FILED
SUPREME COURT
STATE OF WASHINGTON
10/28/2024
BY ERIN L. LENNON
CLERK

WASHINGTON STATE SUPREME COURT

GREGORY RYAN, husband, and NEREYDA RYAN, wife, individually, and on behalf of their marital community, Petitioners, v. CITY OF RENTON, a governmental entity; and DANIEL WIITANEN, Respondents.	Supreme Court # 1034164 Court of Appeals # 850156 PETITIONER RYANS' ANSWER TO CLERK'S MOTION TO STRIKE RYANS' REPLY

I. INTRODUCTION

Petitioners Ryan ask for the relief designated in Part 2.

II. STATEMENT OF RELIEF SOUGHT

Ryans ask the Court to accept and consider Petitioners' Reply to Respondent's Answer and deny the Clerk's Motion to Strike Petitioners' Reply to Respondent's Answer.

Because Renton's Answer introduced and sought review by this Court of five additional issues not raised in Ryans' Petition for Review nor decided by the Court of Appeals (Reply, 3-5), Ryans are entitled to reply to those issues under RAP 13.4(d) and by application of RAP 1.2(a).

LAW OFFICE OF JONATHAN R. RAPPAPORT
P.O. BOX 27783
SEATTLE, WASHINGTON 98165
TEL: (206) 634-0711 FAX: (206) 632-7595
EMAIL: JRR@LAWYERJON.COM

III. FACTS RELEVANT TO MOTION

Ryans filed their Reply pursuant to RAP 13.4(d). Ryans limited their Reply to addressing Renton's five new issues raised for review by this Court in Renton's Answer. Reply, 3-5; RAP 13.4(d).

As explained in Ryans' Reply, Part II. A. (Reply, 1-2), Ryans raised four issues for review in their Petition. *First*, whether to curtail discovery abuse by expanding the application of *Magaña v. Hyundai Motor America*, 167 Wn.2d 570, 220 P.3d 191 (2009), to CR 56(f) continuances. *Second*, whether to preserve and enforce Washington's 69-year summary judgment rule viewing all reasonable inferences most favorably to the nonmoving party and denying summary judgment if any genuine issue of material fact present. *Third*, whether to restrict *Ruff v. King County*, 125 Wn.2d 697, 887 P.2d 886 (1995), to cases fitting its narrow facts. *Fourth*, whether to bar "first-crash-free" municipal immunity (or "one free accident," barred in *Tanguma v. Yakima County*, 18 Wn. App. 555, 562, 569 P.2d

LAW OFFICE OF JONATHAN R. RAPPAPORT
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SEATTLE, WASHINGTON 98165
TEL: (206) 634-0711 FAX: (206) 632-7595
EMAIL: JRR@LAWYERJON.COM

1225 (1977)), if plaintiff cannot produce a prior crash report at the exact same road location, regardless of the municipality's actual or constructive notice, especially if defendant has refused to produce discovery as mandated by CR 30(b)(6), CR 33, and CR 34.

Renton's Answer raised five new issues for review by this Court not in Ryan's Petition or decided by the Court of Appeals. RAP 13.4(d). Renton's new issues were listed in Ryans' Reply, Part II. B. (Reply, 3-5). To demonstrate that Ryans limited their Reply to "addressing only the new issues raised in the answer" (RAP 13.4(d)), Ryans contrasted the issues for review raised in their Petition (Reply, 1-2) with the new issues for review raised in Renton's Answer. Reply, 3-5.

On October 16, 2024, the Acting Supreme Court Clerk sent a Clerk's Motion to Strike the Reply letter, stating, "[I]t does not appear that the answer seeks review of issues not raised in the petition for review. Therefore, the reply does not appear to be permitted under [RAP 13.4(d)]."

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P.O. BOX 27783
SEATTLE, WASHINGTON 98165
TEL: (206) 634-0711 FAX: (206) 632-7595
EMAIL: JRR@LAWYERJON.COM

Ryans timely file and serve this Answer to Clerk's Motion to Strike the Reply by October 28, 2024, showing why the Court should accept Ryans' Reply as complying with RAP 13.4(d) and RAP 1.2(a)'s liberal interpretation of the Rules of Appellate Procedure "to promote justice and facilitate the decision of cases on the merits." *Id.*

IV. GROUNDS FOR RELIEF AND ARGUMENT

A. Renton Raised Five New Issues For Review

Renton's Answer raised five new issues for review by this Court that were not raised in Ryans' Petition nor decided by the Court of Appeals. *Compare* Reply, 1-2 (Ryan's issues) *with* Reply, 3-5 (Renton's new issues) *with* decision of the Court of Appeals (Petition, Appendix A). Renton's five new issues were more than mere argument responding to the four issues in Ryans' Petition. Rather, Renton also raised new issues—presenting new factual and legal issues, five new bases for denying review—for this Court to review and consider for the first time. Reply, 3-5.

LAW OFFICE OF JONATHAN R. RAPPAPORT
P.O. BOX 27783
SEATTLE, WASHINGTON 98165
TEL: (206) 634-0711 FAX: (206) 632-7595
EMAIL: JRR@LAWYERJON.COM

B. RAP 13.4(d) Authorizes Ryans' Reply

RAP 13.4(d) acknowledges that a respondent may "seek review of any issue that is not raised in the petition for review, including any issues that were raised but not decided in the Court of Appeals . . . ." *Id.* Respondents' answers raise issues for review by this Court in many ways, whether conditionally (*Gerlach v. Cove Apartments, LLC*, 196 Wn.2d 111, 119 n.4, 471 P.3d 181 (2020)); contingently (*Coogan v. Genuine Parts Company*, 195 Wn.2d 1024, 466 P.3d 776 (2020); directly (*Does v. Sueoka*, 2 Wn.3d 1001, 537 P.3d 1031 (2023)); or obliquely, as Renton did here in its Answer.

Historically, when a respondent raises new issues in its answer, as Renton did here, this Court has allowed petitioners to file a reply. *See, e.g.*, *Seattle Tunnel Partners v. Great Lakes Reinsurance (UK) PLC*, 198 Wn.2d 1032, 501 P.3d 133 (2022) (accepting petitioners' reply but striking respondents' issues contingently raised in respondent Great Lakes Reinsurance's answer).

LAW OFFICE OF JONATHAN R. RAPPAPORT
P.O. BOX 27783
SEATTLE, WASHINGTON 98165
TEL: (206) 634-0711 FAX: (206) 632-7595
EMAIL: JRR@LAWYERJON.COM

C. Ryans Limited Their Reply to Renton's New Issues

Therefore, because Ryans limited their Reply "to addressing only the new issues raised in [Renton's] answer," this Court should deny the Clerk's Motion to Strike Petitioners' Reply to Respondent's Answer and accept and consider Ryans' Reply per RAP 13.4(d).

D. RAP 1.2(a) Also Authorizes Ryans' Reply

Fundamental fairness and RAP 1.2(a) also dictate that this Court deny the Clerk's Motion to Strike and accept and consider Ryans' Reply. "These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits." RAP 1.2(a).

Renton was given the opportunity to answer and be heard regarding Ryans' issues raised for review. RAP 13.4(d). By the same token, Ryans should be given the opportunity to reply and be heard regarding the five new issues Renton raised for review by this Court. Otherwise, the Court will not have heard from Ryans regarding Renton's five new issues.

LAW OFFICE OF JONATHAN R. RAPPAPORT
P.O. BOX 27783
SEATTLE, WASHINGTON 98165
TEL: (206) 634-0711 FAX: (206) 632-7595
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The opportunity for Ryans to be heard is a matter of fairness. Renton should not be able to advance new issues for review by this Court without permitting Ryans to respond. A reply enables this Court to be fully informed in its overall review decision, in keeping with RAP 13.4(d) *and* RAP 1.2(a).

V. CONCLUSION

This Court should hear from Ryans on the five new issues Renton raised in its Answer to Ryans' Petition. It would be unfair to deprive this Court of the full discussion of such issues. This Court should not strike Ryans' Reply.

This document contains 998 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED at Seattle, Washington, on October 28, 2024.

By _____

s/ Jonathan R. Rappaport, WSBA # 20028
Law Office of Jonathan R. Rappaport
P.O. Box 27783, Seattle, WA 98165
Tel: (206) 634-0711 Fax: (206) 632-7595
Email: JRR@LawyerJon.com
Attorney for Petitioners

DECLARATION OF JONATHAN R. RAPPAPORT

I, Jonathan R. Rappaport, declare under penalty of perjury under the law of the State of Washington the following:

1. I am the attorney for petitioners Ryan. I am over the age of 18. I have personal knowledge of all the facts contained in this declaration. I am competent to testify as a witness to these facts.

2. The facts contained in this document and declaration are true and correct, to the best of my knowledge.

4. Today, this document is being eFiled with the Supreme Court of Washington via the eFiling Web Portal and contemporaneously eServed today via the same eFiling Web Portal upon CITY OF RENTON's attorney Gregory Jackson and DANIEL WIITANEN's attorney Paul Crowley.

I declare under penalty of perjury under the law of the State of Washington that the foregoing is true and correct.

DATED at Seattle, Washington, on October 28, 2024.

By _____

s/ Jonathan R. Rappaport, WSBA # 20028
Law Office of Jonathan R. Rappaport
P.O. Box 27783, Seattle, WA 98165
Tel: (206) 634-0711 Fax: (206) 632-7595

Email: JRR@LawyerJon.com
Attorney for Petitioners

LAW OFFICE OF JONATHAN R RAPPAPORT

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Sender Name: Jonathan Rappaport - Email: JRR@LawyerJon.com
Address:
PO BOX 27783
SEATTLE, WA, 98165-2783
Phone: 206-634-0711

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