

FILED
SUPREME COURT
STATE OF WASHINGTON
9/19/2024 4:04 PM
BY ERIN L. LENNON
CLERK

Washington Supreme Court No. 1033265

Washington State Court of Appeals, Div. III No. 390772

**IN THE SUPREME COURT OF
THE STATE OF WASHINGTON**

ALLAN and GINA MARGITAN,

Petitioners,

v.

MARK and JENNIFER HANNA,

Respondents.

ANSWER TO PETITION FOR REVIEW

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TABLE OF CONTENTS

I. IDENTITY OF RESPONDENTS	1
II. COURT OF APPEALS' DECISION	1
III. STATEMENT OF THE CASE	1
IV. ARGUMENT	3
A. The Court of Appeals' Opinion is not in conflict with decisions of the Supreme Court.....	4
B. The Court of Appeals' Opinion is not in conflict with a published decision of the Court of Appeals.....	6
C. The Court of Appeals' Opinion does not involve a significant question of law under the Constitution of the State of Washington or of the United States.....	8
D. The Court of Appeals' Opinion does not involve an issue of substantial public interest.	9
VI. CONCLUSION	11
CERTIFICATE OF COMPLIANCE	12
DECLARATION OF SERVICE.....	13

TABLE OF AUTHORITIES

Cases

<i>Brinkerhoff v. Campbell</i> , 99 Wn. App. 692, P.2d 911 (2000) ...	6
<i>Chaffee v. Chaffee</i> , 19 Wn.2d 607, P.2d 244, (1943)	5
<i>Evans Son, Inc. v. City of Yakima</i> , 136 Wn. App. 471, 149 P.3d 691 (2006)	7
<i>Margitan v. Hanna</i> , No. 39077-2-III, 2024 WL 2768005 (Slip. Op. May 30, 2024)	1
<i>Panorama Vill. Condo. Owners Ass'n Bd. of Directors v. Allstate</i> , 144 Wn.2d 130, P.3d 910, (2001).....	5

Other Authorities

RAP 13.4(b).....	4
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I. IDENTITY OF RESPONDENTS

Defendants-Respondents Mark and Jennifer Hanna file this Answer to Margitan's Petition for Review.

II. COURT OF APPEALS' DECISION

Margitan seeks review of *Margitan v. Hanna*, No. 39077-2-III, 2024 WL 2768005 (Slip. Op. May 30, 2024), an unpublished opinion out of the Court of Appeals, Division III. After the Court of Appeals issued its opinion, Margitan filed a Motion for Reconsideration and requested that the Court of Appeals publish its opinion. On July 9, 2024, Court of Appeals denied Margitan's motion.

III. STATEMENT OF THE CASE

After years of contentious litigation, and on the eve of trial, the Hannas and the Margitans, who are neighbors, entered into a settlement agreement. The settlement agreement compensated the Margitans in exchange for the release and dismissal of their claims against the Hannas. The agreement

also included terms designed to help the parties avoid future disputes. The settlement agreement was thoughtful, detailed, and the result of hours of negotiations. The agreement was signed by the Hannas, Margitans, and their respective counsel. Following the execution of the settlement agreement, the parties appeared before the Spokane County Superior Court, Judge Maryann Moreno, and made a record of the settlement terms.

Later, Margitan sought to inject new terms into the agreement. He also refused to sign the release drafted by the Hannas' counsel. Counsel attempted to find workable compromises. When the Hannas would not give in to Margitan's unreasonable demands, Margitan attempted to rescind the agreement. The Hannas moved (on shortened time) to enforce the settlement agreement, which Judge Moreno granted.

Margitan appealed, arguing that the Superior Court erred in enforcing the settlement agreement. The Court of Appeals, Division III disagreed with Margitan and affirmed the Superior

Court's Order enforcing the settlement agreement. The Court of Appeals concluded that there was not a genuine dispute concerning the terms of the agreement despite Margitan's attempts to "concoct" a dispute. The Court of Appeals also rejected Margitan's argument that the Superior Court erred in hearing the Hannas' motion to enforce on shortened time, concluding that the Superior Court was "well within its discretion" in hearing the motion on an expedited basis.

For a more detailed recitation of the facts and analysis of Margitan's arguments on appeal, please see the Court of Appeals' May 30, 2024 Opinion (attached to Margitan's Petition for Review).

IV. ARGUMENT

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.

RAP 13.4(b) (formatting altered for clarity).

Margitan's Petition for Review fails to meet any criteria justifying review under RAP 13.4(b).

A. The Court of Appeals' Opinion is not in conflict with decisions of the Supreme Court.

Margitan first argues that the Court of Appeals' Opinion "conflicts with US and Washington State cases which prohibit trial courts from failing to hear a litigant's motion." Pet. at 10-12 (citations omitted). Margitan does not specify what motion the court "fail[ed] to hear," but presumably it was his motion for reconsideration regarding the Superior Court's Order enforcing the settlement agreement. *See* Slip Op. at 14. It is true

that, following Judge Maryann Moreno's retirement, a new Superior Court judge was assigned to the case, and the new judge declined to rule on Margitan's motion for reconsideration.

Margitan fails to establish a due process right to have a trial court consider a motion for reconsideration. Regardless, the issue was mooted by Margitan's appeal. Margitan appealed the order that he asked the Superior Court to reconsider thus obviating the need for a decision on reconsideration.

Margitan also argues that the Court of Appeals' Opinion "conflicts with . . . case law holding a trial court has no authority to alter [or rewrite] the terms of a negotiated settlement agreement." Pet. at 13 (citing *Chaffee v. Chaffee*, 19 Wn.2d 607, 625, 145 P.2d 244, 252 (1943) and *Panorama Vill. Condo. Owners Ass'n Bd. of Directors v. Allstate*, 144 Wn.2d 130, 137, 26 P.3d 910, 914 (2001)). Margitan mischaracterizes the Superior Court's Order enforcing the Hanna-Margitan settlement agreement. The Superior Court did not alter or

rewrite the parties' settlement agreement in this case; it merely ruled that the settlement agreement was enforceable.

Margitan fails to establish that Court of Appeals' Opinion conflicts with decisions of the Supreme Court.¹

B. The Court of Appeals' Opinion is not in conflict with a published decision of the Court of Appeals.

Margitan cites, in passing, to a few published Court of Appeals' decisions for the proposition that he had a "right to be heard." *See* Pet. at 11-12. This argument was addressed in Section A, *supra*. As described in the Court of Appeals' Opinion, Margitan had full opportunity to "be heard."

Margitan also argues that the Court of Appeals' Opinion conflicts with *Brinkerhoff v. Campbell*, 99 Wn. App. 692, 994 P.2d 911 (2000) on the grounds that *Brinkerhoff* requires the

¹Margitan also argues that the Court of Appeals' Opinion "conflicts with CR 3." Pet. at 17-18. An alleged conflict with a court rule is not grounds for review under RAP 13.4(b). In arguing that the Superior Court erred in exercising "authority over nonparties," Margitan fails to cite any case law or other legal authority to support his argument.

party seeking to enforce a settlement agreement to establish that there is no genuine dispute over the existence and material terms of the agreement. Pet. at 14-15. The Court of Appeals' Opinion cites *Brinkerhoff* for this same proposition, Slip. Op. at 15, and the Opinion goes on to apply the same rule. The Court of Appeals correctly concluded that the Hannas carried their burden to establish the existence and material terms of the settlement agreement (despite Margitan's attempt to "concoct a factual dispute," Slip Op. at 16).

Finally, Margitan argues that the Court of Appeals' Opinion conflicts with *Evans Son, Inc. v. City of Yakima*, 136 Wn. App. 471, 149 P.3d 691 (2006). Margitan cites *Evans Son, Inc.* for the proposition that CR 2A requires the agreement of the parties set out in "writings." Pet. at 16. Margitan appears to argue that Court of Appeals' Opinion conflicts with *Evans Son, Inc.* because the Superior Court allegedly added the words "acts" and "forever" into the parties' settlement agreement. Pet. at 16. Again, there is no conflict between the Court of Appeals'

Opinion and other decisions of the Court of Appeals. The Court of Appeals specifically addressed Margitan's argument, noting that the argument was "not entirely clear," "ridiculous," and based on a "strained interpretation" of the settlement agreement. Slip Op. at 16-17.

In sum, Margitan fails to establish that any part of the Court of Appeals' Opinion conflicts with other published decisions of the Court of Appeals.

C. The Court of Appeals' Opinion does not involve a significant question of law under the Constitution of the State of Washington or of the United States.

Margitan argues that the Court of Appeals' Opinion conflicts with the Fifth and Fourteenth Amendments of the United States Constitution. Pet. at 9. Specifically, Margitan alleges that was denied "procedural and substantive" due process. *Id.* As addressed above, this argument is vague, but seemingly relates to (1) the newly assigned Superior Court judge not hearing Margitan's motion for reconsideration, and/or

(2) Judge Moreno hearing the Hannas' motion to enforce settlement agreement on shortened time. The first contention was mooted by Margitan's appeal, and the second contention is baseless: hearing motions on shortened time is within the discretion of the Court. *See generally* Slip Op. at 23-26.

The Court of Appeals' Opinion does not involve a significant question of law under the Constitution of the State of Washington or of the United States.

D. The Court of Appeals' Opinion does not involve an issue of substantial public interest.

Margitan argues that there is "great substantial public interest to have this Court determine if a trial court can [o]rder a litigant to release a nonparty." Pet. at 18. Margitan made this argument to the Court of Appeals, which found the argument without merit. *See* Slip Op. at 18. The plain language of the agreement required the Margitans to release their claims against the Hannas' adult children (based on allegations Margitan asserted in his 2021 lawsuit) and Margitan's counsel stated in

open court that the Hannas' insurer PEMCO would be released.

Id.

There is no public interest implicated in this case. This is a dispute between two neighbors², and, despite espousing some benefit to Washington jurisprudence, Margitan really seeks to vindicate what he considers his personal rights. Margitan's argument is frivolous and does not involve an issue of substantial public importance.

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²As Margitan notes, the parties have engaged in "years of litigation." Pet. at 2. Margitan's litigation has resulted in several Court of Appeals' decisions, all of which deny him his requested relief. *Margitan v. Spokane Reg'l Health Dist.*, No. 32907-1-III, 2016 Wash. App. LEXIS 92, at *1 (Ct. App. Jan. 21, 2016); *Margitan v. Spokane Reg'l Health Dist.*, No. 34606-4-III, 2018 Wash. App. LEXIS 1711, at *1 (Ct. App. July 24, 2018); *Margitan v. Spokane Reg'l Health Dist.*, No. 34746-0-III, 2018 Wash. App. LEXIS 1712, at *1 (Ct. App. July 24, 2018), *rev. denied*, *Margitan v. Hanna*, 2019 Wash. LEXIS 92 (Wash., Feb. 6, 2019).

VI. CONCLUSION

For the foregoing reasons, the Hannas respectfully request that Margitan's Petition for Review be denied.

RESPECTFULLY SUBMITTED this 19th day of September, 2024.

PAINE HAMBLIN, P.S.

By: /s/ Paul S. Stewart
John C. Riseborough, WSBA #7740
Paul S. Stewart, WSBA # 45469
Attorneys for Respondents Hanna

CERTIFICATE OF COMPLIANCE

Pursuant to RAP 18.7(b), the undersigned certified that this Answer contains 1,627 words. *See* RAP 18.17(c)(10) (Petitions for Review and Answers must contain 10,000 words or less).

DATED this 19th day of September, 2024.

PAINE HAMBLÉN P.S.

By: /s/ Paul S. Stewart
John C. Riseborough, WSBA #7740
Paul S. Stewart, WSBA #45469
Attorneys for Respondents Mark and
Jennifer Hanna

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that a true and accurate copy of the document to which this declaration is affixed was sent via email and regular mail, postage prepaid, on this day, to:

Allan Margitan
PO Box 328
Nine Mile Falls, WA 99026
marginel@aol.com

Dated this 19th day of September, 2024, at Spokane,
Washington.

/s/ Paul S. Stewart _____
Paul S. Stewart

PAINE HAMBLÉN

September 19, 2024 - 4:04 PM

Transmittal Information

Filed with Court: Supreme Court
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Appellate Court Case Title: Mark Hanna, et al. v. Allan Margitan, et al.
Superior Court Case Number: 19-2-04124-7

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