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Washington State
Supreme Court

IN THE SUPREME COURT

OF THE STATE OF WASHINGTON

Supreme Court No. 1035080

Court of Appeals Division I Case No. 86630-3-I

ANNA G. BELL,

Petitioner,

v.

CANDACE K. SCHUPP,

Respondent.

PETITIONER'S ANSWER IN OBJECTION TO MOTION TO STRIKE

Date: November 8th 2024

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I. ARGUMENT

Petitioner Bell ("Bell") respectfully objects to the clerk's motion to strike Petitioner's Reply to Respondent's Answer to Petition. Bell respectfully disagrees that Respondent's Answer does not seek review of issues not raised in the petition for review. Respondent Schupp's ("Schupp") Answer raised new legal issues which were not raised priorly by Bell such as: challenging the office and the purpose of the summary judgement (*Answer at 8*) and the established evidence from the rule CR 56 (*Answer at 8*) and raising the issues of the law of the case doctrine and the exceptions to it where the error was plain or obvious and prejudiced a substantial right of a litigant (*Answer at 5*). Bell has not raised any of these issues or challenged any of the laws or offices in her Petition.

Moreover, Schupp's answer wasted time by **needlessly** challenging uncontroverted offices such as summary judgment with a statement that "[s]ummary judgement hearing was not a trial [..], it is no substitute for actual testimony at trial." and submitting such an argument as a merit. Emphasis added. Schupp also knowingly excluded from her answer the parts of Price's testimony which affirmed Bell's case – a key piece of direct evidence which should be considered as a merit.

Misleading the review away from the laws and established facts wastes time and, therefore, is a new issue in itself pursuant ER 403. It undermines the rules of the Supreme Court's pleading, practice and procedure based **on the merits**, RCW 2.04.190, emphasis added:

> The supreme court shall have the power to prescribe [..] the kind and character of the entire pleading, practice and procedure to be used in all

> suits, actions, appeals [..]. In prescribing such rules the supreme court shall have regard to the simplification of the system of pleading, practice and procedure in said courts to promote the speedy determination of litigation on the merits.

Bell addressed these new issues raised by Schupp in in the enumerated 'Respondent's New Issue(s)' in the Reply.

Specifically, Schupp argued that (i) "[s]ummary judgement hearing was not a trial [..], it is no substitute for actual testimony at trial." and (ii) a lack of Schupp's, Price's and others' controversy in their declarations on summary judgement against Hayes' testimony on summary judgement was not an established evidence, even though CR 56(d) states that it was, *Answer at 8 and Respondent's New Issue 2 in Reply at 16.* Schupp's new issues conflict with the published decisions of the Court of Appeals, *Almy v. Kvamme* 63 Wn.2d 326 (1963):

> The office of a summary judgment proceeding is to avoid a useless trial.

and *W.G. Platts, Inc. v. Platts*, 73 Wn. 2d 434 (Wash. 1968) page 1:

> [3] Judgment — Summary Judgment — Averment of Specific Facts — Necessity. The purpose of CR 56 is to avoid a useless trial when there is no genuine issue of fact presented by the pleadings and other documents on file. A party opposing a motion for summary judgment which is supported by evidentiary matter may not rest on mere allegations in the pleadings, but must set forth specific facts showing there is a genuine issue for trial.

Schupp never set forth any facts showing there was a genuine issue for trial regarding Hayes' summary judgement testimony where he specifically described how, when, where, with what materials and why he built his fence in 1991 separating a portion of his property from the rest of his property so Bourcier, Temme, Baskin and Bell can use it as a driveway and shoulder.

Since Schupp, Price, Huss and F. Hayes never controverted Hayes' testimony on summary judgement, Schupp could not cite clerk's papers containing such a non-existent controversy. However, in her Answer Schupp misled the Supreme Court by stating that Bell failed to cite what was non-existent, *Answer at 8*:

> Bell fails to cite clerk's papers containing evidence allegedly proffered at the summary judgement hearing; and she fails to address declarations of Frederick Price, Rhonda Huss and Frederick Hayes filed in support of defendant Schupp's motion for reconsideration.

The latter was also false and misleading, because Bell addressed the testimonies of Frederick Price, Rhonda Huss and Frederick Hayes, *Petition for review at 25-27 with the summary judgement's declaration of Norman Hayes attached to the Petition*). Also, Bell did not fault Schupp for not filing the

declarations of Price and others on summary judgement as alleged by Schupp (*Answer at 16*), because Price did file his declaration, but he never argued Hayes' testimony on summary judgement.

This new issue raised by Schupp was essential because if left un-replied and accepted that the (i) "[s]ummary judgement hearing was not a trial [..], it is no substitute for actual testimony at trial." and that (ii) the CR 56(d) did not apply in *Bell v. Schupp*, then the established evidence from the summary judgment would become nil and require relitigation of settled issues, RAP 13.4 (d).

The next new issues raised by Schupp were the plain error rule and the law of the case doctrine which Bell did not raise in her Petition, *Answer at 5*:

> The Rules of Appellate Procedure permit reconsideration by the Court of Appeals in limited situations [..] RAP 2.5(c)(2). This Court has noted that the foregoing rule "codified at least two historically recognized exceptions to the law of the case doctrine:"
>
> > First, the appellate court may reconsider a prior decision in the same case where that decision is "clearly erroneous,... the erroneous decision would work a manifest injustice to one party," and no corresponding injustice would result to the other party if the erroneous holding were set aside. . . .

Schupp argued that since:

> [t]he Court of Appeals provided ample support for reversal of the trial court's entry of judgement as a matter of law [..] its decision was not clearly erroneous[s]
>
> *Answer at 6.*

Such an argument was new and would also apply to the trial court's decision because it also provided ample support for its

decision in the *Findings of Fact and Conclusions of Law*. Since those were new issues raised by Schupp, Bell addressed them in the Reply in the 'Respondent's New Issue' 1, 3 and 4.

Bell's 'Respondent's New Issue 1' addressed that a plain and obvious error was made by the Court of Appeals because Schupp's key witness Price has already confirmed that Bell's predecessor Bourcier was allowed to use Bell's driveway and shoulder since 1991 and Hayes and Temme testified that it was not a revocable license. Bell also addressed that Schupp's Answer concealed that essential part of Price's testimony from the Supreme Court, thus misleading the Court and causing waste of time, ER 403 and CR 11, which were new issues in themselves.

When it comes to the suppression or exclusion of evidence in civil cases in Washington State, the Court of

Appeals considers several factors, including **direct evidence**: whether the missing evidence would directly support a claim or defense. Emphasis added. Excluding the evidence that Price had testified that Bourcier was allowed to use Bell's driveway and shoulder since 1991 was a new issue of missing evidence which would directly support Bell's claim of adverse possession.

Bell's 'Respondent's New Issue 3' addressed that a plain and obvious error was made by the Court of Appeals because Schupp's key witness Price testified that his testimony was hearsay. The patently hearsay testimony by Price was overlooked.

Bell's 'Respondent's New Issue 4' addressed that a plain and obvious error was made by the Court of Appeals because it has already affirmed the adverse possession elements claimed

by Bell by affirming the four identical prescriptive easement elements and separately affirming the fifth element 'exclusive' by stating that "[u]ndisputed evidence shows that the driveway has followed the same or a virtually identical route for several decade[s].", *Opinion at 7*. Altogether, 'Respondent's New Issue 1, 3 and 4' addressed the new issues raised by Schupp in her Answer regarding a plain and obvious error and the law of the case doctrine.

Bell's 'Respondent's New Issue 5' addressed that Bell made an honest mistake in citing the law, but it did not mislead the Supreme Court in any way regarding Bell being a full provider and a 24/7 caregiver to her elderly disabled parent.

Bell's 'Respondent's New Issue 6' addressed that Schupp's Answer made false statements about the Petition's exhibits, which was a new issue in itself pursuant ER 403 and

CR 11. Schupp falsely claimed that Bell's pictorial images from the trial were either new or additional evidence in the Petition and should be stricken.

Schupp made many other patently false statements in her Answer which were aimed at misleading the Supreme Court and wasting time and, therefore, were new issues in themselves. Schupp knew or should have known that: (i) Price has confirmed that Bourcier was allowed to use Bell's driveway since 1991 and it was not a revocable license, (ii) Price and others filed declarations on summary judgements where they never controverted Hayes's testimony on summary judgement, (iii) Bell could not cite clerk's papers on that because there were no controversies by Schupp or others against Hayes on summary judgement, (iv) Schupp and others were afforded a full opportunity to controvert Hayes on summary judgement,

(v) established evidence from summary judgement was allowed in trial pursuant CR 56 (d), (vi) Price's statements were hearsay by his own admission, (vii) Bell was represented by Mr. Ryan Kurtz, the attorney at law, for over two years and until after the Opinion was filed, (viii) RAP 18.1 applied to Bell, (ix) Schupp's appeal of Bell's prescriptive easement was frivolous because the location and use of Bell's driveway by Bell and predecessors since 1974 was undisputed, (x) RCW 4.84.185 applied on frivolous claims on appeal including contesting the prescriptive easement and (xi) the rules do not prohibit pictorial images in the text or appendix of a Petition, RAP 10.3, 10.4, 13.4 and 18.17.

These false statements by Schupp did not help the Supreme Court "to promote the speedy determination of litigation on the merits", RCW 2.04.190, but misled the Court

away from the merits and direct evidence. The U.S. Supreme Court made clear that deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with "rudimentary demands of justice." *Mooney v. Holohan*, 294 U.S. 103, 112 (1935).

Bell respectfully asks this Court to allow Bell's Reply, RAP 13. 4 (d).

II. CONCLUSION

Schupp's Answer has raised several new issues which included: challenging the office of the summary judgment and the rule CR 56, suppressing direct evidence from Price's testimony, raising the new issue of plain and obvious error and making false and misleading statements which all were new issues in themselves pursuant RAP 13.4 (d), ER 403 and CR 11. Bell has not raised any of these issues in her Reply and, therefore, they were new. Schupp's Answer conflicted with the published decisions of the Court of Appeals and raised a significant question of law under the Constitution of the State of Washington such as in CR 56, pursuant RAP 13.4 (d).

This is a case in which the solid and ample evidence from five unrelated successive owners since 1989 (Bourcier-Temme, Baskin, Hayes, Bell and Price) supporting the continuous,

notorious, hostile and exclusive use and maintenance of Bell's driveway and shoulder by Bell and her predecessors for ten years is being needlessly challenged by Schupp's false, hearsay, unduly delayed and meant to waste time statements, RCW 4.84.185, ER 403 and CR 11. The facts, evidence and quotes presented by Bell in the Petitition, Reply and Answer in Objection support it and support the trial's court decision as a matter of law.

NUMBER OF WORDS: 1,970

Dated: November 8th, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIENCE

I declare that I have examined this petition and to the best of my knowledge and belief it is true and correct. This petition contains words 1,970, excluding the parts of the document exempted from the word count by RAP 18.17.

Dated this 8th day of November 2024, and signed at La Center, Washington.

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the date indicated below, I served true and correct copies of the foregoing *Petitioner's Answer in Objection to Motion to Strike* by certified mail and by electronic service to the following person(s) at the following mail and e-mail address(es):

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Dated this 8th day of November 2024, and signed at La Center, Washington.

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Anna Bell <abarsukova@gmail.com> Fri, Nov 8, 2024 at 4:28 PM
To: "OFFICE RECEPTIONIST, CLERK" <supreme@courts.wa.gov>, mark@eriksonlaw.com, kris@eriksonlaw.com
Bcc: Anna Bell <abarsukova@gmail.com>

Good afternoon,

Please find a new filing: a pdf file of the Petitioner's Answer in Objection to Motion to Strike Petitioner's Reply attached in the

Supreme Court No. 1035080
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and filed by November 8th 2024 via the email as recommended by the Supreme Court's voice mail due to the e-filing system being unavailable at this time.

Respectfully,

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Thank you.

Anna Bell

11/13/2024

Gmail

Anna Bell <abarsukova@gmail.com>

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