

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
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No. 100892-9

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SUPREME COURT  
OF THE STATE OF WASHINGTON

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SINA GHODSEE, an individual, through Litigation  
Guardian ad Litem, JOSHUA BROTHERS,

Petitioners,

and

SHAHRBANOO GHODSEE, an individual,

Plaintiff,

v.

CITY OF KENT, a political subdivision of the State of  
Washington,

Respondent,

and

KING COUNTY, d/b/a King County Crisis  
and Commitment Services,

Defendant.

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PETITIONERS' ANSWER TO NAMI-WA  
AMICUS BRIEF ON REVIEW

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## A. INTRODUCTION

The *amicus curiae* brief of NAMI-WA on RAP 13.4(b) review only crystalizes the point made in Sina Ghodsee’s petition for review that this is a Supreme Court case. Division I’s published opinion made plain errors in its treatment of the public duty doctrine, the duty to Sina owed by City of Kent (“City”) law enforcement officers in the execution of the unambiguous order issued by Judge Johanna Bender for Sina’s detention under the Involuntary Treatment Act, RCW 71.05 (“ITA”), and the application of RCW 71.05.120(1).

This Court should grant review and reaffirm the duty analysis under *Restatement (Second) of Torts* § 281 that it has *repeatedly* employed in its decisions, and reject, yet again, the application of public duty doctrine to a common law cause of action. This Court also needs to definitively construe the reach of RCW 71.05.120(1). RAP 13.4(b).

## B. ARGUMENT WHY REVIEW SHOULD BE GRANTED

The involvement in this case of our State’s foremost

advocacy group for severely mentally ill persons only makes clear the need for this Court to address Division I's published opinion that is full of errors on vital issues of law that adversely affect the needs of severely mentally ill people in our State.

Given its opposition to the submission of NAMI-WA's brief to this Court, it is likely that the City may repeat its diversionary arguments previously advanced in its objections to the filing of NAMI-WA's brief. It will likely again try to focus on isolated references in the NAMI-WA brief to due process for ITA patients or a special relationship between entities having ITA detention obligations and ITA-eligible detainees like Sina. The Court should not be misled by such an argument.

First, as NAMI-WA notes, the City owed Sina a duty.<sup>1</sup>

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<sup>1</sup> The City tries to claim that its § 281 duty is limited to "affirmative" actions rather than non-feasance. The Court can readily see through this argument. The City has no answer to *Washburn v. City of Federal Way*, 178 Wn.2d 732, 310 P.3d 1275 (2013) where the City's officers failed to act to protect a DV victim while serving a domestic violence prevention order on a DV perpetrator. As in *Washburn*, the KPD officers acted negligently in performing their ITA responsibilities. For nearly

Division I’s opinion correctly determined that the City owed Sina a duty under *Restatement* § 281, op. at 10, a common law duty the City acknowledges. Answer at 12. But Division I then erred by asserting that the public duty doctrine applied, op. at 4-16, and that the City did not breach that duty as a matter of law. Op. at 13-16.<sup>2</sup> That holding directly conflicts with this Court’s command that the public duty doctrine does not negate a common law governmental duty. *E.g.*, *Beltran-Serrano v. City of Tacoma*, 193 Wn.2d 537, 549-50, 442 P.3d 608 (2019).

Second, NAMI-WA focuses in its brief at 7-16 on the fact that the public duty doctrine does not apply here. For the reasons

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two weeks KPD officers *acted*, albeit completely ineffectively, to try to detain Sina.

<sup>2</sup> NAMI-WA contends that *In re Detention of N.G.*, 20 Wn. App. 2d 819, 503 P.3d 1 (2022), *review granted*, 510 P.3d 989 (2022), reinforces the argument advanced by Sina in his petition at 17-23 that the issue of breach is factually-rich. NAMI-WA is correct. Although Sina argued in his petition that Division I erred in deciding breach as a matter of law, the City did not address that issue, conceding that Division I erred in ruling on breach as a matter of law. Review is merited on that issue. RAP 13.4(b)(1)-(2).

fully articulated in Sina's petition at 15-17, NAMI-WA is correct. Apart from the fact that doctrine is inapplicable to common law claims, the public duty doctrine clearly does not apply here because the relationship between a city like Kent and an ITA-eligible person is highly *individualized*; the City's duty was *to Sina Ghodsee*, not the public at large. The City largely concedes Sina's contention that Division I erred in applying the public duty doctrine to Sina's common law action by not ever actually addressing that critical point. Answer at 3-4. Review is merited on this issue. RAP 13.4(b)(1)-(2).

Finally, in its brief at 16-19, NAMI-WA articulates why Division I erred in applying the limited immunity afforded by RCW 71.05.120(1) when the City's officers dithered for nearly two weeks, failing to implement Judge Bender's detention order while Sina decompensated, as County mental health treatment staff noted.

As Sina argued in his petition at 23-26, the statute, by its express terms, applies only to the decision of *whether* to detain



or treat a person, not to negligence in *how* the detention is effectuated. Contrary to the City's argument, answer at 23, KPD officers were not making a decision on *whether* to detain Sina. Judge Bender made that decision. Their efforts were directed at *how* to do so.

Moreover, even if gross negligence does apply, fact questions abound on how the KPD officers botched their response to the detention order while Sina's mental health deteriorated. Pet. at 25-26.

Interpretation of a key statute like RCW 71.05.120(1) is an issue for this Court. RAP 13.4(b)(4).

### C. CONCLUSION

NAMI-WA's brief fully supports the argument Sina has raised that Division I's opinion merits this Court's review. RAP 13.4(b).

This document contains 881 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 1st day of August, 2022.

Respectfully submitted,

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DECLARATION OF SERVICE

On said day below I electronically served a true and accurate copy of the *Petitioners' Answer to NAMI-WA Amicus Brief on Review* in Supreme Court Cause No. 100892-9 to the following:

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

DATED: August 1, 2022 at Seattle, Washington.

/s/ Matt J. Albers  
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August 01, 2022 - 4:07 PM

## Transmittal Information

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### Comments:

Petitioners' Answer to NAMI-WA Amicus Brief on Review

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