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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 346064

COURT OF APPEALS, STATE OF WASHINGTON,
DIVISION III

ALLAN and GINA MARGITAN,

Appellants,

v.

SPOKANE REGIONAL HEALTH DISTRICT and SPOKANE
REGIONAL HEALTH DISTRICT, BOARD OF HEALTH,

Respondents,

and

MARK and JENNIFER HANNA,

Respondents.

**BRIEF OF RESPONDENTS
MARK AND JENNIFER HANNA**

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I. INTRODUCTION

On August 2, 2016, Appellants, Allan and Gina Margitan (“Margitan”), served and filed a Notice of Appeal of certain Trial Court orders granting summary judgment. As the appeal relates to Respondents Mark and Jennifer Hanna (“Hanna”), the notice asserts that appeal is being taken of the trial court’s Order of April 15, 2015, dismissing Causes of Action 1 and 2 of the Second Amended Complaint and an Order of July 1, 2016, denying reconsideration of that decision. However, the April 15, 2015 Order is not one of the Orders attached to the Notice as being appealed. Further, the July 1, 2016 Order Denying Reconsideration which is attached concerns Spokane Regional Health District and Spokane Regional Health District, Board of Health’s (SRHD) Motion for Summary Judgment regarding negligent and intentional failure to enforce, not Hannas’. Indeed, of the several Orders attached to the Notice, the only one which grants relief to Hanna is the Order of August 1, 2016, which is a combined Order granting all defendants’ motions for dismissal of Margitan’s interference with business expectancy claim.

August 1, 2016 was the first day of trial of the underlying action and the motions which were granted that day resulted in dismissal of SRHD from the action. Trial continued against Hanna and resulted in a verdict and judgment which are under appeal in this Court under cause

COA 347460. Based on the foregoing, it was not at all clear that Margitan was appealing any Orders which granted relief to Hanna.

On February 3, 21017, Defendants Hanna received the Brief of Appellants in this appeal. The Brief does not contain Assignments of Error, although it does have an "Issues Presented" section. Brief of Appellant, pp.4-6. However, none of the issues identified address or relate to orders or relief granted to Hanna as against Margitan. Finally, no argument is presented in the Brief addressing actionable conduct by Hanna, or any Order of the trial court granting relief to Hanna. Accordingly, it did not appear that Margitan was pursuing an appeal of any trial court Order which granted relief to Hanna. For that reason, Hanna did not file a Respondents' Brief.

On April 5, 2017, Hanna's counsel received a letter from the Clerk/Administrator of the Court of Appeals noting the absence of a brief by Hanna and providing a deadline of April 17, 2017, for filing said brief. Accordingly this Brief is being submitted, but is limited in scope, as no assignments of error or issues with supporting argument have been asserted against Hanna.

II. STATEMENT OF CASE

The Statement of Facts submitted by Appellants Margitan and Respondents SRHD are sufficient for purposes of this Brief, with the following exceptions:

1. Hanna believed that the easement was 20 feet when they retained their contractor to install the onsite septic system, as that was reflected in their sales agreement. (CP 1090) Hannas did learn at closing of their purchase transaction that the easement was actually 40 feet, but neglected to advise their contractor prior to the installation. (It is noted that Margitans are citing to the Findings of Fact of the adjudicatory hearing conducted by the Board of Health, Spokane Regional Health District, dated April 22, 2014.) (CP 64-68)

2. Margitan submitted no evidence as to the location of the waterline in relation to the edge of the drain field. Margitans' effort to equate the 40-foot easement with their two-inch waterline is disingenuous, at best. Neither CP 25, Appendix D, CP 65, CP 437-440, CP 1178-1181, CP 191, nor CP 64-68 cited by Margitan equate or even infer that the Hanna's drain field is in unlawful proximity to the Margitan's waterline. References CP 1072 and CP 1247 are self-serving documents of Mr. Margitan's out-of-court statements and are inadmissible hearsay. Even those do not locate the waterline in unlawful proximity to the drain field.

Indeed, as reflected in CP 1072, Mr. Margitan resisted taking any action of his own to verify the waterline's location. Further, Mr. Margitan did nothing to assess whether his water was potable.

Indeed, the only competent evidence of the location of the waterline was provided by the testimony of Shawn Rushing as reflected on page 8 of the SRHD's Brief of Respondent. (CP 1273, 1275, p.43, ll. 3-14)

III. ARGUMENT

A. Standard of Review.

Respondents Hanna concur with the standard of review as asserted by Respondent, Spokane Regional Health District: *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 226, 770 P.2d 182 (1989). *Scrivener v. Clark College*, 181 Wn.2d 439, 444, 334 P.3d 541 (2014). *Herron v. King Broadcasting Co.*, 112 Wn.2d 762, 768, 776 P.2d 98 (1989). However, for the reasons stated, this Court should not reach the merits of any issues as they relate to Hanna.

B. Margitan is Not Entitled to Relief in this Appeal from this Court, Having Failed to Assign Error to Any Order Affecting Margitan's Rights Vis-à-Vis Hanna, and Having Made No Argument Regarding the Same.

A review of the pleadings on appeal demonstrates that Margitan has not assigned error specifically to any order or ruling of the Court which favored Hanna and which they seek to reverse. Further, neither Margitan's Opening Brief, nor their Reply Brief recently filed, make any

argument directed at the trial court's rulings as they relate to Margitan's claims against Hanna. Accordingly, this Court should afford Margitan no relief against Hanna on this appeal.

“When an Appellant fails to raise an issue in the assignments of error, in violation of RAP 10.3(a)[(4)], and fails to present any argument on the issue or provide any legal citation, an appellate court will not consider the merits of that issue.” *State v. Olson*, 126 Wn.2d 315, 321, 893 P.2d 629 (1995). RAP 10.3(a)(4) requires a Brief contain “[a] separate concise statement of each error a party contends was made by the trial court together with the issues pertaining to the assignments of error.” *See also* Concurrence in *Olson* by Justice Talmadge, emphasizing:

. . . that proper assignments of error are indeed mandatory in briefs. RAP 10.3(a)(4), RAP 10.3(b), RAP 10.3(g), RAP 10.3(h). Assignments of Error assist counsel and the Appellate Courts to focus the issues for decision.

Olson, 126 Wn.2d at 324 (Talmadge, J. (concurring)). *See also State v. Ross*, 141 Wn.2d 304, 311, 4 P.3d 130 (2000).

“If a party fails to support assignments of error with legal arguments, they will not be considered on appeal.” *Howell v. Spokane & Inland Empire Blood Bank*, 117 Wn.2d 619, 624, 818 P.2d 1056 (1991); *State v. Dennison*, 115 Wn.2d 609, 629, 801 P.2d 193, 204 (1990). Margitans have failed to assign error, provide legal authority, or make legal arguments in support of an appeal of any trial court order in favor of

Hanna as against Margitan. Accordingly, this appeal as against Hanna should be dismissed.

IV. CONCLUSION

This Court should deny any relief to Appellants Margitan in connection with any Order of the trial court that afforded relief to Hanna.

DATED this 6th day of April, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on this 7 day of April, 2017, I caused to be served a true and correct copy of the foregoing, by the method indicated below and addressed to the following:

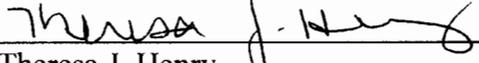
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