Supreme Court No. 1031912
Appellate Court No. 85225-6

SUPREME COURT
OF THE STATE OF WASHINGTON

ALLEN WATKINS and JANIS CLARK,

Respondents,

v.

ESA MANGEMENT, LLC,

Petitioner.

ON APPEAL FROM KING COUNTY SUPERIOR COURT
Honorable Nancy Bradburn Johnson, Honorable Brian McDonald

ANSWER TO PETITION FOR REVIEW

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Table of Contents

Table of Authorities

Cases

Statutes

Court Rules

I. Introduction

In this forcible entry and detainer case, Respondents Allen Watkins and Janis Clark allege that while Mr. Watkins and Ms. Clark were temporarily away from home because of a family emergency, Petitioner ESA Management, LLC (ESA) illegally retook possession of the suite they had been renting at an Extended Stay America in Tukwila, removed all their possessions, and refused to let them back in. The Court of Appeals (Division One) reversed the trial court's order granting summary judgment in favor of ESA and remanded for further proceedings, holding that ESA's "entirely self-serving speculation and bald assertion" fell far short of showing as a matter of law that Mr. Watkins and Ms. Clark had abandoned their unit and were no longer in possession at the time of ESA's entry. *Watkins v. ESA Mgmt., LLC*, 547 P.3d 271, 276 (Wash. Ct. App. 2024).

At the trial level, ESA had argued at a hearing on Mr. Watkins and Ms. Clark's motion for a prejudgment writ of

restitution to be restored to their unit pending trial that the court could not grant such relief without joinder of the current occupant of the unit, as ESA had apparently rented Mr. Watkins and Ms. Clark's suite to a new hotel guest. ESA did not ask the trial court to order joinder or argue that joinder was not feasible and dismissal of the case was warranted on that basis, and the trial court did not make any rulings on those issues. But since ESA raised the issue on appeal, arguing there was a necessary and indispensable party, and because the issue could recur on remand, the Court of Appeals addressed it and held that under RCW 59.12.060, a statute that was not raised or briefed by ESA, "any tenant or subtenant in the actual occupation of the premises when [Mr. Watkins and Ms. Clark's] complaint was filed is a necessary party . . . and must be joined if they assert a right to possess the property." *Watkins*, 547 P.3d at 277-78. The Court of Appeals' opinion does not squarely address whether any occupant who entered the premises after the commencement of the case would be a necessary party.

ESA does *not* seek review of the Court of Appeals' holding that dismissal was erroneous or the Court of Appeals' interpretation of RCW 59.12.060. Instead, ESA asks this Court to review: (1) "Did the Court of Appeals err in not determining whether *any* current actual possessor of the subject real property—a hotel room—is a necessary, indispensable party under Court Rule 19?" and (2) "Is a current actual possessor of the subject real property a necessary and indispensable party under Court Rule 19 and due process of law?" Pet. for Rev. at 1. (emphasis added). The Court of Appeals did not err by declining to reach an issue that has not yet been ruled on by the trial court, that may not arise on remand, and that requires consideration of issues that have never been briefed by the parties. The criteria of RAP 13.4(b)(3) and (4) are not satisfied, and this Court should decline to accept review to render an advisory opinion on issues that are undecided by any lower court, ill-defined by ESA, insufficiently developed, and largely theoretical at this point and

that can and should be addressed in the trial court on remand as pertinent in this litigation.

II. Statement of the Case

Mr. Watkins and Ms. Clark filed this forcible entry and detainer suit against ESA under RCW 59.12.010 and RCW 59.12.020, seeking a writ of restitution and monetary damages after ESA illegally locked them out of the suite in which they had been residing for several years and refused to restore them to possession. CP 1-10. Shortly after filing suit, Mr. Watkins and Ms. Clark filed a motion for a prejudgment writ of restitution under RCW 59.12.090 to be restored to the property pending trial. CP 11-24. Instead of complying with the briefing schedule set by the court on that motion, ESA filed a motion to dismiss and noted it for hearing on the same day, arguing that Mr. Watkins and Ms. Clark had abandoned their unit and therefore were not in possession of the property as required to obtain relief under RCW 59.12.010 and .020. CP 30-36. ESA relied on a declaration of its General Manager (GM) asserting that Mr.

Watkins and Ms. Clark abandoned the premises following a fight. CP 37-38. The GM's declaration also indicated that "there are now new guests in" the room. *Id.* But ESA did not urge dismissal of the action based on the new occupants or request that the court order joinder of the new occupants, and the GM's declaration did not indicate whether the new guests were occupying the unit at the time Mr. Watkins and Ms. Clark filed their complaint or whether ESA rented out the room afterwards despite the pending suit. CP 30-38.

At the hearing on Mr. Watkins and Ms. Clark's motion for a prejudgment writ of restitution, the commissioner heard oral argument on ESA's motion to dismiss and considered the declaration of ESA's GM. Without permitting Mr. Watkins or Ms. Clark to testify or submit any other evidence, the commissioner granted ESA's motion to dismiss and therefore did not rule on the motion for a writ of restitution or any other issues. Mr. Watkins and Ms. Clark appealed, and the Court of Appeals reversed the order of dismissal and remanded for further

proceedings. *Watkins*, 547 P.3d at 273. The Court of Appeals held that the trial court erred by (1) failing to give Mr. Watkins and Ms. Clark a reasonable opportunity to present pertinent evidence and (2) granting ESA's motion even though ESA's declaration, "consisting entirely of self-serving speculation and bald assertion, [fell] well short of proving by uncontroverted facts that there is no genuine issue of material fact as to whether appellants abandoned the property" and the verified complaint set forth specific facts showing issues of material fact for trial. *Id.* at 273, 276.

ESA had argued in its appellate brief that the current occupant of Mr. Watkins and Ms. Clark's unit was a necessary and indispensable party under CR 19, and, concluding that the issue could recur on remand, the Court of Appeals exercised its discretion to reach the issue and hold that under RCW 59.12.060 (a statute governing necessary parties in forcible entry and detainer proceedings but not addressed in either party's briefing), "any tenant or subtenant in the actual occupation of the premises

when appellants' complaint was filed is a necessary party . . . and must be joined if they assert a right to possess the property." *Id.* at 277. The Court of Appeals remanded the matter "for further proceedings consistent with RCW 59.12.060 (if applicable)." *Id.* The 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 this case was filed, nor did the court address whether or how CR 19 applies notwithstanding RCW 59.12.060. ESA moved for reconsideration, asking the Court of Appeals to give additional guidance on remand and hold that any current guest is a necessary party under CR 19, but failing to meaningfully address the interplay of CR 19 and RCW 59.12.060. *See generally* Resp't's Mot. for Reconsideration. Switching positions from its Brief of Respondent, ESA argued in its motion for reconsideration that any current occupant was feasible to join (and was therefore not an indispensable party). *Id.* at 8-9. The court denied ESA's motion for reconsideration and ESA filed this petition for review. ESA does not seek this

Court's review of any of the Court of Appeals' holdings but instead argues that the Court of Appeals erred in not addressing whether any current occupant of the suite is a necessary and indispensable party under CR 19 and asks this Court to grant review to hold that any such occupant is a necessary and indispensable party under CR 19 and due process. *See* Pet. for Review at 1.

III. Argument Why Review Should Be Denied

A. The Court of Appeals did not err in declining to give additional guidance to the trial court about an issue that may or may not arise on remand and was not briefed by the parties.

ESA argues this Court's review is warranted because the Court of Appeals erred by not deciding whether any current guest is a necessary and indispensable party under CR 19 and "an open, litigated issue remains involving a significant question of law under the Constitution of the State of Washington or of the United States." Pet. for Review at 6. But the CR 19 issue and inextricable related issues have not been litigated at the trial level

or fully briefed at the appellate level, and Washington appellate courts generally do not decide issues on which the trial court has not ruled, especially where the issue might be theoretical and has not been adequately developed. *See Drummond v. Bonaventure of Lacey, LLC*, 20 Wn. App. 2d 455, 457-58, 500 P.3d 198 (2021) (declining to review matters on which the trial court did not rule and which may never be pertinent in the case); *Kitsap Cnty. v. Smith*, 143 Wn. App. 893, 909, 180 P.3d 834 (2008) (declining to address issues because the trial court did not reach these issues and the record related to these issues is not adequately developed).

As an initial matter, ESA's petition fails to clearly identify the issues or scope of issues of which it seeks review, and its substantive argument is lacking and internally inconsistent. ESA asks this Court to simultaneously find that any current occupant is an indispensable party *and* that joinder of any current occupant is feasible and so the trial court must order joinder of any current occupant on remand. Pet. for Review at 14-15. These positions

are inconsistent; an absent party is only indispensable within the meaning of CR 19 if the party is needed for a just adjudication, it is *not* feasible to join them, and the court determines that in equity and good conscience the action should be dismissed rather than proceed in their absence. *See Gildon v. Simon Prop. Grp., Inc.*, 158 Wn.2d 483, 494-95, 145 P.3d 1196 (2006). Moreover, ESA's argument in its petition is limited to CR 19 and does not address why CR 19 applies even though RCW 59.12.060 expressly governs necessary and indispensable parties in forcible entry and detainer actions. RCW 59.12.060 specifically provides that persons who enter the premises after the commencement of the action "shall be bound by the judgment the same as if they had been made parties to the action" and includes a special rule of nonjoinder that "*[n]o person other than* the tenant of the premises, and subtenant, if there be one, in the actual occupation of the premises *when the complaint is filed*, need be made parties defendant in any proceeding under this chapter, *nor shall any proceeding abate*, nor the plaintiff be nonsuited, for the

nonjoinder of any person who might have been made a party defendant." RCW 59.12.060 (emphasis added). The 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. ESA's arguments are inconsistent and incomplete, and it is not clear what ESA wants this Court to address or hold. Additionally, these issues may not ultimately be pertinent on remand as the record does not reflect the current status of the premises and when any current occupant came into possession of the unit.

The Court of Appeals simply did not err by not determining whether any current occupant is a necessary and/or indispensable party under CR 19 notwithstanding when they came into possession of the unit as this issue and necessarily related ones have not been raised at the trial level, decided by the trial court, or sufficiently developed factually or legally. That the Court of Appeals chose not to issue an advisory opinion on how the rules in RCW 59.12.060 and CR 19 might play out under

particular facts is not "'an issue of substantial public interest'" that warrants this Court's review. Pet. for Review at 15 (quoting RAP 13.4(b)(4)). The Court of Appeals' approach is entirely consistent with how Washington courts generally review decisions of the lower court and decline to review matters on which the trial court did not rule, especially where the issues may never be pertinent in the case and have not been adequately briefed or otherwise developed. *See* RAP 2.4(a); *Drummond*, 20 Wn. App. 2d at 457-58; *Smith*, 143 Wn. App. at 909.

B. This Court should not grant review to issue an advisory opinion on ill-defined issues that have not been sufficiently developed and can be raised in the lower court.

Issues related to any potentially necessary party on remand are best addressed by the trial court in the first instance. The issues are presently theoretical and academic, and this Court has long held that it will not render advisory opinions or pronouncements on speculative or abstract questions. *See Walker v. Munro*, 124 Wn.2d 402, 418, 879 P.2d 920 (1994).

This Court should especially decline to grant review to render an advisory opinion here where the issues are ill-defined, insufficiently briefed, and have not been developed factually or legally through the lower courts. *See Lakeside Indus., Inc. v. Washington State Dep't of Revenue*, 524 P.3d 639, 645 (Wash. 2023) ("Advisory opinions should be issued 'only on those rare occasions where the interest of the public in the resolution of an issue is overwhelming and where the issue has been adequately briefed and argued.'") (quoting *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 416, 27 P.3d 1149 (2001)); *Washington State Com. Passenger Fishing Vessel Ass'n v. Tollefson*, 87 Wn.2d 417, 419, 553 P.2d 113 (1976) (declining to issue an advisory opinion on a question that was not adequately briefed and vigorously argued). Ultimately, ESA's request for review is premature; any issues related to necessary parties that the Court of Appeals did not reach in its guidance can be raised and addressed by the trial court on remand if they in fact arise.

IV. Conclusion

For these reasons, this Court should deny ESA's Petition for Review.

This document contains 2,388 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 22nd day of July, 2024.

Respectfully submitted,

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