69837-1-I

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

LANE POWELL, PC, an Oregon professional corporation,

Respondent,

v.

MARK DeCOURSEY and CAROL DeCOURSEY, individually and the marital community composed thereof,

Appellants.

RESPONDENT LANE POWELL'S OPPOSITION TO APPELLANTS' MOTION TO PUBLISH DECISION

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Respondent Lane Powell opposes Appellants Mark and Carol DeCourseys' Motion to Publish Decision and respectfully requests that the Court deny the motion. The Court properly concluded that the opinion in this case does not meet the criteria for publication contained in RAP 12.3. It is clear that the DeCourseys intend to appeal to the Washington State Supreme Court and their request for publication is a transparent attempt to increase their chances of obtaining review.

The DeCourseys appear to concede that the opinion does not determine an unsettled area of the law; does not modify, clarify, or reverse an established principle of law; and is not of general public interest or importance. RAP 12.3(d)(1)–(3). The only basis the DeCourseys claim to justify their request for publication is their argument that there is a split of authority among the appellate courts regarding the standard of review to apply to a trial court's recusal decision. Mot. at 1; *see also* RAP 12.3(d)(4). Of course, the Court applied the de novo standard at the DeCourseys' request, so they can hardly be heard to complain about the Court's application of that standard.

More importantly, for purposes of analyzing whether the decision merits publication, the Court properly determined that the decision does not determine an unsettled or new question of law. In fact, based on the language of the decision, the Court did not make a determination that the

de novo standard was actually the proper standard to apply. As even the excerpt quoted by the DeCourseys makes clear, the Court did not analyze the issue at all. In context, it seems that the opinion is more properly understood as simply applying the stricter standard because the standard of review would make no difference to the Court's ultimate determination. Under these circumstances, publication would not contribute anything of value to the body of Washington law regarding this issue.

Nor is it important to highlight a supposed split of authority among the appellate courts when, at least according to the DeCourseys, the Washington Supreme Court has recently resolved the issue. As this Court recognized, the DeCourseys relied upon a 2010 case from the Washington Supreme Court in support of the de novo standard. Mot. at 2 (quoting Slip Op. at 5–6). To the extent Divisions Two and Three are disregarding a Washington Supreme Court opinion, that Court is certainly capable of both noticing and addressing the issue. Publication of an opinion from this Court that aligns with the decision of the Washington Supreme Court will not add anything useful to the process.

In sum, the Court properly concluded that the opinion in this case did not merit publication. Lane Powell respectfully requests that the Court deny the DeCourseys' motion.

DATED this 13th day of May, 2014.

McNAUL EBEL NAWROT & HELGREN
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Attorneys for Respondent

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on May 13, 2014, I caused a copy of the foregoing RESPONDENT LANE POWELL'S OPPOSITION TO APPELLANTS' MOTION TO PUBLISH DECISION to be served by electronic mail to:

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DATED this 13th day of May, 2014, at Seattle, Washington.

By: _____
Lisa Nelson, Legal Assistant