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WASHINGTON STATE
SUPREME COURT

SUPREME COURT OF THE STATE OF WASHINGTON

Court of Appeals No. 46434-9-II
Supreme Court Case No. 92896-7

CHARLES F. SMITH AND BARBARA
DUSZYNSKA, husband and wife,
Appellants/Petitioners

vs.

LLOYD ROOSEVELT REICH and JOYCE
REICH, husband and wife
Respondents

PETITION FOR REVIEW

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SUPREME COURT OF THE STATE OF WASHINGTON

**APPELLANT SMITHS'
PETITION FOR REVIEW**

I. INDENTITY OF PETITIONERS

Petitioners Charles F. Smith and Barbara Duszynska, husband and wife, by and through their counsel of record, Brian H. Wolfe, hereby petition the Supreme Court for review of the opinion of the Court of Appeals filed on December 8, 2015. This Petition for Review is made pursuant to Rules of Appellate Procedure 13.4.

II. COURT OF APPEALS DECISION

Petitioners respectfully request that the Supreme Court review the opinion of the Division II Court of Appeals, State of Washington filed on December 8, 2015. A copy of the decision is in Appendix A at pages A-1 thru A-6.

III. ISSUES PRESENTED FOR REVIEW

1. Petitioners respectfully submit that the Court of Appeals is in error in concluding that the Trial Court did not abuse its discretion by failing to grant Petitioners a continuance to enable them to gather written affidavits to comply with CR 56.

2. The discretion acted upon by a Trial Court and the Court of Appeals always involves an issue of substantial public interest. The failure to properly exercise discretion at the Trial Court level should be determined by the Supreme Court. It is at the Trial

Court level that the public meets the Court system and ultimately justice. If that is not exercised properly then the public does not get its day in court.

3. The decision of the Court of Appeals is in conflict with the decision of the Supreme Court.

IV. STATEMENT OF THE CASE

1. Appellants/Petitioners, Charles F. Smith and Barbara Duszynska, purchased property in Skamania County, Washington. There is a water well located on their property. The related pump house and mechanical equipment is located on neighboring property on the other side of a fence. Both properties have been served by the well and equipment for a period of several years. Disputes arose between the Appellants and Respondents Lloyd Reich and Joyce Reich, husband and wife, over allowing access to the pump house and equipment by Appellants and a drawdown of the water in the well causing Appellants to be without water on several occasions.

2. The disputes resulted in Appellants/Petitioners filing a Complaint February 1, 2012 (CP 001-008) pro se. The Defendants/Respondents hired David Schultz, who filed a Notice of Appearance (CP 012) and later entered an Answer and Affirmative Defense and Counterclaim (CP 013-074).

3. On January 30, 2014, Respondents, through their attorney, simultaneously filed two Motions: one, a Motion to Dismiss the case pursuant to CR 12(b)(6) (CP 089-092) and a second Motion for Summary Judgment. (CP 093) Accompanying both Motions, was an extensive Memorandum from Respondents attorney arguing as a defense that there is a comprehensive ground water code managed by the Washington State Department of Ecology which precluded Appellants from enforcing the claim against

Respondents. (CP 094-112)

4. The Motion for Summary Judgment was much more extensive. This Motion consumed four pages itself plus another 18 pages for its memorandum in support of Summary Judgment. (CP 094-112) This Motion as well as Motion to Dismiss were both based on Appellants/Plaintiff's original Complaint. Respondents/Defendants argued the facts of limiting the water use, arguing breach of agreement, failing to install a separate electrical system, excessive irrigation, claim of encroachment through the fence, realignment, and collateral estoppel based on two or three cases from the small claims department of the Skamania County District Court.

5. Believing that all he needed to do was restate the Complaint and make it more clear on what his issues are (RP 4), Appellant Charles Smith filed, along with a proposed Amended Complaint, a Motion for Leave to Amend Complaint for March 13, 2014 at 1:30 p.m. (CP 195-284) Respondents' attorney had also cited in his two Motions into the same court on the same day March 13, 2014. Appellants Motion was scheduled for 1:30 p.m. and Respondents motions were scheduled for 2:00 p.m.

6. Rather than take up Appellants Motion for Leave to Amend his Complaint first as docketed, the Court decided to take all three matters at the same time, and then decided to "take the Summary Judgment first".

7. When the Court asked the Appellant Smith what is different from the original Complaint. The response was "I have cited case law and tried to make it conform to the legal standards to the best I could". The Trial Court does not seem to have read Appellant's Motion or the proposed Amended Complaint. (RP 2 and 3) He took counsel for the Respondent's word for it that it was the same issues. But in fact the proposed

Amended Complaint is 17 pages, whereas the original Complaint was 8 pages and 30 sections in the proposed Amended Complaint as opposed to 15 sections originally. Much more factual allegations were contained in the proposed Amended Complaint. (CP 195 – 284)

8. The Court determined to take the Motion for Summary Judgment first. The Court noted repeatedly that Appellant had not filed any response to the Motion for Summary Judgment. Appellant stated that if the Summary Judgment was based on the Amended Complaint, he thought that he had evidence that would prevail. (RP 3 & 4) Appellant further insisted that the premise of CR 15(a) was to use the Motion to Amend the Complaint, which should be freely given when justice so requires. The proposed Amended Complaint would then be fundamental to the case. (RP page 4)

9. The Trial Court did take time to explain CR 56 and the requirement that a response needed to be made to raise a genuine issue of material fact. Nothing was said about CR 56(f).

10. Appellant attempted to say what specific facts there were that might be in opposition to the Motion for Summary Judgment. This included the Breach of Contract and the encroachment issue. (RP pages 8 & 9) The Court admonished Appellant that he was going into details of the facts of the case, but this was not a trial. The Court said “we are not at the facts of the case stage. This isn’t a trial”. (RP page 9)

11. After discussion, Appellant made a verbal motion for a continuance. The Court acknowledged that Motion but never ruled on it. (RP pages 10 & 11) After further discussion between the Court and the parties, the Court simply granted Respondents Motion for Summary Judgment (RP page 11). He ordered Respondents attorney to

prepare an Order concerning the factual findings consistent with the Motion and further that the Motion had not been responded to by Appellant. (RP pages 11 & 12)

12. There were additional hearings on April 17th, May 1st and May 15th of 2014. The April 17th hearing resulted in the entry of the Order granting Summary Judgment. Appellants did not appear.

13. The May 15th hearing was Appellants Motion for Reconsideration pursuant to CR 59. It was at this point in time that Appellants had a significant affidavit concerning the factual situation of the parties. It was also in this hearing that Judge Altman encouraged, if not directed, Appellant to appeal the case to a higher Court. (RP page 33 thru 35)

V. ARGUMENT

It is difficult to challenge a Trial Court's abuse of discretion. Discretion is a highly subjective process and there have been cases throughout the Washington history which have had difficulty coming to one conclusion. The case of Rehak v. Rehak, 1 WA App. 963, 465 P.2d 687 (1970) and the federal case of Delno v. Market Street Railroad, 124 F.2d 965, (1942) are two examples that have since been overturned. The Washington Supreme Court case of State ex rel. Carroll v. Junker, 70 Wn 2.d 12, 582 P.2d 775 (1971) appears to be the standard upon which discretion or failure thereof is based. The case stated:

"...

Where the decision or order of the Trial Court is a matter of discretion, it will not be disturbed on review except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds or for untenable reasons. [citations omitted]

Whether this discretion is based on untenable grounds,

or is manifestly unreasonable, or is arbitrarily exercised, depends upon the comparative and compelling public or private interest of those affected by the Order or decision and the comparative weigh of the reasons for and against the decision one way or the other.” Carroll v. Junker, supra page 26.

Petitioners submit that that language indicates that a Court should rule based on the context in which it finds itself, weighing public and private interest, and a comparative weight of the reasons for or against a decision one way or the other.

This is highlighted in Coggle v. Snow, 56 WA App. 499, 784 P.2d 554 (1990) in which a lawyer came to a case a week after the Motion for Summary Judgment was filed by the opponent. The client’s original lawyer was retiring and hired a new trial lawyer and the trial lawyer properly filed a Motion for a Continuance with an Affidavit of why he needed more time to get the appropriate Affidavits from other doctors. The Division I of the Court of Appeals had a lengthy decision on judicial discretion including pros and cons of what discretion is. In the end it is said that discretion requires decision-making founded upon principle and reason. There the Court reasoned that where a parties knows of material witnesses, and it shows no reasons why Affidavits could not be obtained to resist the Motion for Summary Judgment, “the Court has a duty to give the party a reasonable opportunity to complete the record before ruling on the case”, the Court of Appeals also recognized there is an ability to deny the Motion using three criteria. In the end the Court stated:

“The primary consideration in a trial court’s decision on the motion for a continuance should have been justice. The client, Coggle, after obtaining new counsel, should not be penalized for the apparently dilatory conduct of his first attorney. [citations omitted] The court should have reviewed the motions and the context of new legal representation. We fail to see how justice is served by a

draconian application of time limitations here.

...

We cannot discern a tenable ground or reason for the trial court's decision. We hold that the trial court improperly exercised its discretion in denying the motion for a continuance." Coggle v. Snow, supra page 508.

There is another Court of Appeals case that requires review. It is Butler v. Joy, 116 WA App. 291, 65 P.3d 671 (2003). In that case the attorney was retained just a day before the summary judgment hearing. He appeared without written affidavits in support of a continuance and presented a Motion for Continuance orally. That Court of Appeals ruled:

"...

Strictly speaking, his motion does not fit within the guidelines of a CR 56 (f) continuance. However, "the primary consideration and the trial court's decision on the motion for a continuance should have been justice." Coggle v. Snow, 56 WA App. 499, 784 P.2d 554 (1990)

Butler v. Joy, supra, page 299

There is no indication by Respondents Riech that they would be prejudiced by a continuance of a few weeks in order to enable Appellant Smith to properly put forward his material issues of fact in an Affidavit format.

The context that Appellant Smith found himself in on March 13, 2014, was that he had responded to Respondents Motion for Dismissal under CR 12(b)(6) by preparing an Amended Complaint and filing a Motion for Leave to Amend pursuant to CR 15. He then concluded that the Motion for Summary Judgment should relate to the new Amended Complaint not to the prior Complaint. So he came to the hearing on March 13, 2014 ill prepared to argue the Motion for Summary Judgment, which is the only Motion the Court

ultimately addressed. When Appellant Smith tried to elaborate orally, what facts he might have to bring forward in an Affidavit, the Court cut him off stating that this is not the trial and this is not the appropriate time to get into the facts. (RP 9) What else is there on a Motion for Summary Judgment than facts?

The discussion held between Appellant Smith and the Trial Court at RP 9 is significant. Appellant Smith had started to get into details of facts that he had in his possession to demonstrate that there were material issues of fact. But the court cut him off saying “you want to go into the details of the case don’t you.” And a few lines later says, “we are not on the facts of the case stage. This isn’t a trial.” Appellant Smith responded by saying “I am showing you proof positive right in my hands that defense structure – that what the Defendants fail...”. “In a sense Appellant Smith is trying to make an “offer of proof” without denominating it as such. The facts contained in Smith’s proposed Amended Complaint and in his Affidavit supporting his Motion for New Trial or Reconsideration are issues which could have been brought if the Trial Court had let Smith have time or the opportunity to bring forward those relevant matters.

- Respondents Reich were in breach of a Shared Well Agreement for not independently metering their electricity used to power the shared well pump (Proposed Amended Complaint (CP 198 to 215) and (Smith’s Affidavit CP 298 to 313).
- Respondents Reich have ignored and thwarted attempts by Smith to confirm the compliance with the Shared Well Agreement and blame Smith for not causing independent metering of the shared well as one of the purpose of this case. (Proposed Amended Complaint (CP 198 to 215) and (Smith Affidavit CP 298 to 313).
- The moving of a section of fence and the use of an unlicensed surveyor to

determine where the fence should be located. (Proposed Amended Complaint (CP 198 to 215) and (Smith Affidavit CP 298 to 313).

- Whether the electrical permit used by Defendants was really a permit or perhaps a forged documents. (Proposed Amended Complaint (CP 198 to 215) and (Smith Affidavit CP 298 to 313).

- Respondents Reichs refusal to cooperate with Smiths right to inspect, repair and maintain the shared pump house and electrical equipment. (Proposed Amended Complaint (CP 198 to 215) and (Smith Affidavit CP 298 to 313).

- The fact that the amount of land owned by Respondents Riechs were irrigated, whether or not that irrigation was from the well on the Smith property or some other location. (Proposed Amended Complaint (CP 198 to 215) and (Smith Affidavit CP 298 to 313).

While Petitioner' appeal focused on failure to grant him a continuance pursuant to CR 56(f) or any general continuance that is because that failure lead to the Court granting Respondents Motion for Summary Judgment. As stated above the Trial Court needed to make a decision within its discretion based on the context in which it found itself. In addition to the Motion for Summary Judgment, there is a Motion to Dismiss by Respondents under CR 12(b)(6). As pointed out in Appellants brief, when such a motion is made and relies on material outside the pleadings, that motion became a Motion for Judgment on the Pleadings under CR 12(c). Even if there are facts in a separate Affidavit, it becomes a Motion for Summary Judgment under 12(b). In both subheadings, the rules provide that the Trial Court should give all parties reasonable opportunity to present all material made pertinent to just a motion by Rule 56. The Trial Court made no ruling on

Respondents Motion to Dismiss but it was on the Court's docket at the same time. Respondents Memorandum acknowledged that the use of that Memorandum and the accompanying Affidavits may convert the Motion to Dismiss into a Motion for Summary Judgment. Appellant Smith would not have been aware of that transfer or conversion until he appeared the day of the hearing on March 13, 2014.

So the context in which the Trial Court and the parties found themselves was a combination of CR 56 motion for summary judgment and CR 12 motion for judgment on the pleadings or as converted a motion for summary judgment. One remedy available to Appellants/Plaintiff was to move for a continuance so he could have an opportunity to present all material which might have been pertinent to that CR 56 motion.

Unfortunately the Trial Court never ruled on his Motion for a Continuance, but rather moved to simply grant the Respondents Motion for Summary Judgment based largely on the fact that Appellant had not filed any response to that Motion. This is where Appellants assert that the trial Court abused its discretion. The Court of Appeals simply ignored the fact that the CR 12(b)(6) motion become one for summary judgment, and the Court must ask all parties if they wish to present materials. (Blenheim v. Dawson and Hall, 35 WA App. 435, 667 P.2d 125 (1983)). The Court of Appeals somewhat draconian in fashion itself, simply indicated that the Trial Judge denied Plaintiff's Motion "indirectly" by granting Reich's Motion for Summary Judgment and the Trial Court "implicitly exercised its discretion" and denied Smith's Motion. This is contrary to the admonition of the Washington Supreme Court in Carroll v. Junker, supra, wherein the Trial Court should have made its decision based on the comparative weigh of reasons for and against a decision one way or another. Even it done implicitly, it was arbitrarily exercised.

VI. CONCLUSION

The Court of Appeals decision in this matter found in Appendix A is in conflict with the principles of law stated in Carroll v. Junker and involves an issue of substantial public interest regarding the trial Court's application of discretion. The Court of Appeals allows the discretion to be based on an implicit exercise of discretion or denial of the Motion "indirectly". But the true principle for abuse of discretion is whether the discretion or lack thereof is exercised on untenable grounds or for untenable reasons, or the discretion itself is manifestly unreasonable. Carroll v. Junker, supra also has language that if it is arbitrarily exercised, it could be wrong. It depends on a comparative and compelling public or private interest with a comparative way to the reason for and against. In this case the Trial Court made absolutely no weighting of the pros and cons, he simply ignored Appellants Motion for Continuance and ignored the context in which he found himself based on the Rule CR 12 requiring all parties be given reasonable opportunity to present all material evidence pertinent to the Motion for Summary Judgment and Motion for Judgment on the Pleadings.

Appellant asks that the Court of Appeals decision be reversed and that the case be remanded to the trial Court with a reversal of the granting of Respondents Motion for Summary Judgment.

Dated this 8 day of January, 2016.

Respectfully Submitted,

BRIAN H. WOLFE, P.C.

By: 

Brian H. Wolfe, #04306
Attorney for Appellants/Petitioners

APPENDIX A

December 8, 2015

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

CHARLES F. SMITH and BARBARA
DUSZYNSKA, husband and wife,

Appellants,

v.

LLOYD ROOSEVELT REICH and JOYCE
REICH, husband and wife,

Respondents.

No. 46434-9-II

UNPUBLISHED OPINION

JOHANSON, C.J. — Charles Smith and Barbara Duszynska (collectively “Smith”) appeal a superior court ruling granting summary judgment in favor of Lloyd and Joyce Reich (Reich) regarding issues arising from a property dispute. Smith makes a single assignment of error on appeal: that the superior court abused its discretion by declining Smith’s request for a CR 56(f) continuance. We hold that the trial court did not abuse its discretion when it denied Smith’s motion for continuance because Smith ignored the requirements of CR 56(f) and because the superior court did not have to consider hypothetical facts before ruling on a motion for summary judgment. We affirm.

FACTS

Smith and Reich are neighboring landowners. In 1981, the parties’ respective predecessors in interest executed a “Water System Easement and Agreement” (the Agreement), which provided

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that the two parcels would share equal access to water in a drilled well system. The parties' dispute arises primarily out of this Agreement.

Smith filed a civil complaint against Reich in February 2012. Smith's complaint alleged causes of action for breach of contract and encroachment. Smith believed that Reich had breached the Agreement by using excessive water from the shared well and by failing to install a separate electrical metering system for the well's pump. Smith sought damages and orders compelling Reich to take certain other actions related to the well.

Shortly after the well dispute began initially, Reich built a fence along a common boundary line that was determined by a surveyor whom Smith had hired to encroach onto Smith's property by 0.20 feet. Reich's own surveyor, Kenneth Hoffman, determined that no encroachment existed. But Reich, wishing to keep the peace, moved the section of fence that allegedly encroached approximately four inches closer to their property.

Reich moved for summary judgment in January 2014, nearly two years after Smith filed their complaint.¹ Attached to the motion were affidavits from Reich and two others. Smith filed no response to Reich's motion for summary judgment. Smith did, however, file a motion for leave to amend his complaint the week before the summary judgment hearing. The proposed amended complaint added no new cause of action; it merely clarified the existing action and added citation to legal authority. The superior court held a hearing on Reich's summary judgment motion on March 13.

There, the following pertinent exchanges occurred:

¹ Reich filed simultaneous motions for summary judgment and for CR 12(b)(6) dismissal.

[THE COURT]: Okay. All right. Let's take the Summary Judgment Motion first. I noticed that you did not file any response to the Motion for Summary Judgment?

[SMITH]: I have not filed anything sir. I have issued a Subpoena to the Defendants to testify and to bring discovery materials.

[THE COURT]: Okay. You are familiar with these rules I know because you cite them continuously in your pleadings?

[SMITH]: Yes sir.

[THE COURT]: Yet you did not fulfill the most basic dictate of Summary Judgment rule. Did you not read that? You have to file a response and you did not file a response and I cannot treat you in oth – in any other way than as an attorney.

[SMITH]: May I cite rule 15(a) where:

“When justice so requires leave to amend complaint will be freely granted”?

[THE COURT]: And that – that has nothing to do with Summary Judgment.

[SMITH]: If Summary Judgment were based upon the Amended Complaint I believe there is evidence and case history – pardon me – case history cited that would –

.....

[THE COURT]: Okay. Why did you not comply with [CR 56] is my basic question?

[SMITH]: On the premise that 15(a) – under 15(a) the Amended Complaint will be – leave will be granted and the evidence – the attachments in that Amended – proposed Amended Complaint and denoted as such I believe are fundamental to the case.

Report of Proceedings (RP) at 3-4.

[SMITH]: Thank you sir. But I don't want to put a claim to that and may I ask for a continuance?

[THE COURT]: Well – Motion for continuance is on the table.

[REICH]: I'd like to proceed forward on the Motion for Summary Judgment which was served on Defendant – or served on the Plaintiffs January 31st.

RP at 10.

The court briefly discussed other issues before ruling it would grant Reich's motion for summary judgment. The court also denied Smith's reconsideration motion. Smith appeals from the summary judgment order.

ANALYSIS

CR 56(F) CONTINUANCE

Smith contends that the superior court abused its discretion by failing to grant a continuance under CR 56(f). Smith makes two arguments. First, they argue that the superior court erred by failing to exercise its discretion. Second, they argue that the rules permit the court to consider hypothetical facts. We disagree.

CR 56(f) provides,

When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot, for reasons stated, present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

We review a trial court's denial of a CR 56(f) motion for abuse of discretion. *Pitzer v. Union Bank of Cal.*, 141 Wn.2d 539, 556, 9 P.3d 805 (2000). A trial court abuses its discretion when its decision “is manifestly unreasonable or based upon untenable grounds or reasons.” *Salas v. Hi-Tech Erectors*, 168 Wn.2d 664, 668-69, 230 P.3d 583 (2010) (quoting *State v. Stenson*, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997)).

“A court may deny a motion for a continuance when ‘(1) the requesting party does not offer a good reason for the delay in obtaining the desired evidence; (2) the requesting party does not state what evidence would be established through the additional discovery; or (3) the desired evidence will not raise a genuine issue of material fact.’” *Tellevik v. Real Prop. Known as 31641 W. Rutherford St.*, 120 Wn.2d 68, 90, 838 P.2d 111 (1992) (quoting *Turner v. Kohler*, 54 Wn. App. 688, 693, 775 P.2d 474 (1989)). Denial of a continuance can be based on any one of the above three prongs. *Pelton v. Tri-State Mem'l Hosp., Inc.*, 66 Wn. App. 350, 356, 831 P.2d 1147 (1992).

First, Smith argues that the trial court never ruled on their motion for continuance. But the trial court knew of the motion as it mentioned on the record that the “[m]otion for continuance is on the table.” RP at 10. The court, having just heard Smith’s motion to continue the summary judgment hearing, nonetheless denied their motion indirectly by immediately granting Reich’s motion for summary judgment. We conclude that the trial court implicitly exercised its discretion and denied Smith’s motion.

To the extent that they argue that the superior court abused its discretion by denying their motion, Smith’s argument fails because Smith violated CR 56(f). They filed no written request for a continuance. They provided no affidavit setting forth reasons the delay is necessary, why they could not have presented facts to justify their opposition, or what evidence would be established through additional discovery. CR (56)(f). They failed to offer a good reason for the requested delay considering that the summary judgment motion was filed nearly two years after Smith filed their complaint.

Second, Smith argues that the superior court could, and therefore should have, considered whether hypothetical facts existed to preclude summary judgment. We disagree. Smith cites *Brown v. MacPherson’s, Inc.*, 86 Wn.2d 293, 297, 545 P.2d 13 (1975), to support that proposition, but *Brown* involved a trial court’s ruling under CR 12(b)(6), whereas the superior court here granted Reich’s motion for summary judgment and also dismissed Smith’s claims under CR 12(b)(6). CR 12(b)(6) does permit courts to consider hypothetical facts, *Bravo v. Dolsen Cos.*, 125 Wn.2d 745, 750, 888 P.2d 147 (1995), but CR 56 does not. In any event, the court’s findings under that rule here were superfluous. And because the superior court considered at least the

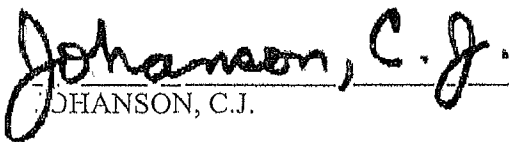
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affidavits filed by Reich, the original CR 12(b)(6) motion would have become one for summary judgment because the court considered matters outside the pleadings. CR 12(b).


In conclusion, because Smith did not satisfy CR 56(f) and because the superior court did not have to consider hypothetical facts before ruling on a motion for summary judgment, we hold that the superior court's decision not to grant Smith a continuance was not manifestly unreasonable or based on untenable grounds or reasons. The trial court properly exercised its discretion when it denied Smith's continuance motion.


Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.


JOHANSON, C.J.

We concur:


WORSWICK, J.


MELNICK, J.

Fri 1/8/2016 3:10
PM

SUPREME COURT OF THE STATE OF WASHINGTON

Court of Appeals No. 46434-9-II
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Respondents

PETITION FOR REVIEW

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I certify under penalty of perjury under the laws of the State of Washington that, on January 8, 2016, I caused Appellants' Petition for Review to be filed with the Court of Appeals and caused to be served on the persons listed below in the manner shown:

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DATED this 8th day of January, 2016 at Vancouver, Washington

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Roberta Woelke, assistant to Brian H. Wolfe