No. 101863-1

SUPREME COURT OF
THE STATE OF WASHINGTON

COURT OF APPEALS DIVISION I
STATE OF WASHINGTON NO. 84106-8-I

KAITLYN FLYNN and KEVIN FLYNN,

Petitioners.

v.

WOODINVILLE ANIMAL HOSPITAL, P.S., et al.,

Respondents.

RESPONDENTS BLUEPEARL WASHINGTON PRACTICE ENTITY, P.C., AND KENT J. VINCE'S ANSWER TO ANIMAL LEGAL DEFENSE FUND'S MEMORANDUM OF AMICUS CURIAE

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I. INTRODUCTION

Animal Legal Defense Fund's ("ALDF") suggests Division One's ruling is a "legal anomaly." Not so. Washington State and other courts around the country have addressed whether pet owners can recover emotional distress damages due to the alleged negligent death of a pet. Regardless of the tort, court or circumstance, courts have held emotional distress damages arising from the loss of such relationships are not compensable -- just like relationships we share with human best friends and many close family members.

Curiously, ALDF cites to authority which explicitly rejects the radical expansion in liability ALDF urges for here. Further, ALDF does not dispute Washington courts have, for good reason, repeatedly held that an extension of the law to allow for recovery of emotional distress damages in this context is more appropriately made by the legislature. ALDF offers nothing new in the face of settled Washington law. Accordingly, the Flynns' Petition for Review should be denied.

II. IDENTITY OF RESPONDING PARTY

Defendants-Respondents are BluePearl Specialty Emergency Pet Hospital of Kirkland ("BluePearl"), and Dr. Kent J. Vince ("Dr. Vince").

III. CITATION TO COURT OF APPEALS DECISION

Flynn v. Woodinville Animal Hospital et al., 2023 WL 2366663.

IV. ISSUE PRESENTED FOR REVIEW

Whether this Court should deny plaintiffs-petitioners Kevin and Kaitlyn Flynn's Petition for Review, where:

1. Division One's ruling is consistent with rulings in both Washington State and courts around the country – emotional distress damages are not recoverable due to the negligent death of a pet; and
2. This case presents no issues of substantial public interest that should be determind by this Court under RAP 13.4(b)(4).

V. STATEMENT OF THE CASE

BluePearl and Dr. Vince adopt by reference their Statement of the Case in their Brief of Respondents to Division One of the Court of Appeals. However, with respect to ALDF's Statement of the Case, ALDF offers factual statements that it fails to support with citations to the record and/or that the record entirely fails to support. The Court should disregard all uncited statements masquerading as facts. RAP 10.3(a)(5); RAP 13.4(c)(6); *Hurlbert v. Gordon*, 64 Wn. App. 386, 399-401, 824 P.2d 1238 (1992).

VI. ARGUMENT

A. Division One's ruling is consistent with rulings in both Washington State and courts around the country – emotional distress damages are not recoverable due to the negligent death of a pet.

ALDF contends that because similarly situated plaintiffs "may only be entitled to a trifling amount of damages in cases involving severe emotional distress following the negligent killing of a beloved animal," this Court should accept review to address this purported "legal anomaly." ALDF Memo at 1.

This baseless assertion is false for several reasons. Pursuant to RAP 13.4, this Court will grant a petition for review only:

> (1) if the decision of the Court of Appeals is in conflict with the decision of the Supreme Court; or (2) if the decision of the Court of Appeals is in conflict with the decision of another division of the Court of Appeals; or (3) if a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) if the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

ALDF asserts grounds for Supreme Court review exist under RAP 13.4(b)(4) only. Yet ALDF cites no authority in support of the proposition that a desire to drastically expand the gamut of available remedies to aggrieved pet-owners constitutes an issue of substantial public interest that should be determined by this Court. "Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search,

has found none." *DeHeer v. Seattle Post–Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962).

Further, Division One's ruling is not a "legal anomaly." Rather, it falls squarely in line with rulings issued by courts in Washington State and other courts around the country. Tellingly, rulings from other jurisdictions cited by ALDF all found against the expansion of liability it urges for here. *Barking Hound Village v. Monyak*, 787 S.E.2d 191 (Ga. 2016) ("we agree with those courts which have held that the unique human-animal bond, while cherished, is beyond legal measure."); *Strickland v. Medlen,* 397 S.W.3d 184 (Tex. 2013) (rejecting attempts to "effectively creat[e] a novel – and expansive – tort claim: loss of companionship for the wrongful death of a pet."); *McDougall v. Lamm*, 48 A.3d 312 (N.J. 2012) (rejecting owner's claim to recover emotional distress damages for negligent death of dog in owner's presence).

Similarly, ALDF cites the Restatement (Third) of Torts: Phys. & Emotional Harm, which explicitly excludes the

recovery of emotion-based damages in pet cases: "Although harm to pets (and chattels with sentimental value) can cause real and serious emotional harm in some cases, lines – arbitrary at times – that limit recovery for emotional harm are necessary. Indeed, injury to a close personal friend may cause serious emotional harm, but that harm is similarly not recoverable under this Chapter." Restatement (Third) of the Law, Torts: Liability for Physical and Emotional Harm, § 47 cmt. m (2012).

Moreover, contrary to ALDF's assertion, Washington law on how damages in pet cases are determined is both straight-forward and consistent with mainstream jurisprudence. When a pet does not have a market value, then there are alternative economic ways of valuing the pet – just as with any property that has no fair market value. In Washington, that value is called its "intrinsic value." *Sherman v. Kissinger*, 146 Wn. App. 855, 871, 195 P.3d 539 (2008). Other states call it "value to the owner" or "special value" or "peculiar value." *McMahon v. Craig*, 97 Cal. Rptr. 3d 555, 564 (Cal. Ct. App.

2009); *Mitchell v. Heinrichs*, 27 P.3d 309, 314 (Alaska 2001); *Carbasho v. Musulin*, 618 S.E.2d 368, 371 (W. Va. 2005). States like Washington that have applied this economic valuation method to pets in lieu of market value have agreed that it allows only for economic measures of damages, not emotional, sentimental or fanciful value. Thus, contrary to ALDF's suggestion, there is no confusion on the measure of damages in pet cases in Washington State.

B. This case presents no issues of substantial public interest that should be determined by this Court under RAP 13.4(b)(4).

ALDF fails to offer any authority establishing this case presents an issue of substantial public interest that should be determined by this Court. This Court has addressed what constitutes an issue of public interest:

> The criteria to be considered in determining whether sufficient public interest is involved are: (1) the public or private nature of the question presented; (2) the desirability of an authoritative determination which will provide future guidance to public officers; (3) the likelihood that the question will reoccur.

Dep't of Ecology v. Adsit, 103 Wn.2d 698, 705, 694 P.2d 1065 (1985); *Sorensen v. City of Bellingham*, 80 Wn.2d 547, 558, 496 P.2d 512 (1972). Case law shows that a question that meets these criteria will almost always implicate constitutional principles or the validity of statutes or other legislative enactments. *In re Myers*, 105 Wn.2d 257, 714 P.2d 303 (1986); *Gen. Tel. Co. of the Northwest, Inc. v. City of Bothell*, 105 Wn.2d 597, 716 P.2d 879 (1986); *Adsit*, 103 Wn.2d at 705; *State ex rel. Chapman v. Superior Court*, 15 Wn.2d 637, 642-43, 131 P.2d 958 (1942); *State ex rel. Yakima Amusement Co. v. Yakima County*, 192 Wn. 179, 73 P.2d 759 (1937).

Here, ALDF suggests "the availability of emotional distress damages in companion animal cases is a matter of public interest," because this issue "is the subject of widespread discussion in the legal community and the general public." ALDF Memo at 8. Yet this case plainly does not present a question that is public in nature, impact the conduct of governmental officers, or pose a constitutional or statutory

challenge. It is a dispute between private parties concerning the death of a dog due to alleged veterinary malpractice.

Again, under RAP 13.4(b)(4), this Court may grant review "if the petition involves an issue of substantial public interest **that should be determined by the Supreme Court**." Emphasis added. Here, as stated in multiple Washington appellate decisions, the radical extension of liability sought by ALDF and petitioners is more appropriately made by the legislature.

"Washington law is clear that a pet owner has no right to emotional distress damages or damages for loss of human-animal bond based on the negligent death or injury to a pet." *Hendrickson v. Tender Care Animal Hospital Corp*., 176 Wn. App. 757, 762, 312 P.3d 52 (2013). In *Repin v. State*, 198 Wn. App. 243, 270 (2017), the court confirmed that *Hendrickson* and *Sherman* follow a strict rule that denies a pet owner emotional distress damages for loss of a human-animal bond based on the negligent death or injury to a pet.

Further, in *Pickford v. Masion*, 124 Wn. App. 257, 98 P.3d 1232 (2004), plaintiffs alleged claims for NIED, malicious infliction of emotional distress, and destruction of the guardian-companion animal relationship following an attack by two dogs on another dog. *Id.* at 259. The trial court dismissed the claims, and plaintiffs appealed. *Id.* In rejecting all of the claims, the court declined "to extend [recovery in tort] to loss of companionship for death or injury to a pet. In Washington, damages are recoverable for the actual or intrinsic value of lost property but not for sentimental value." *Id.* at 263. The *Pickford* court went on to dispose of the same argument ALDF raises here. The court noted that: "**Such an extension of duty and liability is more appropriately made by the legislature**." *Id*. (Emphasis added).

Similarly, in *Hendrickson*, a veterinary malpractice action, Division Two reasoned it would be improper to legislate from the bench: "If there is to be a change of the common law, **we believe a more prudential approach would be for the**

Legislature to consider the matter prior to such a change occurring." *Hendrickson* 176 Wn. App. at 772 (quoting *Gaglidari v. Denny's Restaurants, Inc.*, 117 Wn.2d 426, 448, 815 P.2d 1362, 1374 (1991) (as part of the *Hendrickson* court's justification for refusing to extend the availability of emotional distress damages for the breach of a bailment contract for veterinary services).

ALDF offers no explanation as to why this Court, not the Legislature, is the more appropriate branch to create such a drastic expansion of liability. Thus, the petition does not involve issues of substantial public interest that should be determined by this Court.

VII. CONCLUSION

ALDF and petitioners have unequivocally failed to present grounds under RAP 13.4(b) on which this Court should grant review. Accordingly, respondents respectfully request that the Flynns' Petition for Review be denied.

Respectfully submitted this 28th day of June, 2023.

I certify that this memorandum contains 1,786 words, in compliance with RAP 18.17 (c)(9).

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that on June 28, 2023, I caused service of the foregoing pleading on each and every attorney of record herein via Supreme Court E-Filing Portal:

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