IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

V&E MEDICAL IMAGING SERVICES, INC., a Washington corporation, doing business as AUTOMATED HOME SOLUTIONS,

Plaintiff,

vs.

MARK DECOURSEY and CAROL DECOURSEY, husband and wife, individually and the marital community composed thereof,

Respondents,

vs.

[redacted], a Washington corporation; [redacted] an individual; CONSTRUCTION CREDIT CORPORATION, a Washington corporation; HERMAN RECOR, ARAKI, KAUFMAN, SIMMERLY & JACKSON, PLLC,

Third Party Defendants,

and

PAUL STICKNEY and WINDERMERE REAL ESTATE, S.C.A., INC.,

Petitioners.

No. 85563-3

OBJECTION TO MOTION TO FILE AMICUS "BRIEF"

Pursuant to RAP 10.6(d), the Petitioners object to the motion to file amicus "brief" submitted by "the Ruebels" and "the Bloors". There are many problems with the submission.

First, we note that RAP 13.4(h) provides that an amicus memo relative to a Petition "should be received by the court and counsel of record for the parties . . . not later than 60 days from the date the petition for review is filed." In their motion at page 2, amicus states that the Petition was filed January 20, 2011. Sixty days from that date is March 21, 2011. The undersigned, counsel of record, "received" the motion on March 23, 2011. It appears the amicus motion was a bit late.

But being late is the least of the problems with the submission. It is based upon two cases:

1. *Ruebel v. Camano Island Realty, Inc.*, 140 Wn. App. 1040, 2007 WL 2823285 (2007); and

2. *Bloor v. Fritz*, 143 Wn. App. 718, 180 P.3d 805 (2008).

The problem with the *Ruebel* case is obvious. It is an unpublished opinion. GR 14.1(a) provides:

> A party may not cite as an authority an unpublished opinion of the Court of Appeals.

The problem with the *Bloor* case is that it adds nothing new to this case. Counsel for the respondents cited the Bloor case three times in his respondents' brief in the Court of Appeals. (Resp. Br., at 31, 34 and 45) He also cited it in his Answer to the Petition. (*See* Answer at p. 12.) Even the Court of Appeals cited it at pages 32-33 of its opinion.

As is apparent, the *Bloor* case adds nothing new at this stage of the proceedings.[1] The submission is a transparent effort to present additional extra, unapproved argument.

So, at the heart of the submission we have an opinion which cannot be cited, and an opinion which is already well known to counsel and the Court. As is apparent, this does not fit the purpose of an amicus brief: "further the discourse before the appellate court by **thorough scholarship** and **thoughtful analysis.**" (II WSBA, WASHINGTON APPELLATE PRACTICE DESKBOOK § 28.8 (3d ed. 2005) (emphasis added). The submission is lacking on both requirements.

In fact, the submission is an attempt to introduce evidence of a party's character or trait for the purpose of proving action in conformity therewith on a particular occasion. This is prohibited. *See* ER 404(a).

Finally, we come to the questions "why" and "who". Why is the Talmadge firm filing this? Who is paying the bill? In the *Ruebel* case, the parties were represented by counsel other than the Talmadge firm. In the *Bloor* case, the parties were represented by counsel other than the Talmadge firm. But here we suddenly have the Talmadge firm appearing. Why?

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[1] An amicus brief is limited to bringing to the attention of the court relevant matters not already brought to its attention by the parties. U.S. Supreme Court Rule 37.1.

We direct the Court's attention to a rule of the Supreme Court of the United States. Rule 37 deals with "Brief for an Amicus Curiae." In particular, Rule 37.6 requires disclosure of those people who made "a monetary contribution intended to fund the preparation or submission of the brief."

Transparency! Full disclosure! Who is paying the bill?

CONCLUSION

The submission appears to be late. The submission is clearly improper. The submission burdens the Court. The submission should be rejected.

DATED this 28 day of March, 2011.

REED McCLURE

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