

717666-9

717666-9

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON

2015 AUG 14 PM 3:12
No. 71766-9

IN THE WASHINGTON STATE COURT OF APPEALS

DIVISION ONE

CITY OF RENTON, Respondent

v.

ROBIN D. MILLER, Petitioner/Appellant

**ON DISCRETIONARY APPEAL FROM THE
KING COUNTY SUPERIOR COURT**

The Honorable Judge Bill Bowman

APPELLANT'S REPLY BRIEF

**Robin D. Miller
Petitioner/Appellant, *pro se*
1814 SE 21st Place
Renton, WA 98055
425-271-0959**

INTRODUCTION

The City of Renton (Respondent) now concedes that Miller (Petitioner/Appellant) has made a sufficient showing that the lower court (Renton Municipal) did transmit all documents authorized by his designation of record; and further that the Transmittal Letter filed in the Superior Court on September 13, 2013, consisted of a 25 page transcript of the lower court record in compliance with the designation of record and RALJ 6.2(a). CP 3-28. Having presented no argument in rebuttal, the City also concedes the issues on appeal while joining Miller in urging the Court to remand this case back to the Superior Court.

Yet, with rationale straining credulity, Respondent takes the position that this Court should not grant to petitioner/appellant any of those costs incurred in the Court of Appeal proceedings – notwithstanding the provisions of RAP 14.2.

ISSUE PRESENTED

Should Petitioner/Appellant be awarded the reasonable costs incurred in the Court of Appeals proceedings on Discretionary Appeal?

ARGUMENT

A. City Chose To Ignore Miller's Voluntary Resolution Efforts.

After receipt of the Superior Court's Order denying his motion for reconsideration and prior to filing the Notice for Discretionary Review, Miller reached out to the Renton City Attorney's Office by leaving a voice-mail message seeking mutual dialog in hopes of avoiding any further costs and expenditures of time in the RALJ matter. Yet the City ignored this effort leaving Miller with no viable option but to file a timely Notice for Discretionary Review.

Having waited until after Petitioner's costs of proceeding in the Court of Appeals had been incurred and this Court's Order granting Discretionary Review had been issued, Respondent then offered to concede the matter, expecting Miller to bear the burden of his costs already incurred. (See Respondent's Exhibit 1). Petitioner responded in good faith to abate further costs by offering a counter proposal to the City (See Petitioner's Exhibit 1, attached herewith). Miller enthusiastically offered to jointly file a RAP 18.2 Voluntary Withdrawal of Review Motion, provided only that the City would stipulate to a Court directed award of Petitioner costs. Once again however the City simply ignored Petitioner's effort, leaving Miller no viable option but to proceed with a Motion for Discretionary Review.

The City asserts that because they elected to "take no position" and they "intended not to Answer" the Motion for Discretionary Review that

somehow the costs incurred by Miller in the Court of Appeal proceedings could be avoided. The City then inexplicably reasons that, but for Miller's unwillingness to accept the burden of those costs already incurred as a requisite condition of their concession offer, this Court should illogically conclude that Miller's costs could have been avoided.

B. Petitioner Entitled to Discretionary Review Costs (RAP 14.2)

The City's concession that this case should be remanded to the Superior Court is tantamount to conceding that Miller should be found as having substantially prevailed on Discretionary Review. Accordingly, pursuant to the provisions of RAP 14.2, Petitioner is entitled by the Court Rules to an award of his costs on Discretionary Review

C. City's Basis For Denying Costs Lacks Supporting Authority

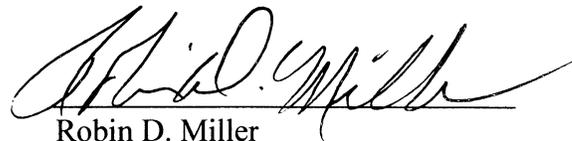
Had "cost avoidance" been their concern, the City's concession offer could have been made prior to Petitioner's Notice for Discretionary Review. Yet the City simply waited until Petitioner was forced to incur Appellate Court costs. Respondent now argues, and then concludes, that "any costs incurred in the Court of Appeals proceedings should not be granted to Petitioner. But the City has provided no authority or case law citation supportive of that proposition. Lacking such authority or citation, this Court is left in the position of having no authority or support upon which to adopt Respondent's position.

CONCLUSION

For all the reasons set forth above and in prior argument, appellant respectfully reiterates his prayer for relief seeking this Court's Order to:

(1) Vacate the Superior Court's Order dismissing Miller's RALJ Appeal; and (2) Remand this case to the King County Superior Court with instructions to conduct the RALJ review on the record; and (3) Award appellant his reasonable & necessary costs on Discretionary Appeal pursuant to RAP 14.3 as the Court may deem reasonable and just.

Respectfully submitted and dated this 14th day of August, 2015



Robin D. Miller
Appellant/Petitioner, *pro se*
1814 SE 21st Place
Renton, WA 98055
425-271-095

EXHIBIT 1

January 05, 2015

Eddie Aubrey
Prosecuting Attorney
Office of the City Attorney
1055 South Grady Way
Renton, WA 98057
eaubey@rentonwa.gov
425-430-6489

**RE: Robin D. Miller v. City of Renton
Washington State Court of Appeals, Division I – Cause No. 71766-9-I**

Subject: City of Renton 12-29-2014 Letter seeking settlement of the above mentioned case.

Dear Mr. Aubrey:

Thank you for reaching out with an attempt to settle the above case by joint motion of concession.

I share the City's desire to avoid the needless delays and further increasing costs that will surely be required to implement the full process in this discretionary appellate review. I also share the City's apparent assessment that, if pursued to completion, the likely result would be the Appellate Court's order of remand back to the Superior Court.

Accordingly, I would welcome the opportunity (and judicial efficiency) of presenting a joint motion seeking the Court's discretionary approval of a voluntary withdrawal from this review. Unfortunately however, I am not in a position to ignore those costs already incurred; as made necessary for preserving the right to an RALJ hearing on the merits in the Superior Court concerning the underlying matter before us.

If the City would be willing to stipulate to an award by the Court of Miller's RAP 14.3 costs at the time the joint motion is granted, I would be pleased to join with the City in the preparation & filing of a joint RAP 18.2 motion for the above stated purpose.

Truly yours,



Robin D. Miller
Appellant, *Pro Se*
1814 SE 21st Place
Renton, WA 98055
425-271-0959