

FILED

No. 92594-1

FEB 23 2015
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 331008

**The Court of Appeals of the State of Washington
(Division III)**

Briana Wakefield,
Appellant,

v.

City of Kennewick,
Respondent,
and

City of Richland,
Respondent.



**Response to the Answer to Appellant's Motion for
Discretionary Review**

Jefferson Coulter, WSBA No. 28947
Karla Camac Carlisle, WSBA No. 40107
Northwest Justice Project

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Attorneys for Appellant

A. OBJECTION

Pursuant to RAP 17.4(g)(1), a reply should not exceed 10 pages. Since this matter has been consolidated by this Court, it is understandable that the reply would be 20 pages. However, respondents' reply is 26 pages. Ms. Wakefield objects to the over-length response filed by both cities and requests that this Court strike the exceeding six pages.

B. RESPONSE ARGUMENT

1. Ms. Wakefield did not make an intelligent, voluntary, knowledgeable waiver to proper notice for the August 20, 2013 hearing.

The City of Richland claims that Ms. Wakefield waived her right to proper notice at the August 20, 2013 hearing. Procedural due process requires notice and an opportunity to be heard before the government can take a person's liberty or property interests. U.S.C.A. Const.Amend. 14. In order for a defendant to waive proper notice required by due process, the waiver must be intelligent, voluntary, and knowledgeable. *State v. Forza*, 70 Wn.2d 69, 71, 422 P.2d 475 (1966). The court must indulge every reasonable presumption against waiver of fundamental rights. *City of Bellevue v Acrey*, 103 Wn.2d 203,207, 691 P.2d 957 (1984).

When a party moves to collect court costs as part of a criminal sentence, a defendant must be properly cited for contempt using the civil

show cause procedures. *Smith v. Whatcom County Dist. Court*, 147 Wn.2d 98, 112, 52 P.3d 485 (2002) The defendant must have notice that failure to pay a fine may be contempt of court and may result in being sent to jail. *Id* at 112. At no point before or during the hearing did the Benton County District Court tell Ms. Wakefield or her counsel that the August 20, 2013 hearing was a contempt proceeding and may result in Ms. Wakefield being sent to jail. (A-75-A-84).

Ms. Wakefield, by her counsel, made it clear at the beginning of the August 20, 2013 hearing that other than the motion to remit court costs, they were unclear as to what was the purpose of the August 20, 2013 hearing. (A-80). The district court did offer to continue the hearing, but never informed counsel or Ms. Wakefield of the true nature of the proceeding. (A-80–A-85). In fact, the district court stated:

The court: The issue here today, on a failure to pay fine hearing, is are we in the position to restart the payments or not; and is there an available for Ms. Wakefield to work these off. That's the issue to me. (A-84).

Never once did the court state the issue was to determine if Ms. Wakefield was in contempt of court. Ms. Wakefield was never served with a civil show cause motion informing her that failure to pay a fine may be contempt of court and may result in jail time. At the August 20, 2013 hearing, Ms. Wakefield was indeed sentenced to jail time, affecting her

liberty, which was overturned by the superior court. (A-5 and A-9). Even if Ms. Wakefield had agreed to the continuance, the due process violation would never have been cured. The notice sent out for the hearing never stated the contempt issue and the district court never explained the reason for the hearing. (A-14). Ms. Wakefield did not waive her procedural right to due process and the district court so far departed from the usual course of proceedings to warrant review by this Court.

C. CONCLUSION

This Court should accept review under RAP 2.3(d) to determine whether the superior court's decision upholding the district court's ruling of August 20, 2013 conforms to the controlling law and proper legal standards

February 20, 2015

Respectfully submitted,

NORTHWEST JUSTICE PROJECT

By: 

Jefferson Coulter, WSBA No. 28947
Karla Camac Carlisle, WSBA No. 40107
Attorneys for Appellant Briana Wakefield

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DIVISION III
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THE COURT OF APPEALS OF THE STATE OF WASHINGTON
(DIVISION III)

Briana Wakefield,

Appellant,

No. 331008

City of Kennewick,

Respondent,

CERTIFICATE OF SERVICE

and

City of Richland,

Respondent,

The undersigned hereby certifies that on February 19, 2015, a copy of the following:

Response to the Answer to Appellant's Motion
for Discretionary Review

was served at the following addresses via the method indicated:

Jessica M. Foltz
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James F. Bell
Assistant City Prosecuting Attorney for
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CERTIFICATE OF SERVICE - 1

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Mail Hand Delivery Other _____
 Certified Mail Fax

Signed this 19th day of February, 2015.



Linda Banda, Legal Assistant



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César E. Torres
Executive Director

February 19, 2015

Sent via regular U.S. Mail

Renee Townsley
Clerk/Administrator
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Spokane, WA 99201-1905

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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

Re: *Wakefield v. City of Kennewick and City of Richland*
Court of Appeals Case No. 331008

Dear Clerk Townsley:

Enclosed for filing please find the original and a copy of the *Response to the Answer to Appellant's Motion for Discretionary Review* together with proof of service on opposing counsels. If you have any questions, please contact our office. Thank you.

Sincerely,

Linda Banda
Legal Assistant

Encls.

cc w/encl.: Briana Wakefield