

FILED

APR 14 2017

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.

**SUPPLEMENTAL BRIEF OF RESPONDENTS
MARK AND JENNIFER HANNA**

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Mark and Jennifer Hanna

I. INTRODUCTION

This Supplemental Brief is necessitated by a misleading statement in Appellant Margitan's Reply Brief at page 9, wherein he asserts that Hannas admitted that the drain field was too close to the waterline. If left uncorrected, that assertion would misrepresent the record below, mislead the Court, and result in an injustice to the Hannas. Accordingly, this Supplemental Brief is filed to correct that error.

II. ARGUMENT

As reflected in the Affidavit of John C. Riseborough, Hannas have consistently taken the position that there is no evidence that their drain field is in unlawful proximity to the Margitans' waterline. Hannas have taken that position before the Public Health Officer, before the Spokane Regional Health District Board of Health, before the Superior Court when Margitans sought review of that decision in Spokane County Superior Court, Cause No. 14-2-01879-1 (Review Action), and before this Court in Margitans' appeal affirming the Superior Court's dismissal.

In his Reply Brief, Mr. Margitan has made reference to a Memorandum filed by Mr. Perdue on behalf of Hannas in the Review Action, contending that it reflects an admission by the Hannas that the waterline is in proximity to the drain field. That Memorandum, CP 543-546, was filed in the Review Action noted above and the assertion made was for the purpose of that appeal only. (CP 542) As can be seen by that explanatory email, Hannas did not know where the waterline was, as they

had been unable to locate a contractor willing to take the risks of attempting to find it. To correct that record and to ensure no misunderstanding, Mr. Perdue then filed an Amended Memorandum in the Review Action, which is attached in true and complete form to the Affidavit of John C. Riseborough filed herewith. That Memorandum is not within the Clerk's Papers in this action, but is on file with the Spokane County Superior Court under Cause No. 14-2-01879-1.

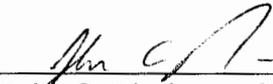
Mr. Margitan's assertion on appeal that the Hannas have admitted the proximity of the waterline to the drain field is disingenuous at best. The Court should reject that contention as inconsistent with the record.

III. CONCLUSION

Margitan's representation and argument that Hannas have admitted an unlawful proximity of the waterline to their drain field is false and unless corrected would mislead the Court. Accordingly, the Court should disregard that assertion.

DATED this 14 day of April, 2017.

PAINE HAMBLEN LLP

By: 
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Jennifer Hanna

CERTIFICATE OF SERVICE

I hereby certify that on this 14 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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