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COURT OF APPEALS

DIVISION 1

STATE OF WASHINGTON

CASE #77209-1-I

Michael Bracken, Rita Spencer aka LaRita Spencer, Appellants

v.

James Merklinghaus, Respondent

RESPONDENT'S ANSWER TO APPELLANTS' PETITION FOR DISCRETIONARY REVIEW

Attorney for Respondent:	Appellants, Pro Se
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TABLE OF CONTENTS

INTRODUCTION

Appellants entered into a one-year lease agreement with Respondent to rent premises known as 417 99th Ave NE #C, Bellevue, Washington 98004 on or about April 1, 2013. The lease expired on March 31, 2014, making appellants month-to-month tenants.

On June 8, 2017, Respondent caused a 20 day notice to terminate tenancy to be served on Appellants- their tenancy was to expire June 30, 2017.

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On July 19, 2017 an order for alternative service was secured by Respondent and a summons and complaint were served by posting and mailing on July 21, 2017.

A show cause hearing took place on July 31, 2017 where Appellants appeared and argued. Findings of Fact and Conclusions of Law, Judgment and Order Granting Writ was executed by Judge Ken Schubert and a writ of restitution was issued.

Appellants subsequently filed documents appealing the decision of the Superior Court. The first brief filed by the Appellants was rejected; the second, filed on February 20, 2018, was accepted.

On November 19, 2018 the Court of Appeals issued an unpublished opinion finding no error with the decision made in the Superior Court. In its decision, the Appellate panel stated, "Finding no error, we affirm." See *Appendix A*

On January 3, 2018 the Appellants filed a Petition for Discretionary Review in this matter to the Supreme Court of Washington.

STATEMENT OF CASE

Appellants executed a one-year lease at premises commonly known as 417 99th Ave NE, Bellevue, King County, Washington 98004

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with James Merklinghaus, owner of the premises on April 1, 2013. The lease expired by its terms on March 31, 2014. The lease stated, "This agreement shall be month to month beginning April 1st, 2014, or a new lease to be started." (CP at 52-56)

The lease expired by its own terms on March 31, 2014 and no subsequent lease was executed, nor was a fully executed lease document ever produced by Appellants.

On June 8, 2017 a 20 Day Notice to Vacate was served on Appellants by posting and mailing, evidence of which is included in the record. The 20 Day Notice stated that tenancy was to terminate on June 30, 2017. (CP at 80-82)

Upon the discovery that Appellants had not vacated the property on the date required by the 20 day notice, Respondent filed a summons and complaint with the King County Clerk's office on July 6, 2017 as case number 17-2-17606-1 SEA. (CP at 1-18, 88-98)

Respondent sought and was granted an order for hearing to show cause for July 18, 2017 (CP at 19-21; 46-47; 99-100)

Respondent attempted service of the summons and complaint and the order to show cause on numerous occasions without success.

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Declaration of Due Diligence by the process server cited four separate occasions on which service was attempted, but not completed. The declarant stated, "...on July 10 attempt the blinds were moving and fingers visible in between the blinds." (CP at 24-25)

Respondent petitioned the court for alternative service via motion and an order for alternative service was granted on July 17, 2017. (CP at 22-27; 83-84)

Respondent sought a new order to show cause, and was granted a hearing date of July 31, 2017. (CP at 28-31; 85-87)

On July 21, 2018 Appellant was served with a summons and complaint, as well as the order to show cause on July 31, 2017. (CP at 33, 1.7)

On July 31, 2018 a show cause hearing was conducted before Judge Ken Schubert. Findings of Fact and Conclusions of Law; Judgment and Order Granting Writ was executed by Judge Schubert after hearing. (CP at 32-45) A writ of restitution was granted and Respondent filed the writ with the King County Sheriff's office for execution.

On July 31, 2017 Appellants filed a Notice of Appeal with the King County Clerk. (CP at 36-41)

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On July 31, 2017 the Appellants paid the filing fee to appeal. (CP at 49)

On August 1, 2017 Appellants filed a "Response" to the order to show cause alleging "a clear violation of Landlord Tenant rights, acts and laws..." (CP at 48, 51)

On August 3, 2017 Appellants moved the court to stay enforcement of the writ of restitution issued on July 31, 2017. In their motion, Appellants allege that the eviction was racially motivated, that the plaintiff and their counsel had intentionally misled them, and that certain items were not disclosed by the plaintiff and/or their attorney.(CP at 130-133) The motion to stay was granted pending the posting of a $14,700 bond. (CP at 135)

On August 11, 2017 Appellants posted a bond in the amount of $14,700 and successfully stayed the writ of restitution. (CP at 143)

The Appellants posted two subsequent bonds to stay execution of a Writ of Restitution.

The Court of Appeals, Division I subsequently affirmed the decision of the Superior Court finding the Appellants in Unlawful Detainer and granting Respondent a Writ of Restitution. See *Appendix A*

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On January 3, 2019, Appellant filed a Petition for Discretionary Review to the Washington Supreme Court.

ARGUMENT

I. APPELLANTS' REQUEST FOR DISCRETIONARY REVIEW DOES NOT CONFORM WITH RAP 13.4(b)

Washington Rules of Appellate Procedure 13.4(b) states, in relevant part, "A petition for review will be accepted by the Supreme Court only:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court."
>
> *Washington Rules of Appellate Procedure,* 13.4(b)

Here, Appellants state, "The (sic) is a case of housing discrimination based on race, color and marital status." *Appellant's Petition for Review,* p.1

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Further, Appellants recite a series of facts alleging *ex parte* contact by Appellant's counsel with the court in an effort to secure a favorable decision. *Id.* Aside from this bald accusation, the Appellant provides no factual background nor any specific laws, Appellate decisions or public policies on which the decision by the Court of Appeals should be heard by the Supreme Court, according to *RAP* 13.4(b).

Although the Appellants cite The Civil Rights Act of 1866 and the Federal Fair Housing Act generally, there is no allegation made by the Appellants that the Court of Appeals erred in affirming the decision of the Superior Court, or that either of those two bodies of law were violated by the actions of the Superior Court, its officers or the Respondent or his attorney. *Appellants' Petition,* p. 2

In their conclusion, the Appellants state, "The Appellant Defendant intentionally manipulated the procedural process in both the Superior and Appellant Courts to conceal the corrupt unethical practices and data reoccurring in both court systems. *Id* p.3

Again, in their conclusion, the Appellant offers nothing more than unsupported assertions of manipulation and abusive practices and offers

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nothing in the way of concrete evidence, much less an argument as to how those practices violate any federal or state law.

CONCLUSION

As is stated above, the Appellant was properly served all documents pursuant to an unlawful detainer, was heard in a show cause hearing and had a writ of restitution issued for recovery of the premises in which they resided.

The Appellants have made no allegation consistent with the standard set forth in *RAP* 13.4(b) for the granting of Discretionary Review by the Supreme Court.

It is for these reasons that the Respondent respectfully requests that the Court deny the Appellants their request for Discretionary Review of the decision by the Court of Appeals in this matter.

Respectfully submitted, this 14th day of January, 2019

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Appendix A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JAMES MERKLINGHAUS, Respondent, v. MIKE BRACKEN, RITA SPENCER AKA LARITA SPENCER, Appellants.	)	No. 77209-1-I DIVISION ONE UNPUBLISHED OPINION FILED: NOV 19 2018

PER CURIAM. Larita Spencer and Michael Bracken (Spencer) appeal the judgment and writ of restitution in an unlawful detainer action. Finding no error, we affirm.

FACTS

On April 1, 2013, Spencer executed a one-year lease for an apartment owned by James Merklinghaus. Spencer did not renew the lease and, after April 1, 2014, lived in the apartment on a month-to-month tenancy.

On June 8, 2017, Merklinghaus served Spencer with a 20-day notice to vacate, terminating the month-to-month tenancy as of June 30. Spencer did not vacate the apartment, and on July 6, 2017, Merklinghaus filed an unlawful detainer action.[1] A show cause hearing was scheduled for July 18, 2017 but was rescheduled for July 31, 2017 because Merklinghaus was initially unable to serve

[1] RCW 59.12.030(2) states that a "month-to-month" tenant is guilty of unlawful detainer when the tenant continues in possession of leased property beyond the end of the month following the landlord's notice to vacate. The provision requires that the landlord serve notice to vacate more than 20 days prior to the end of the month for which the tenant must quit the premises.

Spencer with the summons and complaint.[2] At the show cause hearing, the trial court entered a judgment in favor of Merklinghaus and ordered a writ of restitution. Spencer appeals.

DECISION

This court reviews a trial court's findings of fact in an unlawful detainer action for substantial evidence. Pham v. Corbett, 187 Wn. App. 816, 825, 351 P.3d 214 (2015). Unchallenged findings of fact are verities on appeal. Pham, 187 Wn. App. at 825. We review conclusions of law de novo. Pham, 187 Wn. App. at 825.

Spencer has not supported any of their assertions with relevant legal authority or citation to the record. This court need not consider arguments that the appellant has not supported by pertinent authority, references to the record, or meaningful analysis. RAP 10.3(a); Saunders v. Lloyd's of London, 113 Wn.2d 330, 345, 779 P.2d 249 (1989). We address Spencer's claims to the extent possible given the limits of the record and the legal analysis.

Spencer first claims that they "did not receive a fair hearing" because they received the order scheduling the show cause hearing on July 21, 2017 but "[t]he date for written response and a request for trial had already expired on July 20, 2017."[3] But Spencer appeared at the show cause hearing and submitted a 78-

[2] Merklinghaus ultimately obtained an order for alternative service pursuant to RCW 59.18.055.

[3] It is unclear to what Spencer is referring. The order setting the show cause hearing does not contain a date for a response. The summons, on the other hand, requires that any written response be received by July 17, 2017.

page written response, which was reviewed and considered by the trial court. Spencer does not demonstrate that they were deprived of a fair hearing.[4]

Spencer next appears to argue that the trial court denied them the opportunity to present evidence at the show cause hearing. Spencer contends that they entered into a verbal agreement with Merklinghaus in which they would pay a higher monthly rent in exchange for Merklinghaus making repairs to the carpet and deck. They argue that they "entered with courtroom with five 'witnesses' [and] three of the witnesses could have testified in favor of the verbal contractual agreement and repairs." But Spencer does not claim that the trial court did not permit the witnesses to testify. And any mention of these witnesses is absent from the verbatim report of proceedings.

Spencer next argues that Merklinghaus "took advantage of the Appellants by presenting documentation and a list of witnesses to the courts without providing the same documentation and list of names to the Appellants." But again Spencer does not identify what it was that they did not receive, nor how such an alleged failure constitutes reversible error.

Finally, Spencer argues that Merklinghaus's attorney engaged in ex parte contact with the trial court. But Spencer's failure to identify any evidence of ex parte contact in the record precludes appellate review.

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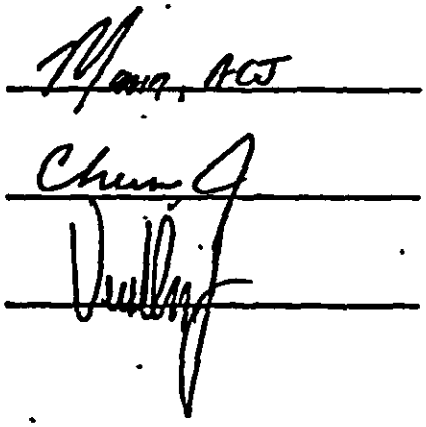
[4] Spencer also argues that the caption in the order setting the show cause hearing incorrectly reflected the county as Pierce rather than King. The record does not support this claim. While the order granting alternative service reflected the incorrect county in the header, the order setting the show cause hearing did not.

Affirmed.[5]

For the Court:



[5] On October 24, 2018, the court administrator/clerk denied Merklinghuas's motion on the merits and granted his motion for accelerated review. On November 9, 2018, Spencer filed a "Motion for Time" requesting time to respond to the motion for accelerated review. The motion is denied.