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NO. 363953

COURT OF APPEALS, DIVISION THREE
OF THE STATE OF WASHINGTON

GLENDA KOENIG,

Plaintiff-Appellant,

and

CITY OF QUINCY,

Defendant-Respondent.

ON APPEAL FROM GRANT COUNTY SUPERIOR COURT
Cause No. 17-2-00993-4
Honorable John D. Knodell

APPELLANT'S REPLY BRIEF

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I. INTRODUCTION

Ms. Koenig seeks reversal of the trial court's summary judgment dismissal of her WLAD accommodation claim against the City of Quincy. She contends that genuine issues of material fact exist as to whether (1) her requested accommodations were medically necessary and reasonable; (2) the City's denial of her requested accommodations was unreasonable; and (3) her unpaid medical leave was a reasonable accommodation *per se*.

The City responds and presents three additional arguments in support of affirming the trial court's summary judgment dismissal. The City's responsive arguments are unpersuasive. Binding precedent, including *Riehl v. Foodmaker, Inc.*, 152 Wn.2d 138, 94 P.3d 930 (2004), controls the outcome of this matter. The Court should reverse and remand this matter for trial.

II. REPLY ARGUMENT

An employee needs to produce "very little evidence" to survive summary judgment in a WLAD case. *Arthur v. Whitman County*, 24 F. Supp. 3d 1024, 1033 (E. D. Wash. 2014) (applying Washington law).[1] This is because the ultimate question is one that is most appropriately

[1] "Washington courts still look to federal case law interpreting [Title VII, the ADA, and the ADEA] to guide our interpretation of the WLAD." *Kumar v. Gate Gourmet Inc.*, 180 Wn.2d 481, 491, 325 P.3d 193 (2014); *id*.at n. 6.

"conducted by the factfinder upon a full record." *Id.* "Washington courts agree that in employment discrimination cases, summary judgment in favor of the employer is seldom appropriate." *Id.* (citing *Riehl*, 152 Wn.2d at 144). Here, Ms. Koenig presents more than the "very little evidence" necessary to survive summary judgment.

A. Ms. Koenig establishes a prima facie case for her WLAD failure to accommodate claim. *Riehl* requires that summary judgment be denied.

To establish her claim for WLAD discrimination on the basis of failure to reasonably accommodate a disability, Ms. Koenig must establish the following five elements: (1) she had a medically recognizable or diagnosable impairment; (2) she gave the City notice; (3) either (a) her impairment had a substantially limiting effect on her ability to perform her job, <u>or</u> (b) she provided medical documentation to the City establishing a reasonable likelihood that working without an accommodation would aggravate the impairment to the extent that it would create a substantially limiting effect; (4) she would have been able to perform the essential functions of the job with reasonable accommodation; and (5) the City failed to reasonably accommodate her PTSD. 6A Wash. Prac., Wash. Pattern Jury Inst. Civ. WPI 330.33 (6th ed.); *also Riehl*, 152 Wn.2d at 145.

Ms. Koenig establishes Elements (1) and (2) of her prima facie case without issue. Ms. Koenig's PTSD is a recognized disability in Washington State (Element (1)). *See Riehl*, 152 Wn.2d at 149 (categorizing PTSD as a "disability"). And Ms. Koenig gave the City notice of her disability on multiple occasions, including through letters from her legal counsel and treating counselor in October 2014 and January 2015 (Element (2)). CP 305–307, 323, 346, 349.

The City argues that Ms. Koenig fails to establish Elements (3) and (5), which are discussed in detail below. But first, with regard to Element (4), Ms. Koenig has, at a minimum, established an issue of material fact sufficient to avoid summary judgment. Ms. Koenig presents testimony, including from her treating counselor and the City's independent medical examiner, that she was a "competent professional" with a "long and successful work history," "still capable of performing substantive gainful activity in a competitive workplace" if permitted to "work in a different building for a while." CP 268, 349, 358. This testimony establishes a genuine issue of fact regarding Element (4) of Ms. Koenig's prima facie case. Summary judgment is not appropriate on this basis.

The City's arguments in support of summary judgment implicate Elements (3) and (5). The City's arguments are unpersuasive.

1. Ms. Koenig presents sufficient evidence that (a) her impairment had a substantially limiting effect on her ability to perform her job and (b) she provided the City with medical documentation establishing the need for accommodation.

Satisfaction of the third Element of a prima facie WLAD accommodation claim requires evidence establishing either of two scenarios: (a) that the employee's disability has a substantially limiting effect on her ability to perform the job **or** (b) that the employee has provided the employer with medical documentation establishing a "reasonable likelihood" that working without an accommodation would have a substantially limiting effect. *See* WPI 330.33. The City argues only that Ms. Koenig fails to establish scenario (b). Regardless, Ms. Koenig establishes scenario (a) for summary judgment purposes, presenting evidence that her disability had a substantially limiting effect on her ability to perform her job. Dr. Callison's October 2014 Letter notified the City that Ms. Koenig had suffered "trauma" due to the sexual assaults she experienced while at work and that her "symptoms are triggered and worsen when she is faced with the idea of returning to the workplace." CP 307. And Dr. Callison's January 2015 letter provides more detail, informing the City that her PTSD symptoms were exacerbated by returning to the building where she was sexually assaulted—a work environment she considered unsafe. CP 349.

The City argues that Ms. Koenig "provided no medical documentation that any failure to provide the accommodations requested by [Ms. Koenig] would exacerbate her mental health condition." Resp. at 27. Neither the record before this Court nor the holding in *Riehl* support the City's argument.

Riehl holds that, to survive summary judgment, Ms. Koenig need only provide "competent evidence establishing a nexus between" her PTSD disability and "the need for accommodation." *Riehl*, 152 Wn.2d at 147. "This requirement is not burdensome." *Id.* at 148. Dr. Callison's October 2014 and January 2015 Letters satisfy this requirement. The Letters put the City on notice that there was a reasonable likelihood that Ms. Koenig's PTSD disability would have a substantially limiting effect on her ability to perform her job if the City forced her to work without an accommodation: "until and unless such protocols are implemented and enforced, I cannot recommend that [Ms. Koenig] return to work for the City…. Her symptoms will continue to present so long as she believes she is not working in a safe environment"). CP 349. Nothing more is required to survive summary judgment.

The City's reliance on the facts in *Studley* and *Riehl* is unavailing. *See* Resp. at 28–29. In both cases, the plaintiff/employee failed to establish the "nexus" between the disability and the need for

accommodation. In *Studley*, the plaintiff failed even to inform her employer that she had a mental health disability requiring accommodation, and the court dismissed on this basis: "Having failed to show either a need or request for on-going mental health accommodation, this aspect of plaintiff's claim fails." *Studley v. The Boeing Company*, No. C15-1150RSL, 2016 WL 6298773, *4 (W.D. Wash. Oct. 27, 2016). And in *Riehl*, the plaintiff presented no evidence that he was entitled to accommodation over-and-above the extensive accommodations his employer had already provided. *Riehl*, 152 Wn.2d at 148–149. Both cases are distinguishable from the facts at bar. Here, Ms. Koenig informed the City of both her disability and her need for accommodation, and the City refused to provide any accommodation, requested or otherwise.

The City further argues that Dr. Callison's October and January Letters were insufficient because Dr. Callison "did not formulate an opinion whether there were any accommodations Plaintiff would require to return to work." Resp. at 29. The City's argument fails for at least two reasons. First, Dr. Callison's January 2015 letter expressly identifies an accommodation she believed Ms. Koenig 'would require to return to work': "implementing comprehensive anti-harassment/abuse training and response protocols that will be supported and enforced through a conscientious and routine human resources effort." CP 349. And second,

Riehl does not require Ms. Koenig to establish a "medical nexus" between her PTSD and a specific accommodation, only between her PTSD and "any accommodation." *Riehl*, 152 Wn.2d at 148 n. 4 (emphasis added). Nor does *Riehl* require Ms. Koenig to establish that her need for accommodation is "therapeutically necessary," just "that a connection exists between the condition and the need for accommodation." *Id.* at 149 n. 6. Dr. Callison's two Letters establish this connection. The City asks this Court to redefine the burden of proof necessary to survive summary judgment on a WLAD accommodation claim. The Court should decline to do so.

Considering all facts and inferences in the light most favorable to Ms. Koenig, Ms. Koenig presents evidence sufficient to survive summary judgment on the third Element of her WLAD accommodation claim. She does the same for Element (5).

2. The reasonableness of Ms. Koenig's requested accommodations is a question for the jury, not for the City's unilateral determination.

WLAD "requires" an employer to reasonably accommodate an employee with a disability "unless the accommodation would pose an undue hardship." *Frisino v. Seattle School Dist. No. 1*, 160 Wn. App. 765, 777, 249 P.3d 1044, *review denied* 172 Wn.2d 1013 (2011). An accommodation is reasonable if it "enable[s] the proper performance of

the particular job held or desired." WAC 162-22-065(1)(b). Thus to accommodate, the employer must affirmatively take steps to help the employee with a disability to "continue working at the existing position" or "attempt to find a position compatible with the limitations." *Id.* at 778.

"Whether an employer's actions constituted a reasonable accommodation or whether the employee's requests were an undue hardship is a question for the jury." *Erwin v. Roundup Corp.*, 110 Wn. App. 308, 315, 40 P.3d 675 (2002); *Phillips v. City of Seattle*, 111 Wn.2d 903, 911, 766 P.2d 1099 (1989) (same). The inquiry is an "either/or" proposition—an accommodation is either reasonable or it is an undue burden; it cannot be both. *Erwin*, 110 Wn. App. at 315 (citing *Phillips*, 111 Wn.2d at 911). "Under the WLAD, the employer has the burden of proving that a requested accommodation would cause an undue hardship." *Snyder v. Medical Service Corp. of Eastern Washington*, 145 Wn.2d 233, 257, 35 P.3d 1158 (2001); WAC 162-22-075 ("An employer … **must** provide reasonable accommodation **unless** it can prove that the accommodation would impose an undue hardship.") (emphasis added). Stated summarily, Washington law presumes that an employee-requested accommodation that "enables the proper performance" of the job is *per se* reasonable unless the employer can prove it is an undue hardship.

Here, Ms. Koenig requested accommodations she believed to be reasonable and that would permit her to return to work: (1) to work temporarily in a building other than the one where she was sexually assaulted; and (2) for the City to make changes to its admittedly deficient sexual harassment policies and procedures. The City rejected both requests without offering an accommodation of its own and without claiming the requested accommodations would pose an undue hardship.

Citing to federal decisions from the First Circuit and the District of Puerto Rico, the City posits that it does not bear the burden to establish undue hardship, but rather it is Ms. Koenig who "bears the burden of proposing an accommodation that would enable her to perform the job effectively and is, at least on the face of things, reasonable." Resp. at 30–31 (citing *Kvorjak v. Maine*, 250 F.3d 48, 55 (1st Cir. 2001); *Grillasca-Pietri v. Portorican Am. Broadcasting Co., Inc.*, 233 F. Supp. 2d 258, 264 (D.P.R. 2002)). The City's position runs directly contrary to controlling Washington precedent that an accommodation is "either" reasonable "or" an undue hardship, with the proof of establishing undue hardship falling to the employer. *Snyder*, 145 Wn.2d at 257; *Phillips*, 110 Wn.2d at 911; *Erwin*, 110 Wn. App. at 315. Again, the City asks this Court to redefine the burden of proof necessary to survive summary judgment on a WLAD accommodation claim. Again, the Court should decline to do so. Under

Washington law, the reasonableness of Ms. Koenig's requested accommodations is an issue for trial, not summary judgment.

3. The City presents no evidence that Ms. Koenig's requested accommodations posed an undue hardship.

"The failure to produce evidence of undue hardship should preclude entry of summary judgment in the employer's favor." *Snyder*, 145 Wn.2d at 257. *Frisino* is instructive.

In *Frisino*, a teacher with a respiratory sensitivity to dust, mold, and other irritants sought from her employer a reasonable accommodation—a move to a different classroom. 160 Wn. App. at 771. The employer attempted to accommodate the teacher by offering to move her to other classrooms and later hiring a mold remediator to remove mold. *Id.* at 771–772, 774. After the teacher refused to return to work even with these accommodations, the employer fired her. *Id.* at 776. The teacher sued for failure to accommodate under WLAD and the trial court granted summary judgment. *Id.* Division I reversed, holding that issues of fact remained with regard to whether the teacher's requested accommodation posed an undue hardship on the employer. *Id.* at 784. The *Frisino* Court further held that even if an employer makes an attempt at accommodation, the employer "risks statutory liability if that attempt is not effective and it cannot show that additional efforts are an undue

burden." *Id.* at 782.

Here, unlike the employer in *Frisino*, the City did not even attempt to accommodate Ms. Koenig. It therefore "risks statutory liability" if it cannot show that Ms. Koenig's requested accommodations posed an undue hardship. *Frisino*, 160 Wn. App. 782.

WAC 162-22-075 provides the three factors an employer must consider to establish undue hardship: (1) "The size of and the resources available to the employer"; (2) "Whether the cost can be included in planned remodeling or maintenance"; and (3) "The requirements of other laws and contracts, and other appropriate considerations." WAC 162-22-075(1)–(3); *also* 6A Wash. Prac., Wash. Pattern Jury Inst. Civ. WPI 330.36 (6th ed.) (same). Here, there is nothing in the record to indicate that the City engaged in the three-factor analysis required by WAC 162-22-075(1)–(3) when it denied Ms. Koenig's requested accommodations. In fact, the City does not even use the term "undue hardship" in its Response or evidentiary record.

a. The City fails to produce evidence that Ms. Koenig's requested accommodation to work temporarily in a different building posed an undue hardship.

With regard to Ms. Koenig's requested accommodation to work temporarily in a different building, WAC 162-22-065 provides that

"[c]hanges in the job setting or conditions of work" are "[p]ossible examples of reasonable accommodation." WAC 162-22-065(2)(b). The City argues that relocating Ms. Koenig to a different building "is not functionally different than reassigning an employee to a new supervisor." Resp. at 33. But the City presents no evidence to support this bare assertion.

The only evidence offered by the City is a declaration from Ms. Koenig's supervisor that it would be "inefficient" for Ms. Koenig to work in another building. CP 138. 'Inefficiency' is not a factor under WAC 162-22-075. And although the City's attorney opined in an April 2015 email that requiring Ms. Koenig to work in the building where she was sexually assaulted was the "most efficient administration of city services" (CP 328), attorney "supposition or opinion" is insufficient for summary judgment purposes. *Grimwood v. Univ. of Puget Sound, Inc.*, 110 Wn.2d 355, 359, 753 P.2d 517 (1988) *abrogated on other grounds by Mikkelsen v. Pub. Util. Dist. No. 1 of Kittitas Cnty.*, 189 Wn.2d 516, 404 P.3d 464 (2017).

b. The City fails to produce evidence that Ms. Koenig's requested accommodation to improve the City's sexual harassment policies and procedures posed an undue hardship.

With regard to Ms. Koenig's request that the City strengthen its

sexual harassment policies and procedures, Title VII establishes that "appropriate adjustment or modification of … training materials or polices" "may" be a reasonable accommodation. 28 U.S.C. § 12111(9). The City argues that it "believes" its existing policies and procedures were adequate (Resp. at 33–34), despite testimony from its CR 30(b)(6) designee expressly to the contrary (CP 287). Regardless, 'belief' in the adequacy of existing policies and procedures is not part of the undue hardship analysis mandated by WAC 162-22-075. And Ms. Koenig's testimony, cited by the City, that her requested accommodation of harassment policy improvements was "one of the things that in totality [her] decision on whether or not to return to the City was based on" (Resp. at 34), adds another log to the pyre of material facts at issue, rendering summary judgment inappropriate.

B. The City fails to establish that working in the building where she was sexually assaulted was an essential function of Ms. Koenig's job.

An employer is not required to accommodate a handicapped employee by reassigning an essential function of the employee's job. *Fey v. State*, 174 Wn. App. 435, 452, 300 P.3d 435 (2013). But "[w]hether a function is an essential function of a position is ordinarily a question of fact." *Id.* at 453 n. 5. Here, the City argues that working in the Administrative Services Building (ASB) was an essential function of Ms.

Koenig's employment. Resp. at 35–37. But given that the City (a) offers no evidence of Ms. Koenig's actual job description or its essential functions and (b) cannot state with certainty whether Ms. Koenig worked as Administrative Assistant to the City Engineer (a position arguably requiring Ms. Koenig's presence in the ASB), or as a Secretary/Receptionist (a position found in other City buildings), an issue of fact remains as to what, precisely, were the essential functions of Ms. Koenig's job. CP 243–244, 284.

C. The availability of unpaid medical leave is not a *per se* reasonable accommodation. The reasonableness of unpaid leave as an accommodation is a question of fact for a jury.

The reasonableness of unpaid medical leave as a WLAD accommodation is a question of fact. *See, e.g.*, *Kries v. WA-SPOK Primary Care, LLC*, 190 Wn. App. 98, 143, 362 P.3d 974 (2015) ("Providing unpaid leave **can** qualify as a reasonable accommodation. **A question of fact exists** as to whether allowing [an employee] further leave would be a reasonable accommodation.") (emphasis added, internal citations to extra-jurisdictional cases omitted). The word "can" is permissive, not mandatory. CAN, Black's Law Dictionary (10th ed. 2014). Thus, the City's argument that the availability of medical leave is a *per se* reasonable accommodation fails as a matter of law. Resp. at 37–38. A jury must decide this issue. The City's remaining arguments fair no better.

D. Ms. Koenig provided notice to the City of her PTSD disability, requested reasonable accommodation, and identified the specific accommodations she believed to be reasonable. Ms. Koenig engaged in an "interactive process."

WLAD envisions that an employer and a handicapped employee engage "in good faith in an interactive process to determine reasonable accommodations." *Hartleben v. University of Washington*, 194 Wn. App. 877, 890, 378 P.3d 263 (2016), *review denied* 187 Wn.2d 1006 (2017). The purpose of the interactive process is twofold: first, to put the employer on notice of the disability. And second, to determine the existence of either of two scenarios: 1) whether the disability will have a "substantially limiting effect" on the employee's ability to perform her job, or 2) whether the employee put the employer on notice via "medical documentation" that a "reasonable likelihood" exists that engaging in job functions without an accommodation would "aggravate" the disability to the extent that it would create a "substantially limiting effect." RCW 49.60.040(7)(d).

The employee's duty as part of the interactive process is "to cooperate with the employer's efforts by explaining the disability and the employee's qualifications." *Frisino*, 160 Wn. App. at 780. And because the interactive process must be "reasonable" and in "good faith," whether an employee engaged in an interactive process with an employer is a

question of fact for the jury. *See id.* at 783 (communications between employer and employee regarding accommodation "raise … questions of fact").

Here, Ms. Koenig satisfied her duty under *Frisino*. She responded regularly to the City's inquiries into her condition and need for accommodation, informing the City that she suffered from trauma and PTSD. She also provided the City with a list of accommodations she believed would be reasonable. The City rejected these requested accommodations (a) without explaining why they would constitute an undue hardship, and (b) without offering Ms. Koenig an accommodation it believed was reasonable. By explaining her disability and providing a list of accommodations she believed would reasonably permit her to return to work, Ms. Koenig, at a minimum, establishes an issue of fact as to whether she and the City engaged in the interactive process required by WLAD.

The City argues that Ms. Koenig did not engage in the interactive process because she "failed to cooperate with the City to establish a reasonable accommodation with regard to her PTSD." Resp. at 26. The City's argument fails in light of the facts that (a) Ms. Koenig notified the City of her PTSD disability and (b) offered several accommodations she believed to be reasonable and that would allow her to return to work. That

the City believed the accommodations to be unreasonable is of no consequence: it is the jury—not the City—who must determine the reasonableness of Ms. Koenig's requested accommodations.

The City also relies on an inference of delay and obstruction from the fact that Ms. Koenig did not respond to each and every City inquiry. *Id.* at 25–26. But at summary judgment, all inferences are drawn in favor of the nonmoving party—here, Ms. Koenig. "In discrimination cases, … [e]vidence 'will generally contain reasonable but competing inferences of both discrimination and nondiscrimination that must be resolved by a jury'." *Frisino*, 160 Wn. App. at 777 (quoting RCW 49.60.020 (mandating "liberal construction" of WLAD); *Martini v. Boeing Co.*, 137 Wn.2d 357, 364, 971 P.2d 45 (1999) ("competing inferences")).

E. Ms. Koenig does not claim wrongful discharge. The City's defense of its decision to terminate Ms. Koenig should be disregarded.

The City argues that it was entitled to fire Ms. Koenig because she "did not advise the City of her expected date of return to work." Resp. at 39. The City's argument is immaterial. First, Ms. Koenig does not bring a claim for wrongful discharge, which is a cause of action separate and distinct from a statutory claim of failure to accommodate her PTSD under WLAD. *See Hollenback v. Shriners Hospitals for Children*, 149 Wn. App. 810, 825, 206 P.3d 337 (2000) (wrongful discharge is a common law tort).

"An argument neither pleaded nor argued to the trial court cannot be raised for the first time on appeal." *Silverhawk, LLC v. KeyBank Nat. Ass'n*, 165 Wn. App. 258, 265, 268 P.3d 958 (2011).

Second, Ms. Koenig does not argue that she was entitled to indefinite medical leave. She argues that her requested accommodations were reasonable and that she could have returned to work had the City accommodated her PTSD.

And third, Ms. Koenig did, at a minimum, establish an inference of an "expected date of return to work": the date that the City strengthened its admittedly deficient (CP 287) sexual harassment policies, procedures, training, and enforcement (CP 346). The City had the ability to accommodate Ms. Koenig, but chose to fire her instead. By refusing to provide Ms. Koenig with any accommodation for her PTSD disability, the City "risks statutory liability" (*Frisino*, 160 Wn. App. at 782), the amount of which must ultimately be determined not on summary judgment, but "by a factfinder upon a full record" at trial (*Arthur v. Whitman County*, 24 F. Supp. 3d 1024, 1033 (E.D. Wash. 2014)).

VI. CITY'S CONTINUING RAP 9.12 VIOLATION

The City supplemented the record with documents not considered by the trial court. The City justifies its violation of RAP 9.12 by claiming that it "did not use these documents as substantive evidence" and that it

submitted them "to give the Court a history of what took place leading up to summary judgment." Resp. at 43. The Court should reject the City's justification.

First, the provisions of RAP 9.12 are "simple, easy to comply with, and mandatory." *Green v. Normandy Park*, 137 Wn. App. 665, 679, 151 P.3d 1038, *review denied* 163 Wn.2d 1003 (2008). Providing the Court with an unchallenged procedural history of the case below is not one of the "three ways—and only three ways" to supplement the record under RAP 9.12. *Id.*

Second, because neither Ms. Koenig nor the City challenges the procedural history of this matter on appeal, the "history of what took place leading up to summary judgment" is irrelevant here.[2] Moreover, the City concedes that it "did not use" the supplemented documents "as substantive evidence." Resp. at 43. Supplementation of the record with documents (a) not used as substantive evidence, (b) not considered by the trial court, and (c) not necessary to reach a decision on appeal is improper,

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[2] The only purported procedural history the City offers in its Response Brief are its demonstrably false statements that "Plaintiff originally filed her lawsuit in Grant County Superior Court" and that "The City removed Plaintiff's lawsuit to federal court." Resp. 2–3. Ms. Koenig filed her original action in the Federal District Court for the Eastern District of Washington on August 17, 2015. The City did not remove this action. Attached as Appendices 1 and 2 are a copy of the summons and the complaint caption page of Ms. Koenig's original action, which includes the Eastern District Court's ECF filing stamp.

unnecessarily inflates the record, and wastes this Court's limited resources. *See, e.g.*, *Diversified Wood Recycling, Inc. v. Johnson*, 161 Wn. App. 859, 891, 251 P.3d 293, *review denied* 172 Wn.2d 1025 (2011) (denying motion to supplement record when documents proposed for supplementation "were not before the trial court" and were not "necessary to reach a decision on the merits of the trial rulings at issue in this appeal.").

The City exacerbates its RAP 9.12 violation, devoting nearly four pages of its Responsive Brief to an at-length discussion of its rule-violative supplementation, complete with citation and quotation. Resp. at 43–46. The *Green* Court awarded attorney fees for similar actions taken in "complete defiance of the Rules of Appellate Procedure." *Green*, 137 Wn. App. at 680–81 (awarding attorney fees when the defendant, "[w]ithout the permission of either this court or the superior court," "designated [two documents] for inclusion in the Clerk's Papers. It then cited to the documents and argued from their content in its briefing.").

"[A] motion to strike is typically not necessary to point out evidence and issues a litigant believes this court should not consider…. So long as there is an opportunity (as there was here) to include argument in the party's brief, the brief is the appropriate vehicle for pointing out allegedly extraneous materials—not a separate motion to strike."

Engstrom v. Goodman, 166 Wn. App. 905, 909, 271 P.3d 959, *review denied* 175 Wn.2d 1004 (2012).

VII. CONCLUSION

The Court should (1) reverse the trial court's summary judgment dismissal of Ms. Koenig's WLAD accommodation claim, and (2) remand Ms. Koenig's WLAD accommodation claim for trial. The Court should also (3) award Ms. Koenig her attorney fees and costs on appeal.

Respectfully submitted this 7th day of June, 2019.

JEFFERS, DANIELSON, SONN AND AYLWARD, P.S.

By_____

H. Lee Lewis, WSBA No. 46478
Attorneys for Appellant, Glenda Koenig

TABLE OF APPENDICES

Appx.	Document	Date	Sub No.
1	Caption Page, Verified Complaint for Damages, Case No: 2:15-cv-00210	8/17/15	1
2	Summons in a Civil Action, Case No. 2:15-cv-00210-SAB	8/17/15	2

IN THE FEDERAL DISTRICT COURT

FOR THE EASTERN DISTRICT OF WASHINGTON

GLENDA STETNER, a married individual,	)	NO.
Plaintiff,	)	VERIFIED COMPLAINT FOR DAMAGES
vs.	)	**DEMAND FOR JURY TRIAL**
CITY OF QUINCY, a Washington municipal corporation, and BROCK LAUGHLIN, a married individual,	)	
Defendants.	)	

Plaintiff, GLENDA STETNER, through her attorneys of record, Jeffers, Danielson, Sonn & Aylward, P.S., by H. Lee Lewis, brings this Complaint against the Defendants herein and alleges as follows:

//

//

Jeffers, Danielson, Sonn & Aylward, P.S.
Attorneys at Law
2600 Chester Kimm Road / P O Box 1688
Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

AO 440 (Rev 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Washington

GLENDA STETNER, a married individual, *Plaintiff(s)* v. CITY OF QUINCY, a Washington municipal corporation, and BROCK LAUGHLIN, a married individual, *Defendant(s)*	)	Civil Action No. 2:15-CV-210-SAB

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* CITY OF QUINCY
104 B St SW
P.O. Box 338
Quincy, WA 98848

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: H. Lee Lewis
Jeffers, Danielson, Sonn & Aylward, P.S.
P.O. Box 1688
2600 Chester Kimm Road
Wenatchee, WA 98807

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Aug 17, 2015, 4:49 pm
Date

CLERK OF COURT

SEAN F. McAVOY, Clerk

CERTIFICATE OF SERVICE

I hereby certify that on June 7th, 2019, I electronically filed the foregoing with the Clerk of the Court using the Washington State Appellate Court's Portal electronic filing System. Notice of this filing will be sent to the parties listed below by operation of the Court's e-filing system. Parties may access this filing through the Court's system.

Mr. Gerald J. Moberg
Mr. James Baker
Jerry Moberg & Associates, P.S.
PO Box 130
Ephrata, WA 98823
Attorneys for City of Quincy

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

SIGNED and DATED at Wenatchee, Chelan County, Washington, this 7th day of June, 2019.

TEISHA R. BRINCAT

JEFFERS, DANIELSON, SONN, & AYLWARD P.S.

June 07, 2019 - 9:52 AM

Transmittal Information

Filed with Court:	Court of Appeals Division III
Appellate Court Case Number:	36395-3
Appellate Court Case Title:	Glenda Koenig v. City of Quincy
Superior Court Case Number:	17-2-00993-4

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