

91265-3

SUPREME COURT  
STATE OF WASHINGTON  
COURT OF APPEALS NO. 711571

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ROGER L. SKINNER

Appellant

v.

CITY OF MEDINA, WA.

Respondent

Received  
Washington State Supreme Court

FEB 17 2015  
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Ronald R. Carpenter  
Clerk

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SKINNER'S ANSWER TO MEDINA'S PETITION FOR REVIEW

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## **OPPOSITION TO PETITION FOR REVIEW**

Roger Skinner opposes the Petition for Review because the opinion below does not present a significant question of law under the Constitution of the State of Washington or an issue of substantial public interest and it does not conflict with existing precedent.

In its Petition for Review (PFR), Medina freely admits that it is asking this Court to overturn dicta (PFR, pg. 2, para. 2) in the Court of Appeal's opinion (the Opinion). Further, the portions of the Opinion that Medina characterizes as improper, because the Court of Appeals allegedly considered issues not presented, did not modify decision of the Civil Service Commission (CSC). The Court of Appeals found that the Civil Service Commission exceeded its jurisdictional authority in some respects and vacated only those portions of the CSC decision. What Medina characterizes as a consideration and affirmation of other issues is merely the Court saying those that particular portions of the CSC decision were within the CSC's jurisdiction and therefore would not be disturbed on appeal.

Medina further attempts to mislead this court when it states that the Court of Appeals determined that Skinner was entitled to “pursue both back pay and benefits under both contract and tort remedies in court actions.” PFR, pg. 4. Firstly, the referenced statement was a mere footnote to the Opinion (Opinion, f/n 5 at pg.8), certainly not a holding by the Court of Appeals. Secondly, the footnote said said something much different than the quote by Medina - “Apparently, the employee is left to pursue both contract and tort remedies in court actions.” The word “apparently” makes clear that the statement was non-binding dicta.

Even if the Opinion is read to suggest that the Court went beyond the issues presented (which it did not) that is insufficient to justify a review at the Supreme Court. An appellate court may consider issues not raised on appeal if doing so is required to assure a fair and orderly review. See *Niemann v. Vaughn Community Church*, 154 Wn.2d 365, 389 (2013); *Mader v. HCA*, 149 Wn.2d 458, 467 (2003).

The balance of Medina's argument is equally unpersuasive as it is supported only by conclusory statements that fail to justify the use of this Court's resources. Skinner believes that the Petition was filed simply to further prolong this litigation that began nine years ago, in 2006.

DATED February 12, 2015

Respectfully submitted,



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**DECLARATION OF SERVICE**

I certify that on the date below, I sent copies of the foregoing document to the following counsel of record via email and first class mail, postage pre-paid:

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DATED this 12<sup>th</sup> day of February 2015 at Portland, Oregon.



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