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SUPREME COURT
STATE OF WASHINGTON

NO. 82306-5

CITY OF MEDINA

Petitioner (Respondent in Court of Appeals)

v.

ROGER L. SKINNER

Respondent (Appellant in Court of Appeals)

Court of Appeals Case No. 60868-1-1

SKINNER'S RESPONSE TO MEDINA'S SUPPLEMENTAL BRIEF

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ORIGINAL

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A. INTRODUCTION

Respondent Roger Skinner (Skinner) asks this Court to affirm the decision of the appellate court as that decision is consistent with statutory law, relevant case law and the efficient administration of justice. In this response to Medina's Supplemental Brief, Skinner will address the original issues on review as stated in Medina's Petition for Discretionary Review, in accordance with RAP 13.7(b).

B. SUMMARY OF ARGUMENT

As an initial matter, this Court accepted Medina's Petition for Review which set forth two clearly stated issues. There has been no motion by either party which requested this Court to modify the issues originally accepted for review or to accept additional issues for consideration. Therefore, in accordance with RAP 13.7(b), the issues before this Court remain the two issues presented in the original petition and Skinner will address those issues in this response to Medina's Supplemental Brief.

Appellant Skinner filed his Notice of Appeal with King County Superior Court in accordance with the written and published rules of the City of Medina and the statutes of the State of Washington, and thus established the jurisdiction of the Superior Court to hear his appeal of the Civil Service Commission decision. His Notice of Appeal was filed with

the King County Superior Court within 30 days after receiving the Commission's written decision on reconsideration. His filing was therefore timely.

A critical fact in this case is that the Motion for Reconsideration filed by Skinner, prior to his filing of a Notice of Appeal, was based upon Rules promulgated and published by the City of Medina, which rules specifically provided that the Commission could consider and decide Motions for Reconsideration. In this case, it is undisputed that Skinner timely filed a Motion for Reconsideration and the City of Medina did, in fact, consider that Motion and entered a decision on that Motion for Reconsideration. It is also undisputed that Skinner filed his Notice of Appearance within 30 days of the decision on the Motion for Reconsideration.

Finally, it is important to note that the City of Medina Civil Service Commission, upon which the service was made according to the applicable statute, was composed of citizen volunteers. These citizen volunteers were not required to maintain any particular schedule with the Commission or at City Hall and thus Skinner's service upon the clerk at the City Hall was proper.

C. ARGUMENT

1. THE ISSUES BEFORE THE COURT ARE THE TWO ISSUES, SET FORTH IN MEDINA'S PETITION FOR REVIEW, AS ORIGINALLY ACCEPTED BY THIS COURT FOR REVIEW

The Rules of Appellate Procedure applicable to Supreme Court

Review provide, in pertinent part:

Scope of Review. If the Supreme Court accepts review of a Court of Appeals decision, the Supreme Court will review only the questions raised in the motion for discretionary review, if review is sought of an interlocutory decision, or the petition for review and the answer, unless the Supreme Court orders otherwise upon the granting of the motion or petition. . .

RAP13.7(b).

There has been no motion or petition seeking any modification of the issues presented for review. While this court did permit Medina to file supplemental briefing, the court in that decision did not alter the issues under review. Furthermore, Skinner did not receive permission from the court to file a response to the Supplemental Brief until December 18, 2009 and that permission provided Skinner with only slightly more than two weeks to file a response, limited to 15 pages. This timing and briefing limit precluded Skinner from adequately addressing the completely new issues presented by Medina. Therefore Skinner proceeds with the

understanding that the issues under review, as accepted by this court in granting Medina's Petition for Review, are as follows:

1. Whether or not *substantial compliance* with the jurisdictional requirements of RCW 41.12.090 for the service of a notice of appeal upon a local police Civil Service Commission was sufficient to invoke the appellate jurisdiction of the superior court; and
2. Whether or not a local Civil Service Commission, operating under Chapter 41.12 RCW as a quasi-judicial body, has the inherent power, irrespective of statute, to reconsider the findings and decision it entered on September 1, 2006, and cause the statutory 30-day statute of limitations to toll until a decision on the motion for reconsideration was entered by the Commission.

**2. THE COURT OF APPEALS CORRECTLY
DISTINGUISHED THE CASE OF *STATE V. BROWN***

In its Supplemental brief, Medina argues that the Court of Appeal's decision in this case improperly distinguished *State v. Brown*, 126 Wn. 175 (1923). *State v. Brown* presented markedly different facts than are currently before the court. In fact, Medina acknowledges that the facts in the earlier case "are not on all fours" with the present situation. The plaintiff in *Brown* was not seeking reconsideration but instead sought to present "newly discovered evidence" in a completely new trial to a civil

service commission composed of at least one different member. The issue in that case was whether the plaintiff was entitled to either a new trial or a rehearing and review. Id. at 176. The court held:

Under the rule stated, the civil service commission, having been created by the charter of the city of Seattle and not having been given power by the charter to grant new trials or rehearings, did not have the inherent power to do so.

Id. at 177.

In the case at hand, Skinner did not seek a new trial or rehearing, merely reconsideration, as specifically allowed by the rules promulgated and published by the City of Medina. Furthermore, the issue of whether the statute of limitations is tolled while waiting for a decision on a reconsideration motion, the primary issue in the case at hand, was not an issue in *Brown*.

3. **THE COURT OF APPEALS RELIANCE ON
HALL V. SEATTLE SCHOOL DISTRICT IS WELL
FOUNDED**

In its Supplemental Brief, Medina argues that the decision in *Hall v. Seattle School District*, 66 Wn. App.308 (1992) is not relevant to the case at hand because, in *Hall*, the hearing officer reversed its decision, unlike the Medina Civil Service Commission which affirmed its original decision. The outcome of a reconsideration motion does not control the application of tolling rules or statutes or the jurisdiction of a commission.

To hold otherwise would mean that parties would only understand what rules applied in retrospect when it might be too late to comply with such rules. The *Hall* court held that absent a statute or rule prohibiting reconsideration, the Seattle Civil Service Commission had limited inherent power to reconsider its decisions. That holding applies as well in the case of the Medina Civil Service Commission.

4. THE COURT OF APPEALS DID NOT BASE ITS DECISION ON AN EQUITABLE ESTOPPEL ARGUMENT

Medina also argues that the appellate court improperly relied on an equitable estoppel argument although the appellate court did not, in fact, do so. Medina's argument against equitable estoppel is a red herring. The Court of Appeals did not base its decision on equitable estoppel and the cases cited by Medina are inapplicable to the case at hand.

5. THE RULE ALLOWING FOR MOTIONS FOR RECONSIDERATION WAS PROPERLY PROMULGATED BY THE CIVIL SERVICE COMMISSION

The argument by Medina that the Civil Service Commission had no authority to promulgate rules authorizing motions for reconsideration is without merit. Chapter 41.12, entitled Civil Service for City Police, provides, in pertinent part:

It shall be the duty of the civil service commission:

(1) To make suitable rules and regulations not inconsistent with the provisions of this chapter. Such rules and regulations shall provide in detail the manner in which examinations may be held, and appointments, promotions, transfers, reinstatements, demotions, suspensions, and discharges shall be made, and may also provide for any other matters connected with the general subject of personnel administration, and which may be considered desirable to further carry out the general purposes of this chapter, or which may be found to be in the interest of good personnel administration. Such rules and regulations may be changed from time to time. The rules and regulations and any amendments thereof shall be printed, mimeographed, or multigraphed for free public distribution.

RCW 41.12.040, *emphasis added*. Clearly, the Civil Service Commission of the City of Medina had authority to promulgate a rule allowing for Motions for Reconsideration and it did so. Medina's focus on RCW 4.21.090, while ignoring the general rule making authority of RCW 4.21.040 is disingenuous.

6. IN ADDITION TO THE STATUTORY AND CASE LAW BASES SUPPORTING THE COURT OF APPEALS' DECISION, THE APPELLATE DECISION PROMOTES THE EFFICIENT ADMINISTRATION OF JUSTICE

The outcome sought by the City of Medina would cause disarray in the administration of justice in this state. If a Motion for Reconsideration did not toll the statute of limitations, both counsel and the courts would be put in the untenable position of filing for, paying for and preparing for an appeal that may be rendered moot by a decision on reconsideration. In its

Supplemental Brief, Medina offers certain scenarios where the proposed outcome would not cause difficulties but those well defined scenarios do not address the wide scope of situations that arise in the judicial system on a daily basis.

E. CONCLUSION

The balance of Medina's Supplemental Brief concerns Skinner's manner of service. That issue has been fully briefed in the opening briefs and nothing more can be added to those arguments. Skinner properly and timely filed and served his Notice of Appeal. The decision of the Court of Appeals is in accordance with the precedent of the Court of Appeals and this Court. Skinner therefore respectfully requests this Court to affirm the Court of Appeals' decision.

DATED January 5, 2010

Respectfully submitted,



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