No. 826808-I

No. 101058-3

SUPREME COURT

OF THE STATE OF WASHINGTON

AVI LEANNE TAYLOR,

Petitioner

v.

MIRINA BARBARA JANE STONE

Respondent

REPLY TO MOTION FOR DISCRETIONARY REVIEW

Avi Taylor
Petitioner
PO BOX 1014
Monroe, WA
(206) 715-6161

A. INTRODUCTION

In her Motion for Discretionary Review (MDR), pursuant to RAP 13.5, Petitioner argued that the appellate court (1) committed obvious error which renders further proceedings useless; (2) probable error which substantially alters the status quo or limits the freedom of a party to act; and (3) departed from the usual course of judicial proceedings, or sanctioned such a departure by the trial court to call for review (RAP 13.5) (See also, Petitioners Motion for Discretionary Review).

Respondent does not object to these points, instead choosing to stay silent on all of them; review should be granted.

B. ARGUMENT

Stone seems to rest heavily upon his fabricated foundation that that appellate court (1) reviewed and (2) found that there was substantial evidence to support the trial courts findings.

Except, this is in direct contrast to what the court asserted:

"Taylor contends that the evidence does not support the trial courts (findings and conclusions). But we cannot consider these (AOE's) because of an incomplete record on appeal. (boilerplate pro se language). By not designating for review any of the 16 exhibits admitted at trial…we cannot fully review the evidence before the trial court OR discern whether substantial evidence supports it's findings."

Then, again in "Application of Damages" (See Opinion):

"…contends that the trial court erred in applying the evidence to the law…but she fails cite any evidence in the record that relates to a specific claim for damages. We generally will not consider arguments that are unsupported by pertinent legal authority, references to the record, or meaningful analysis… Because Taylor fails to reference the record, cite to any evidence, or provide substantive argument to support her general claim of error, we do not consider it further."

First, while Stone would love to have these courts believe that this case was reviewed, and that during that review, the court found substantial evidence to support the verdict, this is considerably closer to an overt lie than it is the truth. Second, Stone also cites to the evidence that shows the above is not true, and not even he has argued the above. In his ROB, he cites to

the same exhibits that petitioner included in the record on review, and cited to in her AOB. Later, in his Response to her MDR, he cites to her Motion for Reconsideration, which shows where the exhibits in the ROR are, where she asserted her NIED claim, also revealing that the evidence for the damage claims is in the body of the brief, along with the legal authority and analysis -not in the intro to damages paragraph, amongst other things. (See Motion for Reconsideration: (Petition for Review, Appendix E), (Respondents Reply MDR last page))

So here, the appellate court (1) "did not fully review the evidence before the trial court", (2) did not "discern whether substantial evidence supports it's findings" and (3) did "not consider" whether the law/evidence was applied to damages.

Much like in *Palmer*, the appellate court 'failed to undertake an independent view of record' and denied Taylor her review, but then charged her for it. It is fundamentally unfair to ignore the

vertical stare decisis of mandatory law, but then elect to impose a discretionary one. The "prevailing party" was then whomever did not dare to bring errors for review, it was not the one who prevailed, upon review. When all the exhibits relevant to the issues on review were included in the ROR and cited to, along with legal authority and analysis, the decision to award costs based on idea that she hadn't, is manifestly unreasonable.

Respondents main argument seems to be that since petitioner has not committed a crime, but suffered one, that she should be criminalized with court costs wildly disproportionate to her (below poverty, SSDI only) income, and stuck in the system. He argues that only the innocent should be burdened with debts that cannot be paid and would pose a manifest hardship upon, that they should be denied the same considerations at the time of imposition that criminals here in Washington are afforded.

Stone argues that the appellate court elected to impose discretionary costs upon the injured party, and directed her to pay the criminal who injured her, so she should have to. "They imposed!" They often do; they did in Blazina, too. This "blanket imposition" that has been shown to disproportionately devastate our indigent and disabled populations is what spurred the LFO reform that is sweeping through Washington State. The headlines read: *"State Supreme Court Rules Courts Cannot Demand LFOs from People Eking out a Living on Government Benefits"*. Which sounds like, quite a win, for all Washingtonians . . . except, that's not entirely true, now is it? That's only applicable to criminals. Everyone else, is fair game. Currently, it only matters if the ones who broke the law, are disabled, homeless, indigent or on SSI/SSDI benefits. The domino effects are indistinguishable though, and arguably worse for those they committed crimes against - those they injured, left disabled, homeless, without an income, and at the mercy of, in civil court trying to get their damages taken care

of. These parties, need to be given at least the same level of consideration. It's already been hailed as reality, but should be. *(See also "Washington Legislature to Consider Relieving (LFOs) for Indigent Individuals" (Feb 2021)*

As the U.S. Supreme Court states "The civil-criminal distinction is not dispositive and states may not deny an indigent litigant…by styling a proceeding as civil." (See Motion to Modify p.10). This sentiment is shared by many; the American Bar Association also specifies that ability to pay inquiries should take place "whether civil or criminal", "whatever the status of the litigant" and importantly, at the time of imposition. Respondent's attempts to group the entirety of the reports cited to in petitioners MDR as exclusive to indigent defendants are without merit. The "chronic and acute health stressors" that follow such impositions are as indistinguishable. *(See Formal Opinion 490 (March 2020) - "Ethical Obligations of Judges in Collecting Legal Financial Obligations and Other*

Debts"), (See "It's all about the Money"), (See "Monetary Sanctions as Chronic and Acute Health Stressors: The Emotional Strain of People Who Owe Court Fines and Fees.")

This is a matter of "substantial public interest" as a great deal of our population find themselves in civil court; the indigent, the physically disabled, those "eking out a living on government benefits"; and by the sounds of it, many thanks to drivers like Stone on our roads, many more soon will be. (See PFR p.25-35) 71% of low-income households have experienced a civil legal problem in the past year, and 80% of disabled households. (*See "The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans"*)

These people are currently falling through gaps in Washington State law, and these are people that are already struggling; many, because of crimes committed against them. We must provide for our population, not a percentage of it to ensure we

are taking the necessary steps to avoid unreasonably punishing and perpetuating poverty. On behalf of our most impoverished, please accept review, to make sure we're accounted for too.

The Attorney General of Washington State also agrees that such issues are of significant public interest, as they dictate "the level of protection afforded to taxpayer-funded cash assistance granted to low-income families and individuals in Washington." (See *Amicus, ATG Wakefield*). Much like in *Wakefield*, the court is aware that Taylor can only pay these LFOs from her SSDI/ SSI benefits. Whether the ultimatum is Pay or Stay, or Pay or Appear, it's still use your benefits to pay this, or else.

Though, while the issues raised in petitioners' Motion for Discretionary Review do happen to also meet at least some of the criteria for a Petition for Review, this is just an added bonus. Respondent has spent much of his motion arguing how her MDR doesn't meet the requirements for a PFR. What is more

relevant, is how her MDR does meet the requirements for an MDR, and how he fails to address any of these points in his response. In letters dated June 3rd and July 28th, the courts specify that the PFR is governed by RAP 13.4, the MDR by RAP 13.5. This is also mirrored in the forms for the respective rules, relevantly here with the form for MDR being RAP 13.5. (See Appendix A)

Then, both the appellate court and respondent concede that Taylor suffered more than just past pain and suffering, in their arguments. Stone explains the trial courts silence on damages for disfigurement, disability, mental and emotional anguish, by arguing that they were "not required to assign a separate line item in her award for pain, disability, disfigurement, mental anguish, loss of enjoyment of life, etc". (ROB p.21) The appellate court also adopts this argument, insisting that the trial court considered disability in their award, arguing that it doesn't need to be delineated. (Opinion p.11) Both parties have then

edited the verdict to reflect this, with respondent changing it to an award for “general damages”, the appellate court to an award for “noneconomic damages” not just “pain and suffering” as the trial court verdict reads. (PFR p.13)(See Stone Response MDR)

Both parties also acknowledge that petitioner does not have the ability to pay. The fact that she was found to be indigent on multiple occasions is impressed upon throughout respondents brief. These orders confirm that her only income since this collision has been federally protected SSDI benefits. The appellate court also accepts this truth, he also mentions, and of their own accord elected to waive the filing fee. The fact that she is now homeless and now living well below the poverty level is also not one in debate. No one is proposing that she will have the ability to pay these discretionary LFOs. There is no evidence that she has been able to return to her pre-Stone life; vocationally, physically and so on, let alone financially. There are no radiology or medical reports that her spine or range of

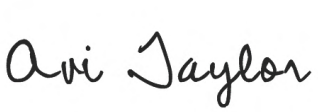
motion has returned to it's symptomless, fully functioning and thriving, pre-accident status. What the radiographic findings do show is a severe and traumatic spinal injury to all areas of petitioners spine. That, as her doctor testified to, has seriously exacerbated since with more needed. The sheer logistics of living after sustaining injury to 100% of your spine, hands, wrists, ribs, and other appendages. It would be against your will, if you tried it too. She loses a lot of time; asking for money, is asking for benefits; that's all there is now.
(See also Motion to Waive, Appendix B)

Lastly, the fact everyone's arguing about "pain and suffering" being synonymous with "general damages" or "noneconomic damages" is only further indicative of how prevalent the distinguishability issue is and one that is all too ripe for review. These are issues in which our courts are openly and intractably divided, as also reflected in *Wakefield* and *Catling*.

C. CONCLUSION

Petitioner respectfully asks this court to open the door to justice by accepting review.

Submitted on this 12th day of October, 2022 by:



Avi Taylor, Petitioner

This document contains 1,931 words, excluding the parts exempted from the word count by RAP 18.17.

Appendix A

LEA ENNIS
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
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June 3, 2022

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Case #: 826808
Avi Taylor, Appellant v. Mirina Stone, Respondent
King County Superior Court No. 19-2-05264-3

Counsel:

Enclosed please find a copy of the Order Denying Motion for Reconsideration entered in the above case.

Within 30 days after the order is filed, the opinion of the Court of Appeals will become final unless, in accordance with RAP 13.4, counsel files a petition for review in this court. The content of a petition should contain a "direct and concise statement of the reason why review should be accepted under one or more of the tests established in [RAP 13.4](b), with argument." RAP 13.4(c)(7).

In the event a petition for review is filed, opposing counsel may file with the Clerk of the Supreme Court an answer to the petition within 30 days after the petition is served.

Sincerely,

Lea Ennis
Court Administrator/Clerk

jh

c: The Hon. Regina Cahan

LEA ENNIS
Court Administrator/Clerk

The Court of Appeals
of the
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DIVISION I
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July 28, 2022

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Case #: 826808
Avi Taylor, Appellant v. Mirina Stone, Respondent
King County Superior Court No. 19-2-05264-3

Counsel:

Please find enclosed a copy of the Order Denying Motion to Modify the Commissioner's ruling entered in the above case today.

The order will become final unless counsel files a motion for discretionary review within thirty days from the date of this order. RAP 13.5(a).

Sincerely,

Lea Ennis
Court Administrator/Clerk

jh

See RAP 18.17 for document formatting requirements.

RAP FORM 3. Motion for Discretionary Review

[Rule 6.2 (review of trial court decision); Rule 13.5 (review of Court of Appeals interlocutory decision); Rule 17.3(b) (content of motion))

No. (appellate court)

(SUPREME COURT or COURT OF APPEALS, DIVISION_____)
OF THE STATE OF WASHINGTON

(Title of trial court proceeding with parties designated as in rule 3.4, for example:
JOHN DOE, Respondent,
v.
MARY DOE, Petitioner,
and
HENRY JONES, Defendant.)

MOTION FOR DISCRETIONARY REVIEW

(Name of petitioner's attorney)

Attorney for (Petitioner)

(Address, telephone number, and Washington State Bar Association membership number of petitioner's attorney)

A. IDENTITY OF PETITIONER

(Name) asks this court to accept review of the decision or parts of the decision designated in Part B of this motion.

B. DECISION

(Identify the decision or parts of decision which the party wants reviewed by the type of decision, the court entering or filing the decision, the date entered or filed, and the date and a description of any order granting or denying motions made after the decision such as a motion for reconsideration. The substance of the decision may also be described: for example, "The decision restrained defendant from using any of her assets for any purpose other than living expenses. Defendant is thus restrained from using her assets to pay fees and costs to defend against plaintiff's suit for a claimed conversion of funds from a joint bank account.") A copy of the decision (and the trial court memorandum opinion) is in the Appendix at pages A-____ through ____.

C. ISSUES PRESENTED FOR REVIEW

(Define the issues which the court is asked to decide if review is granted. See Part II of Form 6 for suggestions for framing issues presented for review.)

D. STATEMENT OF THE CASE

(Write a statement of the procedure below and the facts. The statement should be brief and contain only material relevant to the motion. If the motion is directed to a Court of Appeals decision, the statement should contain appropriate references to the record on review. See Part III of Form 6. If the motion is directed to a trial court decision, reference should be made to portions of the trial court record. Portions of the trial court record may be placed in the Appendix. Certified copies are not necessary. If portions of the trial court record are placed in the Appendix, the portions should be identified here with reference to the pages in the Appendix where the portions of the record appear.)

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

(The argument should be short and concise and supported by authority. The argument should be directed to the considerations for accepting review set out in rule 2.3(b) for review of a trial court decision and rule 13.5(b) for review of a decision of the Court of Appeals.)

F. CONCLUSION

(*State the relief sought if review is granted. For example: "This court should accept review for the reasons indicated in Part E and modify the restraining order to permit defendant to use her assets to pay fees and costs incurred in defending plaintiff's suit for conversion*.")

[If the petition is prepared using word processing software, include the following statement: This document contains _____ words, excluding the parts of the document exempted from the word count by RAP 18.17.]

(Date)

Respectfully submitted,

_____

Signature

(Name of petitioner's attorney)

APPENDIX

(See rule 17.3(b)(8) for materials to include within the Appendix.)

[Adopted effective July 1, 1976; Amended effective September 1, 1994; September 1, 2010; September 1, 2021.]

AVI TAYLOR - FILING PRO SE

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