

FILED

AUG 24 2015

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

NO. 326551-III

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

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MARISA WUNDERLICH and JOSEPH WONDERLICH,  
a married couple

Respondents

v.

JOHN P. ROUSE and KARMA ROUSE, a married couple,  
and THORPE-ABBOTT PROPERTIES LLC,

Appellants

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SUPPLEMENTAL REPLY BRIEF OF APPELLANTS

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**A. SUPPLEMENTAL ARGUMENT IN REPLY**

- 1. RESPONDENTS, MARISA WUNDERLICH AND JOSEPH WUNDERLICH, FAIL TO ADDRESS IN ANY MANNER THE SUBSTANTIVE MATTERS SET FORTH IN THE "SUPPLEMENTAL BRIEF OF APPELLANTS"**

A simple review of the "Respondents' Supplemental Brief (sic)" makes abundantly clear that said Respondents have totally failed to address in any manner the substantive assignment of error of Appellants, and the issue and argument associated therewith, as set forth in the "Supplemental Brief of Appellants" filed herein on July 6, 2015. Consequently, and once again, such failure or neglect of Respondents should now be taken as a concession by them as to the merits of said assignment of error, and the issue and argument associated therewith, as contained in said "Supplemental Brief of Appellants." State v. Ward, 125 Wn.App. 138, 143-44, 104 P.3d 61 (2005). This is once again true since such concession by Respondents is entirely consistent with the governing law on discovery, et al., as incorporated in the "Supplemental Brief of

Appellants." See, State v. Steen, 164 Wn.App. 789, 804 n.10, 265 P.3d 901 (2011).

2. **INSTEAD, RESPONDENTS, MARISA WUNDERLICH AND JOSEPH WUNDERLICH, ATTEMPT TO MISLEAD AND TOTALLY DISTRACT THIS COURT IN TERMS OF APPELLANTS' UPDATED CHRONOLOGY OF EVENTS WHICH UNDENIABLY TRANSPIRED BEFORE THE TRIAL COURT SINCE THE INITIAL FILING OF THIS APPEAL, AND MAKE AN ENTIRELY FRIVOLOUS CHALLENGE TO APPELLANTS' CORRESPONDING CLERKS' PAPERS SUBMITTED TO PROVE, AS EXPRESSLY REQUIRED BY RAP 10.3(a)(5), THE UPDATED CHRONOLOGY**

The most basic review of the content of the "Supplemental Brief of Appellants" makes abundantly clear that the reason for Appellants' inclusion of the updated chronology of events which transpired before the Superior Court was to enable this reviewing Court to have a full, complete and precise picture of what had transpired in the Superior Court within the eight (8) plus months between the filing of the original "Notice of Appeal to Court of Appeals, Division III" of Appellants on July 24, 2014 [CP 277-87] and the later filing of the "Supplemental Notice of Appeal to Court of Appeals, Division III" of Appellants on March 26, 2015. [CP 578-82]. Simply

put, would this Court desire to enter a decision in this case without having the benefit of a full and complete picture of events, with the proof thereof, that had transpired before the trial court?

Apparently, Respondents would have been content without this Court having the knowledge of contained in the "Supplemental Statement of the Case" as set forth in the "Supplemental Brief of Appellants" on pages 2-5. In effect, Respondents' challenge to the inclusion of the decisions [CP 545-51; 568-72] and judgments [CP 564-67; 573-75] of the Honorable Michael P. Price, Judge, before the subsequent judgment of Judge Moreno [CP 576-77] which subsequent judgment is the subject matter of the "Supplemental Notice of Appeal to Court of Appeals, Division III" of Appellants [CP 578-82] is totally disingenuous on their part and amounts to nothing less than an beleaguered attempt to mislead and distract this reviewing Court from the real issues at hand.

As a related aside, it should be pointed out that Appellants, in terms of the "Supplemental

Brief of Appellants," never once argued, or even suggested, that any decisions [CP 545-51; 568-72], findings and conclusions [CP 552-61] or judgments [CP 564-67; 573-75] of Judge Price bore in any manner upon the precise issues raised by Appellants and directed to the challenged, erroneous decisions of Judge Moreno [CP 52; 126-30; 286-87], including the "(Proposed) [sic] JUDGMENT AGAINST ERIC KNAYES [sic]" [CP 576-77], which judgment is the subject of the "Supplemental Notice of Appeal to Court of Appeals, Division III" of Appellants [CP 578-82]. This judgment of Judge Moreno [CP 576-77] followed the entry of the decisions [CP 545-51; 568-72], findings and conclusions [CP 552-61] and judgments [CP 564-67; 573-75] of Judge Price. This clear and proven chronology is contrary to the misleading statements made by Respondents in their "Respondents' Supplemental Brief (sic)." Hence, Respondents' arguments can only be perceived as a further misguided venture to distract this Court from the real and dispositive issues on this appeal.

Finally, and to the same effect, Respondents' further challenge to Appellants' inclusion of additional Clerks' Papers is totally nonsensical. In this vein, RAP 10(a)(5) expressly requires Appellants to cite directly to the record the precise basis of proof for the facts set forth in Appellants' updated chronology of events which transpired before the Superior Court.

Needless to say, and with this in mind, Respondents' ill-conceived attempt to invoke the strictures of RAP 18.9 is, in itself, potentially subject to the imposition of monetary sanctions herein against Respondents. In this regard, Appellants choose to simply leave it to this Court whether monetary terms should in fact be entered against Respondents in this case without further ado.

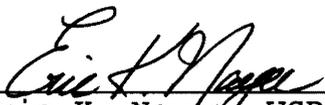
#### **B. CONCLUSION**

Based upon the foregoing, Appellants, John P. Rouse, Karma Rouse, Thorpe-Abbott Properties, LLC, and their undersigned counsel, again maintain that this Court should reverse the challenged decisions of the superior court and remand this matter for a

determination of the amount of reasonable attorney fees which Appellants should be awarded under the provisions of CR 26(g) and CR 37(a)(4) in so far as the motion of the plaintiffs and Respondents, the Wunderlichs, and their attorney's conduct, before the Superior Court violated the civil rules set forth above.

Respectfully submitted this 24th day of August 2015.

The Naves Law Firm, P.S.

By:   
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COURT OF APPEALS  
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MARISA WUNDERLICH and JOSEPH )	
WONDERLICH, a married couple )	No. 326551-III
) Respondents, )	
v. )	DECLARATION OF
) SERVICE OF	
) SUPPLEMENTAL	
) REPLY BRIEF OF	
JOHN P. ROUSE and KARMA )	APPELLANTS
ROUSE, a married couple, and )	
THORPE-ABBOTT PROPERTIES, LLC )	
) Appellants. )	
_____ )	

ERIC K. NAYES makes the following  
declaration:

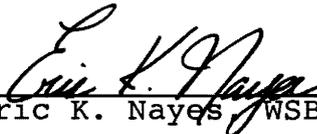
1. I am the attorney for appellants, John P. Rouse and Karma Rouse, husband and wife, appellant, Thorpe-Abbott Properties, LLC, a Washington limited liability company, and myself, in the above entitled matter. The following is based upon my personal knowledge.

2. On August 24, 2015, I personally served a true and correct copy of a "Supplemental Reply Brief of Appellants" in the above entitled matter on Marshall Casey, of M Casey Law, PLLC, attorney

for plaintiffs and respondents, Marisa Wunderlich and Joseph Wunderlich, at 1318 West College Avenue, Spokane, Washington, by leaving the same at the offices of Marshall Casey at 1318 West College Avenue, Spokane, Washington, with the receptionist therein.

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

SIGNED in Spokane, Spokane County,  
Washington, on this 24th day of August 2015.

  
Eric K. Naves, WSBA #2709

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