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Court of Appeals
Division III
State of Washington

No. 326357

IN THE COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

LACY STORY-HOWE, a married individual,

Appellant,

v.

OKANOGAN COUNTY, and SHAWN MESSINGER and "JANE DOE" MESSINGER, husband and wife, and the martial community thereof,

Respondents.

APPELLANT'S REPLY BRIEF

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I. ARGUMENT

A. Employee Storey-Howe's Declaration Should Be Considered as It Is Relevant and Non-Speculative.

Okanogan County argues that Plaintiff/Appellant Lacy Storey-Howe's ("Employee Storey-Howe") declaration is generally irrelevant and speculative. Respondent's Answering Brief at 18. However, where a portion of evidence is admissible, an objection must be made to the portion which is inadmissible or the objection is of no avail. Keen v. O'Rourke, 48 Wn.2d 1, 5, 290 P.2d 976 (1955).

It is difficult to respond to such a general attack on Employee Storey-Howe's declaration on the grounds of relevancy and speculation except to say that Okanogan County is incorrect and Employee Storey-Howe's declaration does, in fact, contain relevant information and non-speculative information. The issues before the Court go beyond those stated by Okanogan County to each issue argued in the Appellant's Opening Brief as to each contested element of each claim. The threshold to admit relevant evidence is very low and even minimally relevant evidence is admissible. State v. Darden, 145 Wn.2d 612, 621, 41 P.3d 1189 (2002).

The entirety of Employee Storey-Howe's declaration relates to the incidents that occurred involving Communications Chief Shawn Messinger ("Chief Messinger"), Communications Deputy Heather Almont ("Co-

Worker Almont"), Sergeant Patricia Stevens ("Sergeant Stevens"), the Las Vegas conference, and Employee Storey-Howe's employment as a Communications Deputy for Okanogan County. As such Employee Storey-Howe's declaration is entirely relevant to the issues before the Court as outlined and articulated in the Appellant's Opening Brief and here below. See Appellant's Opening Brief at 2-15. Every item in her declaration relates to the case and is based, in part, or in full upon her personal knowledge or understanding of a situation, goes to her knowledge of the on-goings of the Okanogan County Communications Department, or is based out of public records of Okanogan County, statements of Okanogan County officials, and investigations of Okanogan County, a party opposing her in this action. As to the general attack on her declaration, Employee Storey-Howe would simply submit that each fact is used and tied into Employee Storey-Howe's arguments presented to the Court here and in her Opening Brief.

As to the more specific relevancy attacks on Employee Storey-Howe's declaration, the information contained in Employee Storey-Howe's brief is relevant. See Respondent's Answering Brief at 19. Okanogan County suggests that Employee Storey-Howe's working relationship with Sergeant Stevens is somehow irrelevant; however, it is clearly relevant to her retaliation claim as explained in the Appellant's Opening Brief and here below in relation to her Retaliation claim. See Respondent's Answering

Brief at 19. Additionally, the newspaper articles, while maybe not decisive of anything in-and-of themselves, make more probable that Employee Storey-Howe's working conditions were intolerable when combined with other factors in relation to Employee Storey-Howe's Constructive Discharge claim as explained in her Opening Brief and here below. See Allstot v. Edwards, 116 Wn. App. 424, 433-34, 65 P.3d 696 (2003).

Okanogan County argues that various specific items of Employee Storey-Howe's declaration are conclusory and contain the knowledge of other individuals. See Respondent's Answering Brief at 21-22. The various statements laid out by Okanogan County are Employee Storey-Howe's impressions, are explained elsewhere in her declaration, or are inferences.

For instance, the first bullet-point item in Okanogan County's list of speculative statements regarding Chief Messinger's special treatment towards Co-Worker Almont is explained in the same paragraph of Employee Storey-Howe's declaration. See Respondent's Answering Brief at 21; See CP at 252. The third item, relating to a lack of sexual harassment training leading to sexual harassment, is a reasonable inference in the same way that if a driver did not receive driver training and caused a collision it would be reasonable to attribute said lack of training to the collision. See Respondent's Answering Brief at 21. The fourth and sixth items, relating to context dependent understandings of what Employee Storey-Howe

understood Chief Messinger to be saying, are just that, they go to her interpretation and understanding of Chief Messinger's statements. See id. As people do not always speak literally and sometimes use code, innuendo, sarcasm, and other such linguistic devices, it is sometimes necessary to clarify what was understood in relation to what was said. See Respondent's Answering Brief at 22. The ninth item in relation to Undersheriff Somday being aware that Employee Storey-Howe would receive a department-wide e-mail is just common sense. See Respondent's Answering Brief at 22. If "Person A" intentionally sends an e-mail to every member of the department and "Person B" is a member of the department, and "Person A" knows that "Person B" is a member of the department, it stands to reason that "Person A" is aware that "Person B" will receive the e-mail.

Further, as a general matter, Employee Storey-Howe's state of mind and subjective feelings in relation to, and in response to, her working situation are a part of her Hostile Work Environment, Retaliation, and Constructive Discharge Claims. As such, they are relevant and necessary to her claims.

Employee Storey-Howe's declaration is relevant and non-speculative and so it should be considered in full.

B. The Severity and Pervasiveness of Chief Messinger's Conduct Establishes a Hostile Work Environment Claim.

Okanogan County argues that all of Chief Messinger's conduct, aside from the Las Vegas hotel-room incident where Chief Messinger leapt onto Employee Storey-Howe, should be ignored and that Chief Messinger's actions were not serious. See Respondent's Answering Brief at 31-32. Okanogan County further argues that any actions targeted at persons other than Employee Storey-Howe should not be considered. See Respondent's Answering Brief at 27. However, to do so would not be a consideration of the totality of the circumstances.

An element of a hostile work environment claim is that the complained of conduct affected the terms of conditions of employment. Sangster v. Albertson's, Inc., 99 Wn. App. 156, 161, 991 P.2d 674 (2000). The U.S. Supreme Court, in adopting and implementing the test, which is the same test that is used by Washington Courts, states that the test "is not, and by its nature cannot be, a mathematically precise test." See Harris v. Forklift Systems, Inc., 510 U.S. 17, 22-23, 114 S.Ct. 367, 126 L.Ed. 295 (1993). The test generally looks to see whether the conduct was severe or pervasive so as to create a hostile working environment by looking at the totality of the circumstances. See Adams v. Able Building Supply, Inc., 114 Wn. App. 291, 296-97, 57 P.3d 280 (2002).

The Harris Court, noted that the "appalling conduct alleged in Meritor, and the reference in that case to environments 'so heavily polluted with discrimination as to destroy completely the emotional and psychological stability of minority group workers,' merely present[ed] some especially egregious examples of harassment. They d[id] not mark the boundary of what is actionable." Harris, 510 U.S. at 22 (internal citations omitted). Some Courts have attempted to describe the line marking what is actionable where on one side lie "sexual assaults; other physical contact, whether amorous or hostile, for which there is no consent express or implied; uninvited sexual solicitations; intimidating words or acts; obscene language or gestures; pornographic pictures" and on the other side of the line lie "occasional vulgar banter, tinged with sexual innuendo, of coarse or boorish workers." See Baskerville v. Culligan Intern. Co., 50 F.3d. 428, 430 (7th Cir.1995).

First and foremost, Chief Messinger's conduct was severe. See Moring v. Arkansas Dept. of Correction, 243 F.3d 452, 456-57 (8th Cir.2001) (finding inappropriate conduct during work trip in plaintiff's hotel room sufficiently abusive). Second, it was not an isolated incident.

Okanogan County's own investigation announces that Chief Messinger's conduct went beyond casual conversation of a benign nature and was sex discrimination. CP at 276. This conclusion was based off the

numerous unwanted contacts and behaviors at the Las Vegas conference that Chief Messinger engaged in, including, but going beyond, Chief Messinger's jumping on Employee Storey-Howe while alone with her in her hotel room. See CP at 276. The conduct included pulling on a female employee's hair, kicking female employees behind their legs, holding a female employee's hand, putting his arms around a female employee, entering a female employee's hotel room, and being insistent that a female employee consume alcohol. Id. The investigation reflects the fact that Chief Messinger's conduct went so far beyond the confines of acceptable workplace behavior as to clearly be intimidating and offensive. Id. These are the findings of Okanogan County's own investigation. Id.

In applying the totality of the circumstances test, the conduct here was physical, not verbal. The physical contacts were not minor, incidental, accidental, or other reasonable contacts which may occur in the workplace; but multiple, intentional, unwanted, physical contacts that any reasonable person would be offended by, especially in a professional environment. This does not even remotely do justice to the most severe of these incidents: the late night discussion of sex toys, sexual questioning about Co-Worker Almont, another female target of Chief Messinger's unwanted attentions, and then the physical pushing down of, and jumping on top of, Employee

Storey-Howe, on her bed, while Chief Messinger was intoxicated and isolated with Employee Storey-Howe in her hotel room.

By anybody's standards, Chief Messinger's behavior deviated so far from the expected and acceptable to easily be considered extremely outrageous and alarming. Okanogan County's investigation has already concluded that the actions of Chief Messinger constituted sexual harassment, had a negative impact on the Communications Deputies' work environment, anxiety levels, and created an intimidating and offensive atmosphere. See CP at 276. Employee Storey-Howe was offended, embarrassed, and otherwise horrified by Chief Messinger's conduct. See CP at 256. In fact, even recounting the incident during her deposition brought her to tears. See CP at 83-84.

The severity and outrageousness of Chief Messinger's actions is clear. No person in their right mind would do to their own staff what Chief Messinger did to Employee Storey-Howe. One could only imagine the result if Chief Messinger were to have attempted half of these acts, and especially the hotel room incident, on the elected Sheriff or the Undersheriff. Chief Messinger may have very well have been arrested on the spot. The audacity is not any different because the victim was a subordinate, female employee; in fact, it is worse due to the power discrepancy between the parties and the sexual component. Okanogan

County puts forth that acts that are criminal in nature suffice to establish severity. See Respondent's Answering Brief at 31. Employee Storey-Howe submits to the Court that if anyone were to intentionally, and uninvitedly, push down another person in the street and jump on top of them, that would clearly qualify as a criminal assault.

C. The Hostile Work Environment Totality of the Circumstances Test Considers Conduct Targeted at People Other than the Plaintiff.

The law is clear that the totality of the circumstances test looks to the "totality of the circumstances," including the "environment," which necessarily includes conduct targeted at persons other than the plaintiff. Spriggs v. Diamond Auto Glass, 242 F.3d 179, 184 (4th Cir.2001). As stated in Hicks v. Gates Rubber Co., 833 F.2d 1406, 1415-16 (10th Cir.1987):

> "The second question is whether incidents of sexual harassment directed at employees other than the plaintiff can be used as proof of the plaintiff's claim of a hostile work environment. The answer seems clear: one of the critical inquiries in a hostile environment claim must be the *environment.* Evidence of a general work atmosphere therefore—as well as evidence of specific hostility directed toward the plaintiff—is an important factor in evaluating the claim. Indeed, 'such evidence could be critical to a plaintiff's case, where a claim of harassment cannot be established without a showing of the isolated indicia of a discriminatory environment.'" (Internal citations omitted).

This is simply a part of the totality of the circumstances test. That the facts of a particular case may be distinguishable is immaterial to the test

used to establish whether a hostile work environment exists. See Respondent's Answering Brief at 27. Chief Messinger's actions towards Co-Worker Almont were a fact of the work environment that Employee Storey-Howe was aware of, and under the totality of the circumstances, should be considered as part of the whole of Mr. Messinger's conduct as argued in the Appellant's Opening Brief. See Appellant's Opening Brief at 21-23.

Okanogan County's present argument that the only inappropriate act that Chief Messinger engaged in was the hotel room incident is contrary to the pre-litigation investigation performed by Okanogan County. See Respondent's Answering Brief at 32; see CP at 276. Okanogan County has already concluded that the conduct went beyond the hotel room incident; however, now in a continued effort to downplay the severity of what happened to Employee Storey-Howe, argues that only the hotel room incident should be considered. See CP at 276; See Respondent's Answering Brief at 32. Looking to the totality of the circumstances, Chief Messinger's conduct went beyond that of the hotel room incident, and beyond that of just the Las Vegas conference. His inappropriate conduct towards Co-Worker Almont prior to the Las Vegas conference should be considered.

Okanogan County knew Chief Messinger had tendencies to engage in inappropriate behavior and nothing was done to correct this behavior in

order to prevent occurrences such as what happened to Employee Storey-Howe. Thus, Chief Messinger's conduct towards Co-Worker Almont is put forth here to establish 1) that Employee Storey-Howe was aware of what was happening to Co-Worker Almont and that these realities because a part of her working environment, and 2) that Okanogan County was aware of Chief Messinger's behavior prior to the Las Vegas Conference and did nothing to correct his behavior.

This Court should consider Chief Messinger's behavior during the Las Vegas conference as well as his behaviors towards Co-Worker Almont.

D. Chief Messinger's Conduct Is Imputed to Okanogan County.

As articulated and adopted by the Sangster Court, the test for employer imputation cited by Okanogan County was replaced by the test identified in the Sangster decision. See Sangster, 99 Wn. App. at 165. The Sangster decision, a decision of this Court, is the correct adoption of the imputation test as modified by the Burlington Industries Court. See Sangster, 99 Wn. App. at 164-65; see Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 744, 118 S. Ct. 2257, 2261, 141 L. Ed. 2d 633 (1998).

It is presumed that "[a]n employer is subject to vicarious liability to a victimized employee for an actionable hostile environment created by a

supervisor with immediate (or successively higher) authority over the employee." Sangster, 99 Wn. App. at 164-65.

An affirmative defense exists where the employer can demonstrate (a) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (b) that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise. Id. As the word "and" makes clear, both elements must be met. Where the employee takes advantage of preventive or corrective opportunities, the defense is not available to the employer.

As stated by the EEOC:

> "Harassment is the only type of discrimination carried out by a supervisor for which an employer can avoid liability, and that limitation must be construed narrowly. The employer will be shielded from liability for harassment by a supervisor only if it proves that it exercised reasonable care in preventing and correcting the harassment and that the employee unreasonably failed to avoid all of the harm. *If both parties exercise reasonable care, the defense will fail.*" EEOC Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, No. 915.002 (June, 18 1999) (emphasis added).[1]

It is the employer's burden to demonstrate the affirmative defense. See Sangster, 99 Wn. App. at 165. There is no requirement that Employee

[1] Available at http://www.eeoc.gov/policy/docs/harassment.html

Storey-Howe establish that Okanogan County "knew or should have known" about Chief Messinger's inappropriate behavior in relation to this test or why Employee Storey-Howe would have the burden of establishing a defense for Okanogan County. See Respondent's Answering Brief at 35. Imputation is simply accomplished by Chief Messinger's status as a supervisor. This also establishes why, counter to Okanogan County's position, it is immaterial whether Okanogan County Sergeants were aware of Chief Messinger's behavior prior to the Las Vegas conference. See Respondent's Answering Brief at 19, 31. It is unclear why the knowledge of Sergeants, who are persons of lower rank than the Chief of Communications, would be relevant in the first place. Further, and more to the point, while the facts presented demonstrate that Okanogan County officials and employees did know of, and were aware of, Chief Messinger's conduct, this was not a necessary factor for imputation. Again, imputation is accomplished by supervisory status. For the intents and purposes here, Chief Messinger was Okanogan County.

Okanogan County must establish both elements of the affirmative defense, and has established neither. Because Okanogan County did nothing, or at least has not established that it did anything, to prevent Chief Messinger's conduct, and because Okanogan County has not established

that Employee Storey-Howe did not exercise reasonable care, Okanogan County cannot avail itself to the affirmative defense.

Because Chief Messinger's actions are imputed to Okanogan County, summary judgment as to imputation element of Employee Storey-Howe's hostile work environment claim is improper.

E. Employee Storey-Howe Utilized the Correct Standards in Determining Whether an Adverse Employment Action Occurred.

The framework used to analyze Title VII Retaliation claims applies equally to WLAD. Arthur v. Whitman County, No. CV-12-365-LRS, 2014 WL 2533334, at *7 (E.D. Wash. June 5, 2014). To satisfy the adverse action prong, "a plaintiff must show that a reasonable employee would have found the challenged action materially adverse, which in [the Retaliation] context means it might have dissuaded a reasonable [person] from making or supporting a charge of discrimination." Id. (citing Burlington Northern and Santa Fe Ry. Co. v. White, 548 U.S. 53, 68, 126 S.Ct. 2405, 165 L.Ed.2d 345 (2006)). Employee Storey-Howe submits that the standards outlined in her Opening Brief should be applied here. See Appellant's Opening Brief at 25-26. Actions beyond the limited definition Okanogan County supplies are considered retaliatory. See Respondent's Answering Brief at 38. Further, Employee Storey-Howe was constructively discharged, which was

a tangible employment event in any regard. See Appellants Opening Brief at 28-31.

F. Employee Storey-Howe Has Established a Sufficient Causal Link Between Her Engagement in a Protected Activity and Sergeant Stevens' Retaliation.

Okanogan County puts forth that there is no causal link between Sergeant Stevens' retaliation and Employee Storey-Howe's sexual harassment complaint/investigation. See Appellant's Responding Brief at 38-39.

Washington Courts have recognized that "employers will rarely reveal that they are motivated by retaliation" so that "plaintiffs must resort to circumstantial evidence to demonstrate retaliatory purpose. Currier v. Northland Services, Inc., 332 P.3d 1006, 1013 (Wash. Ct. App. 2014). Proximity in time is one factor suggesting retaliation. Id. Satisfactory work evaluations prior to the retaliation is another. Id.

Here, as outlined in Appellant's Opening Brief, Sergeant Stevens and Employee Storey-Howe had a fine working relationship prior to Employee Storey-Howe's sexual harassment complaint and Employee Storey-Howe had satisfactory evaluations prior to the Las Vegas conference. See Appellant's Opening Brief at 11-13. After the complaint, Sergeant Stevens told Employee Storey-Howe not to pursue her complaint against Chief Messinger. See Appellant's Opening Brief at 11-13, 26-27.

Then, Sergeant Stevens began retaliating against Employee Storey-Howe. See Appellant's Opening Brief at 11-13, 26-27. Employee Storey-Howe has presented adequate evidence of a causal link between Employee Storey-Howe's protected actions and Sergeant Stevens' retaliation through uncontroverted evidence, which is to be construed in Employee Storey-Howe's favor. Here, there is also the added factor that Sergeant Stevens actually came out and indicated that she did not want Employee Storey-Howe to pursue her complaint, revealing her animus. Thus, there is more here than just satisfactory evaluations prior to the retaliation, the timing of the protected activity, and Sergeant Steven's retaliatory actions.

A causal link is established here through circumstantial and direct evidence and is sufficient to support Employee Storey-Howe's claim for Retaliation.

G. Resignation Is a Part of a Constructive Discharge Claim.

Okanogan County argues that Employee Storey-Howe ignores the fact that she quit in relation to her Constrictive Discharge claim. See Respondent's Answering Brief at 39. A natural part of a constructive discharge claim is a resignation, it is unclear how Employee Storey-Howe ignored the fact that she resigned. It stands to reason that a Constructive Discharge claim is establish by establishing the elements of Constructive Discharge. Employee Storey-Howe has established a prima facie case for

Constructive Discharge. See Appellant's Opening Brief at 28-31. It is establishing the elements of Constructive Discharge that demonstrates that the resignation was not voluntary. See Allstot v. Edwards, 116 Wn. App. 424, 433-34, 65 P.3d 696 (2003).

In Allstot, another decision of this Court, this Court correctly emphasized that whether working conditions were intolerable was a question of fact which should be resolved at trial. See Allstot, 116 Wn. App. at 433-34.

Here, Employee Storey-Howe was extremely offended by Chief Messinger's Las Vegas conduct. CP at 256. Chief Messinger's actions, in-and-of themselves were intolerable. To make matters worse, when Employee Storey-Howe looked for support and understanding in her work environment, she received the opposite. See Appellant's Opening Brief at 11-14. On the one hand, in a private, in-house investigation, Okanogan County touted these broad and noble ideals and how Chief Messinger engaged in unacceptable sexual discrimination, while on the other hand, it told her not to pursue her claim, retaliated against her, and presented a public face like nothing had happened. Okanogan County's public face and response, presented through statements to local newspapers and a department e-mail, in the small Omak community, was that Chief Messinger was a swell guy. Where Employee Storey-Howe needed support

and understanding given that she was sexually harassed, she did not receive it.

Further, the official response of Okanogan County was not to fire Chief Messinger. See CP at 277. Resigning was an action that Chief Messinger took on his own. The official response was to demote him and to place him in the same position and rank as Employee Storey-Howe, of Deputy, in an office with a handful of employees. See CP at 276. An Okanogan County employee could repeat Chief Messinger's conduct and behaviors step-by-step tomorrow and all that would happen is that the employee would be demoted to the same rank of the person that they sexually harassed, and be allowed to continue to work in the same Communications Office as the victim of their harassment. The reason WLAD exists is to prevent this kind of behavior and to hold employers accountable. To dismiss Employee Storey-Howe's WLAD claims at the summary judgment stage, without even a chance to present her case to a jury, would not be serving those goals.

H. Employee Storey-Howe's Negligent Retention Claim Is Not Duplicative and Okanogan County Knew of Chief Messinger's Propensities.

Okanogan County takes the position that Employee Storey-Howe's negligent retention claim is duplicative and there is no evidence that

Okanogan County knew or should have known of Chief Messinger's propensities. See Respondent's Answering Brief at 44.

First, while the claim is somewhat similar to other claims Employee Storey-Howe has presented, it is the only claim that requires establishing that that Okanogan County knew, or should have known, of Chief Messinger's unfitness. See Betty Y. v. Al-Hellou, 98 Wn. App. 146, 148-49, 988 P.2d 1031 (1999). As Chief Messinger is presumed to be Okanogan County for Employee Storey-Howe's claims under WLAD, it is not necessary to establish that Okanogan County separately knew, or should have known, of Chief Messinger's propensities. Thus, the claims are not duplicative under Francom v. Costco Wholesale Corp., 98 Wn. App. 845, 865, 991 P.2d 1182 (2000), and Employee Storey-Howe should be allowed to proceed on both claims.

The grounds for why Okanogan County was aware of Chief Messinger's propensities are laid out in Appellant's Opening Brief at 11-13.

Employee Storey-Howe's claim for negligent retention should not have been dismissed at summary judgment and is not duplicative.

I. Employee Storey-Howe's Reliance on and Recitation of Case Law Is Accurate.

Okanogan County puts forward that Employee Storey-Howe citation of Adams is misplaced while referring to its discussion of the "because of sex" and "disparate treatment" elements of a hostile work environment which are not before the Court. See Respondent's Answering Brief at 28; Adams, 114 Wn. App. at 296-97. However, the case was cited (and quoted) for its discussion pertaining to "severe and pervasive," the very issue before the Court. See Appellant's Opening Brief at 19-20.

Okanogan County also puts forward that a quote from Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75, 81-82, 118 S.Ct. 998, 140 L.Ed.2d 201 (1998), is somehow misconstrued. See Respondent's Answering Brief at 29-30. Okanogan County submits that the case was cited in part for the proposition that a Court should consider conduct targeted at other employees and is context dependent. Id. While the Court should consider conduct targeted at other employees for reasons mentioned above, Oncale was not cited for that purpose. See Appellant's Opening Brief at 18. As for Oncale being context dependent, the Oncale decision states that "[i]n same-sex (as in all) harassment cases, that inquiry requires careful consideration of the social context in which particular behavior occurs and is experienced by its target." See Oncale, 523 U.S. at 81-82. Also, Meritor

was cited for the reason indicated: its approval of the case of Rogers v. EEOC, 454 F.2d 234, 241-42 (4th Cir.1971). Meritor, 477 U.S. 55-56; see Respondent's Answering Brief at 27; Appellant's Opening Brief at 18-19.

II. CONCLUSION

For the aforementioned reasons, the Trial Court erred in granting summary judgment for Okanogan County as to Employee Storey-Howe's Hostile Work Environment, Retaliation, Constructive Discharge, and Negligent Retention claims and the Trial Court's decisions should be reversed and vacated.

Respectfully submitted this 10th day of December, 2014.

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

LACY STOREY-HOWE, a married individual, Plaintiff, v. OKANOGAN COUNTY, and SHAWN MESSINGER and "JANE DOE" MESSINGER, husband and wife, and the marital community thereof, Defendants.	**NO. 326357** **Affidavit of E-Mailing of Appellant's Reply Brief**

STATE OF WASHINGTON)
) ss.
COUNTY OF CHELAN)

Barbara A. Coffin, being first duly sworn on oath, deposes and says: I am now and at all times herein mentioned was a citizen of the United States and of the State of Washington, of legal age, not a party to the above entitled action and competent to be a witness herein.

That on the 10th day of December, 2014, I e-mailed a true and accurate copy of the Appellant's Reply Brief

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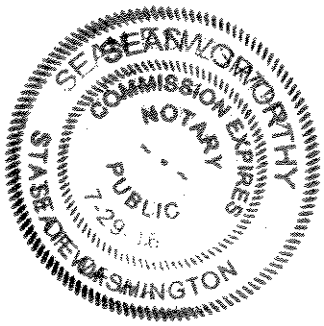
Barbara A Coffin

Barbara A. Coffin

SIGNED AND SWORN TO before me this 10th day of December, 2014, by Barbara A. Coffin.

Signature of
Notary Public
Printed Name: Sean R. Esworthy
Commission expires: 07/29/2016



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