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DIVISION II

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WASHINGTON STATE
SUPREME COURT

STATE OF WASHINGTON

NO. 46095-5

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

BY _____
DEPUTY

Douglas Verdier,

Plaintiff/Appellant,

vs.

Gregory Bost and Laurie Bost,

Defendants/Respondents,

vs.

Todd Verdier,

Counterclaim Defendant/Appellant.

APPEAL FROM THE SUPERIOR COURT

HONORABLE BARBARA JOHNSON

PETITION FOR REVIEW

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I. Identity of Petitioners.

This petition is made on behalf of Douglas Verdier, Plaintiff and Appellant, and also on behalf of Todd Verdier, Counterclaim Defendant and Appellant. They are father and son and will be referred to as the Verdiers.

II. Court of Appeals Decisions.

Review is sought of the decision of the Court of Appeals filed in this matter on March 8, 2016. Petitioners moved for reconsideration and publication of the decision on March 25, 2016. The Court of Appeals denied both motions by order filed on April 25, 2016.

III. Issues Presented for Review.

The following issues are presented for review:

1. Can a party who has filed a pleading seeking damages based on a report to a public agency (Offending Allegations) avoid the sanctions contained in RCW 4.24.510 by amending his or her pleadings to remove the Offending Allegations after a motion has been filed to strike or dismiss those allegations?

IV. Statement of the Case.

Douglas Verdier and Gregory and Laurie Bost (the Bosts) own adjoining parcels on the south side of Washougal River Road in rural Clark County. The rear or back yards of both lots front on the Washougal River. A dispute arose about the location of the boundary line between the two parcels. The Bosts have contended that the boundary line is based on a survey. Mr. Verdier believes that the boundary was a split rail fence that had been in existence for some time. Mr. Verdier also owns a parcel on the north side of the Washougal River Road. There is a well on that property that has served both properties. Disputes have arisen concerning the use of that well. Mr. Verdier filed suit on January 30, 2013, to resolve those issues. The Bosts subsequently answered without filing any counterclaims. (CP 1-7)

By December of 2013, the Bosts obtained new counsel and filed Defendants' Amended Answer, Affirmative Defenses, and Counterclaims (the Amended Pleading). (CP 8-18) The pleading included claims against both Todd Verdier and Douglas Verdier for negligent infliction of emotional distress based on certain specific conduct to include the following in paragraph 25:

- a. Falsely reporting to the Clark County Department of Health that raw sewage was seeping from defendant's property and entering the Washougal River;
- b. Falsely reporting to the Washougal Fire Department that defendants' campfire in their riverside fire pit was an unmaintained and out of control fire.

(CP 13) These will be referred to as the Offending Allegations.

Todd Verdier moved to strike or dismiss these the Offending Allegations based on both RCW 4.24.510 and RCW 4.24.525. Douglas Verdier filed his own similar motion and joined in his son's motion. (CP 19-26) Neither filed an answer to the Bosts' affirmative claims. Before the motions were heard, the Bosts filed Defendants' Second Amended Answer, Affirmative Defenses and Counterclaims (the Second Amended Pleading). The Second Amended Pleading omitted the references to the reports to the Clark County Health Department and the Washougal Fire Department. It was identical to the Amended Pleading in all other respects. (CP 27-38)

The trial court then denied the Verdiers' motions on the basis that they were moot. (CP 43-44) The Court of Appeals affirmed and denied the Verdiers' motions for reconsideration and for publication.

V. Argument.

a. Introduction.

The Supreme Court should grant review because the issue presented in this case is a matter of public interest. Furthermore, the decision of the Court of Appeals conflicts with decisions of the Supreme Court and the Court of Appeals. The Supreme Court should take review for that reason as well. RAP 13.4(b)(2), (3), (4)

It should be made clear at the outset that the Verdiers are seeking relief based on RCW 4.24.510. They recognize that a companion statute, RCW 4.24.525, has been held to be unconstitutional in *Davis v. Cox*, 183 Wn.2d 269, 351 P.3d 862 (2013).

b. The Issue Presented Is One of Public Interest.

This case implicates rights and remedies under RCW 4.24.510. That statute provides as follows in pertinent part:

A person who communicates a complaint or information to any branch or agency of federal, state, or local government, or to any self-regulatory organization that regulates persons involved in the securities or futures business and that has been delegated authority by a federal, state, or local government agency and is subject to oversight by the delegating agency, is immune from civil liability for claims based upon the communication to the agency or organization regarding any matter reasonably of concern to that agency or organization. A person prevailing upon the defense provided for in this section is entitled to recover expenses and reasonable attorneys' fees incurred in establishing the defense and in addition shall receive

statutory damages of ten thousand dollars. Statutory damages may be denied if the court finds that the complaint or information was communicated in bad faith.

The statute provides for immunity from civil liability for claims based upon communications to public agencies. It also allows attorney's fees and statutory damages to a person sued based on such a communication. The statute advances the critical public policy of protecting persons who make reports to public agencies as stated in RCW 4.24.500 as follows:

Information provided by citizens concerning potential wrongdoing is vital to effective law enforcement and the efficient operation of government. The legislature finds that the threat of a civil action for damages can act as a deterrent to citizens who wish to report information to federal, state, or local agencies. The costs of defending against such suits can be severely burdensome. The purpose of RCW 4.24.500 through RCW 4.24.520 is to protect individuals who make good-faith reports to appropriate governmental bodies.

Because of this policy established by the legislature, any critical or undecided aspect of the workings of RCW 4.24.510 becomes a matter of public interest.

The precise question presented here is whether a party can escape the sanctions imposed by RCW 4.24.510 by amending his or her pleadings after a motion to strike or dismiss has been filed. It has not been authoritatively decided by the Supreme Court. The same question was raised by the parties under RCW 4.24.525 but not decided in *Henne v. City*

of Yakima, 182 Wn.2d 447, 341 P.3d 283 (2015) In that case, the plaintiff amended his complaint after the City of Yakima filed a motion to strike pursuant to RCW 4.25.525. The trial court ruled that the amendment rendered moot any claim for attorney’s fees and statutory damages. The City of Yakima appealed from this interlocutory ruling. The Court of Appeals affirmed in a 2-1 decision with Judge Fearing dissenting. *Henne v. City of Yakima*, 177 Wn.App. 583, 313 P.3d 1188 (2013) The Supreme Court took review. It decided the case on other grounds. It did not reach the issue of whether a party could amend out of an award of attorney’s fees and statutory damages because it concluded that all claims that might be subject to being stricken under RCW 4.24.525 had not been eliminated by the amendment. It stated that the issue would be “left for another day.” 182 Wn.2d at 452-453, footnotes 4-5; 182 Wn.2d at 460, per Fairhurst, J., concurring in the result. The Court remanded the matter back to the court of Appeals with directions to dismiss the appeal. In light of this decision by the Supreme Court, the opinion of the Court of Appeals in *Henne v. City of Yakima*, *supra*, cannot be considered decisive. Therefore, the question presented in this case is clearly unsettled.

The problem the Court saw in addressing the question in *Henne v. City of Yakima*, *supra*, is not present here. The Bosts’ amendment eliminating the Offending Allegations eliminates all claims to

which RCW 4.24.510 applies. Therefore, our case presents a good vehicle for resolution of the issue.

The scenario presented in this case—making a claim based on allegations for which there is immunity under RCW 4.24.510 and then seeking to amend to avoid the sanctions that statute provides—is not unique. Counsel has seen this in at least one other case.

The issue that Petitioners' raise here concerns a matter of public importance—the right and remedies available to a person sued based on a report to a public agency. The issue presented here is not unique. It has occurred in other cases. The precise question was left undecided in another case due to matters not present here. It is therefore unsettled. The Supreme Court should take review and decide whether a party can escape the sanctions provided in RCW 4.24.510 by amending the pleadings after a motion to dismiss is made.

c. The Decision of the Court of Appeals Conflicts with Decisions of the Supreme Court and Other Decisions of the Court of Appeals.

The Court of Appeals ruled that the Bosts could amend without sanction because the Verdiers did not also file an answer along with their motions to strike and dismiss. Opinion, p. 5 That decision

conflicts with decisions from both the Supreme Court and the Court of Appeals. The Supreme Court should take review for that reason as well.

The primary legal principle involved in this case is the notion that statutes are interpreted in accordance with their plain meaning that can be ascertained through dictionary definitions. *Estate of Hazelwood v. Bremerton Ice Arena*, 166 Wn.2d 489, 498, 210 P.3d 308 (2009); *Puget Sound Crab Association v. State*, 174 Wn.App. 572, 579, 300 P.3d 448 (2013) The statute in question, RCW 4.24.510, allows for sanctions to a person who “prevails” on the defense of immunity from suit based on Offending Allegations. The word “prevail” is defined by Oxford Dictionaries, located at <http://www.oxforddictionaries.com>, as to “be victorious.” *Black’s Law Dictionary* (9th Ed. 2009), defines “prevail” in the litigation context to mean “to obtain the relief sought in the action; to win a lawsuit.” The Verdiers moved to strike and dismiss the Offending Allegations. By any stretch, the Verdiers prevailed when the Bosts removed them from their pleadings because they obtained the relief that they sought—not having to face a suit for emotional distress based on allegations made to public agencies. The Court’s decision, however, allows the Bosts to escape sanctions even though the Verdiers prevailed. The decision therefore is at odds with the way that statutes are to be

interpreted as both the Supreme Court and the Court of Appeals have stated.

The Bosts' amendment that removed the Offending Allegations was the functional equivalent of a voluntary nonsuit. The Bosts gave up any claim based on the Offending Allegations. It is well established that when a party pursuing a claim dismisses, the defending party has prevailed. *Andersen v. Gold Seal Vineyards, Inc.*, 81 Wn.2d 863, 868, 505 P.2d 790 (1973); *Walji v. Candyco, Inc.*, 57 Wn.App. 284, 288-89, 787 P.2d 946 (1990); *Hawk v. Branjes*, 97 Wn.App. 776, 986 P.2d 841 (1999). The decision of the Court of Appeals also fails to recognize this rule.

Statutes must also be interpreted to carry out the intention of the legislature. *Western Plaza, LLC, v. Tison*, 184 Wn.2d 702, 708, 364 P.3d 76 (2015); *State v. Saint-Louis*, 188 Wn.App. 905, 916 (355 P.3d 345 (2015)) The legislature enacted RCW 4.24.510 to protect persons who make reports to public agencies as RCW 4.24.500 states. The goal of protecting persons making reports to public agencies is not enhanced—and in fact is frustrated—if a person can avoid paying attorney's fees and statutory damages by simply amending pleadings to omit offending allegations after a party has gone to the expense of filing a motion to strike. The making of allegations subject to the anti-SLAPP statutes

should be deterred. There is no deterrence if a party can first make anti-SLAPP allegations; gamble on whether the adverse party will make a motion to strike; and then avoid all sanctions by amending the pleadings. As noted above, statutes must be interpreted according to their plain meaning. A corollary to this rule is the notion that courts cannot read into a statute something that is not there. *Internet Community & Entertainment Corp v. Washington State Gambling Commission*, 169 Wn.2d 687, 695, 238 P.3d 1163 (2010); *Manary v. Anderson*, 164 Wn.App. 569, 574-575, 265 P.3d 163 (2011) There is nothing in RCW 4.24.510 that allows a party to avoid its sanctions by amending after a motion has been filed. The Court of Appeals' decision conflicts with decisions of the Supreme Court and the Court of Appeals by violating this rule.

The decision of the Court of Appeals also violates the key cannon that cases should be decided on the merits and not on procedural technicalities. *Vaughn v. Chung*, 119 Wn.2d 273, 830 P.2d 668 (1992); *Griffith v. Bellevue*, 130 Wn.2d 189, 192, 922 P.2d 83 (1996); *Spokane County v. Specialty Auto and Truck Painting, Inc.*, 153 Wn.2d 238, 245, 103 P.3d 792, 795 (2004); *Fox v. Sackman*, 22 Wn.App. 707, 591 P.2d 855 (1979) There is a related principle—that a procedural rule of court cannot be used to take away a substantive right. *State v. Fleming*, 41 Wn.App. 33, 36, 701 P.2d 815 (1985); *State v. Card*, 48 Wn.App. 781,

790, 741 P.2d 65 (1987) The Court allowed the Bosts to escape the sanctions of RCW 4.24.510 because the Verdiers did not file answers to their claims at the same time that they moved to strike or dismiss the Offending Allegations. The decision of the Court of Appeals is therefore based on a procedural technicality rather than the merits. It uses a procedural rule to deprive the Verdiers of their substantive rights to attorney's fees and statutory damages under RCW 4.24.510. It therefore conflicts with decisions of the Supreme Court and the Court of Appeals.

Finally, an adverse party may not be prejudiced by an amendment of pleadings. *Wilson v. Horsley*, 137 Wn.2d 500, 505, 974 P.2d 316 (1999) Allowing the Bosts to escape the sanctions of RCW 4.24.510 by amending their pleadings clearly prejudices the Verdiers because it eliminates their rights to statutory damages and attorney's fees. The decision of the Court of Appeals conflicts with the rule established in this decision of the Supreme Court.

The decision of the Court of Appeals was based on the following language in CR 15(a):

A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is permitted. . .

The Court of Appeals ruled that the Verdier's motion to dismiss and strike were not responsive pleadings because they were not answers to the Bosts'

counterclaims. This decision did not take into consideration the provisions of CR 12(b)(6) as set out here:

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross claim, or third party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defense may at the option of the pleader be made by motion. . .(6) to dismiss for failure of the pleading to state a claim upon which relief can be granted. . .

A motion to dismiss under CR 12(b)(6) can be based on an affirmative defense. For example, in *Clapp v. Olympia View Publishing Co.*, 137 Wn.App. 470, 154 P.3d 230 (2007), the Court affirmed the grant of a motion to dismiss a libel action made under CR 12(b)(6) on the basis of the “fair reporting” privilege. The Verdiers’ motions fall under the heading of motions to dismiss under CR 12(b)(6) because they went to the merits of the Bosts’ claim for infliction of emotional distress based on reports to public agencies. They thus served as responsive pleadings that cut off the Bosts’ ability to amend pleadings without leave of Court. The Court of Appeals decision conflicts with another decision of the Court of Appeals by ruling to the contrary.

As this discussion shows, the decision of the Court of Appeals conflicts with a number of decisions of the Supreme Court and the Court of Appeals. Therefore, the Supreme Court should take review to resolve the issue presented here.

VI. Conclusion.

For the reasons indicated above, the Court of Appeals should take review of this matter. It should then reverse the decision of the trial court and the Court of Appeals and remand the matter back to the trial court for further consistent proceedings. It should also award the Verdiers their attorney's fees and costs on appeal.

DATED this 23 day of May, 2016.



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APPENDIX I

March 8, 2016

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

DOUGLAS VERDIER and TODD VERDIER,

Appellants,

v.

GREGORY BOST and LAURIE BOST,

Respondent.

No. 46095-5-II

UNPUBLISHED OPINION

SUTTON, J. — Douglas and Todd Verdier appeal the trial court's denial of their special motion to strike and request for an award of statutory damages, reasonable expenses and attorney fees under RCW 4.24.510 and .525, Washington's anti-SLAPP statutes.¹ The Verdiers argue that the trial court erred because the defendants cannot avoid statutory damages by amending their pleadings to eliminate the allegations prohibited by the anti-SLAPP statutes.

We hold that, because RCW 4.24.525 is unconstitutional, the Verdiers's claims under RCW 4.24.525 are moot. Further, we hold that the Gregory and Laurie Bosts's amended pleadings were proper, and thus, the Verdiers's claims under RCW 4.24.510 are also moot. Accordingly, we affirm.

FACTS

This matter arises from a dispute between neighbors, Douglas and Todd Verdier and Gregory and Laurie Bost, over a common property line and shared well access and maintenance.

¹ Strategic lawsuit against public participation (SLAPP).

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On January 30, 2013, the Verdiers sued the Bosts to quiet title to the disputed land and damages for the maintenance and use of the well. The Bosts filed their answer and affirmative defenses to the Verdiers's complaint on February 20, 2013.

On December 13, 2013, the Bosts filed their first amended answer, affirmative defenses, and counterclaims alleging that both Verdiers had, at various times, entered and caused damage to their property, and that, on a number of separate occasions, Todd Verdier attempted to verbally and physically intimidate both of the Bosts. The Bosts further alleged that the Verdiers:

- a) Falsely report[ed] to the Clark County Department of Health that raw sewage was seeping from [the Bosts's] property and entering the Washougal River;
- b) Falsely report[ed] to the Washougal Fire Department that [the Bosts's] campfire in their riverside fire pit was an unmaintained and out of control fire[.]

Clerk's papers (CP) at 13. The Verdiers failed to file any response to the Bosts's affirmative defenses or their first amended pleadings and counterclaims.

On February 14, 2014, the Verdiers filed a special motion to strike the Bosts's allegations that they made false reports to the Clark County Department of Health and the Camas-Washougal Fire Department.² The Verdiers alleged that they were immune from liability under RCW 4.24.510, and moved for statutory damages, reasonable expenses, and attorney fees and costs under RCW 4.24.510 and .525(6)(a)(ii). Following the Verdiers's motion to strike, the Bosts filed a second amended answer, removing the allegations regarding false reporting by the Verdiers to the health and fire departments.

² Although related, the boundary dispute litigation is separate from the anti-SLAPP litigation, which arose after the initiation of the boundary dispute.

In light of the Bosts's amended pleadings, the trial court ruled that the Verdiers's motion to strike under RCW 4.24.525 and their request for statutory damages, reasonable expenses, and attorney fees under RCW 4.24.510 were moot and denied the Verdiers's motion. The Verdiers appeal.

ANALYSIS

The Verdiers argue that the trial court erred when it ruled that their claims were moot and denied their special motion to strike and request for statutory damages, reasonable expenses and attorney fees under RCW 4.24.510 and .525. They also argue that the Bosts cannot avoid liability for the statutory damages available under RCW 4.24.510 by amending their pleadings to remove the offending allegations implicating RCW 4.24.510. We disagree.

I. LEGAL PRINCIPLES

A strategic lawsuit against public participation, a SLAPP suit, is a meritless suit filed primarily to chill a defendant's exercise of First Amendment rights. *City of Seattle v. Egan*, 179 Wn. App. 333, 337, 317 P.3d 568 (2014). This court reviews the denial of an anti-SLAPP motion de novo. *Bevan v. Meyers*, 183 Wn. App. 177, 183, 334 P.3d 39 (2014). Both RCW 4.24.510 and .525 allow recovery of statutory damages, reasonable expenses, and attorney fees.³

³ RCW 4.24.525(6)(a-b) allowed the prevailing party to recover statutory sanctions, reasonable expenses, and attorney fees; however, RCW 4.24.510 allows only "[a] person prevailing upon the defense" of allegations based on reporting to a government agency to recover statutory damages, reasonable expenses, and attorney fees.

In 2015, our Supreme Court struck down RCW 4.24.525 as unconstitutional.⁴ *Davis v. Cox*, 183 Wn.2d 269, 296, 351 P.3d 862 (2015). Before our Supreme Court declared it unconstitutional, RCW 4.24.525(4) provided for a procedural defense against a SLAPP suit—the special motion to strike; however, RCW 4.24.510 does not provide for such a procedural mechanism. RCW 4.24.510 states,

A person who communicates a complaint or information to any branch or agency of federal, state, or local government . . . is immune from civil liability for claims based upon the communication to the agency or organization regarding any matter reasonably of concern to that agency or organization. A person prevailing upon the defense provided for in this section is entitled to recover expenses and reasonable attorneys' fees incurred in establishing the defense and in addition shall receive statutory damages of ten thousand dollars. Statutory damages may be denied if the court finds that the complaint or information was communicated in bad faith.

Although RCW 4.24.510 provides no procedural mechanism to defend a SLAPP suit, a party may still be immune from civil liability and recover statutory damages, reasonable expenses, and attorney fees under RCW 4.24.510. *See, e.g., Segaline v. Dep't of Labor & Indus.*, 169 Wn.2d 467, 238 P.3d 1107 (2010); *Harris v. City of Seattle*, 302 F. Supp. 2d 1200 (W.D. Wash. 2004). While the anti-SLAPP statute entitles a defendant to immunity from liability for bad-faith reporting to a government agency, it does not entitle him to recover statutory damages, reasonable expenses, and attorney fees. *See* RCW 4.24.510.

II. AMENDED PLEADING

The Verdiers argue that the Bosts cannot amend their pleadings to avoid the sanctions imposed by RCW 4.24.510. We disagree.

⁴ Because RCW 4.24.525 is unconstitutional, Verdiers's claims on appeal pertaining to RCW 4.24.525 are moot. Therefore, we address only the claims related to RCW 4.24.510.

A party may amend a pleading at any time before a responsive pleading is served or, if the pleading is one that does not require a response and the matter is not on the trial calendar, at any time within 20 days after the initial pleading is served. CR 15(a). Otherwise, the party may amend its pleading only with permission of the court or by written consent of the other party. CR 15(a). The court is required to freely give the requesting party leave to amend when “justice so requires.” CR 15(a). The amended complaint supersedes the original complaint. *Henne v City of Yakima*, 177 Wn. App. 583, 588, 313 P.3d 1188 (2013), *rev’d on other grounds*, 182 Wn.2d 447 (2015).

Here, there is no evidence in the record that the Verdiers ever responded to any of the Bosts’s pleadings asserting their affirmative defenses and counterclaims. CR 15 allows a party to amend a pleading at any time before receiving a response, and if a response is not required, then within 20 days of filing. The Bosts’s asserted affirmative defenses and counterclaims required a response from the Verdiers, and because there is no evidence that they ever did respond, the Bosts’s second amended answer filed after the motion to strike is a proper pleading. Thus, under CR 15, the Bosts had a right to amend their pleading to remove the offending allegations. Therefore, even if RCW 4.254.510 provided a means of recovery if the Verdiers successfully defended the SLAPP lawsuit, the amended pleadings rendered their claims moot, and the trial court properly denied the Verdiers’s motion to strike and request for statutory damages, reasonable expenses, and attorney fees under RCW 4.24.510. Accordingly, we affirm.

ATTORNEY FEES

Both parties request attorney fees under RAP 18.1 should they prevail on appeal.⁵ Neither the Verdiers nor the Bosts are entitled to attorney fees on appeal.

A prevailing party may recover attorney fees only if provided by statute, agreement, or equitable principles. *Tacoma Northpark, LLC v. NW, LLC*, 123 Wn. App. 73, 84, 96 P.3d 454 (2004). RAP 18.1 requires more than just a bald request for attorney fees, and the party requesting fees must provide argument and citation to authority to support their request. *In re Marriage of Coy*, 160 Wn. App. 797, 808, 248 P.3d 1101 (2011). Here, the Bosts do provide citation to case law supporting their request. However, the authority those cases cite is RCW 4.24.525(6)(a)(i), which was ruled unconstitutional by our Supreme Court in *Davis*. 183 Wn.2d at 295-96. The remaining statute, RCW 4.24.510 provides recovery of attorney fees and costs to a “person prevailing upon the defense” of claims that violate the statute. The Bosts were not the party asserting a defense under RCW 4.24.510, and cite no other statutory authority, contract agreement, or equitable principles to support their request for attorney fees. Thus, we deny their request for attorney fees under RAP 18.1.

⁵ The Bosts cite to *Aronson v. Dog Eat Dog Films, Inc.*, 738 F. Supp. 2d 1104, 1117 (W.D. Wash. 2010) and *Davis v. Cox*, 180 Wn. App. 514, 551, 325 P.3d 255 (2014), *reversed*, 183 Wn.2d 269 (2015), which provide that the prevailing party on appeal is entitled to attorney fees under RCW 4.24.525(6)(a)(i).

CONCLUSION

We hold that, because RCW 4.24.525 is unconstitutional, the Verdiers's claims under RCW 4.24.525 are moot. Further, we hold that the Bosts's amended pleadings were proper, thus, the Verdiers's claims under RCW 4.24.510 are also moot. Accordingly, we affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.


SUTTON, J.

We concur:


BERGER, A.C.J.


MELNICK, J.

APPENDIX II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

DOUGLAS VERDIER and TODD VERDIER,

Appellants,

v.

GREGORY BOST and LAURI BOST,

Respondents.

No. 46095-5-II

ORDER DENYING MOTION FOR RECONSIDERATION AND MOTION TO PUBLISH

APPELLANT DOUG VERDIER moves for reconsideration and for publication of the Court's March 8, 2016 opinion. Upon consideration, the Court denies the motions.

Accordingly, it is

SO ORDERED.

PANEL: Jj. Bjorgen, Sutton, Melnick,

DATED this 25th day of April, 2016.

FOR THE COURT:

FILED COURT OF APPEALS DIVISION II 2016 APR 25 PM 2:56 STATE OF WASHINGTON BY DEPUTY

Bjorgen, C.J. CHIEF JUDGE

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**NO. 46095-5
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II**

Douglas Verdier,

Plaintiff/Appellant,

vs.

Gregory Bost and Laurie Bost,

Defendants/Respondents,

vs.

Todd Verdier,

Counterclaim Defendant/Appellant.

APPEAL FROM THE SUPERIOR COURT

HONORABLE BARBARA JOHNSON

DECLARATION OF SERVICE

**BEN SHAFTON
Attorney for Appellant Douglas Verdier
Caron, Colven, Robison & Shafton
900 Washington Street, Suite 1000
Vancouver, WA 98660
(360) 699-3001**

COMES NOW Amy Arnold and declares as follows:

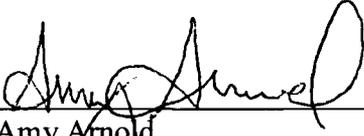
1. My name is Amy Arnold. I am a citizen of the United States, over the age of eighteen (18) years, a resident of the State of Washington, and am not a party to this action.

2. On May 23, 2016, I deposited in the mails of the United States of America, first class mail with postage prepaid, a copy of Petition for Reivew to the following person(s):

Mr. Stephen Leatham
Heurlin Potter Jahn Leatham Holtman & Stoker
PO Box 611
Vancouver, WA 98666-0611

I DECLARE UNDER PENALTY OF PERJURY AND THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

DATED at Vancouver, Washington, this 23rd May, 2016.



Amy Arnold