FILED
SUPREME COURT
STATE OF WASHINGTON
6/30/2023 4:47 PM
BY ERIN L. LENNON
CLERK

Supreme Court No. 102076-7

SUPREME COURT
OF THE STATE OF WASHINGTON

Court of Appeals No. 83541-6-I

GARRET SCHIREMAN, in his individual capacity, and as executor for THE ESTATE OF LOREN E. SCHIREMAN,

Petitioner,

v.

CHRISTOPHER P. WILLIAMS,

Respondent.

PETITIONER'S REPLY TO RESPONDENT'S ANSWER TO PETITION FOR REVIEW

Gregory W. Albert
WSBA #42673
Jonah L. Ohm Campbell
WSBA #55701
Albert Law PLLC
3131 Western Ave, Suite 410
Seattle, WA 98121
(206) 576-8044

TABLE OF CONTENTS

I. REPLY 1

TABLE OF AUTHORITIES

CASES

Avon Dev. Enterprises Corp. v. Samnick, 286 A.D.2d 581, 730 N.Y.S.2d 295 (2001) 4

Paradise Orchards Gen. P'ship v. Fearing, 122 Wn. App. 507 (Div. 3, 2004) 4

Ruffalo v. Patterson, 234 Cal. App. 3d 341 (Cal. Ct. App. 1991) 4

I. REPLY

Mr. Williams' Answer to Mr. Schireman's Petition for Review ("Answer") raises a new claim Mr. Williams never raised in his Division One appeal. Mr. Williams now claims, for the first time, that he asked the Trial Court to decide proximate cause in his CR 12(h) and CR 50 motions:

> What Schireman cannot deny, pet. at 10-12, however, is that Williams argued a CR 12(h) motion before the trial, arguing that causation was for the court, not a jury. RP 712-29. The court denied it. RP 724-29. Similarly, Williams argued a CR 50(a) motion asking the court to decide causation. RP 231-47. The court denied it as well. RP 244-47.

Answer at 7.

Mr. Williams' newfound claim is untrue. When previously confronted with the fact that he never asked the Trial Court to decide cause under *Daugert*, he conceded that point and pivoted toward his collateral estoppel argument:

> Garret argues throughout his response that Williams "never asked Judge Appel to decide proximate cause". BR 21. That is because there was no need for anyone to argue or decide "proximate cause", since the issues were purely

> legal ones that *had already been decided by Judge Bowden*. Garret was trying to turn the case into one of negligence by Williams, but it should never have survived the first motion to dismiss.

Reply Brief of Appellant ("RBoA") at 6 (italics added).

Later, Mr. Williams reiterated that his appeal "has nothing to do with proximate cause," because it is essentially a collateral estoppel argument:

> …both of Williams' motions in two of his assignments of error sought dismissal of Garret's claims on the basis that a jury should not decide an issue previously decided as a matter of law by a judge. It has nothing to do with 'proximate cause', a central focus of Garret's BR.

RBoA at 6, n. 3 (citations omitted).

Now that Division One issued a ruling finding the Trial Court should have decided proximate cause instead of a ruling adopting his collateral estoppel argument, he reverses his own admissions to support the ruling. Answer at 7. But rather than identify any specific point at which he "ask[ed] the Court to decide causation," he tells the Supreme Court to fish through seventeen pages of his CR 12 oral argument and sixteen pages of

his CR 50 oral argument. Answer at 7 (citing RP 712-29 and RP 231-47, respectively).

Mr. Williams' CR 12 oral argument did not ask the Trial Court to decide proximate cause on the merits, interpret the premarital agreement, or observe his *Daugert* rights in any way. RP 712-729. Mr. Williams conflates his CR 12 collateral estoppel argument with *Daugert* because they share similar language about the propriety of a jury deciding an issue for the court, but such language can be found in any summary judgment motion. *See, e.g.,* RP 713:11-13 ("…this is a court issue. This is not a jury issue. A jury should not have this matter"). A closer look shows he is asking the Trial Court to dismiss the case because the TEDRA Judge *already* interpreted the premarital agreement, which is a collateral estoppel argument. RP 714:13-15 ("Whether the interpretation is correct or there was a better interpretation was up to Judge Bowden."); *see also* RP 723:5-12.

The Trial Court had no choice but to deny Mr. Williams' collateral estoppel motion, which it did in a well-considered

opinion. RP 725:11-727:8.[1] *See also Paradise Orchards Gen. P'ship v. Fearing*, 122 Wn. App. 507 (Div. 3, 2004); *Ruffalo v. Patterson*, 234 Cal. App. 3d 341 (Cal. Ct. App. 1991); *Avon Dev. Enterprises Corp. v. Samnick*, 286 A.D.2d 581, 730 N.Y.S.2d 295 (2001). Under Mr. Williams' reasoning, no malpractice victim would have redress for a negative outcome resulting from their lawyer's failure to adequately brief a judge.

Mr. Williams' claim about his CR 50 motion is also untrue. Mr. Williams tells the Court to comb through sixteen pages of transcript to find support. The causation section of his motion is roughly two pages long. RP 235:15-237:20.[2] It begins by stating that proximate cause is the jury's job to decide: "[i]n order for a plaintiff to succeed in this claim, he must show the

---

[1] Mr. Williams' CR 12(h) motion was also procedurally improper as identified by Division One. *See Schireman v. Williams,* 2023 WL 2645875, at * 5 n. 7 (Wn. Ct. App. Div. 1, March 27, 2023).
[2] None of the other sections of the CR 50 motion address anything resembling that issue. RP 231:20-235:14 (duty and breach); RP 237:21-238:8 (damages); RP 238:10-247 (rebuttal and ruling).

jury that but for Mr. Williams's argument, the court would have found in Mr. Schireman's favor." RP 235:20-24. The remainder of the section sought to invoke an improper, subjective standard for the jury to decide proximate cause and then complained that Mr. Schireman could not meet that standard: "[t]he parties in the case nor the jury can enter the underlying court's mind and speculate as to what he could have done…that Judge Bowden would have done something different…" RP 236:3-237:14. Mr. Williams' new claim that he only prepared a proximate cause jury instruction because his CR 50 motion was denied cannot be true, considering his CR 50 motion only contemplated the jury deciding proximate cause. Answer at 8, ¶1.

If Mr. Williams wanted the Trial Court to decide proximate cause, he would have said so in his thorough Trial Brief. CP 1044-1053. He did not. Instead, he stated proximate cause is the jury's "fundamental inquiry." CP 1051:18-1052:2.

Finally, Mr. Williams seems to concede he needs a "liberal standard for error preservation" to support the Division One

ruling. Answer at 19. But even a liberal standard must have limits. Expanding the standard here allows Mr. Williams to see the results of the jury verdict *before* deciding whether he wants the jury to decide the case. Neither *Daugert* nor the liberal standard for preservation was meant to be a device to give defendants two outcomes. If that device stands, every legal malpractice defendant could follow Mr. Williams' blueprint.

Mr. Williams admitted he never asked the Trial Court to decide proximate cause. He only claims otherwise now that the issue became the lynchpin of Division One's decision. Given an opportunity to show where he requested that, he tells the court to go find it among 33 pages of transcript containing no such request. There is nothing to support his new claim. Considering the repeatability of Mr. Williams' method, the Court should grant review of the scattered *Daugert* case law, which affects one of the most sacrosanct rights in the Washington Constitution.

This document contains 1095 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 30th day of June, 2023.

Respectfully submitted,

____

Gregory W. Albert
WSBA #42673
Jonah L. Ohm Campbell
WSBA #55701
Albert Law PLLC
3131 Western Ave, Suite 410
Seattle, WA 98121
(206) 576-8044
Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies under the laws of the state of Washington that on the date written below, I filed the foregoing Petitioner's Reply to Respondent's Answer with the Clerk of the Court using the Washington State Appellate Courts' Portal, which will send notification of such filing to the following:

Suzanne K. Michael
Fisher & Phillips, LLP
1700 7th Avenue, Suite 2200
Seattle, WA 98101
Tel: 206-682-2308
Email: smichael@fisherphillips.com
Attorney for Respondent

Philip A. Talmadge
Talmadge/Fitzpatrick
2775 Harbor Avenue SW
Third Floor, Suite C
Seattle, WA 98126
Tel: (206) 574-6661
Email: phil@tal-fitzlaw.com
Attorney for Respondent

Dated this 30th day of June, 2023.

Jonah L. Ohm Campbell

ALBERT LAW PLLC

June 30, 2023 - 4:47 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	102,076-7
Appellate Court Case Title:	Garret Schireman v. Christopher Williams
Superior Court Case Number:	18-2-06663-6

The following documents have been uploaded:

- 1020767_Answer_Reply_20230630164618SC339885_7686.pdf
  This File Contains:
  Answer/Reply - Reply to Answer to Petition for Review
  The Original File Name was 20230630 Schireman Reply to Answer.pdf

A copy of the uploaded files will be sent to:

- greg@albertlawpllc.com
- jmatautia@fisherphillips.com
- lwidmer@fisherphillips.com
- matt@tal-fitzlaw.com
- phil@tal-fitzlaw.com
- rrjones@fisherphillips.com
- smichael@fisherphillips.com

Comments:

Sender Name: Jonah Ohm Campbell - Email: jonah@albertlawpllc.com
Address:
3131 WESTERN AVE STE 410
SEATTLE, WA, 98121-1036
Phone: 509-675-3076

Note: The Filing Id is 20230630164618SC339885