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Supreme Court No. 694138  
Court of Appeals No. 69413-8-1

E CPJ  
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IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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JACKSON J. MIKA

Plaintiff/Respondent/Petitioner

v.

JBC ENTERTAINMENT HOLDINGS, INC., a Corporation  
doing business in the State of Washington, JBC OF SEATTLE, WA,  
INC., a Washington business, a subsidiary of JBC  
ENTERTAINMENT HOLDINGS, INC.; MARQUIS HOLMS, an  
individual d/b/a BOSS LIFE ENTERTAINMENT, JANE DOE,  
husband and wife, and their community, GREG STEVENS, an  
individual, Husband and wife, and their community; TONY  
HUMPHRIES, an individual, Husband and wife, and their  
community

Defendants/Appellants/Respondents

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REPLY ON PETITION FOR DISCRETIONARY REVIEW

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 ORIGINAL

**Table of Contents**

**I. INTRODUCTION..... 1**

**II. ARGUMENT..... 1**

**A. THE FAILURE TO EXPLAIN THE PURPOSES OF  
MR. STEVENS' TRIPS TO WASHINGTON STATE IS  
PROPERLY BEFORE THE COURT..... 1**

**B. ACTIONS TAKEN IN UNPUBLISHED DECISIONS  
AFFECT THE PUBLIC..... 3**

**III. CONCLUSION ..... 3**

## Table of Authorities

### Cases

<i>Bennett v. Hardy</i> , 113 Wash. 2d 912, 918, 784 P.2d 1258 (1990).....	3
---	---

### Rules

GR 14.1.....	3
RAP 2.5(a) .....	1
RAP 9.12.....	2

## I. INTRODUCTION

Petitioner Jackson Mika files this reply on his Petition for Discretionary Review as follows.

## II. ARGUMENT

### A. THE FAILURE TO EXPLAIN THE PURPOSES OF MR. STEVENS' TRIPS TO WASHINGTON STATE IS PROPERLY BEFORE THE COURT

Mr. Stevens contends that his failure to explain why he came to Washington State six times is not properly before this court as it was not raised below. Response Brief, p. 10. This is incorrect.

The basis for Mr. Stevens' claim is RAP 2.5(a) which provides:

- (a) **Errors Raised for First Time on Review.** The appellate court may refuse to review any claim of error which was not raised in the trial court. However, a party may raise the following claimed errors for the first time in the appellate court: (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right. A party or the court may raise at any time the question of appellate court jurisdiction. A party may present a ground for affirming a trial court decision which was not presented to the trial court if the record has been sufficiently developed to fairly consider the ground. A party may raise a claim of error which was not raised by the party in the trial court if another party on the same side of the case has raised the claim of error in the trial court.

As is noted by the rule, Mr. Mika was free to raise any ground for affirming the trial court here as the record was

sufficiently developed to fairly consider why Mr. Stevens did not explain the purpose of his six trips to Washington State. Again, Mr. Stevens prevailed at the trial court. CP 505-507.

Additionally, the proper rule to apply here is RAP 9.12 entitled "Special Rule for Order on Summary Judgment" as Mr. Mika prevailed at Summary Judgment on the issue. CP 505-507. RAP 9.12 requires that only issues brought to the attention of the trial court in a summary judgment proceeding are considered by the appellate court. RAP 9.12 does not proscribe additional arguments relating to the same issue just as RAP 2.5 does not. Here the issue was whether Mr. Stevens was subject to the jurisdiction of the Washington Courts. Pointing out that he fails to explain why he was in Washington State is not a new issue, but additional argument by Mr. Mika.

Additionally, when a question is presented which affects a party's right to maintain the action is at issue, then RAP 9.12 does not apply.

Moreover, we recognize another exception to the general rule and have considered issues not raised below quote when the question raise affects the right to maintain the action." *Maynard Inv. Co., Inc. v. McCann*, 77 Wash. 2d 616, 621, 465 P.2d 657 (1970). *New Meadows Holding Co. v. Washington Water Power Co.*, 102 Wash. 2d 495, 498, 687 P.2d 212 (1984). The central issue of this case is Plaintiff's

right to maintain their action. Under this exception consideration of RCW 49 .40 4.090 is appropriate.

*Bennett v. Hardy*, 113 Wash. 2d 912, 918, 784 P.2d 1258 (1990).

The argument/ground is properly before the Court.

**B. ACTIONS TAKEN IN UNPUBLISHED DECISIONS AFFECT THE PUBLIC**

Mr. Stevens attempts to minimize the impact of the decision below by pointing out that the issue raised challenges practices in unpublished decisions of the Court of Appeals. Response Brief, p. 16.

This Court regularly accepts review of issues raised in unpublished decisions when the issue affects the public. Actions taken in unpublished decisions clearly and frequently impact the citizenry of Washington State. Further, this Court has asked for input from members of the Washington State Bar Association regarding citation to unpublished opinions and is, it appears, revisiting the prohibition under GR 14.1. Exhibit A attached hereto.

In short, the fact that the practice of ignoring arguments raised at the trial court and not in the appellate court occurs in unpublished opinions is not a bar to review.

**III. CONCLUSION**

Again, review should be granted.

Dated this 24<sup>th</sup> day of March, 2014.

THE LAW OFFICE OF  
CATHERINE C. CLARK PLLC

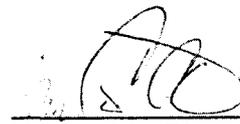
PHILLIPS LAW, LLC

By:



Catherine C. Clark,  
WSBA 21231

By:



Howard L. Phillips,  
WSBA 17987

Attorneys' for Respondent Jackson J. Mika

## EXHIBIT A

## Clark, Catherine

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**From:** WSBA [email@wsba.org]  
**Sent:** Friday, March 21, 2014 3:35 PM  
**To:** Clark, Catherine  
**Subject:** The Washington Supreme Court seeks your input



# WSBA

WSBA member:

Unpublished opinions of the Washington State Court of Appeals are now broadly accessible online. The Washington State Supreme Court is interested in examining the rule prohibiting citation to unpublished opinions in light of new technology. The Supreme Court is interested in your responses to this questionnaire as part of its reassessment.

Please take the time to participate in this very short survey. It should take less than 10 minutes to complete.

Thank you in advance for your time.

<https://www.surveymonkey.com/s/57M7R5QUnpublishedOpinionsI>

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EXHIBIT A

## OFFICE RECEPTIONIST, CLERK

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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Monday, March 24, 2014 3:48 PM  
**To:** 'Morgan, Tamara'  
**Subject:** RE: Mika v. JBC Entertainment, et al. - # 694138

Rec'd 3-24-14

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

**From:** Morgan, Tamara [mailto:Tamara@loccc.com]  
**Sent:** Monday, March 24, 2014 3:45 PM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Subject:** Mika v. JBC Entertainment, et al. - # 694138

Greetings,

Attached please find Petitioner's Reply on Petition for Discretionary Review and Declaration of Service for filing in the above-referenced case.

Please call me with any questions.

Thank you,

*TAMARA L. MORGAN*  
*PARALEGAL/OFFICE MANAGER*  
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