101415-5

No. 83360-0

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

KATHRYN M. COX,

Appellant,

vs.

LASHER HOLZAPFEL SPERRY & EBBERSON, PLLC, a Washington Professional Limited Liability Company; and MAYA TRUJILLO RINGE and JOHN DOE RINGE, a marital community,

Respondents.

RESPONDENTS' ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENTS

The Respondents are attorney Maya Trujillo Ringe and the law firm Lasher Holzapfel Sperry & Ebberson, PLLC.

II. INTRODUCTION AND RESTATEMENT OF ISSUES

Appellant Kathryn Cox mischaracterizes the Court of Appeals' decision. The Court of Appeals did not hold that a legal malpractice plaintiff's standard of care expert must provide testimony regarding proximate cause for the plaintiff to survive summary judgment. Instead, the Court of Appeals applied the correct and well-established summary judgment standard and determined as a matter of law that no reasonable juror would find that Ms. Cox established the proximate cause element of her claim. The Court of Appeals' application of the correct summary judgment standard is in harmony with this Court's decision in *Daugert v. Pappas*, 104 Wn.2d 254, 704 P.2d 600 (1985), and published Court of Appeals decisions. There are no grounds for acceptance of review under RAP 13.4(b)(1) or (b)(2). Ms. Cox's petition should be denied.

III. RESTATEMENT OF THE CASE

A. The Underlying Divorce Case

Ms. Trujillo Ringe is an experienced family law attorney.[1] She represented Ms. Cox in a 2017 divorce case before King County Superior Court Judge John Ruhl.

1. Judge Ruhl's Decision

At Ms. Cox's direction, at trial Ms. Trujillo Ringe asked Judge Ruhl to enforce the couple's post-nuptial agreement. CP 0033-0048. If the agreement were enforced, Judge Ruhl would have awarded Ms. Cox the vast bulk of the marital estate, as well as Mr. Cox's future earnings and past, present, and future retirement benefits. *Id.*

After a four-day bench trial, Judge Ruhl determined that the post-nuptial agreement was unenforceable because it was substantively and procedurally unfair. CP 0052-0060. As a

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[1] Ms. Trujillo Ringe was a principal at Lasher Holzapfel Sperry & Ebberson, PLLC, the other Respondent in this action. The claims again the law firm are based solely on Ms. Trujillo Ringe's alleged conduct.

result, Judge Ruhl exercised his discretion and divided the community assets in a way he determined was equitable. CP 0049-0080. Despite ruling against Ms. Cox, Judge Ruhl praised Ms. Trujillo Ringe's efforts:

> The Court finds that the factual and legal issues in this case were complex; that the legal issues were further complicated by numerous recent appellate decisions, which both parties' counsel were careful to cite to the court; that **both parties' counsel efficiently presented their evidence at trial; that the quality of the legal work performed by both parties' counsel in this case was excellent and quite helpful to the court.**

CP 0085 (emphasis added).

Although Ms. Cox did not prevail at trial, Judge Ruhl ordered John Cox to pay virtually all of Ms. Trujillo Ringe's fees. CP 0081-0089. Judge Ruhl found the fees and costs "reasonable in light of the novelty and complexity of the legal and factual questions involved" and "commensurate with [Ms. Trujillo Ringe's] level of experience and ability." CP 0085.

2. The Court of Appeals Affirmed Judge Ruhl's Decision

After trial, Ms. Cox hired new counsel to file an appeal. Ms. Cox's appellate counsel relied upon the evidence presented by Ms. Trujillo Ringe in the divorce trial and argued that Judge Ruhl's decision was in error. CP 0090-0148. The Court of Appeals affirmed Judge Ruhl, agreeing that the post-nuptial agreement was substantively and procedurally unfair and noting the discretionary nature of Judge Ruhl's decisions with respect to the division of assets. CP 0149-0170.

B. Procedural History in This Case

1. The Complaint

Ms. Cox, acting *pro se,* filed her complaint in this case on November 23, 2020. CP 0001-0006. She did not secure expert legal standard of care opinions supporting her claims before she did so. CP 0185-0186. She alleged that Ms. Trujillo Ringe breached the standard of care in vague and unspecified ways. CP 0005-0006.

2. Ms. Cox Did Not Disclose Any Experts in Initial Discovery

Ms. Cox identified no expert witnesses in her June, 2021 written discovery responses. CP 0173-0174.

3. Ms. Trujillo Ringe's Summary Judgment Motion

Ms. Trujillo Ringe filed her motion for summary judgment on September 17, 2021. CP 0019-0028. She argued that Ms. Cox could not establish breach, proximate cause, or damages. With respect to breach, Ms. Trujillo Ringe argued that Ms. Cox was required to produce competent expert legal standard of care testimony to support her claims. Ms. Trujillo Ringe noted that Ms. Cox had disclosed no expert opinions in the ten months since she filed her complaint. CP 0024-0025.

The same day Ms. Trujillo Ringe filed her motion, Ms. Cox filed a Supplemental Primary Witness Disclosure in which she identified Carolyn Martino as a potential standard of care expert. CP 0015-0018. Ms. Martino is a California lawyer and is

not licensed in Washington. At the time Ms. Cox filed the disclosure, Ms. Martino had no opinions. CP 0178-0182.

Over two weeks later, Ms. Cox submitted a declaration from Ms. Martino with her summary judgment opposition. CP 1460-1474. Ms. Martino opined that Ms. Trujillo Ringe breached the standard of care in the following ways:

- "Fail[ing] to properly investigate and evaluate the competency of her own client . . . ." CP 1469.
- "Fail[ing] to investigate the underlying facts and claims by not interviewing key witnesses prior to trial." CP 1469.
- "Fail[ing] to properly prepare for trial or substitute a different attorney who was not distracted by personal issues." CP 1469.
- "Fail[ing] to provide information to her client about the possible outcomes of trial." CP 1470.
- "Fail[ing] to secure mental health experts for both plaintiff and defendant . . . ." CP 1470.
- "Fail[ing] to secure a forensic accountant expert to address the postnuptial agreement terms and conditions." CP 1470.

- "Fail[ing] to call witnesses at trial . . . to refute facts being put forth by Mr. Cox relating to mental state, capacity, employment duties and responsibilities." CP 1470.

In her reply brief, Ms. Trujillo Ringe objected to the admissibility of Ms. Martino's declaration because she was not competent to provide expert witness opinions on the standard of care for Washington divorce trial attorneys. CP 1475-1478. Ms. Trujillo Ringe further argued that even if the trial court concluded Ms. Martino was qualified to offer opinions, the opinions she expressed were insufficient to defeat summary judgment.

Ms. Cox filed a sur-reply (CP 1568-1574) and a supplemental declaration from Ms. Martino with additional opinions. CP 1575-1581.

The trial court granted Ms. Trujillo Ringe's motion for summary judgment. CP 1582-1587. In doing so, the court considered Ms. Martino's two declarations and Ms. Cox's sur-

reply. *Id.* The trial court's decision was based in part on lack of evidence of proximate cause. *Id.*

4. The Court of Appeals Affirmed Dismissal

In affirming the dismissal, the Court of Appeals determined that "[Ms. Cox] fails to raise a material question of fact as to proximate cause. '[R]easonable minds could reach but one conclusion' as to this element, and summary judgment dismissal was proper." *Cox v. Lasher Holzapfel Sperry & Eberson, PLLC*, 2022 WL 2662032 *4.

IV. ARGUMENT

A. Standard for Accepting Review

Ms. Cox's Petition for Review is based on RAP 13.4(b)(1) and (b)(2), which state as follows:

> **(b) Considerations Governing Acceptance of Review.** A petition for review will be accepted by the Supreme Court only:
>
> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
>
> (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; . . . .

B. The Court of Appeals Decision is in Harmony with Supreme Court Precedent

Ms. Cox argues incorrectly that the Court of Appeals' decision conflicts with the proximate cause standard expressed in *Daugert v. Pappas*, 104 Wn.2d 254, 704 P.2d 600 (1985). In *Daugert*, this Court stated the applicable standard as follows:

> In most instances, the question of cause in fact is for the jury. It is only when the facts are undisputed and inferences therefrom are plain and incapable of reasonable doubt or difference of opinion that this court has held it becomes a question of law for the court. *Peterson v. State*, 100 Wn.2d 421, 436, 671 P.2d 230 (1983) (quoting *Mathers v. Stephens*, 22 Wn.2d 364, 156 P.2d 227 (1945)). The principles of proof and causation in a legal malpractice action usually do not differ from an ordinary negligence case.

Daugert, 104 Wn.2d at 257.

In this case, as demonstrated by the quoted language below, the Court of Appeals made clear that it was applying the summary judgment standard articulated in *Daugert*:

- "Proximate cause in a legal malpractice claim is 'no different . . . than in an ordinary negligence' claim where a plaintiff must demonstrate cause in fact and legal causation. *Versuslaw, Inc. v. Stoel Rives, LLP*, 127 Wn.

App. 309, 328, 111 P.3d 866 (2005)." *Cox v. Lasher Holzapfel Sperry & Eberson, PLLC*, 2022 WL 2662032 *3.

- "[A] 'plaintiff must demonstrate that [they] would have achieved a better result had the attorney not been negligent.'" *Id.*
- "While generally proximate cause is left for a jury, it can be determined on summary judgment if 'reasonable minds could not differ.'" *Id*.
- "'[A]n adverse party . . . must 'set forth specific facts showing that there is a genuine issue for trial.'" *Id.* at *4.

After setting forth the correct legal standard, the Court of Appeals determined that Ms. Cox "fails to raise a material question of fact as to proximate cause. '[R]easonable minds could reach but one conclusion' as to this element, and summary judgment was proper." *Id.* at *4.

The Court of Appeals correctly noted that Ms. Cox's expert, Ms. Martino, submitted a declaration that primarily "provided only conclusory statements without noting the basis or foundation for those assertions. . . . [The expert] neglected to identify what evidence particular investigation would have

produced, experts who would have provided the testimony she states was critical and how that would have changed the outcome for [Ms. Cox].” *Id.*, at *4. The Court of Appeals did not rule that expert testimony on causation is required and Ms. Cox’s argument to the contrary is a misrepresentation of the decision. Rather, the Court of Appeals determined that no reasonable juror would rule in Ms. Cox’s favor based on proximate cause arguments for which there was no factual basis or foundation.

The only specific evidence Ms. Martino opined Ms. Trujillo Ringe should have introduced at trial was the testimony of Ms. Cox’s adult children. Ms. Cox argued that her children’s testimony would have demonstrated that “Mr. and Mrs. Cox had engaged in several years of discussions and negotiations that culminated in the Property Settlement Agreement.” *Id.* at *3.

The Court of Appeals correctly noted that “[Ms.] Trujillo Ringe used the declaration by Jessica to impeach John at trial and John admitted on cross-examination that all four children had filed ‘declarations about both the long-term negotiations that

went into that contract, the post-nup.' Trujillo Ringe also elicited testimony from John that settlement discussions were taking place 'from 2008 to 2011,' and that there were '3 years of, quote, negotiating.'" *Id.* at *3. Considering the evidence Ms. Trujillo Ringe introduced at trial on this topic, the Court of Appeals correctly determined that reasonable minds could reach but one conclusion: Ms. Trujillo Ringe's decision not to call the children as witnesses did not impact the ultimate outcome of the divorce case.

C. The Court of Appeals Decision Is in Harmony with Published Court of Appeals Precedent

Despite RAP 13.4(b)(2)'s limited application to "published decisions", Ms. Cox discusses two unpublished decisions (*Spice* and *Angelo*), which have no bearing on her petition. The only published Court of Appeals case Ms. Cox discusses is *Dang v. Floyd, Pflueger & Ringer, PS*, 2022 WL 9732289, 518 P.3d 671, 680-82 (2022), where the Court of Appeals applied the same summary judgment standard that was articulated by this Court in *Daugert* and applied by the Court of

Appeals in this case. Just as in this case, the Court of Appeals in *Dang* determined that based on the evidence presented, no reasonable juror would conclude that the plaintiff would have obtained a more favorable result in an underlying MQAC administrative hearing had the defendant attorneys acted differently. The Court of Appeals' decision in this case does not conflict with *Dang* or any other published Court of Appeals decision regarding proximate cause in legal malpractice cases.

V. CONCLUSION

The Court of Appeals applied the correct summary judgment standard regarding proximate cause and correctly determined that no reasonable juror would rule in Ms. Cox's favor based on the evidence she submitted in opposition to Ms. Trujillo Ringe's summary judgment motion. There are no grounds under RAP 13.4(b)(1) or (b)(2) to accept review. Ms. Cox's petition should be denied.

I certify that ***Respondents' Answer to Appellant's Petition for Review*** contains 2,073 words (excluding words

contained in appendices, title sheet, table of contents, table of authorities, certificate of compliance, certificate of service, signature blocks, and pictorial images) in compliance with RAP 18.17.

DATED this 30th day of November, 2022.

FORSBERG & UMLAUF, P.S.

Jeffrey T. Kestle, WSBA #29648
Roy A. Umlauf, WSBA #15437
Attorneys for Respondents

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing **RESPONDENTS' ANSWER TO PETITION FOR REVIEW** on the following individuals in the manner indicated:

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(X) Via Email
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SIGNED this 30th day of November, 2022, at Seattle, Washington.

s/ Lynda Ha
Lynda T. Ha

FORSBERG & UMLAUF, P.S.

November 30, 2022 - 3:02 PM

Transmittal Information

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