SUPREME COURT CASE NO. 1041390
Court of Appeals Case No. 40438-2 III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

KIRSTEN L. LARSEN and MARIA DE LOS ANGELES HALLMAN

Appellants

vs.

CHELAN COUNTY

Respondent

CHELAN COUNTY'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

The appellants, Kirsten Larsen and Maria De Los Angeles Hallman, do not identify any decision of this Court or the Court of Appeals that conflicts with the unpublished decision below. In fact, the appellants do not address the standards for a petition for discretionary review at all.

Rather, while not specifically articulated, the appellants appear to claim that the Court of Appeals erred in applying well-settled law to the specific facts of this case. The petition for review offers the usual citations to Washington's law for waiver. The appellants do not attempt to respond to the decision of the Court of Appeals below and, instead, essentially only repeat the same claims already rejected by the Court of Appeals. Mere repetition of the appellants' arguments—or repetition with slight variations of earlier themes—is not a persuasive way to show that any of the criteria of RAP 13.4, which the appellants do not address, have been met.

Indeed, the appellants appear to outright agree that the key case on point is *Lybbert v. Grant Cnty.*, 141 Wn.2d 29, 1 P.3d 1124 (2000), just as the Court of Appeals found in its opinion. Op. at 6. Far from demonstrating a conflict in decisions pursuant to RAP 13.4(b)(1) or (2), the appellants demonstrate harmony between the Court of Appeals' decision and existing law.

The appellants make no attempt to claim that the Court of Appeals' decision raises a significant question of constitutional law. RAP 13.4(b)(3). While providing no citation to RAP 13.4(b)(4), the appellants' argument related to the liberal construction standard of the Washington Law Against Discrimination ("WLAD") suggests an attempt to claim the Court of Appeals' decision involves an issue of substantial public interest. *See* RAP 13.4(b)(4).

This argument is unavailing. While the appellants' lawsuit involved claims under the WLAD, neither the trial court nor the Court of Appeals decision implicated the WLAD.

To the contrary, the Court of Appeals affirmed the trial court's summary judgment dismissal for failure to serve the complaint prior to the expiration of the statute of limitations on specific factual grounds. The practical effect of the unpublished decision is that this decision is of little interest to anyone other than the parties. The petition should be denied.

II. IDENTITY OF RESPONDENT

The respondent is Chelan County (the "County"), also respondent in the proceedings below.

III. COUNTERSTATEMENT OF THE CASE

The County incorporates by reference the statement of facts in the decision. Op. at 2-4.

The case below concerned a discrete issue: whether "the trial court erred in granting summary judgment in favor of the County because the County waived its defense of insufficient service of process when it engaged in certain pretrial conduct." *Id*. at 4.

As was noted before both the trial court and the Court of Appeals, the facts of this case are relatively undisputed. Ms. Larsen's employment with the County ended with her removal from the County payroll on May 4, 2020, as a result of a restructuring of the County's Community Development Department. Op. at 2. Ms. Hallman's employment with the County ended on December 31, 2020, as a result of reorganization of the Chelan County Sheriff's Office. *Id.*

On April 12, 2023, Ms. Larsen filed her lawsuit against the County, contesting her termination as wrongful and in violation of the WLAD. *Id.* The complaint was served upon the deputy clerk to the Chelan County Board of County Commissioners ("BOCC."). *Id.* at 2-3. On May 11, 2023, the appellants filed their amended complaint, adding Ms. Hallman, who was also contesting her termination as wrongful and in violation of the WLAD. *Id.* at 3. Once again, this amended complaint was served upon the deputy clerk to the BOCC. *Id.* The appellants never served their lawsuit on the County auditor,

as required by RCW 4.28.080(1) prior to expiration of the statute of limitations. *Id*. at 9.

The County filed its motion for summary judgment on April 8, 2024. *Id*. at 4. The trial court granted the County's motion. *Id*. The Court of Appeals identified that "[b]ecause the statute of limitations had expired on April 3, 2024, before the County was properly served, the Plaintiffs would have to show the County waived its improper service of process defense to overcome summary judgment dismissal of their claims." *Id*. The Court of Appeals affirmed the trial courts determination that the County did not waive its defense of insufficient service of process. *Id*. at 8.

IV. REVIEW SHOULD BE DENIED

A petition for review before the Supreme Court will be granted *only* if one of the four standards set forth in RAP 13.4(b) is met. *See* RAP 13.4(b). Additionally, RAP 13.4(c)(7) states that a petition for review should contain "[a] direct and concise statement of the reason why review should be accepted

under one or more of the tests established in section (b), with argument." The appellants do not provide any argument as to the applicability of, let alone cite a single time, any standard of RAP 13.4(b).

As such, the County, and more importantly this Court, is left to guess as to the grounds for the petition. Based on the petition, which is essentially a "copy and paste" version of the appellants' Court of Appeals briefing, the County can only assume the basis for the appellants' petition is mere disagreement with the Court of Appeals decision below. Mere disagreement is not a basis for review under RAP 13.4(b). The appellants' failure to articulate argument as to how the standards of RAP 13.4(b) apply should result in denial of their petition.

A. The decision of the Court of Appeals is consistent with, and involves a straightforward application of, this Court's precedent regarding the law of waiver.

The Court of Appeals found that the County did not waive its defense of insufficient service of process. In doing so,

the Court of Appeals relied upon, and analyzed, the case of *Lybbert v. Grant Cnty.*, 141 Wn. 2d 29, 1 P.3d 1124 (2000). Op. at 6-8.

The problem with the appellants' arguments, outside of their failure to address the Court of Appeals' decision, is that they are only a renewal of their losing legal arguments made previously. The appellants provide this Court no reason to believe that the Court of Appeals' decision applied the law of waiver in a way contrary to any Washington precedent. There is nothing for this Court to consider pursuant to RAP 13.4(b)(1) or (2) because the appellants do not—or cannot—identify any conflicting precedent.

Instead, the appellants point this Court to various cases that discuss the law of waiver and then claim that the County waived its affirmative defense of insufficient service of process. Pet. at 4-5, 13-20. The Court of Appeals' decision does not conflict with any of the cases cited by the appellants, and the appellants do not argue such. Rather, the appellants continue

their losing argument that the County's limited behavior after the complaint was filed but before the County filed its motion for summary judgment constituted waiver—including the County "engaging in discovery". Pet. at 8-12.

When cases discuss "engaging in discovery" in the context of waiver, the inquiry is whether the party asserting the defense *has affirmatively pursued* discovery from the other party, not vice versa. *See e.g., Romjue v. Fairchild*, 60 Wn. App. 278, 280-81, 803 P.3d 57 (1991) (defendant who waived defense had propounded discovery on plaintiff and did not correct plaintiff's counsel who stated "it is my understanding that the defendants were served in the above matter"); *Lybbert*, 141 Wn.2d at 33-34 (waiver found where, among other things, county served discovery upon plaintiff prior to answering complaint); *King v. Snohomish Cnty.*, 146 Wn.2d 420, 425-26, 47 P.3d 563 (2002) (county waived defense of failure to file pre-claim notice by engaging in 45 months of discovery and litigation).

The Court of Appeals' decision is consistent with the above precedent. The County served no discovery in this case and, instead, simply responded to the appellants' discovery, which it is required to do under the court rules. The County acknowledges that it requested extensions of time to answer the appellants' first set of discovery. However, as the Court of Appeals noted, "the Plaintiffs' first set of interrogatories did not inquire about the County's reliance on the insufficient service of process defense. It was not until the Plaintiffs' second set of interrogatories, served after the statute of limitations had expired, that they inquired into the County's affirmative defenses." Op. at 7-8.

While not linked to a standard of review, the appellants make passing reference to the idea that the County's pre-suit notice of the complaint constitutes effective service in this case. Pet. at 2-3. The Court of Appeals correctly applied *Meadowdale Neighborhood Comm. v. City of Edmonds*, 27 Wn. App. 261, 616 P.2d 1257 (1980) and found that "actual notice,

standing alone, is insufficient to bring [a municipality] within the court's jurisdiction." Op. at 9 (quoting *Meadowdale Neighborhood Comm.*, 27 Wn. App. at 268)).

The Court of Appeals' decision is consistent with this Court's decisions regarding the law of waiver.

B. The appellants' petition does not raise an issue of constitutional significance or substantial public interest.

The appellants focus their argument on the purported existence of conflict in precedent. In reality, the petition shows only that the appellants disagree with the outcome in this case and seek to relitigate the merits of their claims before this Court.

The petition does not develop any argument claiming unconstitutionality. To the extent the petition's reference to the WLAD is a claim that the decision below raises an issue of substantial interest, the Court should not be persuaded by such an argument.

To be clear, the County has the utmost respect for the WLAD and the policies therein. However, at this juncture, the case and decision below did not and does not implicate the WLAD's liberal construction. Therefore, any argument by the appellants that they should be excused from their failure to comply with RCW 4.28.080 should be rejected. There was no dispute before the trial court or Court of Appeals that the appellants did not serve the County in accord with RCW 4.28.080 prior to the expiration of the statute of limitations on their claims. The *sole* issue before the trial court and Court of Appeals was whether the County had waived its defense of insufficient service of process. No arguments and/or rulings were made as to the appellants' claims under the WLAD.

The requirement to serve the County auditor pursuant to RCW 4.28.080 applies to *all* plaintiffs, regardless of the basis of their underlying claims. To excuse the appellants from this requirement simply because their lawsuit makes claims under the WLAD would render the service statute irrelevant. It would

also run contrary to long established case law that service upon a municipality requires strict compliance with RCW 4.28.080. *See Meadowdale Neighborhood Comm.*, 27 Wn. App. at 264; *see also* Op. at 9-10.

No grounds for review under RAP 13.4(b)(3) or (4) are provided by the appellants and none exist.

V. CONCLUSION

Because the appellants' petition meets none of this Court's criteria for granting review, the County respectfully requests that it be denied.

I certify that this document contains 1860 words, excluding the parts of the documents exempted from the word count by RAP 18.17.

Respectfully submitted this 2nd day of June, 2025.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on the date set forth below, I electronically filed the foregoing *Chelan County's Answer to Petition for Review* with the Supreme Court of the State of Washington, which will send notification of said filing to the attorneys of record as follows:

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DATED this 3rd day of June, 2025.

Janet L Rose
JANET L. ROSE

MENKE JACKSON BEYER, LLP

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