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SUPREME COURT NO. 1031912
APPELLATE COURT NO. 85225-6

SUPREME COURT
OF THE STATE OF WASHINGTON

ESA MANAGEMENT, LLC,

Petitioner,

v.

ALLEN WATKINS and JANIS CLARK,

Respondents.

REPLY IN SUPPORT OF PETITION FOR REVIEW

Daniel A. Brown, WSBA #22028
Joseph A. Toups, WSBA #57024
WILLIAMS, KASTNER & GIBBS PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
Ph: (206) 628-6600
Fax: (206) 628-6611

*Attorneys for Petitioner ESA Management,
LLC*

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I. ARGUMENT

Petitioner supplies this limited reply in accordance with RAP 13.4(d) to address two new issues raised in Respondent's Answer, namely that (1) the record does not reflect the status of the premises and (2) this petition should be denied as it requests an advisory opinion resting on issues not argued at the trial court.

The purpose of a petition to the Supreme Court is to identify the reasons that warrant the Court's review of the case; not necessarily to make substantive argument. RAP 13.4(b) governs the Court's acceptance of review and enumerates four reasons in which the petition for review will be accepted. The Petition identifies two of the four enumerated reasons: (1) a significant question of law under the Constitution of the State of Washington *and* a significant question of law under the Constitution of the United States; and (2) the petition involves an issue of substantial public interest.

As Respondents agree, "[t]he Court of Appeals did not squarely interpret the application of RCW 59.12.060 to any guest

ESA allowed to occupy the unit *after* the complaint in the case filed, nor did the court address whether or how CR 19 applies notwithstanding RCW 59.12.060.” *Answer to Petition* at 7.

As Petitioner’s agent stated after the complaint was filed: “Additionally, there are now new guests in Room #110 (and have been for weeks.)” CP 38. Thus, the current possessor’s due process rights have always been pertinent and ripe during the pendency of this appeal. There was no contrary evidence in the record that these “new guests” are no longer in possession.

Therein lies the question ripe for review: Must any actual possessor of the real property at issue be joined as either a necessary or indispensable party under the due process provisions of the Constitution of the State of Washington and of the United States and as echoed in Court Rule 19 notwithstanding RCW 59.12.060?

Importantly, Respondents do not actually contest that the Petition raises significant questions of law under the Constitution of the State of Washington and the Constitution of the United

States and involves an issue of substantial public interest. Respondents offer *no argument* that these due process issues do not constitute an issue of substantial public interest.

Rather, Respondents argue that “[t]he application of RCW 59.12.060, the interplay of RCW 59.12.060 and CR 19, if any, and any related due process issues have never been briefed by either party.” *Answer to Petition for Review* at 10. But such briefing is not yet required. RAP 2.5(a) and this Court’s jurisprudence hold that a ‘manifest error affecting a constitutional right’ may be raised for the first time in an appellate court.” *State v. Sauve*, 100 Wn.2d 84, 86–87, 666 P.2d 894, 896 (1983). If review is accepted by this Court, the issue will be fully briefed by all parties.

As demonstrated above, actual possessors’ due process rights under the Constitutions of the State of Washington and the United States and under CR 19 are still at issue and were identified in the record. That the Court of Appeals failed to

resolve these issues related to CR 19 and constitutional rights is manifest error.

II. CONCLUSION

Again, Respondents do not contest that significant constitutional questions exist here nor that they constitute a substantial public interest. In fact, Respondents appear to concede in their Answer that the constitutional questions as considerations in Court Rule 19 do exist; that because RCW 59.12.060 applies, the current possessors are not entitled to any due process before they are deprived of a significant property interest. They simply misremember the record, which evinces actual possessors at the time of the show cause hearing from which Respondents originally sought review. *See* CP 38. Their argument that these issues are not ripe because they were not litigated below is unfounded; manifest error relating to constitutional rights warrants acceptance of the Petition.

RESPECTFULLY SUBMITTED this 6th day of August,
2024.

s/Joseph A. Toups¹

Daniel A. Brown, WSBA #22028

Joseph A. Toups, WSBA #57024

WILLIAMS, KASTNER & GIBBS
PLLC

601 Union Street, Suite 4100

Seattle, WA 98101-2380

Ph. (206) 628-6600

Fax: (206) 628-6611

Email: dbrown@williamskastner.com

jtoups@williamskastner.com

*Attorneys for Petitioner ESA
Management, LLC*

¹ I certify that the foregoing contains 647 words in compliance with RAP 18.17 as calculated by the word processing software used to prepare this document.

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ASSOCIATION		
1200 Fifth Avenue, Suite 700		
Seattle, WA 98101		
Ph: 425.270.7130		
Email: edmundw@kcba.org		
Email: yuant@kcba.org		
Email: christinaj@kcba.org		
Email: ashleeno@kcba.org		
<i>Attorneys for Appellants</i>		

Signed at Seattle, Washington this 6th day of August, 2024.

s/Janis Hager
Janis Hager, Legal Assistant

WILLIAMS KASTNER

August 06, 2024 - 11:29 AM

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Sender Name: Janis Hager - Email: jhager@williamskastner.com

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