

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
7/15/2024 2:40 PM  
BY ERIN L. LENNON  
CLERK

No. 1031378  
Court of Appeals No. 58179-5-II

THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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ANN CHAUDHRY AND MUHAMMAD CHAUDHRY, A  
MARRIED COUPLE,

Plaintiffs/Appellants,

vs.

TYSON D. DAY AND “DOE” DAY, INDIVIDUALLY AND  
IN THEIR MARITAL COMMUNITY

Defendants/ Respondent

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RESPONDENTS’ ANSWER TO APPELLANTS’ PETITION  
FOR REVIEW

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## **I. IDENTITY OF RESPONDENT**

Respondent Tyson Day (“Day”) answers and opposes the June 3, 2024 Petition for Review (“the Petition”) of Petitioners Ann Chaudhry and Muhammad Chaudhry (collectively “the Chaudhrys”). The Chaudhrys’ petition for discretionary review is defective in form and substance. Critically, Appellants fail to identify any issues for review, or explanation of why review should be accepted under any of the tests contemplated by RAP 13.4.

## **II. CITATION TO COURT OF APPEALS DECISION**

The Court of Appeals affirmed the trial court’s dismissal of the Chaudhrys claims for nuisance, negligence, and infliction of emotional distress in a published opinion in *Ann Chaudhry and Muhammad Chaudhry v. Tyson D. Day and “Doe” Day*, No. 58179-5-II (Wash. Ct. App. May 7, 2024), attached to the Chaudhrys’ Petition for Review. Specifically, the appellate court

held that the trial court properly granted Day's motion for summary judgment because there was no evidence presented concerning the condition of the tree that spawned the branch that allegedly fell on the Chaudhrys' roof. Hence, the Chaudhrys could not prove the tree was dangerous, and likewise could not establish that Day had any duty to take corrective action to remedy any danger.

### **III. COUNTER-STATEMENT OF ISSUES**

1. Should this Court accept review under RAP 13.4(b) where Appellants have failed to present any assignments of error? **No.**

### **IV. COUNTER-STATEMENT OF THE CASE**

The Chaudhrys did not provide a Statement of the Case pursuant to RAP 13.4(c) in their petition for review. Respondent Day therefore provides the following statement of the case.

### A. Factual Background

This lawsuit arises over a Silverleaf Maple on Respondent Tyson Day's property located at 2410 Angela Street SE in Lacey, Washington. Appellants Ann and Muhammad Chaudhry own the home neighboring Mr. Day's. They claim that during a storm in October 2019, portions of the Silver Maple fell onto the roof of their home, resulting in significant damage and injuries. (CP 1-9). In February 2020, Appellants initiated the underlying suit, alleging that Day's tree constitutes a nuisance pursuant to RCW 7.48, and a negligence claim under the theory that Respondent failed to properly maintain his tree. (CP 1-9).

The Chaudhrys claimed to have communicated their concerns regarding the tree to Respondent verbally and in writing. In support of this contention, Ann Chaudhry executed a declaration in March 2023. Her declaration does not include copies of any prior written communications between the neighbors. (CP 361-363). The record contains no evidence of written or oral communications between the neighbors prior to

suit being filed. Appellants have admitted they have no photographs, motions pictures, or videos depicting branches/shrubbery/leaves from Respondent's tree on their roof. (CP 324).

Similarly, the Chaudhrys were unable to produce any photographs/motion pictures showing the condition of their property prior to October 2019. (CP 323). In support of their damage claims, the Chaudhrys produced numerous reports and invoices for future repair work on the home. However, none of these reports contain photographs, descriptions, or eye-witness accounts of branches on the roof.

In 2021, after initiating litigation, Appellants retained arborist Galen Wright, who issued a report dated March 9, 2021. In his report, Mr. Wright opines that the tree is in poor condition. (CP 353). The only photographs of the Silver Maple in the record are those contained in Mr. Wright's report. (CP 352-355).

### B. Petitioners Appeal

Respondent Day filed a motion for summary judgment seeking dismissal of the Chaudhrys' claims. The trial court granted Respondent's motion in March 2023, ruling that the Chaudhrys failed to establish that Respondent Day had actual or constructive notice of the tree's defects such that a duty could be imputed to him. (CP 389). Appellants sought reconsideration on the grounds that "substantial justice has not been done." The trial court denied the motion for reconsideration. (CP 389).

Appellants appealed the trial court's ruling, arguing that the 2021 Washington Forestry Consultants report and the Chaudhrys' numerous communications regarding the tree established that Day had notice of its defects such that there was a genuine issue of material fact for a jury. The Court of Appeals ruled that even when viewed in the light most favorable to the Chaudhrys, the evidence only established that they regularly complained about the tree, not that they notified Day of a specific defect in it. In its May 2024 opinion, the appellate court affirmed



the trial court's dismissal where the Chaudhrys could not establish that Day had constructive or actual notice of the trees defects such that a duty could be imputed.

## **V. ARGUMENT**

RAP 13.4(b) provides a petition for review will be accepted by the Supreme Court only if:

- 1) The decision of the Court of Appeals is in conflict with a decision of the Supreme Court;
- 2) The decision of the Court of Appeals is in conflict with another decision of the Court of Appeals;
- 3) A significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- 4) The petition involves an issue of substantial public interest that should be determined by the Supreme Court.

The Chaudhrys have failed to identify under which portion of RAP 13.4(b) they seek review. The petition does not identify any Supreme Court decisions or other Court of Appeals decisions

which conflict with the May 2024 Court of Appeals ruling. Similarly, it fails to pose any question of law under the Washington or United States Constitution at issue in their case. Lastly, the Chaudhrys do not provide evidence of any issues of substantial public interest in their case that merit review by the Supreme Court.

## **VI. CONCLUSION**

The Chaudhrys' petition demonstrates that review is inappropriate under any of the four tests contemplated by RAP 13.4(b). For the reasons outlined above, Respondent respectfully requests that this Court deny the Petition.

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## **RAP 18.17 CERTIFICATION**

I certify that this brief contains 960 words (excluding words contained in appendices, title sheet, table of contents, table of authorities, certificate of compliance, certificate of service, and signature blocks) in compliance with RAP 18.17.

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## DECLARATION OF SERVICE

I hereby declare under the penalty of perjury under the laws of the State of Washington that I have served a true and correct copy of the foregoing, except where noted, upon the individual(s) listed by the following means:

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☒ E-Filed

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DATED: July 15, 2024

By:

A handwritten signature in black ink, appearing to read "John Peller", written over a light gray rectangular background.

Name: John Peller

Title: Legal Secretary

**TODD BOWERS & ASSOCIATES**

**July 15, 2024 - 2:40 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 103,137-8  
**Appellate Court Case Title:** Ann Chaudhry, et al. v Tyson D. Day, et al.  
**Superior Court Case Number:** 20-2-00851-3

**The following documents have been uploaded:**

- 1031378\_Answer\_Reply\_20240715144013SC000586\_5860.pdf  
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**Comments:**

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