety of school children, visibility, and feasibility in determining the location of the Longfellow School Zone. *Id*. Williams' assertion that Spokane failed to conduct the investigation is simply not true. And though Spokane and ATS do not concede that Spokane must pass a resolution to lawfully establish the school zone in these circumstances, the Spokane City Council did pass a Resolution in 2014, years before Williams was ticketed for speeding, affirming the establishment of the Longfellow School Speed Zone. *See* Appellants' Amended Opening Brief, Appx. pp. 41-43.

Third, Williams falsely claims that Spokane and ATS did not fully redact their briefs as directed by the Commissioner. The Court of Appeals outright rejected this claim and found that while the Commissioner's ruling barred reference to Spokane's 2019 Resolution reaffirming the

establishment of the Longfellow Elementary School Speed Zone, it did not bar Spokane and ATS from arguing lack of standing. *See* Opinion, p. 18 ("We reject Chris Williams' contention that the court commissioner's ruling precluded the raising of the defense of lack of standing.") Spokane and ATS argued that Williams lacked standing based on Spokane's adoption of an earlier Resolution affirming the validity of the Longfellow School Zone in 2014, as well as the recent adoption of the 2019 Resolution. As directed by the Commissioner, Spokane and ATS removed reference to the 2019 Resolution. Their briefs retained the argument for lack of standing because it relied on Spokane's earlier 2014 Resolution. Appellants' Amended Opening Brief, Appx. pp. 43-44.

Fourth, Williams claims that Spokane and ATS did not raise the issue of standing before the Court of Appeals. As described above, Spokane and ATS explicitly raised the issue of standing in their brief before the Court of Appeals. Appellants' Amended Opening Brief, Appx. pp. 43-44.

Fifth, Williams unconvincingly claims that he did not get an opportunity to fully address the issue of standing. In fact, Williams had multiple opportunities to address standing before the Court of Appeals. Williams had the opportunity to respond to the standing argument raised by Spokane and ATS in their opening brief, *but chose not to do so*.

Williams also had the opportunity to address standing at oral argument when the panel posed multiple questions to the parties regarding Williams' standing. And finally, the Court of Appeals gave leave to the parties to present *supplemental briefing on the issue of standing*. Williams now asserts, without merit, that he did not get an opportunity to fully respond to the issue. This is incorrect. *See* Opinion, p. 25 ("The parties have already presented their arguments about standing, and the court asked questions, during oral argument, about Williams' standing. After oral argument, this court asked additional questions concerning standing.").

Finally, Williams grossly mischaracterizes the Court of Appeals' Opinion by suggesting it ruled on standing grounds to avoid the effort involved in considering the substantive issues on appeal. In reality, the Court of Appeals clearly explained that it considered and ruled on standing for the sake of *judicial efficiency*. If this case returns to the superior court the issue of standing could still be raised by Spokane and ATS in a dispositive motion and we would end up right back where we find ourselves now – with a Court of Appeals ruling dismissing the case based on standing. Opinion, p. 25 ("Whatever ruling the superior court issued on the merits as to standing, that ruling would return to this appellate court for a decision on the merits.").

Williams' Petition is unwarranted, and the Court of Appeals correctly ruled that Williams must seek a refund from the municipal court and that he lacks standing for equitable relief. The Court of Appeals' unpublished opinion is fact-specific, entirely consistent with settled Washington law, and establishes no precedent. Williams provides no reasonable argument to support his contention that the issues in this case present a conflict with a decision by the Supreme Court, a conflict with a decision of the Court of Appeals, or qualify as issues of substantial public interest requiring further guidance by this Court. Accordingly, this Court should deny review.

III. ARGUMENT

A. Review Is Unwarranted.

This Court accepts review of a decision of the Court of Appeals only under the limited circumstances delineated in RAP 13.4(b). Review is appropriate if a Court of Appeals decision conflicts with a decision of the Supreme Court or another Court of Appeals, if "a significant question of law under the Constitution of the State of Washington or of the United States is involved," or if "the petition involves an issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b)(3), (4). None of those circumstances are presented here.

As an initial matter, the Opinion does not conflict with any precedent of the Supreme Court or another Court of Appeals. *See* RAP 13.4(b)(1), (2). To the contrary, the Opinion is directly in line with long-standing Washington case law, as the Court of Appeals specifically noted in the Opinion. Opinion, p. 6. And finally, the Opinion does not involve an issue of "substantial public interest that should be decided by the Supreme Court." Recall, this case involves one plaintiff, Williams, one ticket for speeding in one school zone, and a $234 fine paid. This type of case does not merit the attention of this Court.

1. Washington Courts Agree that Appellate Courts Have *Discretion* to Consider an Issue Raised for the First Time on Appeal.

Williams claims that there is a split in authority regarding whether the appellate courts can consider standing for the first time on appeal. This is simply not the case. The law is clear, per RAP 2.5(a), that "the appellate court may refuse to review any claim of error which was not raised in the trial court." This rule provides the appellate court with *discretion* to consider an issue raised for the first time on appeal. Since courts are afforded discretion in this regard, decisions will naturally vary depending on the nature of the case – a court may or may not choose to allow consideration of new issues or arguments on appeal.

Here, the Court of Appeals pointed to cases where courts have decided not to consider standing raised for the first time on appeal, but clearly acknowledged this was based on an exercise of *discretion*: "Presumably this line of authority would still permit the appellate court, at its discretion, to review the defense of standing asserted for the first time on appeal." Opinion, p. 24. The Court of Appeals then referenced numerous cases where appellate courts did allow consideration of standing raised for the first time on appeal. Opinion, p. 23. There is no conflict of law here, merely examples of different courts exercising discretion in different cases.

In this case, the Court of Appeals considered the fact that the parties had a full and fair opportunity to address their arguments on standing and the fact that judicial economy would be served by considering standing now, rather than during an inevitable later appeal of this case. Based on these factors, the court exercised its discretion per RAP 2.5(a) and chose to consider standing on appeal.

Washington law is also clear that appellate courts can and do address standing *sua sponte*. *See Jevne v. Pass LLC*, 3 Wn. App.2d 561, 565, 416 P.3d 1257 (2018) (citing *In re Recall of West*, 156 Wn.2d 244, 248, 126 P.3d 798 (2006); *Branson v. Port of Seattle*, 152 Wn.2d 862, 875 n.6, 101 P.3d 67 (2004)). Thus, the Court of Appeals acted consistent

with Washington law when addressing standing for the first time on appeal in this case.

2. The Court of Appeals' Decision Does Not Conflict with *Orwick v. City of Seattle*.

Williams erroneously claims that the Court of Appeals' decision conflicts with *Orwick v. Seattle*, 103 Wn.2d 249, 692 P.2d 793 (1984). When in fact, *Orwick* involves a different procedural posture and is not germane. In *Orwick*, three individuals received traffic citations for speeding, but the citations were dismissed before the plaintiffs had a chance to contest them. No judgment was ever entered against the individuals in the municipal court and no fine was paid. This case is different. Here, Williams chose to pay the fine associated with his speeding ticket. Judgment was then entered against Williams by the municipal court. Williams has available to him a remedy that the *Orwick* plaintiffs did not, namely a motion to vacate the judgment to seek refund of the fine paid. As such, *Orwick* has no import on the question of available remedies for seeking a refund for a speeding infraction fine paid after judgment was entered by the municipal court.

Williams claims that it is unfair and inconsistent with *Orwick* to require a ticketed motorist to first file a motion to vacate before the municipal court before it can go to the superior court seeking a refund of

the fine. Williams claims that if the municipal court grants the motion to vacate and refunds the fine, then the motorist would be precluded from bringing the case in equity to the superior court regarding the same traffic violation. This argument fails for two reasons. First, Williams' argument does not make practical sense. If the hypothetical motorist prevails and the municipal court agrees that there was no speeding infraction, then what would be the motorist's remaining complaint? Second, and most importantly, the Court of Appeals did not hold that this procedural limitation would bar Williams from bringing an equitable claim to the superior court. Opinion, p. 15 ("This argument would not, however, preclude Williams from pursuing his equitable relief.").

Williams further asserts that this case involves one of "system-wide violations," again attempting to improperly inflate the scope of this case. This argument is without basis. This case involves one plaintiff, Williams, one ticket for speeding in one school zone, and one fine of $234. There are no "system-wide violations" presented in evidence in this case.

The Court of Appeals properly ruled that Williams must follow the procedures for vacating a judgment found in chapter 46.63 RCW, IRLJ 6.7(a) and CRLJ 60(b). This ruling is entirely consistent with settled Washington case law, including *Orwick*.

3. The Court of Appeals' Opinion Does Not Conflict with *Doe v. Fife Municipal Court*.

The Court of Appeals held that Williams is barred from bringing a request for a refund for his speeding ticket to the superior court, without first filing a motion to vacate the judgment entered against him by the municipal court. In reaching this conclusion, the court relied on *Doe v. Fife Municipal Court*, 74 Wn. App. 444, 184 P.2d 182 (1994). The Court of Appeals found *Doe* controlling, yet, Williams claims the Court of Appeals' Opinion *conflicts* with *Doe*. This argument fails, as the facts and procedural posture in this case perfectly track *Doe*.

In *Doe*, court costs were imposed on a group of anonymous plaintiffs by courts of limited jurisdiction in Pierce County as a condition of deferred prosecution in connection with alcohol-related traffic offenses. The drivers had paid the costs, and then brought suit in superior court claiming the costs were illegal because there was no statutory authority to impose them. The superior court dismissed the refund claims, ruling that the plaintiffs were barred from recovery because they did not first appeal the orders to the limited courts or move for relief from judgment under the appropriate rule. 74 Wn. App. at 448. On appeal, the Court of Appeals agreed that the costs could not be recovered through a superior court

lawsuit because plaintiffs must first bring a motion to vacate before the court that entered the underlying judgment.

Williams attempts to differentiate *Doe*, and even claims that this case is inconsistent with *Doe*. Williams argues that application of *Doe* is somehow unfair here because it would require a ticketed motorist to first challenge the ticket before the municipal court. While Williams views this as unfair, this is precisely the objective of this rule, and for good reason. As the Court of Appeals explained: "Judicial resources are employed more efficiently if the party who asserts a judgment as being void is first required to address its concerns to the court that issued the judgment. If the litigant is dissatisfied with the municipal court's refusal to vacate a judgment, the litigant may then appeal to the superior court." Opinion, p. 17.

The Court of Appeals ruling is entirely consistent with *Doe* and does not unfairly strip Williams of judicial relief, but Williams must follow the applicable procedural requirements to avail himself of such remedies.

4. The Court of Appeals' Opinion Does Not Involve Matters of Substantial Public Interest.

Williams final contention is that this lawsuit involves matters of substantial public interest. This Court will accept a petition for review if

the petition involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b)(4). A substantial public interest exists, for example, where the Court of Appeals' holding below will affect numerous other individuals. *See, e.g.*, *State v. Watson*, 155 Wn.2d 574, 577, 122 P.3d 903 (2005) (noting case before it "presents a prime example of an issue of substantial public interest" because "Court of Appeals holding, while affecting parties to this proceeding, also has the potential to affect every sentencing proceeding in Pierce County after November 26, 2001, where a DOSA sentence was or is at issue.").

Here, there is no substantial public interest apparent in Williams' request that this Court revisit an unpublished opinion applying settled law on the procedural requirements for appealing a traffic violation and on standing. The Court of Appeals' ruling will not affect other litigants as the Opinion cannot be cited for precedent and, in any event, the Opinion would only be relevant to litigants who have arguably failed to satisfy applicable procedural requirements and lack standing to file an action, and ample binding authority on both issues already exists.

While Williams may have substantial interest in obtaining a refund of his traffic ticket, and potentially generating damages for the yet-to-be certified class of plaintiffs, he has failed to show any substantial *public* interest in this issue. There is no public interest implicated in Williams'

request for review of the Court of Appeals' application of standing, which involved application of settled law to the specific facts in this case.

In sum, the issues presented by Williams for this Court's review involve routine application of well-established law by the Court of Appeals, not novel issues of widespread public importance that should be determined by this Court.

IV. CONCLUSION

For the foregoing reasons, Spokane and ATS respectfully request that this Court deny Williams' Petition for Review.

Respectfully submitted this 4th day of December, 2020.

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CERTIFICATE OF SERVICE

I, Terry L. Strothman, certify under penalty of perjury under the laws of the State of Washington that, on December 4, 2020, I caused the foregoing document to be served on the persons listed below in the manner shown:

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Dated this 4th day of December, 2020, at Seattle, Washington.

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AMENDED BRIEF OF APPELLANTS

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I. INTRODUCTION

Chris Williams was ticketed by a traffic safety camera for speeding in a school zone in Spokane. Williams did not dispute he was speeding, paid the fine, and chose not to contest the infraction. That resulted in a judgment that Williams had committed the infraction. Two years later, Williams filed a lawsuit in Spokane County Superior Court challenging his speeding ticket. For the first time, Williams claimed the school zone was unlawful because it extended more than 300 feet from the marked school crosswalk. Williams argued his infraction should be invalidated and his ticket refunded. Williams' position is unfounded.

Appellants the City of Spokane ("City") and American Traffic Solutions, Inc. ("ATS") moved for summary judgment on Williams' claims for unjust enrichment and declaratory judgment. The City and ATS argued the superior court lacked subject matter jurisdiction to hear Williams' request for a refund two years after the fact. That is because Williams' traffic infraction can only be challenged in municipal court. Further, Williams' superior court action to challenge his infraction was barred by *res judicata* and the voluntary payment doctrine. Finally, the school zone was lawfully established because the zone placement was determined after a careful on-site investigation by the City's senior traffic engineer.

The superior court improperly denied summary judgment. In granting discretionary review, the Commissioner correctly found the superior court erred by ignoring the applicable statutory scheme and on-point case law, concluding the superior court does not have subject matter jurisdiction over Williams' unjust enrichment claim. This statutory scheme may not be circumvented via a collateral attack in superior court, particularly where a driver opted not to challenge his infraction in the first instance, chose to admit the violation occurred by virtue of paying the fine, and accepted entry of judgment against him. The superior court's summary judgment ruling should be reversed, and final judgment should be entered in favor of the City and ATS.

II. IDENTITY OF APPELLANTS

Appellants are the City of Spokane and American Traffic Solutions, Inc.

III. ASSIGNMENTS OF ERROR

The Spokane County Superior Court (the "trial court") erred as a matter of law in denying the City and ATS' Motion for Summary Judgment.

IV. ISSUES PRESENTED FOR REVIEW

1. Whether the trial court erred by concluding it has subject matter jurisdiction over Respondent Chris Williams' unjust enrichment

claim when the municipal court has exclusive jurisdiction to hear a refund claim related to a judgment for a traffic infraction entered by the municipal court, and Williams' sole recourse is to file a motion to vacate the municipal court judgment, not a new action in superior court.

2. Whether the trial court erred by concluding the voluntary payment doctrine does not bar Williams' unjust enrichment claim for a fine Williams opted to pay, without contest, for a speeding infraction.

3. Whether the trial court erred by concluding that *res judicata* does not bar Williams' claims regarding the validity of his infraction for speeding in a school zone when he could have raised, and opted not to raise, precisely the same defense in his infraction proceeding in municipal court.

4. Whether the trial court erred by concluding the trial court's determination of the City's obligations related to extending a school speed zone beyond 300 feet on either side of a marked crosswalk present a genuine issue of material fact, when it is a clear matter of statutory interpretation.

5. Whether the trial court erred by not dismissing all claims against ATS when Williams has not alleged or established specific facts stating claims against ATS.

V. STATEMENT OF THE CASE

A. Statement of Facts

On March 11, 2016, Williams was issued a Notice of Infraction ("NOI") by the City for speeding in a school zone in violation of RCW 46.61.440 (speeding in a school speed zone). Clerk's Papers ("CP") at 21-25. The infraction was detected by a safety camera. *Id.* Spokane Municipal Code Chapter 16A.64 authorizes the use of safety cameras to enforce the 20 mph speed limit in school zones. Consistent with this authority, Spokane obtains automated traffic safety camera school zone equipment and services from a vendor, ATS. CP at 372-83.

The NOI reflects that on March 1 at 3:16 PM, Williams was driving 28 mph in a 20 mph school speed zone by Longfellow Elementary School in the City of Spokane. CP at 21. The NOI detailed Williams' options, including paying the fine, requesting a hearing to contest or mitigate the infraction, or submitting an affidavit of non-responsibility. *Id.* Williams paid the $234 fine in full, never ultimately contested the infraction (though he initially indicated he would and a hearing date was set), and the Spokane Municipal Court entered judgment against him. *Id.* at 21-35.

B. Procedural History

Over two years after receiving an NOI and opting to pay the

associated fine, Williams filed suit against the City and ATS in Spokane County Superior Court on April 25, 2018. CP at 3-11. Williams alleges the infraction issued to him by the City for speeding in a school zone was improper because he was not in a lawfully designated school zone. *Id.* Williams contends that the City (and ATS) violated Washington law by issuing the infraction for speeding in an allegedly unlawfully designated school zone. *Id.* Williams also asserts a claim for unjust enrichment against the City (and ATS) for wrongfully receiving the $234 penalty payment, and seeks restitution of the payment. *Id.* Finally, Williams seeks a judicial declaration that the City (and ATS) are unlawfully issuing speeding tickets in an invalid school zone. *Id.*

On May 15, 2018, the City and ATS filed a joint motion for summary judgment asking the trial court to dismiss all of Williams' claims. CP at 36-51, 73-88. In the motion, the City and ATS argued that Williams' claims should be dismissed on four grounds.

First, the City and ATS argued that Williams' unjust enrichment claim seeking a refund of the penalty Williams paid for the speeding infraction should be dismissed for lack of subject matter jurisdiction. Williams' sole remedy for seeking a refund of the fine he paid for his speeding ticket is through filing a motion to vacate with the court that entered judgment against him: the Spokane Municipal Court.

Second, the City and ATS argued the unjust enrichment claim should be dismissed under the voluntary payment doctrine—because Williams voluntarily paid the fine without contest.

Third, they argued all claims were barred under the doctrine of *res judicata* because Williams had an opportunity to raise the claims or defenses regarding the legality of the school zone and the validity of his speeding ticket before the municipal court, but chose not to.

Finally, they argued all of Williams' claims should be dismissed because the Longfellow school zone is a lawfully designated school zone and Williams was cited for speeding in the school zone. The final argument turns on whether the City's reliance on its traffic engineer's investigation to extend the Longfellow school speed zone was proper, as a matter of law, under RCW 46.61.440 and WAC 468-95-330.

ATS also sought dismissal of all claims due to Williams' failure to allege facts stating any claim specifically against ATS. All are purely legal issues.

On November 16, 2018, the trial court issued a Letter Ruling Denying Defendants' Motion for Summary Judgment, and on November 28, 2018, the trial court entered an order. CP at 391-92, 394-97. The City and ATS filed a Notice of Appeal for Discretionary Review on December 13, 2018. On December 28, 2019, the City and ATS filed a

Joint Motion for Discretionary Review.

On March 8, 2019, Commissioner Wasson for the Washington Court of Appeals, Division III, granted the City and ATS' Motion for Discretionary Review. On April 8, 2019, Williams filed a Motion to Modify the Commissioner's Ruling Accepting Discretionary Review. On May 6, 2019, this Court denied Respondent's Motion to Modify the Commissioner's Ruling. The City and ATS' appeal of the trial court's denial of the Motion for Summary Judgment is now before this Court.

VI. ARGUMENT

A. Standard of Review

This case hinges on purely legal questions of jurisdiction and statutory interpretation. The determination of whether a court has jurisdiction is a question of law that is reviewed de novo. *ZDI Gaming, Inc. v. State ex rel. Wash. State Gambling Comm'n*, 173 Wn.2d 608, 624, 268 P.3d 929 (2012); *Crosby v. Spokane County*, 137 Wn.2d 296, 301, 971 P.2d 32 (1999). An order denying a motion for summary judgment also is reviewed de novo. *See Ruvalcaba v. Kwang Ho Baek*, 175 Wn.2d 1, 6, 282 P.3d 1083 (2012).

B. The Trial Court Lacks Subject Matter Jurisdiction over Williams' Refund Claim

Williams' unjust enrichment claim asks the trial court to issue him a refund of the fine he paid as a penalty for being caught speeding in a

school zone. Williams' refund demand is misplaced. That is because Washington law provides, and recent Court of Appeals decisions confirm, that Williams' <u>sole recourse</u> is to file a motion to vacate before the court that entered judgment against him—in this case, the Spokane Municipal Court. As Commissioner Wasson correctly held, the trial court ignored Washington law and erroneously relied on an inapplicable case in finding that it has subject matter jurisdiction over the unjust enrichment claim.

1. Williams' Sole Remedy to Seek a Refund of His Speeding Ticket Is in the Municipal Court

Chapter 46.63 RCW establishes the parameters applicable to all traffic infraction cases. *Id*. Under RCW 46.63.070, any person wishing to contest an infraction must do so in the "court specified" in the NOI. Here, that is the Spokane Municipal Court. CP at 21-23. Unlike cases in superior court, RCW 46.63.090 limits infraction proceedings, providing that hearings contesting infractions shall be conducted without a jury, and any appeal of the municipal court's order is to the superior court. The decision of the superior court in an infraction appeal is also subject only to discretionary review pursuant to RAP 2.3. *Id*. Finally, RCW 46.63.151 prohibits the awarding of costs and attorneys' fees in traffic infraction cases.

Consistent with RCW 46.63.080, the Washington Supreme Court established the Infraction Rules for Courts of Limited Jurisdiction ("IRLJ"). IRLJ 1.1 provides:

> (a) Scope of rules. These rules govern the procedure in courts of limited jurisdiction for all cases involving "infractions".
>
> Infractions are noncriminal violations of law defined by statute.
>
> (b) Purpose. These rules shall be construed to secure the just, speedy, and inexpensive determination of every infraction case.

"All cases" involving infractions are governed by these rules. *State v. Keltner*, 102 Wn. App. 396, 399, 9 P.3d 838 (2000) (citing IRLJ 1.1)).

Per the IRLJ, if a party fails to respond to an NOI, or fails to appear at a requested hearing to contest an NOI, the court shall enter an order finding that the defendant has committed the infraction and assess monetary penalties provided by law. IRLJ 2.5, 3.2. Under IRLJ 6.7(a), to obtain relief from such a judgment, a party must bring a motion to vacate to the municipal court under the Civil Rules for Courts with Limited Jurisdiction, Rule 60(b). That is precisely the case here.

2. The Court of Appeals Properly Applied the IRLJ and Dismissed Collateral Attacks of Traffic Tickets in ***Boone***, ***Doe***, and ***Karl***

Recent rulings from the Washington Court of Appeals have interpreted and applied these same IRLJ requirements and concluded that

superior courts lack jurisdiction to entertain a refund claim for a traffic ticket. *Boone v. City of Seattle*, 4 Wn. App. 2d 1038, 2018 WL 3344743 (2018) (unpublished), involves facts and procedural circumstances similar to this case and is instructive here. (Pursuant to GR 14.1(a), this case may be accorded such persuasive value as this Court deems appropriate.) Boone, an individual, was issued an NOI for speeding in a school zone. The infraction was detected by automated traffic safety camera. Boone paid the fine, without contest, and the municipal court entered a judgment against him. *Boone*, 2018 WL 3344743, at *1.

Boone later filed a complaint in King County Superior Court, alleging that issuance of the citation was unlawful because the school zone signage did not comport with the legal requirements. Boone sought declaratory relief and restitution—a refund—for the penalty paid. *Id.* at *1-2. The superior court dismissed Boone's claim for a refund of the penalty, finding the claim was barred under *res judicata*. CP at 385-87. The superior court also held it lacked subject matter jurisdiction because any unjust enrichment/refund claim must first be brought before the municipal court under IRLJ 6.7(a). *Id*.

The *Boone* appellate court affirmed the *Boone* superior court's dismissal on summary judgment:

> The superior court properly dismissed Boone's claim for a refund of the fine paid as part of his municipal court judgment. Such a claim may only be brought through a motion to vacate in municipal court. Because of our resolution of this issue, we do not reach the parties' arguments concerning res judicata as an alternative grounds to dismiss the claim.

Boone, 2018 WL 3344743, at *4 (emphasis added).

In reaching its conclusion, the *Boone* appellate court tracked through the same statutory framework and applicable rules the City and ATS set forth for the trial court in their motion for summary judgment:

> Traffic infractions are within the exclusive jurisdiction of the municipal court. RCW 3.50.020. Infraction proceedings are governed by the Infraction Rules for Courts of Limited Jurisdiction (IRLJ). IRLJ 1.1(a). The issuance of a notice of infraction initiates an infraction case. IRLJ 2.2(a). A person who receives a notice of infraction may pay the penalty without contest, request a hearing to contest that the infraction occurred, or request a hearing to explain mitigating circumstances. IRLJ 1.1(b). When the person pays the fine without contest, the court enters "a judgment that the defendant has committed the infraction." IRLJ 2.4(b)(1). A judgment of infraction is a final decision. IRLJ 1.2(e). To obtain relief from judgment, a party must bring a motion under CRLJ 60(b). IRLJ 6.7(a). Under that rule, the court may grant relief from judgment in a number of circumstances, including where the judgment is void. CRLJ 60(b).

Id. at *2. Based on its analysis and application of the IRLJ to a case involving an individual who received a NOI and paid the citation without contest, the *Boone* appellate court concluded:

> If, as Boone asserts, the City lacked authority to issue citations at improperly signed school zones, the municipal court judgment is void. The exclusive means to vacate a void judgment is through a motion under CRLJ 60(b). The trial court did not err in ruling that Boone and similarly situated plaintiffs had to bring refund claims in municipal court.

Id. at *3.

The *Boone* appellate court also relied on another Court of Appeals case in reaching this holding, *Doe v. Fife Municipal Court*, 74 Wn. App. 444, 874 P.2d 182 (1994). *Doe* involved court costs that were imposed by courts of limited jurisdiction in Pierce County as a condition of deferred prosecution in connection with alcohol-related traffic offenses. Drivers who had paid the costs brought suit in superior court claiming the costs were illegal because there was no statutory authority to impose them. The superior court dismissed the refund claim, ruling that the plaintiffs were barred from recovery because they did not appeal the orders to the limited courts or move for relief from judgment under the appropriate rule. 74 Wn. App. at 448. On appeal, the Court of Appeals agreed that the costs could not be recovered through a superior court lawsuit. Instead, the plaintiffs' *exclusive remedy* was to go back to the court of limited jurisdiction and file a motion to vacate. *Id*. at 451-53.

Another recent Court of Appeals case similarly held that the superior court does not have jurisdiction to entertain a claim for a refund

of a traffic ticket. In *Karl v. City of Bremerton*, 7 Wn. App. 2d 1047, 2019 WL 720834 (2019) (unpublished), the plaintiffs received parking citations they claimed to be invalid due to improper signage. Karl contested the citation in the municipal court, which found the infraction was committed and upheld the fine. Karl did not appeal to the superior court, or seek to vacate the judgment. Instead, the following year, Karl filed a lawsuit in Kitsap County Superior Court seeking a refund of the fines he and purported class members had paid. The *Karl* Court of Appeals affirmed the trial court's dismissal of the refund claim, holding:

> Karl may not collaterally attack the imposition of fines imposed on him and others by the municipal court for committed traffic infractions in an independent action in superior court. After the 30-day deadline to file an appeal under RALJ 2.5 has passed, the exclusive means for him to vacate the parking tickets allegedly issued contrary to state law is through a CRLJ 60(b) motion. Therefore, Karl does not have a cause of action because his refund claim could only be brought through a motion to vacate in the limited jurisdiction court.

Id. at *4.

The facts, the procedural postures, and the courts' reasoning in these three cases (*Boone*, *Doe*, and *Karl*), perfectly track what is at issue here and direct dismissal of Williams' refund claim for lack of jurisdiction.

3. The Trial Court Improperly Relied on an Inapplicable Case: *Washington v. Taylor*

On October 2, 2018, this Court issued a published decision in *Washington v. Taylor*, 5 Wn. App. 2d 530, 427 P.3d 656 (2018), *petition for rev. denied*, 192 Wn.2d 1019 (2019). The trial court cited *Taylor* in denying the City's and ATS' challenge on subject matter jurisdictional grounds. In doing so, the trial court confused jurisdictional principles. The reality is that *Taylor* is inapplicable here.

In *Taylor*, an individual was stopped by the Washington State Patrol in the city limits of Spokane and arrested for driving under the influence ("DUI"). Taylor was charged with a DUI, a gross misdemeanor, in Spokane County District Court. Taylor appealed his conviction to Spokane County Superior Court, arguing the district court lacked jurisdiction to hear his case, and that it should have been brought before the Spokane Municipal Court. Taylor argued the City's adoption of RCW 46.61.502 (DUI) into the City's Municipal Code vested its municipal court with exclusive jurisdiction over DUIs committed within the City's boundaries.

The Court of Appeals agreed with the State, holding that the municipal court's jurisdiction was not exclusive and that the district court had jurisdiction to hear a case involving a gross misdemeanor. The

controlling statute in *Taylor* was RCW 3.66.060, which provides:

> The district court shall have jurisdiction: (1) Concurrent with the superior court of all misdemeanors and gross misdemeanors committed in their respective counties and of all violations of city ordinances.

The *Taylor* court also held that RCW 46.61.502 is not a "city ordinance," thus concluding that RCW 3.50.020, which gives municipal courts exclusive criminal jurisdiction over violations of city ordinances, did not apply in that instance.

This case is different. Despite that, the trial court attempted to apply *Taylor* to these facts, to an erroneous end. The trial court erroneously dismissed the City's and ATS's jurisdictional arguments based on *Taylor* and RCW 3.66.060, holding that because a state statute, RCW 46.61.440 (speeding in a school zone), is at issue in this case, the "Spokane County Superior Court has been granted jurisdiction by the State Legislature, concurrent with Spokane County District Court." CP at 391-92. As Commissioner Wasson held, the trial court's ruling misapplies this Court's analysis in *Taylor* and improperly disregards the plainly applicable reasoning in *Boone*.

First, this case involves Williams' request for a refund of the fine he paid for a traffic infraction. This case does not involve a misdemeanor or gross misdemeanor, which is the subject of *Taylor* and RCW 3.66.060.

Second, there is no question as to original jurisdiction in dispute. The City and ATS do not contend the trial court would not have had concurrent, original jurisdiction to enter a judgment against Williams for violating RCW 46.61.440 (speeding in a school zone). Applying *Taylor*, Williams arguably could have been before the trial court for speeding in the Longfellow school zone in violation of RCW 46.61.440, had the City not structured enforcement to be via the municipal court. Regardless, this question is immaterial. The municipal court already entered a judgment against Williams for the speeding infraction. Now, the question is whether/how/where Williams may seek a refund of the penalty he opted to pay. The answer is: only through a motion to vacate in municipal court.

Under IRLJ 6.7(a), to obtain relief from the judgment entered against him, Williams must file a motion—in the municipal court—to vacate the judgment entered by the municipal court. Williams did not bring such a motion for relief, and instead went straight to the trial court—the superior court—with his refund claim. Per *Boone*, *Doe*, and *Karl*, this venue is not available under such circumstances and the unjust enrichment claim should be dismissed for lack of subject matter jurisdiction.

4. *Todd* and *Orwick* Are Inapposite

Williams tries to distinguish *Boone* by diverting and arguing that a different case, *Todd v. City of Auburn*, No. C09-1232JCC, 2010 WL

774135 (W.D. Wash. Mar. 2, 2010), is controlling. Williams' reliance on *Todd* is misplaced. In *Todd*, individual plaintiffs brought a putative class action against several municipalities and two camera companies to invalidate citations detected by automated traffic safety cameras. The issue was whether the federal district court could hear the case, or whether the municipal court had exclusive jurisdiction. The federal district court found it had jurisdiction because the claims involved administration of traffic cameras *in multiple jurisdictions*, aka "system-wide violations," and because it involved *federal constitutional claims*. 2010 WL 774135, at *2. This case involves *neither*.

This case involves only one individual, one ticket for speeding in a school zone, at one location, and one fine paid—$234. The facts and legal analysis in *Boone*, *Doe*, and *Karl* more squarely align, and Williams' unjust enrichment claim should be dismissed on the same grounds.

Williams also erroneously relies on *Orwick v. Seattle*, 103 Wn.2d 249, 251, 692 P.2d 793 (1984). *Orwick* involves a different procedural posture and is not germane. In *Orwick*, three individuals received traffic citations for speeding, but the citations were dismissed before the plaintiffs had a chance to contest them. <u>No judgment was ever entered against the individuals in the municipal court and no fine was paid</u>. This case is different. Here, Williams chose to pay the fine associated with his

traffic infraction. Judgment was then entered. Williams has available to him a remedy that the *Orwick* plaintiffs did not, namely a motion to vacate the judgment to seek refund of the fine paid. As such, *Orwick* has no import on the question of jurisdiction over Williams' refund claim for a speeding infraction fine paid after judgment was entered by the municipal court. The Court of Appeals in *Boone* refused to apply *Orwick* for this same reason. *Boone*, 2018 WL 3344743, at *3 ("Because there was no prior judgment at issue in [*Orwick*, this case is] of no help to Boone.").

C. *Res Judicata* Bars Williams' Claims That Could Have Been Raised Before the Municipal Court

Res judicata does not permit Williams to ask the trial court to invalidate the municipal court's judgment against him based on a legal theory that he could have raised before the municipal court, and opted not to raise, in the first instance. The purpose of the doctrine of *res judicata* is to "prevent relitigation of that which has been previously litigated." *See Luisi Truck Lines, Inc. v. Wash. Utils. & Transp. Comm'n*, 72 Wn.2d 887, 894, 435 P.2d 654 (1967). In addition to preventing re-litigation, *res judicata* also prevents litigants like Williams from unjustly getting a second bite of the apple by raising, after the fact, a legal theory that could have been raised in the first instance. *Loveridge v. Fred Meyer, Inc.*, 125 Wn.2d 759, 763, 887 P.2d 898 (1995) (*res judicata* bars a party from re-

litigating all claims and defenses that were raised, *or could have been raised*, in an earlier action).

The party seeking to bar claims under res judicata principles must show that the prior action and the second action have the same: (1) parties, (2) subject matter, (3) cause of action, and (4) quality of the persons for or against whom the claim is made. *Stevens County v. Futurewise*, 146 Wn. App. 493, 503, 192 P.3d 1 (2008). The doctrine applies to judgments from municipal court proceedings, just as it does to other court proceedings. *Reninger v. Dep't of Corr.*, 134 Wn.2d 437, 449-50, 951 P.2d 782 (1998). Here, each element is satisfied.

First, the parties and quality of the parties are the same. Williams and the City were parties to the municipal court judgment, just as they are parties to this lawsuit. The quality of the parties is the same, because Williams and the City occupy the same roles: (a) Williams violated a traffic law and (b) the City made an infraction decision based upon a review of the evidence. Although Williams named ATS as a defendant, he makes no separate allegations specifically against ATS. Regardless, the City and ATS have contractual privity (as Williams himself alleges), which meets the *res judicata* standards. *See* CP at 4, ¶3.5; *see also Ensley v. Pitcher*, 152 Wn. App. 891, 902, 222 P.3d 99 (2009) ("Different defendants in separate suits" are the same party of the purposes of res

judicata where they are "in privity.").

Second, the subject matter is the same. Both the municipal court proceedings and the trial court case arise from the one speeding infraction issued to Williams.

Third, the claims or defenses are the same. *Res judicata* prevents re-litigation of claims or defenses that either were, or could have been, decided in the prior action. *See Norris v. Norris*, 95 Wn.2d 124, 130, 622 P.2d 816 (1980). Thus, a defendant may not withhold defenses in one action and attempt to assert those same defenses affirmatively in a second action. *Symington v. Hudson*, 40 Wn.2d 331, 338, 243 P.2d 484 (1952).

The trial court erroneously concluded that *res judicata* does not apply because "the length of the speed zone and the propriety of the measurement or extension was NOT an issue decided by the infraction payment below." CP at 391-92 (emphasis in original). This holding misapplies the doctrine of *res judicata*. *Res judicata* prevents re-litigation of claims or defenses that were, <u>or could have been</u>, decided in the prior action. As such, Williams may not sit on his hands and withhold his defenses in the first action, and then attempt to assert the same defense affirmatively in the second action. *White v. Miley*, 138 Wash. 502, 509, 244 P. 986 (1926) ("[T]he judgment in a case will operate as an estoppel … as to all grounds of … defense which might have been, but were not,

presented and passed upon.").

Williams' claims are based entirely on defenses that he could have asserted in municipal court. Other superior courts in Washington have held *res judicata* bars identical claims in similar cases challenging infractions for violation of school speed zone laws or running red lights.[1] The trial court erred in holding that the legality of the Longfellow school zone was somehow not at issue before the municipal court, when the issue could have been, but was not, raised by Williams in defense of his infraction.

D. Williams Voluntarily Paid His Fine for Speeding

The trial court also erred by allowing Williams to manufacture a disputed issue of fact regarding his own voluntary payment of the fine for his infraction. Upon receiving the NOI, Williams chose not to dispute that he was speeding in a school zone. He did not appear at a hearing to contest the infraction. Instead, Williams chose to pay the penalty in full. Indeed, Williams himself admitted under penalty of perjury that he "decided to just go ahead and pay" the infraction because he "did not wish to spend the time and effort to continue to fight" because he "had more important

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[1] CP at 385-390 (*Nicolas E. Boone v. City of Seattle*, King County Superior Court Case No. 14-2-22655-1 SEA, May 8, 2015 (Dkt. #82 - Order Granting Summary Judgment); *Dewberry v. Federal Way*, King County Superior Court Case No. 16-2-30616-1 KNT, Sept. 29, 2017 (Dkt. #99 - Order Granting Summary Judgment).

business to attend to." CP at 171-75. This is the very epitome of a voluntary payment. *See Lynch v. Deaconess Med. Ctr.*, 113 Wn.2d 162, 165, 776 P.2d 681 (1989) (to recover in unjust enrichment, "the plaintiff cannot be a mere volunteer"). As such, Williams' unjust enrichment claim is barred under the voluntary payment doctrine.

Nonetheless, the trial court held that "there is an issue of fact about what the Plaintiff knew or should have known at the time he paid the school zone speeding ticket." CP 391-92. In so holding, the trial court mistakenly permitted Williams to manufacture a disputed fact by contradicting his own testimony. Indeed, Williams' attempt to defeat summary judgment by claiming he did not pay the fine "voluntarily" was inconsistent with Williams' own description of deciding to "just go ahead and pay it because [he] did not wish to spend the time and effort to continue to fight." CP at 172. The trial court's ruling was in error because mere allegations, argumentative assertions, conclusory statements, and speculation do not raise issues of material fact that preclude a grant of summary judgment. *Greenhalgh v. Dep't of Corr.*, 160 Wn. App. 706, 714, 248 P.3d 150 (2011).

The trial court also apparently relied on statements made in the response to summary judgment by *counsel* for Williams that the voluntary payment doctrine should not bar the unjust enrichment claim because

Williams was "unaware the ticket he [received] was unlawful as the school zone had not been properly extended." CP at 302. Notably, this contention is not evidence. It is not an allegation in the Complaint, nor is it contained in Williams' own declaration. Instead, it was proffered solely as argument of counsel as a basis for contending that Williams' payment of the citation should not bar the current claim. The facts have not changed and there is no legal precedent for Williams' contention that his decision not to fight the infraction because he had "more important business to attend to" was anything but voluntary. As such, Williams' voluntary payment of the fine should bar his unjust enrichment cause of action.

E. The City Lawfully Established the Longfellow School Speed Zone

The final issue presents a narrow question of statutory interpretation: What is required under the law for the City to extend a school speed zone more than 300 feet from a marked crosswalk?

Williams claims the law requires a City traffic engineer to conduct a traffic study with a physical, written report justifying the placement of the school zone, *and* a City Council resolution approving the placement. This interpretation is unsupported and, if adopted, would lead to an absurd result requiring extensive documentation and gratuitous City Council involvement in routine traffic management determinations, most

appropriately within the purview of the City's senior traffic engineer. Here, the City's senior traffic engineer conducted an on-site investigation for the Longfellow Elementary School speed zone. The traffic engineer determined, based on his engineering judgment, the proper and safe location for the school zone was 385 feet north of the crosswalk.

The trial court incorrectly concluded that an issue of fact remained preventing it from ruling on the propriety of the Longfellow school zone on summary judgment. However, no issues of fact exist and the only outstanding issue, *which the trial court entirely sidestepped*, is what Washington law requires for a school zone to extend beyond 300 feet from a marked crosswalk. This is a purely legal issue properly before this Court.

1. Brief Background on the 2008 Longfellow Elementary School Zone Extension

The Longfellow Elementary School crosswalk was put in to allow school children to safely cross the street. In 1989, the Spokane School Safety Committee adopted a policy to install new speed limit signage at certain school zones: "20 MPH When Children Are Present."[2] The Longfellow Elementary School crosswalk at issue in this case was one of locations that received the new signage. The new signage was placed 300 feet north of the North Nevada Street crosswalk.

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[2] *See* Spokane City memo from 1989 establishing new signage at Longfellow school zone, CP at 153-54.

In 2008, the City was awarded a grant from the Washington Traffic Safety Commission to install new "20 MPH When Flashing" devices at 70 school zone locations around the City.[3] The Longfellow Elementary School zone was one of those 70 locations.[4]

Each site was evaluated by City staff in the field to select the best location for the new school zone devices. Senior Traffic Engineer for the City, Robert Turner, thoroughly evaluated the site at the Longfellow Elementary School crosswalk to determine the most appropriate and safest location for the "20 MPH When Flashing" device.[5] Based on Mr. Turner's engineering investigation, he determined that the proper location for the "20 MPH When Flashing" signage for the Longfellow school zone was 385 feet north of the North Nevada Street crosswalk.[6] Mr. Turner's engineering investigation and determination are entirely consistent with Washington law.

Years later, in 2015, the City installed photo-enforcement equipment at this school zone in close proximity to the flasher signage,

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[3] *See* Final Report on Flashing Beacons in School Zones, CP at 158-70.

[4] *See* CP 84-86.

[5] *Id.*

[6] *Id.*

which ultimately detected Williams' speeding infraction.[7]

2. Washington Law Requires a School Speed Zone to Extend 300 Feet on Either Side of a School Crosswalk, but It May Extend Farther Based on a "Traffic and Engineering Investigation"

Washington law clearly authorizes placement of a school zone more than 300 feet from a crosswalk, if the decision is based on a "traffic and engineering investigation." Per RCW 46.61.440(1), the Washington legislature established a 20 mph speed limit in school zones, which, by statute, must extend 300 feet in either direction of a school crosswalk:

> [I]t shall be unlawful for the operator of any vehicle to operate the same at a speed in excess of twenty miles per hour … when passing any marked school or playground crosswalk.... The speed zone at the crosswalk shall extend three hundred feet in either direction from the marked crosswalk.

Three hundred feet is the minimum distance for a school zone to extend from a crosswalk, but it may span more than 300 feet, as described expressly in WAC 468-95-330:

> [T]he reduced school or playground speed zone shall extend for 300 feet in either direction from the marked crosswalk….
>
> ….
>
> No school or playground speed zone may extend less than 300 feet from a marked

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[7] *See* CP at 381-83 (Spokane City Resolution No. 2014-0118—*A Resolution Regarding the School Zone Speed Camera Pilot Program*).

> school or playground crosswalk, but may extend by traffic regulation beyond 300 feet based on a traffic and engineering investigation.

WAC 468-95-330 replaces a paragraph in the 2009 Manual on Uniform Traffic Control Devices ("MUTCD"), which was adopted by the Washington State Department of Transportation ("WSDOT") in WAC 468-95-010. WSDOT has issued multiple modifications to the MUTCD, like the above provision, in WAC Chapter 468-95.

Based on the above provisions, a 20 mph school zone may lawfully extend beyond 300 feet if based on a "traffic and engineering investigation." This phrase is not defined. However, the law is clear that it is the within the powers and duties of a traffic engineer to "determine the installation … of traffic control devices" and to "conduct engineering investigations." WAC 308-330-260(2) (Traffic engineer). Furthermore, a city traffic engineer is authorized "[t]o establish safety zones of such kind and character and at such places as he/she may deem necessary for the protection of pedestrians." WAC 308-330-265(4) (Traffic engineer – Authority). Thus, it is squarely within the City traffic engineer's scope of authority to conduct an "engineering investigation" at the Longfellow Elementary School and "determine the installation" of flashing signage to "establish safety zones … deem[ed] necessary for the protection of

pedestrians."

Nowhere does the law require that a traffic and engineering investigation be documented in a written report. In some instances a traffic engineer may decide it makes sense to document an investigation; however, it is not required by law.[8]

3. The City Conducted a "Traffic and Engineering Investigation"

The record evidence reflects that the City conducted the requisite traffic and engineering investigation sufficient to support, as a matter of law, the City's establishment of the Longfellow school zone extending more than 300 feet from a school crosswalk. There is no dispute in this case that the City's senior traffic engineer, Mr. Turner, is a seasoned traffic engineer, with decades of relevant experience. Nor is there any dispute that in 2008 Mr. Turner performed an on-site investigation for the Longfellow school zone to evaluate proper placement of the "20 MPH When Flashing" sign.[9] Mr. Turner testified about all of the factors he considered in conducting the Longfellow school zone investigation.[10] Based on his engineering judgment, and the site-specific factors, Mr.

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[8] *See* CP at 112, 24:2-5 ("Q: Does a traffic investigation and an engineering investigation … include documentation? A: Sometimes it does, sometimes it doesn't.").

[9] *See* CP at 84-86.

[10] *Id*.

Turner concluded that the proper location for the Longfellow school zone was 385 feet north of the crosswalk.[11]

Williams attempted to manufacture issues of fact by hiring a declarant who claims that based on her review, the "20 MPH When Flashing" signage *could* be placed 300 feet north of the crosswalk.[12] This declarant's opinion regarding whether the signage could, today, be placed at 300 feet is entirely irrelevant. Site conditions could have changed over the past 10 years since Mr. Turner conducted his investigation. Further, even if the signage could be physically squeezed into the sidewalk at 300 feet, Mr. Turner's determination to place the signage at 385 feet was based on a number of factors he considered, including visibility, stability of the signage installation, avoiding encroaching on neighbors' property by locating the sign inside a fence, preventing obstructions to neighbors' site lines, and ensuring the safety of school children.[13] Williams' declarant was not the City's traffic engineer in 2008 tasked with determining the proper location of the school zone, and her hollow allegations presented are pure speculation and insufficient to defeat summary judgment. *Seiber v. Poulsbo Marine Ctr., Inc.*, 136 Wn. App. 731, 736, 150 P.3d 633 (2007); *SentinelC3, Inc. v. Hunt*, 181 Wn.2d 127, 140, 331 P.3d 40 (2014)

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[11] *Id.*
[12] *See* CP 197-98, ¶17.
[13] *See* CP at 48-49.

(conclusory statements that unresolved factual issues remain are insufficient to survive a motion for summary judgment).

Williams further attempted to construct issues of fact by hiring as a fact witness the technician who assisted Mr. Turner at the City in 2008. The technician claims that Mr. Turner did not discuss with him a number of the factors considered during the traffic and engineering investigation for the Longfellow school zone.[14] Again, it is irrelevant whether Mr. Turner discussed every factor *he* considered in evaluating the site with his technician. It was Mr. Turner, the City's senior traffic engineer, who was tasked with conducting the investigation and determining the proper placement of the Longfellow school zone signage, not the technician. In fact, the technician was not even aware that Washington law requires school zones to extend 300 feet from a crosswalk.[15] The technician's unfamiliarity with the applicable requirements is due to the fact that it is not the technician's role, nor within his authority, to conduct the engineering investigation and make the requisite determinations regarding the school zone. Mr. Turner testified as to exactly what *he* considered during the site investigation and why he made his determination regarding the Longfellow school zone. Williams cannot claim based on the

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[14] *See* CP at 182, ¶19.
[15] CP at 179, ¶11.

technician's declaration that Mr. Turner himself did not consider the factors he enumerated.

4. The City Is Not Required to Conduct an "Engineering Study" to Extend a School Speed Zone

Williams claims that establishment of the Longfellow school zone required an "engineering study," rather than a "traffic and engineering investigation," even though the applicable provisions of law clearly use the term "traffic and engineering investigation." A fundamental rule of statutory construction is that the legislature "is deemed to intend a different meaning when it uses different terms." *State v. Roggenkamp*, 153 Wn.2d 614, 625, 106 P.3d 196 (2005) (citing *State v. Beaver*, 148 Wn.2d 338, 343, 60 P.3d 586 (2002) ("When the legislature uses different words within the same statue, we recognize that a different meaning is intended."); *Simpson Inv. Co. v. Dep't of Revenue*, 141 Wn.2d 139, 160, 3 P.3d 741 (2000) (it is "well established that when 'different words are used in the same statute, it is presumed that a different meaning was intended to attach to each word'" (citation omitted))).

An "engineering study" is defined under the MUTCD as requiring documentation.[16] However, based on the rules of statutory construction, WSDOT would have used the defined term "engineering study" if that is

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[16] MUTCD at Section 1A.13 paragraph 3, 65.

what was intended. Rather, DOT selected a different term, "traffic and engineering investigation"; therefore "a different meaning is intended."

The term "traffic and engineering investigation" is not defined. However, another section of the MUTCD supports the interpretation that the decision regarding the placement of a school zone does not require documentation. Per the MUTCD, "the decision to use a particular device at a particular location should be made on the basis of *either* an engineering study *or* the application of engineering judgment."[17] "Engineering judgment" and "engineering study" are both defined terms.[18] By definition, engineering judgment does not require documentation, while an engineering study does require documentation.[19] Therefore, under the MUTCD, engineering judgment, which does not require documentation, may be relied on to make a determination regarding the type and location of a traffic control device.

The bottom line is that the law requires a "traffic and engineering investigation" to be conducted to extend a school zone beyond 300 feet from a crosswalk, not an "engineering study." A "traffic and engineering investigation" does not require documentation.

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[17] *See* WAC 468-95-017 (amending the MUTCD in Section 1A.09) (emphasis added).

[18] MUTCD at Section 1A.13 paragraph 3, 64 ("Engineering Judgment"), 65 ("Engineering Study").

[19] *Id*.

5. Extending the Longfellow School Zone by 85 Feet Did Not Require the City Council to Pass a Resolution or Ordinance

Williams argues that in order to locate the Longfellow Elementary School zone 385 north of the crosswalk, the law requires specific approval by the City Council, either through an ordinance or resolution. Williams relies on the language in WAC 468-95-330: "No school or playground speed zone may extend less than 300 feet from a marked school or playground crosswalk, but may extend *by traffic regulation* beyond 300 feet based on a traffic and engineering investigation." (Emphasis added.) Williams' interpretation is off-base and unsupported.

The Washington legislature knows how to require city council approval for certain actions and did not do so here. For example, RCW 46.63.170(a) expressly requires enacting an ordinance to install automated traffic safety cameras:

> The appropriate local legislative authority must prepare an analysis of the locations within the jurisdiction where automated traffic safety cameras are proposed to be located: (i) Before enacting an ordinance allowing for the initial use of automated traffic safety cameras; and (ii) before adding additional cameras or relocating any existing camera to a new location within the jurisdiction. Automated traffic safety cameras may be used to detect one or more of the following: Stoplight, railroad crossing, or school speed zone violations; or

> speed violations subject to (c) of this subsection. At a minimum, the local ordinance must contain the restrictions described in this section and provisions for public notice and signage. Cities and counties using automated traffic safety cameras before July 24, 2005, are subject to the restrictions described in this section, but are not required to enact an authorizing ordinance.

As required, the Spokane City Council did issue an ordinance in 2015 approving the placement of the camera device for the Longfellow school zone.[20]

Although not required by law, the Spokane City Council has approved the location of the Longfellow Elementary School speed zone. In December 2014, the City Council passed Resolution No. 2014-0118—*A Resolution Regarding the School Zone Speed Camera Pilot Program*.[21] The Resolution states that "the city staff has identified school speed zones at Longfellow Elementary…." and "supports staff recommendations for the installation of automated traffic cameras in school zones in these areas." The City Council approved further protections at these school zones, in addition to the existing signage, to "improve pedestrian safety."

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[20] *See* CP at 372-79 (Spokane Ordinance C35272 – Relating to the use of automated traffic safety cameras for school speed zones, amending SMC sections 15A.64.210 and 16A.64.220 of the Spokane Municipal Code).

[21] *See* CP at 381-83 (Spokane City Resolution No. 2014-0118).

Notably, the City Council cites an incident that occurred in 2014 where an 11-year-old child was critically injured when a driver was speeding "too fast for conditions."

While clearly not required under the law, the Spokane City Council has approved the Longfellow Elementary School speed zone. Therefore, there is no live claim for injunctive relief remaining in this case. Williams' request for injunctive relief regarding the alleged deficiencies with the Longfellow speed zone is moot and should be dismissed.

F. Williams Lacks Standing for Declaratory Relief

A claimant must present a justiciable controversy to obtain a declaratory judgment under the Uniform Declaratory Judgment Act, chapter 7.24 RCW. *Branson v. Port of Seattle*, 152 Wn.2d 862, 877, 101 P.3d 67 (2004). The claimant must show:

> (1) ... an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive.

League of Educ. Voters v. State, 176 Wn.2d 808, 816, 295 P.3d 743 (2013) (alteration in original; internal quotations marks omitted) (quoting *To-Ro*

Trade Shows v. Collins, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001)).

Because no monetary or injunctive relief is available to Williams, he lacks standing to assert any remaining claims for declaratory relief. Any further allegations concerning the City's enforcement of the Longfellow Elementary School speed zone are not part of an actual controversy between parties with a genuine claim for relief. *See*, *e.g.*, *Boone*, 2018 WL 3344743, at *5 ("Because no monetary relief is available, the claim is moot. Any further allegations concerning the City's compliance with the MUTCD are not part of an actual controversy between parties with a genuine claim for relief.").

G. All Claims Against ATS Should Be Dismissed

Although Williams named ATS as a defendant in this case, he made no separate allegations specifically against ATS, and established no facts in response to summary judgment to state a claim against ATS. Williams' vague allegations in the Complaint are not specific to any action taken by ATS with respect to him. Williams' unjust enrichment claim fails against ATS because the only asserted payment was made by Williams *to the City*, and there is no evidence, let alone an allegation, that Williams paid anything to ATS. Williams' remaining claims fails against ATS because they allege a violation of Washington law for issuing speeding tickets in the purportedly invalid Longfellow school speed zone. Indeed,

ATS did not issue Williams an infraction. Rather, the City issued Williams an NOI for speeding in a school zone. As such, all claims against ATS should have been dismissed. The trial court erred by neglecting to so rule.

VII. CONCLUSION

For all the foregoing reasons, this Court should reverse the trial court's summary judgment ruling and direct entry of final judgment in favor of the City and ATS.

DATED this 4th day of November, 2019.

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the state of Washington that on November 4, 2019 I caused the foregoing **Amended Brief of Appellants** to be served via the Appellate Court filing portal upon the parties herein as indicated below:

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