

IN THE SUPREME COURT OF THE  
STATE OF OREGON

John B. WELS, Jr.,  
*Respondent on Review,*

*v.*

Douglas W. HIPPE,  
*Defendant,*  
*and*

Le Roy HIPPE  
and Cheryl Hippe,  
*Petitioners on Review.*

(CC 101215E3; CA A150238; SC S063486)

On petition for reconsideration filed by petitioners on review December 5, 2016; considered and under advisement January 4, 2017.\*

Clayton C. Patrick, Clatskanie, filed the petition for reconsideration for petitioners on review.

No appearance *contra*.

Before, Balmer, Chief Justice, and Kistler, Walters, Landau, Baldwin, and Brewer, Justices, and DeHoog, Judge of the Court of Appeals, Justice pro tempore.\*\*

LANDAU, J.

The petition for reconsideration is allowed. The former opinion is modified and adhered to as modified.

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\* 360 Or 569, \_\_\_\_ P3d \_\_\_\_ (2016); 269 Or App 785, 347 P3d 788 (2015).

\*\* Nakamoto, J., did not participate in the consideration or decision of this case.

**LANDAU, J.**

Defendants have petitioned for reconsideration of our opinion in [Wels v. Hippe](#), 360 Or 569, \_\_\_ P3d \_\_\_ (2016). Defendants prevailed but seek clarification of our instruction remanding the case to the trial court for further proceedings. Defendants assert that this instruction requires the trial court to vacate its original judgment in favor of plaintiff and enter judgment in favor of defendants, rather than holding a new trial and allowing plaintiff to present further evidence. We agree that clarification is warranted as follows: The case is remanded to the circuit court for entry of judgment in defendants' favor, and the award of costs is modified accordingly.

The petition for reconsideration is allowed. The former opinion is modified and adhered to as modified.