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SUPREME COURT
STATE OF WASHINGTON
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Supreme Court No. 92491-1
Court of Appeals No. 33232-2-III

SUPREME COURT
OF THE STATE OF WASHINGTON

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NINA FIREY,

Petitioner

v.

Nicolassa Orozco, et al,

Defendants,

Tammie Myers, et al,

Respondents

RESPONDENTS' ANSWER TO PETITION FOR REVIEW

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ORIGINAL

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ARGUMENT

Petitioner argues the Court of Appeals incorrectly weighed the petitioner's credibility when it determined petitioner's experts could not base their expert opinions on her statements. Petitioner is simply incorrect.

The unpublished opinion from the Court of Appeals properly applied prior case law which permits the court to determine whether an expert opinion submitted to oppose a summary judgment motion is based on fact as opposed to mere conjecture or speculation. The court stated that the central issue in the case was whether the opinions lacked a sufficient factual basis.

Neither the trial court or the Court of Appeals determined credibility of Ms. Firey. It was held that the conclusions of the experts concerning various construction errors was not based on their first hand knowledge, or any other facts, which would normally be relied upon by experts in this field. The work of K. & T Construction had been altered, removed or destroyed by the time the experts visited the property. The court reasoned the experts must, therefore, have based their opinions on statements made by the petitioner expressing her opinion about

construction errors made by K & T. Because she was not qualified to provide expert opinions, her experts were not permitted to simply endorse her opinions as their own. The question does not turn on petitioner's credibility. The question is whether the experts had sufficient facts to formulate their own opinions. Simply repeating petitioner's unqualified opinions does not show a basis in fact for their opinions.

The Court of Appeals relied on Supreme Court law citing *Doe v. Puget Sound Blood Ctr.*, 117 Wn.2d 772, 787, 819 P.2d 370 (1991), for the proposition that an expert opinion that is only a conclusion based on unfounded assumptions, does not satisfy the summary judgment standard. (See, Court of Appeals Opinion at p. 14.) The court also cited ER 703 which provides that facts or data relied upon by an expert must be such as is normally relied upon by experts practicing in that particular field of expertise. that test is not met where an expert merely adopts the opinions of one who is not an expert.

The conclusion that an expert opinion should be disregarded when it lacks factual basis or is speculative, does not depart from prior case law.

Petitioner is simply incorrect in asserting the Court of Appeals decided a credibility issue. As stated by the court, the central issue was whether there was sufficient factual support for the experts' opinions or, whether to the contrary, they were mere speculation.

Review should be denied because this case does not demonstrate a conflict with any past precedent. RAP 13.4(b) does not provide a basis for accepting review.

Respectfully submitted this 25th day of November, 2015.

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CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury as follows:
On November 25, 2015, I filed the foregoing document with the Court and served a copy on the undersigned in the manner indicated:

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Subject: Nina Firey v. Tammie Myers, et ux., et al

Dear Clerk,

Attached for filing in this matter is the following:

Nina Firey v. Tammie Myers, et ux., et al
Supreme Court No. 9249-1
Respondent's Answer to Petition for Review
Filed by: Michal A. Lehner, WSB No. 14189
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Thank you.

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