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SUPREME COURT
STATE OF WASHINGTON
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SUPREME COURT
OF THE STATE OF WASHINGTON

No. 89348-9

KERRY A. CLARK, et al.,

Appellants,

v.

MIKE WALCH, et al.,

Respondents.

THE FOLKMANS' ANSWER TO WALCHES' PETITION FOR REVIEW
BY THE SUPREME COURT OF WASHINGTON

William H. Williamson, WSBA 4304
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 ORIGINAL

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I. IDENTITY OF THE ANSWERING PARTY

The answering party/respondents are Robert C. Folkman and Patricia W. Folkman, husband and wife (“Folkmans”). Folkmans submit this Answer to the Petition for Review filed with this Court on September 26, 2013 by Petitioner Mike Walch (“Walches”). Their Answer is made pursuant to RAP 13.4(d).

II. RESTATEMENT OF ISSUES PRESENTED FOR REVIEW

Walches’ Petition for Discretionary Review seeks review of the Unpublished Decision filed on July 23, 2013 by the Court of Appeals, Division III in Cause No. 30129-0-III (“Opinion”). The issues presented by Walches are more accurately restated as follows:

Issue No. 1. Should this Court create a state-wide exception to reasonable necessity factors under RCW Chapter 8.24 where, purportedly, Walches may only access their property through a revocable permissive use agreement with the holder of a federally granted easement held by Burlington Northern Santa Fe (“BNSF”) railroad?

Issue No. 2. Whether under the guise of Article I, §16, can a condemnor manufacture a legal fiction by voluntarily refusing to seek a revocable BNSF crossing permit to circumvent a trial court’s review of reasonable neces-

sity factors under RCW 8.24.010?

Issue No. 3. Whether this Court in accepting review should extend its rationale in *Ruvalcaba v. Kwang Ho Baek*, 175 Wn.2d 1, 282 P.3d 1083 (2012) in a similar case to Issues 1 through 3 above where the condemnor has voluntarily landlocked his parcel to support one (1) beneficial use of his property?

III. WHY REVIEW SHOULD BE ACCEPTED UNDER RAP 13.4(b)

Walches' Petition issues potentially affect thousands of parcels in Washington State state-wide that gain access over federal railroad right-of-way easements recognized in *State of Washington v. M.C. Ballard*, 156 Wash. 530, 287 P. 27 (1930). This is a case of first impression in Washington State involving Washington State's private condemnation statute, RCW Ch. 8.24, remarkably similar to the Court's decision in *Ruvalcaba v. Kwang Ho Baek*, 175 Wn.2d 1, 282 P.3d 1083 (2012).

Ruvalcaba, while addressing the voluntary landlocking of private property, did not address circumstances where a federal railroad easement is involved. Petitioner Folkmans join in in the request for discretionary review asking this Court to extend *Ruvalcaba* to the facts in this case and upholding the role of trial courts in determining reasonable necessity for access under RCW 8.24.010 where Walches: refused to seek a BNSF crossing permit called for in

a title report to obtain “legal access;” conducted no engineering feasibility; applied for a separate crossing permit from BNSF; and, did not apply for any local development permits for the intended land-use.

Aside from federal preemption issues implicit with easements granted to railroads by Congress, Walches seek to by-pass the “...necessary for its proper use and enjoyment” provisions of RCW 8.24.010 and case precedent, including, *Brown v. McAnally*, 97 Wn.2d 360, 644 P.2d 1153 (1982), by limiting trial court review to one overriding factor. Namely, they claim that because a revocable crossing permit is not a permanent appurtenant property rights, they have met the reasonable necessity requirements of RCW 8.24.010 as a matter of law without regard to evidence of reasonableness factors described in *Brown*. They ask this Court to create a state common law exception or paramount “necessity” factor that entitles them to seek alternative access routes under RCW 8.24.010 for those parcels accessed solely over railroad crossings, on the grounds that they cannot acquire a permanent right to traverse railroad right-of-ways.

Review should be granted under such circumstances given Walches claims that this issue (permissive revocable rights to cross railroad right-of-ways are paramount and trump all reasonable necessity factors under RCW

8.24.010 that trial courts may consider) affects hundred and possibly thousands of parcels in Washington State. This specific issue has not been addressed in any reported appellate cases interpreting Article I, §16 of the State Constitution or RCW Chapter 8.24 cited in Briefs filed by the parties in this action, including Walches' Petition for Review.

Acceptance of review and a decision by this court would build upon the Court's recent decision in *Ruvalcaba* on abuses of RCW 8.24.010 through voluntary landlocking. The Court's review and decision would provide useful and important guidance to trial courts and the public affected by railroad crossings.

IV. CONCLUSION

Review of the lower court's decision should be granted.

DATED this 24th day of October 2013.

Respectfully submitted,

WILLIAMSON LAW OFFICE

By: 
William H. Williamson, WSBA #4304
Attorney for Petitioner Folkmans

CERTIFICATE OF SERVICE

I certify that on the 24th day of October, 2013, I caused a true and correct copy of this document to be duly filed with the Washington State Supreme Court and served on the following in the manner indicated below:

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October 22, 2013

Dear Supreme Court Clerk & Counsel:

Please find enclosed for receipt by the parties and filing with the Court, Petitioner Folkmans' Answer to Petitioner Walches' Petition for Review in the above entitled cause.

A hard copy original is being mailed to the Court for filing with a return copy receipt in a self-stamped envelope to my office. A single hard copy will be forwarded to attorney Chris Montgomery under separate cover.

Thank you for the courtesies extended in accepting this Answer via email as per your letter to the parties dated October 3, 2013.

Sincerely,

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