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Division III
State of Washington
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Court of Appeals, Division III No. 355969
Benton County Superior Court No. 17-2-00304-0

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

VICTOR JOHNSON and MARILYN JOHNSON,

Appellants,

v.

BILL SPENCER, BENTON COUNTY ASSESSOR,

Respondents.

REPLY BRIEF OF APPELLANTS

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I. REPLY

A. The Superior Court should have found Substantial Compliance rather than Dismissal based upon a technicality.

Substantial compliance means that a 'statute has been followed sufficiently so as to carry out the intent for which the statute was adopted. Banner Realty, Inc. v Dept. of Revenue, 48 Wn.App 274, 278 (1987). It means a court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was adopted. What constitutes substantial compliance with a statute is a matter depending on the facts of each particular case. In re Santore, 28 Wn. App. 319, 327 (1981).

The Superior Court should have found that Mr. Johnson substantially complied with the service requirements. The Superior Court obtains appellate jurisdiction over an appeal from an agency decision when the appellant timely files a petition for review in the superior court and serves the petition on all the parties. City of Seattle v Public Employment Relations Comm'n, 116 Wn.2d 923, 926 (1991). Both service and filing must be accomplished within "thirty days after the service of the final order." RCW 34.05.542(2). Here, Mr. Johnson did file

with the Superior Court and served all parties – he just failed to serve the Board of Tax Appeals. Nevertheless, the Board of Tax Appeals was made aware and sent the record. The parties, through counsel, were determining the briefing schedule. Nothing would have changed or caused the appeal go quicker to the court. Dismissal was issued on a technicality but had Mr. Johnson served the BTA within the 30 days, the parties still would have worked out the briefing schedule.

In Skinner v Civil Service Com'n of City of Medina, 168 Wn.2d 846 (2010), Washington's Highest Court considered if service on the Medina city clerk constituted adequate service on the Commission as an appeal from an administrative body and for purposes of invoking the superior court's appellate jurisdiction. The Supremes reaffirmed that "all statutory requirements must be met before the jurisdiction is properly invoked." *Id.* at 850 (quoting Spokane County v Utils. & Transp. Comm'n, 47 Wn.App. 827, 830 (1987)). The City of Medina argued that Skinner never served the Commission and, therefore, the superior court lacked jurisdiction. *Id.* at 853.

As a starting point, the Supremes' stated, Skinner did not strictly comply with the service requirements. Nonetheless, substantial compliance with service requirements is generally sufficient to invoke a superior court's appellate jurisdiction. *Id.* at 854; See also Black v Dep't

of Labor & Indus., 131 Wn.2d 547, 552-53 (1997). The *Skinner* court went on to note that the City of Medina's citation to Skagit Surveyors & Engineers LLC v Friends of Skagit County, 135 Wn.2d 542 (1998) in arguing for a contrary result was misplaced. *Id.* Skagit Surveyors relied on Union Bay Preservation v Cosmos Development Corp., 127 Wn.2d 614 (1995) to hold that substantial compliance is insufficient to invoke the appellate jurisdiction of the superior court under the APA, chapter 34.05. Indeed, the *Skinner* court stated that Union Bay and Skagit Surveyors do not preclude application of the doctrine of substantial compliance.

In determining whether a party has substantially complied with service requirements, the relevant inquiry is whether the party to be served has received actual notice of appeal or the notice was served in a manner reasonably calculated to give notice to the opposing party. *Skinner*, at 855; See also Black, 131 Wn.2d at 553 (citing In re Saltis, 94 Wn.2d 889, 896. Here we know that the County and its attorney were served a copy of the filed petition to the Superior Court for review. The *Skinner* court at least considered if the service of the notice of appeal was reasonably calculated to give notice to the Commission. Likewise, the attorneys here had no issue with obtaining the record for the Superior Court to have before their briefs were submitted. There was simply no prejudice to the County but

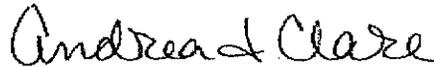
the Court seemingly dismissed based upon a trivial technicality which didn't concern counsel.

II. CONCLUSION

Based upon the foregoing and the previous briefing herein, the Appellants request to reverse and remand should be granted.

RESPECTFULLY SUBMITTED, this 26th day of March, 2018.

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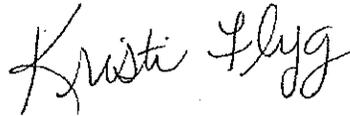
CERTIFICATE OF SERVICE

On the 26th day of March, 2018, I caused to be served a true and correct copy of the within document described as REPLY BRIEF OF APPELLANTS to be served on all interested parties to this action as follows:

Reid Hay Deputy Prosecuting Attorney 7122 W. Okanogan Place, Bldg. A Kennewick, WA 99336	Via United States Mail <input type="checkbox"/> Via Legal Messenger Service <input checked="" type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Electronic Mail <input checked="" type="checkbox"/>
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Dated this 26th day of March, 2018.

TELQUIST McMILLEN CLARE, PLLC



KRISTI FLYG, *Legal Assistant*

TELQUIST MCMILLEN CLARE, PLLC

March 26, 2018 - 4:39 PM

Transmittal Information

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Appellate Court Case Number: 35596-9
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Superior Court Case Number: 17-2-00304-0

The following documents have been uploaded:

- 355969_Briefs_20180326162222D3324482_2396.pdf
This File Contains:
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