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Supreme Court No.

No. 43265-0-II

FILED

OCT 28 2013

SUPREME COURT
OF THE STATE OF WASHINGTON
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

ROBERT LISLE HALE, Personal Representative of the ESTATE OF
LISLE HALE, deceased; CLARA HALE, surviving spouse of LISLE
HALE; ROBERT L. HALE; DONALD HALE; and TRICIA HALE,

Appellants,

BRIDGE BUILDERS, LTD.; MINDI R. BLANCHARD and JOHN DOE
BLANCHARD; BRENDA S. CARPENTER and JOHN DOE
CARPENTER; JANET WATRAL and JOHN DOE WATRAL;
MICHAEL R. HASTINGS and JANE DOE HASTINGS; and
MICHAEL R. HASTINGS, P.S.,

Respondents.

PETITION FOR REVIEW

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STATE OF WASHINGTON
CLERK OF THE SUPREME COURT
MINDI R. BLANCHARD

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I. PETITIONERS

The Petitioners are the entire Hale Family: Plaintiffs Robert Lisle Hale, Personal Representative of the Estate of Lisle Hale, deceased; Clara Hale, surviving spouse of Lisle Hale by her attorney in fact Donald Hale; and Robert L. Hale, Donald Hale, and Tricia Hale, the children of Lisle and Clara Hale. Petitioners ask this Court to accept review of the Court of Appeal's decision terminating review designated in Part II of this Petition.

The Respondents are Bridge Builders, Ltd.; Mindi R. Blanchard (owner Bridge Builders (BB) and John Doe Blanchard; Brenda S. Carpenter (employee of BB) and John Doe Carpenter; Janet Watral(Director of Admissions at Sherwood) and John Doe Watral.¹

II. COURT OF APPEALS DECISION

Hale v. Bridge Builders, LTD., 43265-0-II (Wash. App. 8-20-2013), *unpublished*; Order Denying Motion for Publication, September 24, 2013. The decision is at Appendix 2. The Order Denying Motion for Publication entered on September 24, 2013, is also in the Appendix at 18.

III. ISSUES PRESENTED FOR REVIEW

The parties were before Judge Craddock Verser three times on summary judgment motions regarding the application of the In-Home Care Services

¹ Defendants Attorney Michael R. Hastings and his law firm were dismissed from the case in the spring of 2011.

Act (RCW Ch. 70.127) (Act) and whether Bridge Builders² should have been licensed in the spring and early summer of 2008.

1. Does an elderly couple, incapable of providing for themselves, one of whom suffers from dementia, have legal standing to claim their rights were violated by an alleged "home care service" provider which obtained their power of attorney to facilitate residential care in their own home and actually provided some services and offered more?

2. Is it at least a question of fact whether Defendants were required to be licensed under the In-Home Care Services Act, RCW 70.127?

3. Whether the powers of attorney obtained from the elderly couple by Bridge Builders violated the In-Home Care Services Act, RCW 70.127.150?

4. Should the Hales have been allowed to be provided with discovery concerning the work of Bridge Builders and their clients?

5. Do the allegations in Plaintiffs' Amended Complaint, if proven, support grounds for a claim of professional malpractice against Bridge Builders?

IV. STATEMENT OF THE CASE

² Defendants Bridge Builders, Mindi R. Blanchard (owner) and Brenda Carpenter (employee) are referred to herein, unless otherwise indicated, as Bridge Builders.

A. Facts.

Clara Hale, then age 90, joined Lisle Hale, then age 86, at Sherwood Assisted Living (Sherwood) in Sequim, Washington on June 4, 2008. Lisle had been at Sherwood since early April 4, 2008.

On June 4, 2008, having obtained the name of a lawyer from Defendant Watral Director of Admissions at Sherwood, the very next day, June 5, 2008, the Hales' met with the attorney, Michael R. Hastings, whose office was just across the street from Sherwood.

Later that day, the day after Clara Hale came to Sherwood, Mindi Blanchard met with the Hales – her time entry for that day says, “I met Michael Hastings at Sherwood Assisted Living . . . primarily, they wanted to move back home. I told them that I could assist them with this. I asked them if they would be willing to have me be their power of attorney. They agreed and I told them that I would let Michael Hastings know.” [Emphasis added.] CP 243, Appendix 55.

Attorney Hastings drafted new powers of attorney for them providing Mindi Blanchard and Bridge Builders be named their attorney in fact and revoking the powers they previously had given to their children years earlier. Declaration of Tricia Hale, CP 125.

On June 6, 2008, the revocations and powers were signed.

Declaration of Robert Hale, CP 343-63. Bridge Builders and owner Mindi Blanchard, that very day, without any consultation with the Hale children, without knowing the Hale's physical and mental conditions, without having any knowledge of the costs, without knowing of the emergency care needs of the Hales and without knowing the financial circumstances of the Hales, promptly began the process of moving Hales back to their home. Declaration of Mindi Blanchard, Time Sheets, CP 244-246. See also the Declaration of Alice Semingson, Plaintiffs' expert at Appendix 61-65.

At Sherwood, Defendant Director Watral told the Hale children not to visit their parents for awhile but to give them some time to become acclimated to Sherwood, just as Lisle Hale had earlier in April. CP 125 and following.

The children were crestfallen. After they understood the situation of what had happened, they took steps to thwart Bridge Builders' and Mindi Blanchard's plans and succeeded in doing so June 12, 2009. Lisle Hale has passed away. Clara Hale is still at Sherwood and has severe dementia.

Bridge Builders advertised itself next to an advertisement of Michael R. Hastings. Robt. Hale Declaration, CP 364. The advertisement included reference to the Bridge Builders website – www.bridgebldrs.com. *Id.*

On the website, Bridge Builders provided information about the

services it provided. The Internet information identified Bridge Builders as “Providing Assisted Living Services in the Home.” *Id.*, CP 325 - 41. The home page of the website also said that Bridge Builders “Supported Independence” and that it was “Licensed, Insured and Bonded.” CP 325. The site included a “Menu of Services” (CP 320) and “Specialty Services.” *Id.* In the Fees section, Bridge Builders said its “Mission” was as follows: “We bridge the gaps in resources, and provide the framework for individuals to be able to maintain their personal independence for as long as possible.” [Emphasis added.] *Id.*; CP 331.

In the Specialty Services section, Bridge Builders advertised these services: (a) Power of Attorney – services as attorney-in-fact under power of attorney; (b) Certified Professional Guardian; (c) “Representative of the Estate.” *Id.* CP 334 - 45.

B. Procedure.

The case was commenced in May 2009. Bridge Builders brought three motions for summary judgment commencing in the fall of 2009 prior to this last motion, the one which is the subject of the Court of Appeals decision. All of these motions dealt with the meaning and applicability of the In-home Care Services Act, RCW 70.127 to the Hale circumstances and those of Bridge Builders, Mindi Blanchard and Brenda Carpenter.

Copies of the decisions are in the Appendix 20-54.

V. SUMMARY OF ARGUMENT

Hundreds of thousands of Washington residents, people born during World War II and in the years thereafter, are in need of increasing levels of care, including care which will allow them to stay in their home or homes created when they scaled down. The elder Hales clearly fit squarely within that category. The state of Washington has a number of laws to protect these people from those who might act in an unscrupulous manner when offering or providing "home care services" as defined by RCW 70.127.010 (6).

One of the most important statutes is the In-Home Services Act, RCW Ch. 70.127. This Petition challenges the appellate court's application of that law and how it claims that that law implicates other laws such as the Vulnerable Adults Act, RCW 74.34.200 and the Consumer Protection Act, RCW Ch. 19.86.

VI. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

A. RAP 13.4(b)(4).

This Petition for Review should be accepted by the Supreme Court pursuant to RAP 13.4(b) (4) because Decision of the Court of Appeals involves issues of substantial public interest that should be determined by the Supreme Court.

B. The Elderly Hales Have Standing to Assert Violation of In-Home

Care Services Act RCW Ch. 70.127.

1. *Elderly Hales Sought Application of the In-Home Care Services Act to Themselves.*

The elderly Hales, vulnerable adults by any definition, sought declaratory judgment that the In-Home Care Services Act applied to Bridge Builders. If the In-Home Care Services Act applied:

1. Bridge Builders (and Defendants Blanchard and Carpenter) would have been subject to the requirement of the In-Home Services Act and additional requirements such as those contained in Chapter 246-335 WAC.

2. The durable power of attorney held by Mindi Blanchard of Bridge Builders would have been illegal under RCW 70.127.150.

3. The Plaintiffs would have rights under the Vulnerable Adults Statute RCW 74.34.200 because an action under that Act could be brought against Bridge Builders (and Defendants Blanchard and Carpenter) (as “home care agency.”³

³ RCW 70.34.200 (This section also works to show standing):

(1) In addition to other remedies available under the law, a vulnerable adult who has been subjected to abandonment, abuse, financial exploitation, or neglect either while residing in a facility or in the case of a person residing at home who receives care from a home health, hospice, or home care agency, or an individual provider, shall have a cause of action for damages on account of his or her injuries, pain and suffering, and loss of property sustained thereby. This action shall be available where the defendant

4. The Consumer Protection Act, RCW Ch. 19.86 would apply because a violation of the Act is, *per se*, a violation of the Consumer Protection Act pursuant to RCW 70.127.216.

2. ***The Court Holds the Elderly Hales Have No Standing to Claim Violation of the Act.***

The Court of Appeals starts this most important section of its opinion with the statement “[n]ot everyone providing ‘home care services’ must be licensed. The legislature has provided many exemptions. RCW 70.127.040. In short, absent an exception, a person providing ‘home care services’ must be licensed.”

True, but the inference that only a person providing home care services need be licensed is not accurate. The requirements of licensure are found in RCW 70.127.020. RCW 70.127.020 (1) also provides "a license is required for a person to advertise, operate, manage, conduct, open, or maintain an in-home services agency."

Bridge Builders advertised an array of services, homemaker services, to the general public which services were intended to assist a person so that

is or was a corporation, trust, unincorporated association, partnership, administrator, employee, agent, officer, partner, or director of a facility, or of a home health, hospice, or home care agency licensed or required to be licensed under chapter 70.127 RCW, as now or subsequently designated, or an individual provider.

he or she could continue to live in his or her home. The essential public concern of the Act is "Home care services" which means "nonmedical services and assistance provided to ill, disabled, or vulnerable individuals that enable them to remain in their residences." RCW 70.127.020(6). This is exactly why the elderly Hales contacted them.

The statute gives a very expansive definition of "home care services."

RCW 70.127.020(6) provides::

Home care services include, but are not limited to: Personal care such as assistance with dressing, feeding, and personal hygiene to facilitate self-care; homemaker assistance with household tasks, such as housekeeping, shopping, meal planning and preparation, and transportation; respite care assistance and support provided to the family; or other nonmedical services or delegated tasks of nursing under RCW 18.79.260. [Emphasis added.]

The Act is not talking about things of a special nature, it is speaking to, or addressing, every sort of task which assists an elderly vulnerable person in making his or her residence her usual home for as long as convenient and logical. The people regulated are those who provide service to enable people to live in their home – "in-home care services." Or stated another way, services which enable a person to live in their residence.

Despite the obvious, the court came up with the notion that by looking at the legislative intent section of RCW chapter 70.127 and a statement in the *Cummings* [see below] case, that "[t]he legislature addressed this problem by

establishing minimum standards for care^[fn15]⁴ and by requiring that home care agencies serving these vulnerable populations be licensed to ensure compliance with these standards.” *Cummings v. Guardianship Servs.*, 128 Wn. App. 742 750 (2005), *pet. rev. denied*, 157 Wn.2d 1006, 136 P.3d 759 (2006). But the court conflated the requirements of standing with the ultimate merit of the claim. The court looked at the statement of intent and its interpretation of the *Cummings* case, concluding the "zone of interests protected by the statute is that of home care services" and that somehow the elderly Hales lack standing to even assert their rights were violated under the statute, notwithstanding they fit squarely within the class of vulnerable adults the statute was designed to protect.

This is hardly logical.⁵ The protection of the statute is the protection of those who might be at risk because those who deliver or advertise home care services are required to seek permission from the state to provide them and required regulation in the provision of them so as to protect those

⁴ [fn15] RCW 70.127.080 (establishing requirements for on-site surveys, professional and public liability coverage and criminal background checks); RCW 70.127.120 (establishing standards for record keeping, volunteer policies and complaint handling).

⁵ Query, lawyers provide legal services. But, the zone interest of the Rules of Professional Responsibility and the ELC do not have their zone of interest in the provision of services. No, the zone of interest is to ensure that members of the Bar are ethical.

receiving in-home services were not taken advantage of.

The Hales were not in this group according to the court because according to the court they did not actually receive home care services from the Defendants.

There are two problems with this holding: (1) they have standing because they are vulnerable adults within the class of persons the statute was designed to protect, and (2), they were asserting claims personal to themselves based on the conduct of the Defendants toward them individually. They were not asserting the "claims of others."

What are home care services? RCW 70.127.010(5) provides:

"Home care agency" means a person administering or providing home care services directly or through a contract arrangement to individuals in places of temporary or permanent residence. A home care agency that provides delegated tasks of nursing under RCW 18.79.260(3)(e) is not considered a home health agency for the purposes of this chapter. [Emphasis added.]

RCW 70.127.010(6) provides:

"Home care services" means nonmedical services and assistance provided to ill, disabled, or vulnerable individuals that enable them to remain in their residences. Home care services include, but are not limited to: Personal care such as assistance with dressing, feeding, and personal hygiene to facilitate self-care; homemaker assistance with household tasks, such as housekeeping, shopping, meal planning and preparation, and transportation; respite care assistance and support provided to the family; or other nonmedical services or delegated tasks of nursing under RCW 18.79.260(3)(e).

First, it is questionable whether the zone of interests protected by the statute was only home care services, however broadly defined. Second, Bridge Builders did, in fact provide home care services to Lisle and Clara Hale and were engaging In-Home care services for them and would be providing an entire host of home care services to them.

The *raison d'être* of their intent was the placement of Lisle and Clara Hale back in their home. The *raison d'être*, the entire purpose of the involvement of Bridge Builders, was to recreate the in-home living conditions the Hales had been used to. In Lisle's case what he was use to before he went to Sherwood in early April 2008, and in Clara's case what she was use to in June 2008. One might call the involvement of Bridge Builders in this as something like in-home care service, supercharged into IN-HOME CARE SERVICES. Bridge Builders embarked upon the re-creation of the Hale's home. After doing so, they would have had to provide a myriad of homemaker assistance tasks. Appendix 59-60.

While at Sherwood, Bridge Builders took a number of steps and actions which consisted of nonmedical services and assistance provided to ill, disabled or vulnerable individuals that enabled them to remain in their residences." Their actions were to put the Hales back into their residence so that they could remain in their residence. In addition, Bridge Builders engaged in conduct consisting of "homemaker assistance with household

tasks, such as housekeeping, shopping, meal planning and preparation, and transportation; respite care assistance and support provided to the family; or other nonmedical services or delegated tasks of nursing under RCW 18.79.260.”

Bridge builders took the Hales to their bank, helped the Hales change the accounts presumably to include Bridge Builders, helped the Hales write checks and pay bills especially those owing to Bridge Builders and Attorney Hastings. Bridge Builders did work at the Hales residence by getting a locksmith to go to the residence and change the lock, to gather materials in the residence and to inspect materials which were there. All of these services fell within the category of homemaker services under RCW 70.127.010(6). In addition Bridge Builders, once they were able to put the Hales back in their home, would have had to engage in homemaker services for them with respect of them and with respect of the home. These are identified in the Declaration of Tricia Hale, Appendix 59.

Thus, even if the court were to conclude the zone of interest protected by the statute is that of ”home care services,” which the Hales did in fact receive were the benefit of Bridge Builders home care services. Without question, therefore, the Hales had standing to question the rectitude of the Defendants.

The Court of Appeals is wrong about home care services being the zone of interests protected by the statute. The zone of interests protected by the statute are all those people who were elderly, ill, disabled, vulnerable, who seek or were receiving care from unlicensed providers.

These realities undercut the court's notion that Bridge Builders engaged in no wrongdoing. Thus, the court moved on to an exception from licensure found in RCW 70.127.040.

The Court of Appeals concedes that reading RCW 70.127.010 (6) in light of the fact, but in isolation, the "evidence arguably raises an issue of material fact whether Bridge Builders provided 'homemaker assistance;' however the court goes on to say that when read with the "case management" services exemption, the evidence does not rise to an issue of material fact.

The Court of Appeals said the efforts of Bridge Builders consisted only of "case management services" an exception under RCW 70.127.040 (14). The Court of Appeals is completely in error. There is no exemption under this statute for Bridge Builders. RCW 70.127.040(14) defines "case management services as:

A person providing case management services. For the purposes of this subsection, "case management" means the assessment, coordination, authorization, planning, training, and monitoring of home health, hospice, and home care, and does not include the direct provision of care to an individual.

[Emphasis added.]

This meaning of “case management” was discussed in *Cummings v. Guardianship Servs. of Seattle*, 128 Wn. App. 742, 750, 110 P.3d 796, *pet. rev. denied*, 128 Wn. App. 742 (2005). There, the court said “[f]urther, the licensing statute applies not only to employers of care givers, but to those who provide services directly or ‘through a contract arrangement.’” RCW 70.127.010(5). *Cummings* at 751, fn17 (“Had the legislature wanted to provide the exemption for those who provide care through a contract arrangement it would have said so.”)

As we have seen, “case management” means the assessment, coordination, authorization, planning, training, and monitoring of home health. Such activities are managerial. The person is distanced, critical, advisory as to the services being received by the elderly or vulnerable person who wants to be in his or her home.

But under these facts, Bridge Builders was providing direct care to the Hales. In addition, Bridge Builders was undertaking to provide indirect provision of care for the Hales by hiring of the Korean Women's Association. It is to be noted that RCW 70.127.010 (5):

A home care agency that provides delegated tasks of nursing under RCW 18.79.260 (3)(e) is not considered a home health agency for the purposes of this chapter."

3. *Bridge Builders and Blanchard: Attorneys in Fact.*

At page 8 of the Decision, the Court of Appeal says, with some lusty assurance, that Plaintiffs' argument that Bridge Builders violates RCW 70.127.150 when it obtained powers of attorney from the Hales is incorrect.

The court held as a matter of law the evidence does not show that the Hales received "care" from Bridge Builders and thus cannot have violated the provisions of RCW 70.127.150. The court is really turning this exemption on its head. The essence of the court's argument is that if a person holds a power of attorney there can be no home care services provided because of the power of attorney. To the contrary, the very purpose of the power of attorney was to facilitate Bridge Builders' delivery of home care services.

In any case, if one is required to be licensed under the Act, it is illegal for the person to hold a power of attorney from an elderly client. Therefore the rights of the client have been violated and obviously the client is well within the purpose or interest of the statute to protect that person.

The court held that the evidence does not show that the Hales received care from Bridge Builders and thus cannot have violated the provisions of RCW 70.127.150. The court is really turning this exemption on its head. The essence of the court's argument is that if a person holds a power of attorney there can be no home care services provided because of the power of

attorney. This seems like a tautology but the author is not sure of the definition in these circumstances.

In any case, if one is supposed to be licensed under the Act, it is illegal for the person to hold a power of attorney from the person, from the principal. Additionally, it is of special note that Mindi Blanchard, when she met Lisle and Clara Hale on June 5, said that if the Hales wanted to move back to their home, she would have to be or hold their power of attorney. Appendix 55.

C. Should the Hales Have Been Allowed to Be Provided With Discovery Concerning the Work of Bridge Builders and Their Clients?

At this juncture it is well to point out that the trial court prevented Plaintiffs' attorney from relevant information pertaining to the work Bridge Builders was actually performing so as to determine whether that work was the unlicensed provision of in-home care services. It is very likely that the numerous services provided by Bridge Builders as set forth in their advertising services which were services requiring licensure and prohibition of attorney-in-fact services.

At the third hearing before Judge Verser on June 22, 2011, Judge Verser said in his Order:

If Bridge Builders is simply 'coordinates,' plans, or 'monitors' the services provided to a vulnerable or disabled

resident then the law 70.12 7.040 (14) exemption applies. On the other hand if employees of Bridge Builders actually provide services than the holding in Cummings, dictates that they be they should be licensed and plaintiffs are [sic] entitled to the relief they seek in this motion.

Appendix 26.

Plaintiffs should have an opportunity to prove whether or not Bridge Builders engaged in conduct for which they should have been subject to the proscriptions of the In-Home Care Service Act. Plaintiffs should be able to show Bridge Builders was not providing “case management services;” denial of Plaintiffs’ motion for discovery was a blockage on the discovery needed and relevant.

It is not strange that the motion was so vigorously objected to. It is likely this Plaintiff would have proven his case that Bridge Builders was an In-home provider of home care services and thus should have have been licensed in June of 2008.

D. Malpractice Claim.

The Court of Appeals said that the Hales did not explain how they were injured from the alleged breaches. The Declarations established breach of duties and injury. Injury means "any wrong or caring done another, either in his person, rights, reputation, or property. It is "the invasion of any legally

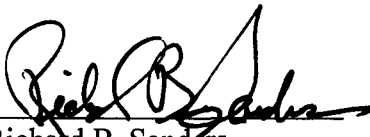
protected interest of another." RESTATEMENT (SECOND) OF TORTS § 7;
BLACK'S LAW DICTIONARY 785 (6th ed. 1990). As for the standard of care,
see the Declaration of Alice Semingson. Appendix 61- 66.

VII. CONCLUSION

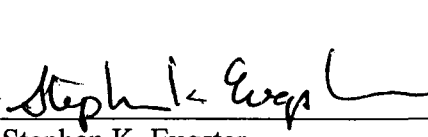
In light of the above, the court would do well to accept review and
insure that people in the business of home care comply with the In-home Care
Services Act.

Respectfully submitted this 22nd day of October, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that on October 22 and 23, 2013, I caused the foregoing Petition for Review, together with its Appendix, to be served upon the following individuals by the method(s) indicated:

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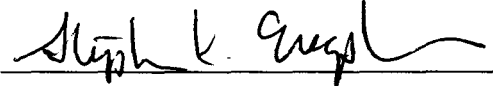
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The parties have an understanding the service may be made to e-mail addresses.

Signed at Lakewood, Washington on October 22, 2013.



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Appendix
Court of Appeals Decision
Order Denying Motion for Publication
Decisions of Judge Craddock Verser Re: Motions for Summary Judgment
Bridge Builders Time Sheets
Declaration of Tricia Hale as to Work Bridge Builders Would Have to Do
upon Moving Lisle and Clara Hale Back to Their Home
Declaration of Alice Semingson

ROBERT LISLE HALE, Personal Representative of the ESTATE OF LISLE HALE, deceased;
CLARA HALE, surviving spouse of LISLE HALE; ROBERT L. HALE; DONALD HALE; and
TRICIA HALE, Appellants,

v.

BRIDGE BUILDERS, LTD.; MINDI R. BLANCHARD and JOHN DOE BLANCHARD;
BRENDA S. CARPENTER and JOHN DOE CARPENTER; JANET WATRAL and JOHN
DOE WATRAL; MICHAEL R. HASTINGS and JANE DOE HASTINGS; and MICHAEL R.
HASTINGS, P.S., Respondents.

No. 43265-0-II.

Court of Appeals of Washington, Division Two.

Filed: August 20, 2013.

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UNPUBLISHED OPINION

WORSWICK, C.J.

The Hale family appeals the summary dismissal of their case. The Hales, a family consisting of two elderly adults and their three adult children, sued Bridge Builders, a company that provides personal services to elderly people. The adult children placed their elderly parents in an assisted living facility. Because the parents did not want to move, they became upset and, with the help of Bridge Builders, made plans to move back home. About a week later, the adult children convinced their parents that the decision to move back home was financially unsound and the move was cancelled. The Hales sued Bridge Builders and a registered nurse at the assisted living facility, seeking declaratory judgments and a variety of tort claims. The trial court dismissed all of the Hales' claims on summary judgment. We affirm.

FACTS

Lisle and Clara Hale, an elderly couple, lived at their home in Sequim, Washington in 2008. Lisle and Clara[1] have three adult children: Tricia, Donald, and Robert. Tricia lived with her parents and managed their care for many years. Donald held durable powers of attorney for his parents, and Robert was named as the successor attorney-in-fact.

In 2007, Lisle's and Clara's health deteriorated. They became increasing frail and suffered from dementia. By March 2008, Lisle, who was 86 years old, and Clara, who was 90 years old, required round-the-clock care. At about this time, the family decided Lisle should be moved to an assisted living facility. They moved Lisle to Sherwood Assisted Living on April 4, 2008. Lisle did not want to move and was upset.

Shortly thereafter, the family determined that Clara should be moved to Sherwood as well. Using a ruse, the children moved Clara to Sherwood on June 3. Family members told Clara that she was going to Sherwood to have lunch with Lisle. The Hale children told Janet Watral, the director at Sherwood who was also a registered nurse, that Clara would likely be upset. The next day, Tricia and Donald went to Sherwood to visit and deliver medication for Clara. They were asked to wait and talk to Watral first. Watral told them that Lisle and Clara were irate and had hired a lawyer. Watral told Tricia and Donald that it would be best if they not visit their parents. That day, Lisle and Clara met an attorney, Michael Hastings.[2]

On June 5, Hastings contacted Mindi Blanchard, the owner of a company called Bridge Builders, Ltd. Bridge Builders provides personal and assisted living services to the residents of Clallam County. Bridge Builders' website listed a wide variety of services, including:

- Advocacy/Mediation
- Daily Reminders
- Daily Check-in Calls
- Bill Paying and Financial Organizing
- Monthly Checkbook Reconciliation
- Reconcile Your Medical Insurance
- Organize Caregiver Assistance
- Coordinating Care
- Peace of Mind Program
- Personal Shopper

- Transportation to Appointments
- Neighborhood Caregiver Services
- Take Your Pet to the Groomer or Vet
- Outings; Family Liaison
- Letter/Note Writing
- Mail Sorting and Filing
- Telephone Call Assistance
- Computer Assistance
- Help Activate Your LTC [(long-term care)] Insurance
- Notary Service
- Homecoming
- Residential Placement Assistance
- Meals Delivered to Your Home
- Friday Flowers
- Power of Attorney
- Certified Professional Guardian
- Representative of the Estate
- Educational Workshops
- Continuing Education Conference

Clerk's Paper (CP) at 325-30.

The website stated that Bridge Builders does not "provide personal care" and that it is "not a caregiving agency." CP at 335-36.

Lisle and Clara had contacted Hastings seeking to change their power of attorney from their children. Hastings asked Blanchard if she would act as Lisle and Clara's new attorney-in-fact.

Blanchard met with Lisle, Clara, and Hastings at Sherwood Assisted Living on June 5. Lisle and Clara told her that their children tricked them into moving to Sherwood Assisted Living and that they wanted to move back into their home. They were also concerned that their children were accessing their money. Blanchard told Lisle and Clara that Bridge Builders could assist them in moving back home. Lisle and Clara agreed that they wanted Blanchard to act as their attorney-in-fact. On June 6, they executed new powers of attorney and revoked the old ones. Lisle also called Blanchard and asked her to change the financial accounts so that his children would no longer have access.

Blanchard visited Lisle and Clara again on June 9 and talked about moving home. Later, Blanchard went to Washington Mutual Bank, where Lisle and Clara banked. On June 10, Blanchard brought the elderly Hales to the bank and changed their accounts. They discussed planning the move for June 12. Because Lisle told Blanchard that he did not want his children accessing the house, Blanchard met a locksmith and had the locks changed. On June 10 and 11, Bridge Builders contacted private caregivers and in-home care agencies to provide in-home care for Lisle and Clara.

On June 12, Donald Hale went to visit his parents. At some point that day, Lisle, Clara, and Donald spoke with Robert over the phone, and Donald recorded the conversation. Lisle and Clara decided it was not in their financial interest to move back home. Later that day, Brenda Carpenter, an employee at Bridge Builders, went to talk to Lisle and Clara to prepare them for the move. When she arrived, Donald told her that Lisle and Clara would not be moving. Bridge Builders canceled the moving plans.

The Hales[3] sued Bridge Builders, Mindi Blanchard, Brenda Carpenter, Janet Watral, and Michael Hastings[4] in April 2009. The Hales sought declaratory judgments that Bridge Builders was an "in-home services agency" required to be licensed under chapter 70.127 RCW and that Blanchard, Carpenter, and Bridge Builders were prohibited from serving as attorney-in-fact for either Lisle or Clara. The Hales also sought damages for: violations of the vulnerable adults act[5] and the Consumer Protection Act[6]; malpractice by Blanchard, Carpenter, Bridge Builders, and Watral; interference with the Hale family; negligent infliction of emotional distress; and outrage.

In December 2011, Bridge Builders moved for summary judgment of all of the Hales' claims. The trial court granted their motion. Later, the trial court entered an amended order and memorandum making the dismissal of the Hales' claims applicable to Watral. The Hales appeal the dismissal of their case on summary judgment.

ANALYSIS

A. Summary Judgment Standard of Review Applies

The Hales argue, without citation to authority, that the trial court should have applied the standards for dismissal under CR 12(b)(6) rather than the standards for summary judgment under CR 56. This argument is meritless. The defendants moved for summary judgment, thus, summary judgment standards apply.

We review summary judgments de novo, engaging in the same inquiry as the trial court. *Sheikh v. Choe*, 156 Wn.2d 441, 447, 128 P.3d 574 (2006). Summary judgment is appropriate where there are no issues of material fact. CR 56(c). A defendant in a civil action is entitled to summary judgment if he can show that there is an absence or insufficiency of evidence supporting an element that is essential to the plaintiff's claim. *Young v. Key Pharms., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). In such a situation, there can be no genuine issue as to any material fact, because a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. *Young*, 112 Wn.2d at 225. To survive a motion for summary judgment, a nonmoving party must set forth specific facts showing that a genuine issue exists. *Young*, 112 Wn.2d at 225-26. The nonmoving party may not rely on speculative or argumentative assertions that unresolved factual issues remain. *Michael v. Mosquera-Lacy*, 165 Wn.2d 595, 602, 200 P.3d 695 (2009). When reasonable minds could reach but one conclusion, questions of fact may be determined as a matter of law. *Cornerstone Equipment Leasing, Inc. v. MacLeod*, 159 Wn. App. 899, 902, 247 P.3d 790 (2011).

B. Standing Not Waived

The trial court dismissed the Uniform Declaratory Judgments Act[7] claims, ruling that the Hales did not have standing. The Hales argue that the trial court should not have ruled on the issue of standing, asserting that the defendants waived the issue by not pleading standing as an affirmative defense. We reject the Hales' argument that standing is an affirmative defense that is waived unless pleaded.

In support of their argument, the Hales cite to the general rule that a party must plead affirmative defenses or have the defense waived. See CR 8(c) ("a party shall set forth affirmatively . . . any . . . matter constituting an avoidance or affirmative defense"). Their argument is undeveloped. They do not provide supporting authority or a reason why standing should be considered an affirmative defense that is waived if not pleaded. Even assuming standing is an affirmative defense, the Hales do not argue prejudice. See *Mahoney v. Tingley*, 85 Wn.2d 95, 100, 529 P.2d 1068 (1975) (failure to plead an affirmative defense is harmless if it does not affect substantial rights of the parties). We do not review issues where inadequate argument has been made. *State v. Thomas*, 150 Wn.2d 821, 868-69, 83 P.3d 970 (2004). The Hales' argument is insufficient and we decline to address whether Bridge Builders waived the issue of standing by not pleading it as an affirmative defense.

Consequently, we do not address Bridge Builders' argument that standing cannot be waived because standing to sue under the Declaratory Judgments Act is a "jurisdictional" question that can be raised at any time. We note, however, that this premise, though recognized in Washington

case law, may be erroneous.[8]

C. No Standing To Assert a Declaratory Judgment Action

The Hales sought declaratory judgments that Bridge Builders was required by statute to be licensed by the Washington Department of Health as an "in-home services agency" and that, as a licensee, Bridge Builders was forbidden from serving as attorney-in-fact for Lisle and Clara. They now argue that the trial court erred when it ruled that the Hales lacked standing to bring their Declaratory Judgments Act claims and that their claims were nonjusticiable. We disagree.

The common law doctrine of standing prohibits a litigant from raising another's legal rights. *Grant County Fire Prot. Dist. No. 5 v. City of Moses*, 150 Wn.2d 791, 802, 83 P.3d 419 (2004). To have standing in a Declaratory Judgments Act action, "a party must (1) be within the zone of interests protected by statute and (2) have suffered an injury in fact, economic or otherwise." *Nelson v. Appleway Chevrolet, Inc.*, 160 Wn.2d 173, 186, 157 P.3d 847 (2007). We conclude that the Hales do not have standing because they do not satisfy the zone of interests requirement.[9]

When evaluating whether a party's interests are within the zone of interests a statute protects, a court looks to the statute's general purpose. *Branson v. Port of Seattle*, 152 Wn.2d 862, 876 n.7, 101 P.3d 67 (2004). If the statute was not designed to protect a party's interests, it is not within the zone of interests. *Grant County*, 150 Wn.2d at 803.

The statutes at issue are under chapter 70.127 RCW. An "in-home services agency" or a "home care agency" must be licensed. RCW 70.127.020(1),[10] (2).[11] If a person provides "home care services," then the person is an "in-home services agency" or "home care agency." RCW 70.127.010(5),[12] (14).[13] "Home care services" means

[n]onmedical services and assistance provided to ill, disabled, or vulnerable individuals that enable them to remain in their residences. Home care services include, but are not limited to: Personal care such as assistance with dressing, feeding, and personal hygiene to facilitate self-care; homemaker assistance with household tasks, such as housekeeping, shopping, meal planning and preparation, and transportation; respite care assistance and support provided to the family; or other nonmedical services or delegated tasks of nursing under RCW 18.79.260(3)(e).

RCW 70.127.010(6). Not everyone providing "home care services" must be licensed. The legislature has provided many exemptions. RCW 70.127.040. In short, absent an exception, a person providing "home care services" must be licensed.

Chapter 70.127 RCW was enacted to protect the ill, disabled and elderly who need assistance with personal care. LAWS OF 1988, ch. 245, § 1; *Cummings v. Guardianship Servs. of Seattle*, 128 Wn. App. 742, 750, 110 P.3d 796 (2005). As the legislative intent section of the statute makes evident, the "legislature was concerned about the virtual invisibility of home care

providers, and the attendant risks to their vulnerable clients." Cummings, 128 Wn. App. at 750; RCW 70.127.005.[14] One way the legislature addressed this problem was by requiring home care agencies serving these vulnerable populations to be licensed and to abide by minimum standards. Cummings, 128 Wn. App. at 750. Based on this statement of intent and our interpretation of it in Cummings, we hold that the zone of interests protected by the statute is that of home care services.

In its memorandum opinion, the trial court determined that Bridge Builders did not provide home care services to the plaintiffs. Because receiving home care services is essential to fall within the zone of interests protected by chapter 70.127 RCW, a lack of evidence that Bridge Builders provided home care services to the Hales is determinative.

When viewing the evidence in the light most favorable to the plaintiffs, reasonable minds can only conclude that Bridge Builders did not provide home care services. None of the evidence creates an issue of material fact on whether Bridge Builders provided home care services to the Hales. What the evidence shows is that Bridge Builders made arrangements for Lisle and Clara to move back to their house. As the arrangements for the move were being made, Lisle and Clara terminated Bridge Builders' services and did not move back home.

Reading RCW 70.127.010(6) in isolation, the evidence arguably raises an issue of material fact on whether Bridge Builders provided "homemaker assistance" ("household tasks, such as housekeeping, shopping, meal planning and preparation, and transportation"). RCW 70.127.010(6). However, when read with the "case management" services exemption in mind, the evidence does not raise an issue of material fact. RCW 70.127.040(14) provides that a person providing "case management services" is not subject to regulation under the act. "Case management" means the assessment, coordination, authorization, planning, training, and monitoring of home health, hospice, and home care, and does not include the direct provision of care to an individual." RCW 70.127.040(14). There is no evidence that Bridge Builders provided direct home care to the Hales.

The Hales argue that they need not have received home care services to have standing; that receiving advertising is sufficient. Under the act, "a license is required for a person to advertise, operate, manage, conduct, open, or maintain an in-home services agency." RCW 70.127.020(1). To this end, the Hales assert that Bridge Builders was either advertising or maintaining an in-home services agency and, therefore, was required to be licensed. The Hales cite declarations to support this point. Among other things, one declaration has copies of pages from Bridge Builders' website. As we discuss above, the zone of interests protected by the statute is the receiving of care. Receipt of advertising may not be within the zone of interests protected by the statute. But even assuming the statute protects against receiving advertising for home care services from unlicensed providers, reasonable minds could not conclude that Bridge Builders advertised home care services as defined by chapter 70.127 RCW. The advertising only shows that Bridge Builders was providing "case management" services. The advertising on the website says that Bridge Builders is not a "caregiving agency." Rather they assist "clients in signing up with a reputable caregiving agency." CP at 335. Consistent with this advertising, invoices show that Bridge Builders had contacted a caregiving agency and private caregiver in planning Lisle

and Clara's move back home. No evidence shows that Bridge Builders planned to provide direct home care to Lisle or Clara. Moreover, it is unclear that Lisle and Clara even received advertisements from Bridge Builders. Lisle and Clara were introduced to Bridge Builders through Hastings, the attorney they consulted in their effort to move back home. We reject the Hales' argument on this point.

In connection with their argument that they have standing, the Hales argue that if Bridge Builders was required to be licensed, Bridge Builders and its employees would have been forbidden by RCW 70.127.150 from serving as attorneys-in-fact for Lisle or Clara. Their reading of the statute is wrong. RCW 70.127.150 states: "No licensee, contractee, or employee may hold a durable power of attorney on behalf of any individual who is receiving care from the licensee." (Emphasis added). The evidence does not show that Lisle or Clara received care from Bridge Builders. Thus, Bridge Builders cannot have violated this prohibition.[15]

Because there is no evidence that home care services were provided, the Hales fall outside the statute's zone of interests. Their declaratory judgment actions were properly dismissed. Because the Hales fall outside the statute's zone of interests, we do not address the injury in-fact requirement or the related justiciability question.

D. Discovery

The Hales next argue that the trial court erred when it denied their motion for discovery of other client information and granted Bridge Builders' motion for a protective order regarding this discovery. We disagree.

"Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action..." CR 26(b)(1). "It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." CR 26(b)(1). A trial court may grant a protective order upon a showing of "good cause" by the party from whom discovery is sought in order to protect a party from annoyance, embarrassment, oppression, or undue burden or expense. CR 26(c). We review discovery rulings for abuse of discretion. *T.S. v. Boy Scouts of America*, 157 Wn.2d 416, 423, 138 P.3d 1053 (2006). Discretion is abused if it is manifestly unreasonable, exercised on untenable grounds, or for untenable reasons. *T.S.*, 157 Wn.2d at 423.

The Hales sent interrogatories and requests for production to Bridge Builders concerning the services Bridge Builders provided to clients other than Lisle and Clara. Bridge Builders refused to answer many of the requests, claiming that client names and documents were confidential and that the requests were overly broad and unduly burdensome and were not reasonably calculated to lead to the discovery of admissible evidence. On the same day that Bridge Builders moved for summary judgment, Bridge Builders also moved for a protective order under CR 26(c) in response to discovery requests from the Hales.

The Hales cannot establish standing or the elements of their claims based on services Bridge Builders provided to other clients. Although evidence of the services of other clients could have possibly revealed that Bridge Builders should have been licensed, this does not make the material relevant or reasonably calculated to lead to the discovery of admissible evidence. The Hales' claims turn on whether they themselves received home care services from Bridge Builders. The trial court did not abuse its discretion in granting the protective order or denying discovery to the Hales, and their argument fails.

E. Vulnerable Adults Act Claim Properly Dismissed

The Hales next argue that the trial court erred by dismissing their vulnerable adult act claims. We disagree.

The Hales alleged a vulnerable adults cause of action under RCW 74.34.200. Under that statute,

a vulnerable adult who has been subjected to abandonment, abuse, financial exploitation, or neglect either while residing in a facility or in the case of a person residing at home who receives care from a home health, hospice, or home care agency, or an individual provider, shall have a cause of action for damages on account of his or her injuries, pain and suffering, and loss of property sustained thereby.

RCW 74.34.200(1). The trial court dismissed this claim, reasoning that the Hales did not set forth any specific facts that gave rise to the conclusion that the elderly Hales were abused, financially exploited, or neglected.

The Hales assert that the defendants "abused" Lisle and Clara by inappropriately isolating them from their adult children. Under the pertinent statutes, "abuse" includes "mental abuse," which is defined to include "inappropriately isolating a vulnerable adult from family, friends, or regular activity...." RCW 74.34.020(2) and .020(2)(c). In support, the Hales cite to two pages in a declaration from Tricia.

The Hales do not identify which specific facts in this declaration raise an issue of material fact. According to the declaration, Tricia and Donald went to visit Lisle and Clara on June 4, 2008, at Sherwood Assisted Living. When they arrived, Watral, the director of the facility, told them that Lisle and Clara were irate, that they had hired a lawyer, and that it would not be a good idea to visit them. She told them to go home; they complied. A couple of days later, Donald and Tricia learned that their parents' durable powers of attorney had been revoked and new ones were issued in favor of Blanchard. Bridge Builders started the process of planning the move back home. Neither Bridge Builders nor Watral consulted the adult Hale children about this plan.

Although Watral advised Tricia and Donald that it would not be a good idea to see their parents, this does not mean there was inappropriate isolation. The Hales acknowledge that Lisle and Clara wanted to move home. And it is uncontested that their adult children were later able to visit and

talk with their parents. From this evidence, reasonable minds could not find that the defendants inappropriately isolated a vulnerable adult from family.

The Hales also assert that the defendants "acted to change the plans the Hales and their family had in place regarding the care of Lisle and Clara Hale." Br. of Appellant at 36. They argue this was "exploitation"[16] and qualified as "abuse." In support, they cite to a declaration from Blanchard, which contains a copy of a billing invoice from Bridge Builders, and recounts Bridge Builders' interactions with the Hales. Again, the Hales fail to explain how this supports their claim.

It is uncontested that the Hale children did not inform Lisle or Clara before moving them into Sherwood Assisted Living. Lisle was not told, until he arrived at Sherwood, that he was going to be moved into the facility. The adult children moved Clara to Sherwood and left it to Watral to explain to Clara and Lisle that Clara's move was permanent and why the move was necessary. In an effort to move back home, Lisle and Clara met with attorney Hastings, who introduced them to Bridge Builders. Lisle and Clara told Blanchard, the owner of Bridge Builders, that they had been tricked into moving to Sherwood and wanted to move back home. Attorney Hastings drafted new powers of attorney for Lisle and Clara, and Bridge Builders made plans to move Lisle and Clara back home. The only reasonable inference from this evidence is that Lisle and Clara decided they wanted to move back home and that Bridge Builders began to assist them in executing this plan. These facts are insufficient to establish "exploitation."

The Hales next argue there was an issue of material fact as to whether there was "financial exploitation" of Lisle and Clara by the defendants. "'Financial exploitation' means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage other than for the vulnerable adult's profit or advantage." Former RCW 74.34.020(6) (2008).[17] In support, the Hales cite to declarations from Tricia and Robert. Again, they fail to explain how these declarations create any issue of material fact.

Robert's declaration attaches, as an exhibit, a transcription of a recorded conversation between Robert, Donald, Lisle, and Clara. The recording is dated June 12, 2008. The transcription shows that Lisle wanted to move back home but that he had not fully considered the costs that would be incurred by living at home. After considering their resources and the costs, Lisle and Clara agreed to stop the plan to move back home and to terminate their relationship with Bridge Builders. These facts do not show that the Hales were financially exploited. They show that Lisle and Clara wanted to move back home, but later changed their minds.

Because there is no issue of material fact, the trial court properly granted summary judgment on the vulnerable adult act claims.

F. Consumer Protection Act Claims Properly Dismissed

The Hales next argue that the trial court erred when it dismissed their Consumer Protection Act claims on summary judgment. Again, we disagree.

In a consumer protection action, the plaintiff must prove an unfair or deceptive act or practice, occurring in trade or commerce, impacting the public interest, which causes injury to plaintiff in his or her business or property. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 780, 719 P.2d 531 (1986). The trial court dismissed the Consumer Protection Act claim, ruling that the Hales failed to show evidence of injury to their business or property.

Without a showing of injury, there is no remedy under the Consumer Protection Act. *Ledcor Industries (USA), Inc. v. Mutual of Enumclaw Ins. Co.*, 150 Wn. App. 1, 12-13, 206 P.3d 1255 (2009). Under the Consumer Protection Act, an injury need not be great or quantifiable, but it must be an injury to business or property. *Ambach v. French*, 167 Wn.2d 167, 171-72, 216 P.3d 405 (2009). Personal injury damages are not compensable under the Consumer Protection Act. *Ambach*, 167 Wn.2d at 173.

Rather than specifically identify the alleged injury or injuries to their business or property, the Hales refer to a list of purported "instances of injury in fact." Br. of Appellant at 39. The Hales do not explain how these "injuries" constitute injuries to business or property. Of the items on the list, the only one that approaches qualifying as an injury to business or property is the claim that Lisle and Clara were billed for the services Bridge Builders provided. There is evidence in the record that Bridge Builders prepared an invoice for services rendered to Lisle and Clara. But nowhere in the record is there evidence that this invoice was actually sent to Lisle or Clara. The Hales also do not allege that they actually paid Bridge Builders, and there is no evidence in the record that they did so. Thus, this evidence does not raise an issue of material fact on injury.

The trial court correctly dismissed the Hales' Consumer Protection Act claim.

G. Malpractice Claims Properly Dismissed

The Hales also asserted malpractice claims against the defendants. They now argue that the trial court erred when it dismissed the claims on the basis that the Hales failed to show how the alleged breaches proximately caused damage. We disagree.

A malpractice claim generally requires proof of four elements: duty of care, breach of that duty, damage, and proximate cause. *Falkner v. Foshaug*, 108 Wn. App. 113, 118, 29 P.3d 771 (2001) (describing elements of a legal malpractice claim).

The Hales do not explain how they were injured from the alleged breaches. In their memorandum in response to motions for summary judgment, the Hales merely stated that the "facts show that Plaintiffs were injured as a result of the failure of Defendants to meet the standards of care they are subject to." CP at 654. On appeal, the Hales similarly fail to explain how they were injured by alleged breaches. Unsupported assertions will not defeat a summary judgment motion. *Vacova*

Co. v. Farrell, 62 Wn. App. 386, 395, 814 P.2d 255 (1991). Thus, the Hales fail to meet their burden to survive the summary judgment motion and their malpractice claim was properly dismissed. See Young, 112 Wn.2d at 230 (affirming summary judgment in favor of defendants in medical malpractice action because the plaintiff did not present competent evidence regarding physicians' standard of care); Wellman & Zuck, Inc. v. Hartford Fire Ins. Co., 170 Wn. App. 666, 680, 285 P.3d 892 (2012) (affirming summary judgment on negligence claim because defendant did not raise a genuine issue of material fact regarding damages) review denied, 176 Wn.2d 1019 (2013).

H. Interference with a Family Relationship

The Hales next argue that the trial court erred when it dismissed their claim for interference with a family relationship. The Hales alleged a novel claim for "Interference with the Family of Lisle and Clara Hale." CP at 524. Washington has not recognized a cause of action for interference with a family relationship (also referred to as alienation of affections) where the interference is between adults and their adult children. The trial court dismissed the claim, ruling that the Hales did not show evidence of "loss of affection" or resulting damages, which the trial court assumed would be required elements of the claim. We hold the trial court did not err.

Although there is no Washington authority on this precise issue, we have recognized a cause of action for alienation of affection of a minor child. *Strode v. Gleason*, 9 Wn. App. 13, 510 P.2d 250 (1973). The elements of alienation of affection of a minor child are: (1) an existing family relationship, (2) a malicious interference with the relationship by a third person, (3) an intention on the part of the third person that such malicious interference results in a loss of affection or family association, (4) a causal connection between the third parties' conduct and the loss of affection, and (5) resulting damages. *Strode*, 9 Wn. App. at 14-15; See also *Babcock v. State*, 112 Wn.2d 83, 107-108, 768 P.2d 481 (1989).[18]

"The novelty of an asserted right and the lack of precedent are not valid reasons for denying relief to one who has been injured by the conduct of another." *Strode*, 9 Wn. App. at 17. But the Hales fail to meet their burden to produce any evidence of a "loss of affection" between the elderly Hales and their adult children, or other resulting damages.[19] We conclude the trial court properly dismissed the Hales' claim for interference with a family relationship on summary judgment.

I. Negligent Infliction of Emotional Distress Claim Properly Dismissed

The Hales further argue that the trial court erred in dismissing their claim for negligent infliction of emotional distress. The trial court dismissed the claim on summary judgment, ruling that the plaintiffs failed to show objective symptomatology.

A plaintiff may recover for negligent infliction of emotional distress if he or she proves negligence, that is, duty, breach of the standard of care, proximate cause, and damage, and proves the additional requirement of objective symptomatology. *Kloepfel v Bokor*, 149 Wn.2d 192, 199, 66 P.3d 630 (2003). To satisfy the objective symptomatology requirement, "a plaintiff's emotional distress must be susceptible to medical diagnosis and proved through medical evidence." *Hegel v. McMahon*, 136 Wn.2d 122, 135, 960 P.2d 424 (1998). The Hales submitted no medical evidence to satisfy this requirement. Thus, the trial court's dismissal of this claim was proper.

J. Intentional Infliction of Emotional Distress (Outrage) Claim Properly Dismissed

Finally the Hales alleged a claim for intentional infliction of emotional distress (outrage). They argue that the trial court erred when it dismissed the claim on summary judgment, ruling that the plaintiffs failed to show any conduct sufficient to sustain a cause of action for outrage. We disagree.

Intentional infliction of emotional distress requires the proof of three elements: (1) extreme and outrageous conduct, (2) intentional or reckless infliction of emotional distress, and (3) actual result to plaintiff of severe emotional distress. *Kloepfel*, 149 Wn.2d at 195. "The claim must be predicated on behavior so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Kloepfel*, 149 Wn.2d at 196 (quoting *Grimsby v. Samson*, 85 Wn.2d 52, 59, 530 P.2d 291 (1975)). "The law intervenes only where the distress inflicted is so severe that no reasonable person could be expected to endure it." *Saldivar v. Momah*, 145 Wn. App. 365, 390, 186 P.3d 1117 (2008).

The Hales failed to submit adequate evidence raising an issue of material fact to support a claim for outrage. Reasonable minds could only conclude the defendants' conduct was not sufficiently extreme and outrageous to result in liability. Bridge Builders briefly assisted the elderly Hales with their request to move back home. When they changed their minds, Bridge Builders stopped. There is no evidence that any of the defendants tried to move Lisle or Clara against their wishes. The defendants' conduct does not come close to satisfying the elements of outrage and the claim was properly dismissed. See *Spurrell v. Bloch*, 40 Wn. App. 854, 863, 701 P.2d 529 (1985) ("[P]laintiffs' affidavits simply do not put in issue material facts as to the elements of outrage.").

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

JOHANSON and McCARTHY, J.P.T. concurs.

[1] Because members of the Hale family share the same last name, we refer to them by their first names for clarity, intending no disrespect.

[2] Bridge Builders asserts that they met Hastings the next day on June 5. Whether it was June 4 or June 5, the date is not material to the issues presented in this appeal.

[3] The plaintiffs in the case are Robert Hale, Donald Hale, Tricia Hale, the estate of Lisle Hale through its personal representative Robert Hale, and Clara Hale.

[4] Hastings was dismissed through an agreed stipulation and is no longer a party in this case.

[5] Chapter 74.34 RCW.

[6] Chapter 19.86 RCW.

[7] Chapter 7.24 RCW.

[8] The characterization of standing to sue under the Declaratory Judgments Act as "jurisdictional" can be traced to *Washington Beauty College, Inc. v. Huse*, 195 Wash. 160, 166, 80 P.2d 403 (1938). There, our Supreme Court addressed the issue of the plaintiff's "right to sue" under the Declaratory Judgments Act for the first time on appeal and characterized the question as involving the "jurisdiction" of the court and could be raised at any time. *Washington Beauty Coll.*, 195 Wash. at 166. But as our Supreme Court has more recently recognized, "jurisdiction" is "the fundamental power of courts to act." *ZDI Gaming, Inc. v. Washington State Gambling Comm'n*, 173 Wn.2d 608, 616, 268 P.3d 929 (2012). Article IV, section 6 of the Washington Constitution does not exclude any causes from the broad jurisdiction of superior courts, meaning Washington courts have few constraints on their jurisdiction. WASH. CONST. art IV, § 6 ("The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court."); *Krieschel v. Bd. of Snohomish County Comm'rs*, 12 Wash. 428, 439, 41 P. 186 (1895) ("it is manifest that it was not the intention of the framers of this § 6 to exclude any sort or manner of causes from the jurisdiction of the superior court."). Subject matter jurisdiction should not be confused with a court's authority to rule in a particular manner. *Cole v. Harveyland, LLC*, 163 Wn. App. 199, 208, 258 P.3d 70 (2011). The subject matter jurisdiction of Washington courts is not so "fleeting and fragile." *Housing Authority of City of Seattle v. Bin*, 163 Wn. App. 367, 376, 260 P.3d 900 (2011) (quoting *Sprint Spectrum, LP v. Dep't of Revenue*, 156 Wn. App. 949, 965, 235 P.3d 849 (2010) (Becker, J., concurring)). If the type of controversy is within the subject matter jurisdiction, then all other defects or errors go to something other than subject matter jurisdiction. *Marley v. Dep't of Labor and Indus.*, 125 Wn.2d 533, 539, 886 P.2d 189 (1994). Consistent with this view, we have recognized that, in Washington courts, a plaintiff's lack of standing is not an issue of subject matter jurisdiction. *Trinity Universal Ins. Co. of Kansas v. Ohio Cas. Ins. Co.*, ___ Wn. App. ___, 298 P.3d 99, 106 (2013); *Ullery v. Fulleton*, 162 Wn. App. 596, 604, 256 P.3d 406, review denied, 173 Wn.2d 1003 (2011). Noting that it has held that standing can be waived outside the context of the Declaratory Judgments Act, our Supreme Court left open the question of whether Washington should retain the rule that standing may be raised for the first time on

appeal in declaratory judgment actions. *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 203 n.4, 11 P.3d 762 (2000). By doing so, the court necessarily implied that standing to sue in a declaratory judgment action is not actually an issue of subject matter jurisdiction because subject matter jurisdiction may be raised at any time.

[9] It is uncontested that Lisle and Clara's children received no services at all from Bridge Builders. We reject their contention that as a "family," they have associational or representational standing. See *American Legion Post #149 v. Washington State Dep't. of Health*, 164 Wn.2d 570, 595-96, 192 P.3d 306 (2008) (applying the associational standing test from *Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 343, 97 S. Ct. 2434, 53 L. Ed. 2d 383 (1977)). We also reject the notion that there is an association in this case. As the complaint states, this lawsuit was brought by five separate people. It was not brought in the name of the "Hale family." While we refer to the Hales, this is for the sake of brevity.

[10] "[A] license is required for a person to advertise, operate, manage, conduct, open, or maintain an in-home services agency." RCW 70.127.020(1).

[11] "An in-home services agency license is required for a nursing home, hospital, or other person that functions as a home health, hospice, hospice care center, or home care agency." RCW 70.127.020(2).

[12] "'In-home services agency' means a person licensed to administer or provide home health, home care, hospice services, or hospice care center services directly or through a contract arrangement to individuals in a place of temporary or permanent residence." RCW 70.127.010 (14).

[13] "'Home care agency' means a person administering or providing home care services directly or through a contract arrangement to individuals in places of temporary or permanent residence." RCW 70.127.010(5).

[14] The legislative intent section states:

The legislature finds that the availability of home health, hospice, and home care services has improved the quality of life for Washington's citizens. However, the delivery of these services bring risks because the in-home location of services makes their actual delivery virtually invisible. Also, the complexity of products, services, and delivery systems in today's health care delivery system challenges even informed and healthy individuals. The fact that these services are delivered to the state's most vulnerable population, the ill or disabled who are frequently also elderly, adds to these risks.

It is the intent of the legislature to protect the citizens of Washington state by licensing home health, hospice, and home care agencies. This legislation is not intended to unreasonably restrict entry into the in-home service marketplace. Standards established are intended to be the minimum necessary to ensure safe and competent care, and should be demonstrably related to patient safety and welfare.

RCW 70.127.005.

[15] In their reply brief, the Hales argue for the first time that if Bridge Builders was required to be licensed, the Washington Administrative Code would have imposed requirements on Bridge Builders that the Hales would have benefited from. We do not consider arguments that are made for the first time in a reply brief. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

[16] "'Exploitation' means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another." RCW 74.34.020(d).

[17] The Hales incorrectly cite to RCW 74.34.020(6)'s current language. We apply the statutes in effect at the time of the alleged acts. See *In re Estate of Haviland*, 177 Wn.2d 68, 75, 301 P.3d 31 (2013) ("Statutes are presumed to apply prospectively, absent contrary legislative intent.").

[18] The Washington Supreme Court has not yet recognized alienation of a child's affections as a cause of action. See *Babcock*, 112 Wn.2d at 107-08 (noting that it had not yet had occasion to recognize a cause of action for alienation of a child's affections, but held that plaintiffs could not establish causation as a matter of law).

[19] More importantly, the Hales have inadequately briefed this issue. Inadequate briefing makes it impossible to further address this novel claim.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

ROBERT LISLE HALE, Personal Representative of the ESTATE OF LISLE HALE, deceased; CLARA HALE, surviving spouse of LISLE HALE; ROBERT L. HALE; DONALD HALE; and TRICIA HALE,

Appellants,


v.

BRIDGE BUILDERS, LTD.; MINDI R. BLANCHARD and JOHN DOE BLANCHARD; BRENDA CARPENTER and JOHN DOE CARPENTER; JANET WATRAL and JOHN DOE WATRAL,

Respondents.

No. 43265-0-II

ORDER DENYING MOTION FOR PUBLICATION

FILED
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DIVISION II
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STATE OF WASHINGTON
BY  DEPUTY

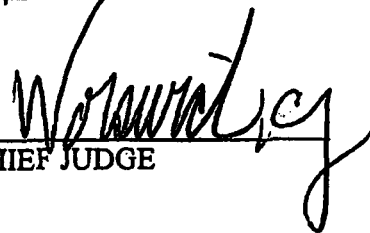
APPELLANTS move for publication of the Court's August 20, 2013 opinion. Upon consideration, the Court denies the motion. Accordingly, it is

SO ORDERED.

PANEL: Jj. Worswick, Johanson, McCarthy

DATED this 24th day of September, 2013.

FOR THE COURT:


CHIEF JUDGE

CASE #: 43265-0-II

Robert Hale, et al., Appellant v. Bridge Builders, et al, Respondents
Order Denying Motion for Publication - Page 2

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BARBARA CHRISTENSEN

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLALLAM

ROBERT HALE, as personal
representative of
The estate of Lisle Hale, deceased;
et. al.,

Plaintiffs,

vs.

BRIDGE BUILDERS, LTD., et. al.,

Defendants.

Case No.: 09-2-00447-4

OPINION AND ORDER ON
MOTION FOR RECONSIDERATION

This matter came before the undersigned to consider Plaintiffs' Motion for Reconsideration of the Court's September 18, 2009 oral opinion granting Defendants' Motion for Partial Summary Judgment.

The court considered the amended complaint filed herein on May 18, 2009 [CP 9]; Defendants' Motion for Partial Summary Judgment filed 7/31/09 [CP 29]; the declaration of Mindi Blanchard with attached exhibits A and B filed 7/31/09 [CP 30]; the declaration of Alan Millet filed 7/31/09 [CP 31]; Plaintiffs' Memorandum in Opposition to the motion filed 8/17/09 [CP 40]; Defendants' Reply Brief filed 9/11/09 [CP 43]; Plaintiffs' Motion to Reconsider and Memorandum in Support of that motion filed 9/28/09 [CP 48 & 49]; and Defendants' Response to the Motion for Reconsideration dated 10/14/09.

CRADDOCK D. VERSER
JUDGE

Jefferson County Superior Court
P.O. Box 1220
Port Townsend, WA 98368

SCANNED - 4

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ISSUE

Is there a genuine issue of material fact as to whether Bridge Builders, LTD., is an "in home services agency" required to be licensed by RCW 70.127.020.

DECISION SUBJECT TO RECONSIDERATION

Plaintiffs allege, among other claims, that defendants Bridge Builders, Ltd., Mindi R. Blanchard, et. ux., and Brenda S. Carpenter, et. ux., jointly referred to in this opinion as "Bridge Builders" are an in home services agency which failed to comply with the licensing requirements of RCW 70.127.020 et. seq.

Bridge Builders assert that they are exempt from that statute by RCW 70.127.040(14) as they provide only "case management services" as defined by that statute.

The court granted Bridge Builders' motion for partial summary judgment ruling as a matter of law that Bridge Builders was not required to be licensed as an in home services agency. That ruling is subject to this motion for reconsideration.

ANALYSIS

In support of their opposition to partial summary judgment, Plaintiffs demonstrated, and Bridge Builders did not dispute, that in the course of their brief relationship with the elder Hales, Bridge Builders: (1) transported the Hales to Washington Mutual Bank to make changes in their bank accounts (2) assisted Lisle Hale with payment of bills (3) arranged for and met with a locksmith at the Hale's home to change the locks on the home and (4) assisted the Hales in preparation for moving them from an assisted living situation back into their home. Plaintiffs contend that these activities are more than "case management services". In addition, Plaintiffs cite to Bridge Builders' advertising for other examples of how Bridge Builders actually provides "home care services" as that term is used by RCW 70.127.010(6).

Chapter 70.127 RCW was enacted in 1988 to protect the ill, disabled and elderly who need assistance with personal care. The legislature was concerned about the virtual invisibility of home care providers, and the attendant risks to their vulnerable clients. The legislature addressed this problem by establishing minimum standards for care, and by requiring that homecare agencies serving these vulnerable populations be licensed to ensure compliance with these standards.

CRADDOCK D. VERSER
JUDGE

Jefferson County Superior Court
P.O. Box 1220
Port Townsend, WA 98368

400

1 Cummings v. Guardianship Services of Seattle, 128 Wn. App.
2 742, 750, 110 P.3d 796 (Div. I, 2005).
3

4 An agency that administers or provides either directly or through a
5 contract arrangement "home care services" must comply with the RCW 70.127
6 licensing requirements and restrictions. RCW 70.127.010(5). "Home Care
7 Services" are defined by RCW 70.127.010(6) as:

8
9 ..nonmedical services and assistance provided to ill, disabled,
10 or vulnerable individuals that enable them to remain in their
11 residences. Home care services include, but are not limited
12 to: homemaker assistance with household tasks, such as
13 shopping, meal planning and preparation and transportation;
14 ..or other nonmedical services.
15

16 Bridge Builders submits the declarations of Mindi Blanchard and Allen
17 Millet in support of their position that they provide only "case management
18 services" and thus are exempt from licensing requirements by RCW
19 70.127.040(14). That statute defines "case management services" as:

20
21 ..the assessment, coordination, authorization, planning,
22 training, and monitoring of home health, hospice, and home
23 care and does not include the direct provision of care to an
24 individual.
25

26 Some of the services offered by home builders, as shown in attachment
27 A to the Mindi Blanchard declaration, are: (1) daily reminders to take
28 medication (2) calling daily and if necessary tracking a person down to
29 insure their "day-to-day safety" (3) responding to an emergency room or home
30 in the event of a medical emergency and maintaining a copy of "emergency
31 documents" to be provided to a medical provider (4) providing a monthly
32 financial report, assisting if the individual cannot write checks and
33 providing monthly checkbook reconciliation (5) providing transportation and
34 accompanying the individual to medical appointments (6) transporting pets to
35 the groomer and providing daily walks for a pet (7) coordinating trips to
36 local events and restaurants (8) all shopping for the individual (9) in
37 home notary service (10) picking up prescriptions, stocking refrigerator,
38 picking up mail, ordering and delivering hot meals.
39

40 CONCLUSION

41
42 The services provided by Bridge Builders appear to be more than "case
43 management services". After careful consideration, the court concludes that
44 there is a genuine issue of material fact as to whether Bridge Builders is
45 an agency required to be licensed under chapter 70.127 RCW.
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CRADDOCK D. VERSER
JUDGE

Jefferson County Superior Court
P.O. Box 1220
Port Townsend, WA 98368


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ORDER

Plaintiffs Motion for Reconsideration is GRANTED. Defendants' motion for partial summary judgment is DENIED.

Dated this 21 day of October, 2009.


CRADDOCK D. VERSER, JUDGE

CRADDOCK D. VERSER
JUDGE
Jefferson County Superior Court
P.O. Box 1220
Port Townsend, WA 98368

405

1 SUPERIOR COURT OF THE STATE OF WASHINGTON
2 IN AND FOR THE COUNTY OF CLALLAM
3
4

5 ROBERT LISLE HALE, Personal
6 Representative of the ESTATE OF LISLE
7 HALE, deceased; CLARA HALE, surviving
8 spouse of LISLE HALE; ROBERT L. HALE;
9 DONALD HALE; and TRICIA HALE,

10
11
12 Plaintiffs,
13

14 vs.
15

16 BRIDGE BUILDERS, LTD.; MINDI R.
17 BLANCHARD and John Doe Blanchard;
18 BRENDA CARPENTER and John Doe
19 Carpenter; JANET WATRAL and John Doe
20 Watral; MICHAEL R. HASTINGS and Jane
21 Doe Hastings; and MICHAEL R. HASTINGS,
22 P.S.,

23
24 Defendants.
25
26

Case No.: 09-2-00447-4

MEMORANDUM OPINION AND ORDER
ON MOTION FOR SUMMARY JUDGMENT

27 This matter came before the undersigned on June 8, 2011 to consider
28 Plaintiffs' Motion for Summary Judgment and Defendants' Motion for Summary
29 Judgment on three causes of action alleged in the complaint. Plaintiffs
30 appeared through their attorney, Stephen K. Eugster of Eugster Law Offices,
31 PSC. Defendants, Bridge Builders, LTD, and Ms. Carpenter and Ms. Blanchard,
32 (Bridge Builders herein) appeared through their attorney, Matthew T. Boyle
33 of the Law Offices of Matthew T. Boyle, P.S.
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CRADDOCK D. VERSER
JUDGE

Jefferson County Superior Court
P.O. Box 1220
Port Townsend, WA 98368

WTR

1 The court considered the complete file in this matter including the
2 Declaration of Robert Hale, Declaration of Stephen Eugster, and the
3 Declaration of Tricia Hale and the exhibits annexed to those declarations.
4 The Court considered Defendants' response including the Declarations of
5 Matthew T. Boyle as well as the complete file in this matter including all
6 previously filed declarations and exhibits submitted in support of
7 Defendant's earlier motion for summary judgment. The court thanks both
8 counsel for their well prepared and reasoned memoranda provided in support
9 of their positions.

10
11 **FACTS**
12

13 The essential facts are set out in the memoranda provided by the
14 parties. Bridge Builders, Mindi R. Blanchard and Brenda Carpenter operate a
15 business that they feel provides "case management" services to elderly
16 adults wishing to remain in their homes, but in need of assistance. Their
17 advertising is annexed as exhibits to the Declaration of Robert Hale, CP 81,
18 filed on April 29, 2011. Plaintiffs' elderly parents were briefly contacted
19 by the defendants in June, 2008 when they were living in an assisted living
20 home. Defendants' agreed to assist plaintiffs' parents in returning to
21 their home, and obtained a power of attorney from them.

22
23 Plaintiffs have moved for summary judgment on three issues. First, that
24 Bridge Builders is an "in-home services agency" which must be licensed under
25 RCW 70.127.020. Second that Bridge Builders obtained the power of attorney
26 from the elderly Hales in violation of RCW 70.127.150. Third that Bridge
27 Builders was operating an in home services agency without a license and
28 therefore in violation of the Washington State Consumer Protection Act 19.86
29 RCW, as set forth in RCW 70.127.216. If Bridge Builders is an unlicensed
30 Home Care Agency then the second and third issues are resolved as a matter
31 of law favorably to the plaintiffs.

32
33 Defendants submit that they are not a home care agency required to be
34 licensed under RCW 70.127.020. While they acknowledge that they offer
35 services to vulnerable elderly adults they assert that the services they
36 offer are "case management" services exempt from any licensing requirement
37 under RCW 70.127.040(14).

38
39 **ISSUE**
40

41 Is Bridge Builders an "in home services agency" which must be licensed
42 under RCW 70.127.020?

43
44 The answer is obvious: It depends on what services they provide.

45
46 Bridge Builders does provide home care services to disabled or
47 vulnerable individuals that enable them to remain in their residences. RCW
48

49 **CRADDOCK D. VERSER**
50 **JUDGE**

Jefferson County Superior Court
P.O. Box 1220
Port Townsend, WA 98368

1 70.127.010(6). While Home Builders advertises the list of services it can
2 arrange [pages 2 through 5 of Robert Hale Declaration 4/29/11 CP 81] in so
3 doing it does not use any of the descriptive phrases that trigger the
4 licensing requirement. RCW 70.127.030. [Attachment A to 7/31/09 Declaration
5 of Mindi Blanchard, CP 30]. The home care services it advertises that it
6 can arrange include "...homemaker assistance with household tasks, such as...
7 shopping, meal planning and preparation, and transportation;" RCW
8 70.127.010(6). However Bridge Builders asserts it only provides "case
9 management" services and thus is exempt from the licensing requirement.
10 Case management services as provided by Bridge Builders consist; of
11 coordinating, planning and monitoring the home care services necessary for
12 vulnerable or disabled individuals to remain at home.

13
14 The court agrees with defendants' application of the holding in *Cummings*
15 *v. Guardianship Services*, 129 Wn. App. 742, 110 P.3d 796 (2003) to the facts
16 of this case. There the court held that because employees of Guardianship
17 Services actually provided the services to vulnerable individuals the
18 company had to be licensed. In so holding the court stated: "In many
19 circumstances, guardians will not be subject to the licensing requirements
20 because they do not themselves provide home care. Rather, they arrange for
21 the ward to receive care from home service agencies." [128 Wn. App. 751].

22
23 CONCLUSION

24
25 The court does not actually know exactly what "services" Bridge Builders
26 provides with its employees. While Ms. Blanchard did take the Hales to the
27 bank, unless this is a service Bridge Builders intends to offer through its
28 employees, in the opinion of this court, this one trip to the bank would not
29 trigger a licensing requirement. Nor would one meeting with a locksmith at
30 the home. If Bridge Builders simply "coordinates", "plans", or "monitors"
31 the services provided to a vulnerable or disabled home resident then the RCW
32 70.127.040(14) exemption applies. On the other hand if employees of Bridge
33 Builders actually provide services then the holding in *Cummings*, dictates
34 that they should be licensed and plaintiffs' are entitled to the relief they
35 seek in this motion.

36
37 ORDER

38
39 There are genuine issues of material fact that remain unresolved thus
40 the motion for summary judgment is DENIED.

41
42 Dated this 22nd day of June, 2011.

43
44
45 
46 CRADDOCK D. VERSER, JUDGE

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49 CRADDOCK D. VERSER
50 JUDGE

Jefferson County Superior Court
P.O. Box 1220
Port Townsend, WA 98368

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BARBARA CHRISTENSEN

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLALLAM

SCANNED-19

ROBERT LISLE HALE, Personal
Representative of the ESTATE OF
LISLE HALE, deceased; CLARA
HALE, surviving spouse of LISLE
HALE; ROBERT L. HALE; DONALD
HALE; and TRICIA HALE,

Plaintiffs,

vs.

BRIDGE BUILDERS, LTD.; MINDI R.
BLANCHARD and John Doe
Blanchard; BRENDA CARPENTER and
John Doe Carpenter; JANET WATRAL
and John Doe Watral; MICHAEL R.
HASTINGS and Jane Doe Hastings;
and MICHAEL R. HASTINGS, P.S.,

Defendants.

Case No.: 09-2-00447-4

AMENDED MEMORANDUM OPINION AND
ORDER ON MOTION FOR SUMMARY
JUDGMENT AND FINDINGS AND
DETERMINATION THERE IS NO
REASON FOR DELAY UNDER
CR 54(b) and RAP 2.2(d), AND
JUDGMENT IN FAVOR OF
DEFENDANTS BRIDGE BUILDERS,
LTD., MINDI R. BLANCHARD AND
BRENDA CARPENTER AND JOHN DOE
CARPENTER

[PROPOSED BY PLAINTIFFS]

This matter came on for oral argument on February 10, 2012 and April 6,
2012 to consider the issues raised by Defendants' Bridge Builders, Mindi
Blanchard and Brenda Carpenter Motion for Summary Judgment. ("Bridge
Builders" hereinafter) The moving defendants appeared through their

AMENDED MEMORANDUM OPINION AND ORDER - 1

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attorney, Matthew T. Boyle. Plaintiffs appeared through their attorney, Stephen K. Eugster.

In addition there were two motions dealing with discovery. Plaintiffs moved for certain discovery, Defendants moved to protect from certain discovery. The general topic of the discovery sought was the services Defendants Bridge Builders performed for clients including those clients who had given them powers of attorney which had been recorded. The court denied Plaintiffs' motion and granted Defendants' "Bridge Builders motion. No discovery by Plaintiff was allowed.

The court considered the complete file in this matter including the following:

1. Defendants' Motion for Summary Judgment dated 12/05/11;
2. Plaintiffs' Memorandum in Response to Motions for Summary Judgment dated 12/29/11;
3. Defendants' Reply in Support of Motion for Summary Judgment dated 2/1/12;
4. Declaration of Alice Semingson dated 12/27/11;
5. Declaration of Tricia Hale in Response to Defendants' Motions for Partial Summary Judgment (12/23/2011);
6. Declaration of Robert Hale in Response to Motions for Summary Judgment dated 12/22/11, with attached exhibits;
7. Declaration of Stephen K. Eugster dated 12/29/11;
8. Plaintiff's Amended complaint dated 5/14/11;
9. The 4/21/11 Declaration of Tricia Hale;
10. The 4/20/11 Declaration of Robert Hale.

In addition the Court considered the declarations previously filed in this matter in support of and in response to previous motions for summary judgment or partial summary judgment.

The court also considered the arguments of counsel.

FACTS

The facts are virtually undisputed and are set forth in previous motions for summary judgment (Defendants' May 11, 2011 Cross Motion for Summary Judgment; and Plaintiffs' Motion for Summary Judgment dated April 29, 2011).

The case arises out of contacts between the defendants Bridge Builders acting through Mindi Blanchard and Brenda Carpenter with Lisle Hale and Clara Kale from June 5, 2008 through June 13, 2008. At that time Lisle Hale was 86 years old and Clara Hale was 90 years old. The contact occurred at the Sherwood Assisted Living facility in Sequim, WA.

The court accepts the facts as set forth in the declaration of Mindi Blanchard as to what Bridge Builders did with reference to the elderly Hales between June 5 and June 13, 2008. The court accepts the declaration of Tricia Hale as to what actions the Hale children took between June 5 and June 13, 2008.

Plaintiffs' amended complaint sets forth nine causes of action, referred to in the amended complaint as "Counts", relating to defendants Bridge Builders. Defendants Bridge Builders have moved for summary judgment dismissing all nine causes of action.

ISSUES

ISSUE NO. 1: Are Plaintiffs entitled to maintain a cause of action for a

AMENDED MEMORANDUM OPINION AND ORDER - 3

declamatory judgment that Defendants Bridge Builders must be licensed as an in home services agency under RCW 70.127?

ISSUE NO. 2: Have Plaintiffs set forth a cause of action based upon the Vulnerable Adult Act, RCW 74.34?

ISSUE NO. 3: Do Plaintiffs have standing to pursue a claim for violation of the Washington State Consumer Protection Act?

ISSUE NO. 4: Can Plaintiffs demonstrate the elements necessary to proceed with a malpractice claim?

ISSUE NO. 5: Does Washington recognize a cause of action for malicious interference with family relationship and if so, do Plaintiffs' allegations support such a claim?

ISSUE NO. 6: Can Plaintiffs show the elements necessary to proceed with a claim of negligent infliction of emotional distress?

ISSUE NO. 7: Is the conduct alleged on behalf of Bridge Builders sufficient to constitute extreme and outrageous conduct necessary to prove intentional infliction of emotional distress?

ANALYSIS

Plaintiffs have repeatedly invited the court to treat Defendants' Bridge Builders motions for summary judgment as motions for dismissal under CR 12(b)(6), and thus the mere allegations of any facts are sufficient to meet their burden to demonstrate a genuine issue of material fact. The court declines that invitation and will hold both parties to the well known standards for summary judgment motions.

In considering a motion for summary judgment, the court must consider all facts and all reasonable inferences from them in the light most favorable

to the nonmoving party. Berrocal v. Fernandez, 155 Wn. 2d 585, 590, 121 P.3d 82 (2005). Summary Judgment can only be granted if the pleadings, affidavits, depositions, and admissions on file demonstrate the absence of any genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. CR 56 (c) .

After the moving party has submitted its proof in support of the motion, the burden shifts to the nonmoving party to set forth specific facts sufficient to rebut the moving party's contentions and to demonstrate that there are material issues of fact. Seven Gables Co. v. MGM/UA Entertainment Co., 106 Wn.2d. 1, 13, 721 P.2d 1 (1986). The nonmoving party "...may not rely on speculation, argumentative assertions that unresolved factual issues remain, or in having its affidavits considered at face value." Seven Gables, at 106 Wn. 2d 13. The court should grant the motion only if reasonable persons could reach only one conclusion. Wilson v. Steinbach, 98 Wn. 2d 434, 437, 656 P.2d 1030 (1982).

Issue No. 1: Declaratory Judgment Action (counts 1 and 2)

This court's jurisdiction under the UDJA is limited to justiciable controversies which involve (1) an actual, present and existing dispute (2) between parties who have genuine and opposing interests, (3) which involved direct and substantial interests rather than potential, theoretical, abstract or academic interests and where (4) a judicial determination will be final and conclusive. Bronson v. Port of Seattle, 152 Wn. 3d 862, 877, 101 P.3d 67 (2004) . These four requirements overlap with the requirements of standing under the UDJA. To-Ro Trade Shows v. Collins, 144 Wn. 2d 403, 411, 27 P.3d 1149 (2001) . In order to have standing to invoke the relief provided by the

Uniform Declaratory Judgment Act, RCW 7.24, the Plaintiffs must (1) fall within the zone of interest that the statute, here RCW 70.127, protects or regulates and (2) they must have suffered an injury in fact. Lakewood Racquet Club v. Jensen, 156 Wn. App. 215, 224, 232 P.3d 1147 (Div. II, 2010). While Plaintiffs argue that defendants waived the challenge to their standing by not raising standing as an affirmative defense, Washington courts hold that standing is a jurisdictional requirement which may be raised at any time during the proceedings. Firefighters v. Spokane Airports, 146 Wn. 2d 207, 212, n.3, 45 P.3d 186 (2002).

Defendant Bridge Builders did not provide "in home care services" to Plaintiffs. During the brief relationship between Bridge Builders and the Hales the elderly Hales lived in an assisted living facility. Defendants assert that Plaintiffs lack standing to pursue their declaratory judgment causes of action. (Counts 1 and 2). RCW 70.127 is designed to protect those receiving in home care services from exploitation as the in-home location of services provided brings risk to those receiving the services. RCW 70.127.005. Even if the court interpreted the fact that Bridge Builders wanted to move the elderly Hales to their home and thus they deserved protection under RCW 70.127, Plaintiffs cannot show an "injury in fact" arising from their brief relationship with the Bridge Builder defendants. Nor can any decision by this court as to whether the Bridge Builder defendants need a RCW 70.127 license be final and conclusive as the Department of Health, not this court, is the agency required to make that determination. Brown v. Vail, 169 Wn.2d 318, 237 P.2d 263 (2010).

For the foregoing reasons the Plaintiffs lack standing to request a

declaratory judgment as to whether the Bridge Builder defendants need to be licensed under RCW 70.127. Defendant Bridge Builders' Motion for Summary Judgment dismissing counts 1 and 2 of Plaintiffs' amended complaint must be GRANTED.

Issue No. 2: Vulnerable Adult Protection Act cause of action.

Bridge Builder defendants allege that Plaintiffs cannot show that they were subjected to "abuse", "financial exploitation" or "neglect" as those terms are defined in the Vulnerable Adult Protection Act. Plaintiffs' respond by citing the court to the allegations in their complaint. However when faced with a summary judgment motion the nonmoving party, here the Plaintiffs, must set forth specific facts showing there is a genuine issue for trial and cannot rely on speculation or argumentative assertions that unresolved factual issues remain. Seven Gables Corp. v. MGM/UA Entertainment Co., 106 Wn.2d. 1, 12, 721 P.2d 1 (1985). Plaintiffs here do not set forth any specific facts that give rise to the conclusion that the elderly Hales were abused, financially exploited, or neglected as those terms are defined in RCW 74.34.020. The declarations of Robert and Tricia Hale opine as to what could have possibly happened if the Bridge Builder defendants had moved the elderly Hales from the assisted living quarters back to their home. Those declarations, like the amended complaint, fail to set forth specific facts which if believed would constitute a cause of action as authorized by RCW 74.34.200. Young v. Key Pharmaceuticals, Inc., 112 Wn.2d. 216, 226-26, 770 P.2d 82 (1989).

For the foregoing reasons Defendants Bridge Builders Motion for Summary Judgment dismissing Plaintiffs' claim, count 3 based upon RCW 74.34,

is GRANTED.

Issue No. 3: Consumer Protection Act cause of action.

RCW 19.86 the Washington State Consumer Protection Act provides that a person injured in his or her business or property by a violation of the Act has a cause of action under the act. As the court has dismissed the counts based upon violation of RCW 70.127 and RCW 74.34, the Plaintiffs have no per se cause of action against the Bridge Builder defendants. Additionally Plaintiffs have not shown an injury to their business or property as a result of the brief association with the Bridge Builder defendants. In absence of any damage to their business or property Plaintiffs do not have standing to bring a claim under the Consumer Protection Act. Panau v. Farmers Ins. Co. of Washington, 66 Wn. 2d 27, 39, 204 P.2d 885 (2009).

Defendants' motion for Summary Judgment dismissing count 4, violation of the Washington State Consumer Protection Act, is GRANTED.

Issue No. 4: Malpractice.

To prove a malpractice claim, a plaintiff must show the existence of a special relationship which gives rise to a duty of care, breach of that duty, proximately causing damage. Falkner v. Foshaug, 108 Wn. App. 113, 118, 20 P. 3d 771 (2001). Here only the elderly Hales had a special relationship with the Bridge Builder defendants which could give rise to a duty of care. Arguably the declaration of Alice Semington satisfies the obligation to demonstrate a duty of care, and arguably the declaration demonstrated that the Bridge Builder defendants breached that duty of care. However, Plaintiffs fail to show how the alleged breaches set forth in the Semington declaration proximately caused damage to the elderly Hales. While Plaintiffs allege "The

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facts show that Plaintiffs were injured as a result of the failure of Defendants to meet the standards of care they are subject to." [Plaintiffs memorandum in response to motion for summary judgment, p. 28, line 13-14] As cited earlier, mere allegations of injury are insufficient to meet the burden in response to a motion for summary judgment.

Defendants' motion for Summary judgment of dismissal of count 6, malpractice, is GRANTED.

Issue No. 5: Interference with family relationship.

Plaintiffs' claim that the Bridge Builder defendants interfered with the relationship the Hale children Plaintiffs had with their parents, Lisle and Clara Hale. While Washington has not recognized a cause of action for interference with a family relationship, Plaintiffs argue that they are entitled to pursue such a claim.

The elements of such a cause of action would at least require the following: (1) an existing family relationship; (2) a malicious interference with the relationship; (3) an intention on the part of the interfering person that the malicious interference results in a loss of affection or family association; (4) a causal connection between the acts of the interfering party and the loss of affection; and (5) resulting damages. Babcock v. State, 112 Wn. 2d 83, 107-108, 768 P.2d 481 (1989); citing Strode v. Gleason, 9 Wn. App. 13, 510 P.2d 250 (1973).

Plaintiffs' cause of action fails in that the Plaintiffs cannot show a "loss of affection" nor can Plaintiffs show any resulting damages, even if they could demonstrate the other three elements of the tort.

Defendants Bridge Builders Motion for Summary Judgment dismissing count

7, interference with family relationship, is GRANTED.

Issue No. 6: Negligent infliction of emotional distress.

As in all negligence cases, in proving negligent infliction of emotional distress, the plaintiff must prove a duty with a breach of duty which proximately causes damage or injury to the plaintiff. In order to prove the damage aspect of intentional infliction of emotional distress a plaintiff demonstrate objective symptomology susceptible to medical diagnosis and proved through medical evidence. Kloepfel v. Bokor, 149 Wn. 2d 192, 66 JP.3d 630 (2003).

Plaintiffs here argue, again, that the court should treat defendants' motion as a CR 12(b) (6) motion rather than a motion for summary judgment. Plaintiffs do not offer any medical evidence to support their contention that the Bridge Builder defendants negligently inflicted emotional distress.

Defendants Bridge Builders Motion for Summary Judgment dismissing count 8, negligent infliction of emotional distress, is GRANTED.

Issue No. 7: Intentional infliction of emotional distress.

While the Hale children may have felt outraged that an organization would interfere with their plan to move their parents into the assisting living environment, as a matter of law, their outrage is not such that no reasonable person could be expected to endure. Saldivar v Momah, 145 Wn. App. 365, 390, 186 P.3d 1117 (2008).

As a matter of law, Plaintiffs have failed to show any conduct on behalf of the Bridge Builder defendants which could possibly be found by any reasonable person to be "...so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency and to be utterly

intolerable in a civilized community." Saldivar, supra, at 145 Wn. App. 390, citing Grimsby v. Samson, 85 Wn.2d 52, 59, 530 P.2d 291 (1975).

Defendants Bridge Builders Motion for Summary Judgment dismissing count 9, intentional infliction of emotional distress, is GRANTED.

FINDINGS AND DETERMINATION THERE IS NO JUST REASON FOR DELAY UNDER CR 54(b) and RAP 2.2(d)

The decisions and orders herein above should be regarded as final.

There is no just reason for any delay as to determination of appeals from the orders. The court heard argument with respect of the foregoing and considered evidence relevant to whether there was any reason for delay as to appeals.

Based on the argument of counsel, the foregoing evidence presented and decisions made herein above, the Court finds there is no just reason for delay in entering judgments

1. Plaintiffs' amended complaint sets out ten counts. The tenth count is merely a claim for attorneys' fees as might be awarded under some of the counts - consumer protection act claim, vulnerable adults act claim, etc.
2. Count 5 is a count specific as to defendants Michael R. Hastings and Michael R. Hastings, P.S. Because defendants Hastings were dismissed, Count 5 is no longer extant.
3. Counts 1, 2, 3, 4, 6, 7, 8, and 9 are to be dismissed on the motions of Defendants Bridge Builders.
4. Here, the final judgment disposes of all counts as in the case. It would not make sense to separately try the counts as they apply to Defendant Watral.

5. All of the counts should be tried at the same time in that they include common questions of law and fact as to Defendants Bridge Builders and Defendant Watral.
6. Indeed, the counts as decided regarding Defendants Bridge Builders might even be considered a non-binding variant of the principal of "law of the case." It certainly would not seem reasonable to think that once a judge has decided a legal question during the conduct of a lawsuit, he/she would be likely to change his/her views.
7. All of the issues of the case are dealt with in the Memorandum Opinion and Order on Motion for Summary Judgment. Thus, in a sense, there are no issues which have not been addressed by the Memorandum.
8. Immediate appeal would alleviate hardship, cost, delay, and enhance judicial economy. *Doerflinger v. New York Life*, 88 Wn.2d 878, 881, 567 P.2d 230 (1977).
9. It would be undesirable for there to be more than one appeal in a single action: The need for making review available in multiple-party or multiple-claim situations at a time that best serves the needs of the litigants. *Id.*, 88 Wn.2d at 880; see also *Fox v. Sunmaster Prods., Inc.*, 115 Wn.2d 498, 503-04, 798 P.2d 808 (1990).

JUDGMENT

In light of the foregoing and the findings immediately above, the court concludes that there is no just reason for delay in expressly entering judgment regarding the foregoing.


NOW, THEREFORE, IT IS ORDERED AS FOLLOWS:

1. Counts 1, 2, 3, 4, 6, 7, 8, and 9 be, and they are, hereby dismissed in

their entirety.

- 2. Plaintiffs' motion for discovery is hereby denied.
- 3. Defendants' Bridge Builders motion for protective order is hereby granted.
- 4. Plaintiffs shall pay statutory attorneys fees in the sum of \$200 to Defendants Bridge Builders.
- 5. The foregoing shall be entered as final judgment of the court.

April 6, 2011.


 Craddock D. Verser
 Judge

Presented by:

Eugster Law Office, P.S.C.

Stephen K. Eugster
 Stephen K. Eugster WSBA #2003
 Attorney for Plaintiffs

Approved and Notice of Presentation Waived:

Johnson, Graffe, Keay, Moniz & Wick, LLP

Ketia B. Wick WSBA #27219
 Attorneys for Defendant Watral

Approved and Notice of Presentation Waived:

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Apr 06 12 02:00p

St. Stephen K. Eugster

(505) 624-5566

P. 14

Law Offices of Matthew T. Boyle, P.S.

Matthew T. Boyle WSBA #6919
Attorneys for Defendants Bridge Builders

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AMENDED MEMORANDUM OPINION AND ORDER - 14

Appendix 40

28

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLALLAM

ROBERT LISLE HALE, Personal)
 Representative of the ESTATE OF)
 LISLE HALE, deceased; CLARA)
 HALE, surviving spouse of LISLE)
 HALE; ROBERT L. HALE; DONALD)
 HALE; and TRICIA HALE,)

Plaintiffs,)

vs.)

BRIDGE BUILDERS, LTD.; MINDI R.)
 BLANCHARD and John Doe)
 Blanchard; BRENDA CARPENTER and)
 John Doe Carpenter; JANET WATRAL)
 and John Doe Watral; MICHAEL R.)
 HASTINGS and Jane Doe Hastings;)
 and MICHAEL R. HASTINGS, P.S.,)

Defendants.)

Case No.: 09-2-00447-4

AMENDED MEMORANDUM OPINION AND
 ORDER ON MOTION FOR SUMMARY
 JUDGMENT AND FINDINGS AND
 DETERMINATION THERE IS NO
 REASON FOR DELAY UNDER
 CR 54(b) and RAP 2.2(d), AND
 JUDGMENT IN FAVOR OF
 DEFENDANTS BRIDGE BUILDERS,
 LTD., MINDI R. BLANCHARD AND
 BRENDA CARPENTER AND JOHN DOE
 CARPENTER

[PROPOSED BY PLAINTIFFS]

This matter came on for oral argument on February 10, 2012 and April 6, 2012 to consider the issues raised by Defendants' Bridge Builders, Mindi Blanchard and Brenda Carpenter Motion for Summary Judgment. ["Bridge Builders" hereinafter] The moving defendants appeared through their

attorney, Matthew T. Boyle. Plaintiffs appeared through their attorney, Stephen K. Eugster.

In addition there were two motions dealing with discovery. Plaintiffs moved for certain discovery, Defendants moved to protect from certain discovery. The general topic of the discovery sought was the services Defendants Bridge Builders performed for clients including those clients who had given them powers of attorney which had been recorded. The court denied Plaintiffs' motion and granted Defendants' "Bridge Builders motion. No discovery by Plaintiff was allowed.

The court considered the complete file in this matter including the following:

1. Defendants' Motion for Summary Judgment dated 12/05/11;
2. Plaintiffs' Memorandum in Response to Motions for Summary Judgment dated 12/29/11;
3. Defendants' Reply in Support of Motion for Summary Judgment dated 2/1/12;
4. Declaration of Alice Semingson dated 12/27/11;
5. Declaration of Tricia Hale in Response to Defendants' Motions for Partial Summary Judgment (12/23/2011);
6. Declaration of Robert Hale in Response to Motions for Summary Judgment dated 12/22/11, with attached exhibits;
7. Declaration of Stephen K. Eugster dated 12/29/11;
8. Plaintiff's Amended complaint dated 5/14/11;
9. The 4/21/11 Declaration of Tricia Hale;
10. The 4/20/11 Declaration of Robert Hale.

In addition the Court considered the declarations previously filed in this matter in support of and in response to previous motions for summary judgment or partial summary judgment.

The court also considered the arguments of counsel.

FACTS

The facts are virtually undisputed and are set forth in previous motions for summary judgment (Defendants' May 11, 2011 Cross Motion for Summary Judgment; and Plaintiffs' Motion for Summary Judgment dated April 29, 2011).

The case arises out of contacts between the defendants Bridge Builders acting through Mindi Blanchard and Brenda Carpenter with Lisle Hale and Clara Kale from June 5, 2008 through June 13, 2008. At that time Lisle Hale was 86 years old and Clara Hale was 90 years old. The contact occurred at the Sherwood Assisted Living facility in Sequim, WA.

The court accepts the facts as set forth in the declaration of Mindi Blanchard as to what Bridge Builders did with reference to the elderly Hales between June 5 and June 13, 2008. The court accepts the declaration of Tricia Hale as to what actions the Hale children took between June 5 and June 13, 2008.

Plaintiffs' amended complaint sets forth nine causes of action, referred to in the amended complaint as "Counts", relating to defendants Bridge Builders. Defendants Bridge Builders have moved for summary judgment dismissing all nine causes of action.

ISSUES

ISSUE NO. 1: Are Plaintiffs entitled to maintain a cause of action for a

declamatory judgment that Defendants Bridge Builders must be licensed as an in home services agency under RCW 70.127?

ISSUE NO. 2: Have Plaintiffs set forth a cause of action based upon the Vulnerable Adult Act, RCW 74.34?

ISSUE NO. 3: Do Plaintiffs have standing to pursue a claim for violation of the Washington State Consumer Protection Act?

ISSUE NO. 4: Can Plaintiffs demonstrate the elements necessary to proceed with a malpractice claim?

ISSUE NO. 5: Does Washington recognize a cause of action for malicious interference with family relationship and if so, do Plaintiffs' allegations support such a claim?

ISSUE NO. 6: Can Plaintiffs show the elements necessary to proceed with a claim of negligent infliction of emotional distress?

ISSUE NO. 7: Is the conduct alleged on behalf of Bridge Builders sufficient to constitute extreme and outrageous conduct necessary to prove intentional infliction of emotional distress?

ANALYSIS

Plaintiffs have repeatedly invited the court to treat Defendants' Bridge Builders motions for summary judgment as motions for dismissal under CR 12(b)(6), and thus the mere allegations of any facts are sufficient to meet their burden to demonstrate a genuine issue of material fact. The court declines that invitation and will hold both parties to the well known standards for summary judgment motions.

In considering a motion for summary judgment, the court must consider all facts and all reasonable inferences from them in the light most favorable

to the nonmoving party. Berrocal v. Fernandez, 155 Wn. 2d 585, 590, 121 P.3d 82 (2005). Summary Judgment can only be granted if the pleadings, affidavits, depositions, and admissions on file demonstrate the absence of any genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. CR 56 (c) .

After the moving party has submitted its proof in support of the motion, the burden shifts to the nonmoving party to set forth specific facts sufficient to rebut the moving party's contentions and to demonstrate that there are material issues of fact. Seven Gables Co. v. MGM/UA Entertainment Co., 106 Wn.2d. 1, 13, 721 P.2d 1 (1986). The nonmoving party "...may not rely on speculation, argumentative assertions that unresolved factual issues remain, or in having its affidavits considered at face value." Seven Gables, at 106 Wn. 2d 13. The court should grant the motion only if reasonable persons could reach only one conclusion. Wilson v. Steinbach, 98 Wn. 2d 434, 437, 656 P.2d 1030 (1982).

Issue No. 1: Declaratory Judgment Action (counts 1 and 2)

This court's jurisdiction under the UDJA is limited to justiciable controversies which involve (1) an actual, present and existing dispute (2) between parties who have genuine and opposing interests, (3) which involved direct and substantial interests rather than potential, theoretical, abstract or academic interests and where (4) a judicial determination will be final and conclusive. Bronson v. Port of Seattle, 152 Wn. 3d 862, 877, 101 P.3d 67 (2004) . These four requirements overlap with the requirements of standing under the UDJA. To-Ro Trade Shows v. Collins, 144 Wn. 2d 403, 411, 27 P.3d 1149 (2001) . In order to have standing to invoke the relief provided by the

Uniform Declaratory Judgment Act, RCW 7.24, the Plaintiffs must (1) fall within the zone of interest that the statute, here RCW 70.127, protects or regulates and (2) they must have suffered an injury in fact. Lakewood Racquet Club v. Jensen, 156 Wn. App. 215, 224, 232 P.3d 1147 (Div. II, 2010).). While Plaintiffs argue that defendants waived the challenge to their standing by not raising standing as an affirmative defense, Washington courts hold that standing is a jurisdictional requirement which may be raised at any time during the proceedings. Firefighters v. Spokane Airports, 146 Wn. 2d 207, 212, n.3, 45 P.3d 186 (2002).

Defendant Bridge Builders did not provide "in home care services" to Plaintiffs. During the brief relationship between Bridge Builders and the Hales the elderly Hales lived in an assisted living facility. Defendants assert that Plaintiffs lack standing to pursue their declaratory judgment causes of action. (Counts 1 and 2). RCW 70.127 is designed to protect those receiving in home care services from exploitation as the in-home location of services provided brings risk to those receiving the services. RCW 70.127.005. Even if the court interpreted the fact that Bridge Builders wanted to move the elderly Hales to their home and thus they deserved protection under RCW 70.127, Plaintiffs cannot show an "injury in fact" arising from their brief relationship with the Bridge Builder defendants. Nor can any decision by this court as to whether the Bridge Builder defendants need a RCW 70.127 license be final and conclusive as the Department of Health, not this court, is the agency required to make that determination. Brown v. Vail, 169 Wn.2d 318, 237 P.2d 263 2010).

For the foregoing reasons the Plaintiffs lack standing to request a

declaratory judgment as to whether the Bridge Builder defendants need to be licensed under RCW 70.127. Defendant Bridge Builders' Motion for Summary Judgment dismissing counts 1 and 2 of Plaintiffs' amended complaint must be GRANTED.

Issue No. 2: Vulnerable Adult Protection Act cause of action.

Bridge Builder defendants allege that Plaintiffs cannot show that they were subjected to "abuse", "financial exploitation" or "neglect" as those terms are defined in the Vulnerable Adult Protection Act. Plaintiffs' respond by citing the court to the allegations in their complaint. However when faced with a summary judgment motion the nonmoving party, here the Plaintiffs, must set forth specific facts showing there is a genuine issue for trial and cannot rely on speculation or argumentative assertions that unresolved factual issues remain. Seven Gables Corp. V. MGM/UA Entertainment Co., 106 Wn.2d. 1, 12, 721 P.2d 1 (1986). Plaintiffs here do not set forth any specific facts that give rise to the conclusion that the elderly Hales were abused, financially exploited, or neglected as those terms are defined in RCW 74.34.020. The declarations of Robert and Tricia Hale opine as to what could have possibly happened if the Bridge Builder defendants had moved the elderly Hales from the assisted living quarters back to their home. Those declarations, like the amended complaint, fail to set forth specific facts which if believed would constitute a cause of action as authorized by RCW 74.34.200. Young v. Key Pharmaceuticals, Inc., 112 Wn.2d. 216, 226-26, 770 P.2d 82 (1989).

For the foregoing reasons Defendants Bridge Builders Motion for Summary Judgment dismissing Plaintiffs' claim, count 3 based upon RCW 74.34,

is GRANTED.

Issue No. 3: Consumer Protection Act cause of action.

RCW 19.86 the Washington State Consumer Protection Act provides that a person injured in his or her business or property by a violation of the Act has a cause of action under the act. As the court has dismissed the counts based upon violation of RCW 70.127 and RCW 74.34, the Plaintiffs have no per se cause of action against the Bridge Builder defendants. Additionally Plaintiffs have not shown an injury to their business or property as a result of the brief association with the Bridge Builder defendants. In absence of any damage to their business or property Plaintiffs do not have standing to bring a claim under the Consumer Protection Act. Panag v. Farmers Ins. Co. of Washington, 66 Wn. 2d 27, 39, 204 P.2d 885 (2009).

Defendants' motion for Summary Judgment dismissing count 4, violation of the Washington State Consumer Protection Act, is GRANTED.

Issue No. 4: Malpractice.

To prove a malpractice claim, a plaintiff must show the existence of a special relationship which gives rise to a duty of care, breach of that duty, proximately causing damage. Falkner v. Foshaug, 108 Wn. App. 113, 118, 20 P. 3d 771 (2001). Here only the elderly Hales had a special relationship with the Bridge Builder defendants which could give rise to a duty of care. Arguably the declaration of Alice Semingson satisfies the obligation to demonstrate a duty of care, and arguably the declaration demonstrated that the Bridge Builder defendants breached that duty of care. However, Plaintiffs fail to show how the alleged breaches set forth in the Semingson declaration proximately caused damage to the elderly Hales. While Plaintiffs allege "The

facts show that Plaintiffs were injured as a result of the failure of Defendants to meet the standards of care they are subject to." [Plaintiffs memorandum in response to motion for summary judgment, p. 28, line 13-14] As cited earlier, mere allegations of injury are insufficient to meet the burden in response to a motion for summary judgment.

Defendants' motion for Summary judgment of dismissal of count 6, malpractice, is GRANTED.

Issue No. 5: Interference with family relationship.

Plaintiffs' claim that the Bridge Builder defendants interfered with the relationship the Hale children Plaintiffs had with their parents, Lisle and Clara Hale. While Washington has not recognized a cause of action for interference with a family relationship, Plaintiffs argue that they are entitled to pursue such a claim.

The elements of such a cause of action would at least require the following: (1) an existing family relationship; (2) a malicious interference with the relationship; (3) an intention on the part of the interfering person that the malicious interference results in a loss of affection or family association; (4) a causal connection between the acts of the interfering party and the loss of affection; and (5) resulting damages. Babcock v. State, 112 Wn. 2d 83, 107-108, 768 P.2d 481 (1989); citing Strode v. Gleason, 9 Wn. App. 13, 510 P.2d 250 (1973).

Plaintiffs' cause of action fails in that the Plaintiffs cannot show a "loss of affection" nor can Plaintiffs show any resulting damages, even if they could demonstrate the other three elements of the tort.

Defendants Bridge Builders Motion for Summary Judgment dismissing count

7, interference with family relationship, is GRANTED.

Issue No. 6: Negligent infliction of emotional distress.

As in all negligence cases, in proving negligent infliction of emotional distress, the plaintiff must prove a duty with a breach of duty which proximately causes damage or injury to the plaintiff. In order to prove the damage aspect of intentional infliction of emotional distress a plaintiff demonstrate objective symptomology susceptible to medical diagnosis and proved through medical evidence. Kloepfel v. Bokor, 149 Wn. 2d 192, 66 JP.3d 630 (2003).

Plaintiffs here argue, again, that the court should treat defendants' motion as a CR 12(b) (6) motion rather than a motion for summary judgment. Plaintiffs do not offer any medical evidence to support their contention that the Bridge Builder defendants negligently inflicted emotional distress.

Defendants Bridge Builders Motion for Summary Judgment dismissing count 8, negligent infliction of emotional distress, is GRANTED.

Issue No. 7: Intentional infliction of emotional distress.

While the Hale children may have felt outraged that an organization would interfere with their plan to move their parents into the assisting living environment, as a matter of law, their outrage is not such that no reasonable person could be expected to endure. Saldivar v Momah, 145 Wn. App. 365, 390, 186 P.3d 1117 (2008).

As a matter of law, Plaintiffs have failed to show any conduct on behalf of the Bridge Builder defendants which could possibly be found by any reasonable person to be "...so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency and to be utterly

intolerable in a civilized community." Saldivar, supra, at 145 Wn. App. 390, citing Grimsby v. Samson, 85 Wn.2d 52, 59, 530 P.2d 291 (1975).

Defendants Bridge Builders Motion for Summary Judgment dismissing count 9, intentional infliction of emotional distress, is GRANTED.

FINDINGS AND DETERMINATION THERE IS NO JUST REASON FOR DELAY UNDER CR 54(b) and RAP 2.2(d)

The decisions and orders herein above should be regarded as final. There is no just reason for any delay as to determination of appeals from the orders. The court heard argument with respect of the foregoing and considered evidence relevant to whether there was any reason for delay as to appeals.

Based on the argument of counsel, the foregoing evidence presented and decisions made herein above, the Court finds there is no just reason for delay in entering judgments

1. Plaintiffs' amended complaint sets out ten counts. The tenth count is merely a claim for attorneys' fees as might be awarded under some of the counts - consumer protection act claim, vulnerable adults act claim, etc.
2. Count 5 is a count specific as to defendants Michael R. Hastings and Michael R. Hastings, P.S. Because defendants Hastings were dismissed, Count 5 is no longer extant.
3. Counts 1, 2, 3, 4, 6, 7, 8, and 9 are to be dismissed on the motions of Defendants Bridge Builders.
4. Here, the final judgment disposes of all counts as in the case. It would not make sense to separately try the counts as they apply to Defendant Watral.

5. All of the counts should be tried at the same time in that they include common questions of law and fact as to Defendants Bridge Builders and Defendant Watral.
6. Indeed, the counts as decided regarding Defendants Bridge Builders might even be considered a non-binding variant of the principal of "law of the case." It certainly would not seem reasonable to think that once a judge has decided a legal question during the conduct of a lawsuit, he/she would be likely to change his/her views.
7. All of the issues of the case are dealt with in the Memorandum Opinion and Order on Motion for Summary Judgment. Thus, in a sense, there are no issues which have not been addressed by the Memorandum.
8. Immediate appeal would alleviate hardship, cost, delay, and enhance judicial economy. *Doerflinger v. New York Life*, 88 Wn.2d 878, 881, 567 P.2d 230 (1977).
9. It would be undesirable for there to be more than one appeal in a single action: The need for making review available in multiple-party or multiple-claim situations at a time that best serves the needs of the litigants. *Id.*, 88 Wn.2d at 880; see also *Fox v. Sunmaster Prods., Inc.*, 115 Wn.2d 498, 503-04, 798 P.2d 808 (1990).

JUDGMENT

In light of the foregoing and the findings immediately above, the court concludes that there is no just reason for delay in expressly entering judgment regarding the foregoing.

NOW, THEREFORE, IT IS ORDERED AS FOLLOWS:

1. Counts 1, 2, 3, 4, 6, 7, 8, and 9 be, and they are, hereby dismissed in

their entirety.

2. Plaintiffs' motion for discovery is hereby denied.
3. Defendants' Bridge Builders motion for protective order is hereby granted.
4. Plaintiffs shall pay statutory attorneys fees in the sum of \$200 to Defendants Bridge Builders.
5. The foregoing shall be entered ~~has~~ final judgment of the court.

April __, 2011.

Craddock D. Verser
Judge

Presented by:

Eugster Law Office, P.S.C.

Stephen K. Eugster
Stephen K. Eugster WSBA #2003
Attorney for Plaintiffs

Approved and Notice of Presentation Waived:

Johnson, Graffe, Keay, Moniz & Wick, LLP

Ketia B. Wick WSBA #27219
Attorneys for Defendant Watral

Approved and Notice of Presentation Waived:

AMENDED MEMORANDUM OPINION AND ORDER - 13

Law Offices of Matthew T. Boyle, P.S.

Matthew T. Boyle WSEA #6919
Attorneys for Defendants Bridge Builders

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Bridge Builders, Ltd.

PO Box 182
 Sequim, WA 98382

Invoice

Date	Invoice #
6/30/2008	2919

Bill To
Lisle & Clara Hale 550 Hendrickson Road Sequim, WA 98382

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
1	06-05-08: Minda - Received a call from Michael Hastings who said that Lisle Hale had called him wanting to change powers of attorney. He wanted me to meet Lisle and Clara Hale to see if I would be willing to assist them. I met Michael Hastings at Sherwood Assisted Living. He introduced me to Mr. & Mrs. Hale and then left. I talked at length with Lisle and Clara. They said that they had been tricked into moving to Sherwood and wanted to move back home. They were concerned that their adult children were accessing their money but, primarily, they wanted to move back home. I told them that we could assist them with this. I asked them if they would be willing to have me be their power of attorney. They agreed and I told them that I would let Michael Hastings know.	50.00	50.00
0.25	06-06-08: Brenda - Picked up the original POA that was signed today and delivered it to Lisle and Clara at Sherwood. Brought our copy back to the office.	50.00	12.50
0.1	06-06-08: Minda - I received a call from Lisle Hale in the morning. He said that he was very concerned that his adult children were accessing their money and wanted me to change the accounts so that their children would no longer have access. I told him that I would call Michael Hastings and let him know their concerns as they had not signed the new powers of attorney yet.	50.00	5.00
0.5	06-09-08: Minda - Visited Lisle and Clara at Sherwood. I talked with them again about moving home. They were emphatic that they wanted to move home as soon as possible. I told them that the earliest I could get them moved was the next Thursday. They would have preferred sooner but were O.K. with Thursday. They said that they no longer had a key to their home. Called their daughter to request a key to the house. Daughter told me to call Robert Hale and gave me a phone number. I called and left a message. Lisle gave me the phone numbers to the caregivers they had used before.	50.00	25.00
Total			

Bridge Builders, Ltd.

PO Box 182
 Sequim, WA 98382

Invoice

Date	Invoice #
6/30/2008	2919

Bill To
Lisle & Clara Hale 550 Hendrickson Road Sequim, WA 98382

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
0.25	06-09-08: Mindi - Went to WAMU to find out what had been done to their accounts. Was told that the accounts were set up as joint ownership with the children. Made an appointment to bring Lisle and Clara in tomorrow. I stopped by Sherwood and told Lisle and Clara what I had found out. Lisle was very anxious to go to the bank but it was too late in the day to take them. Lisle told me that he wanted to make sure that his children couldn't get into their living area of the house. I told them that I would get a locksmith out to change the locks.	50.00	12.50
0.3	06-10-08: Lori - phoned locksmith to arrange time to meet at the house, called sheriff's department to let them know what was happening about locks, and spoke with Michael Hastings concerning the keys and notifying of the sheriff's dept. I called Rainshadow to put them on notice that the Hale's might need 24 hour care for a short time.	50.00	15.00
2	06-10-08: Mindi - Took Lisle and Clara to WAMU to change their accounts. Also got the Social Security money direct deposited into the new checking account.	50.00	100.00
1	06-10-08: Mindi - Helped Lisle pay some bills. Talked about moving them home. Thursday, Lisle again emphasized that he wanted his children to have no access to his house. I told him that I was meeting the locksmith at the house later in the day to get the locks changed.	50.00	50.00
0.4	06-10-08: Mindi - Phone call with Kathie Stepp regarding scheduling.	50.00	20.00
Total			

Bridge Builders, Ltd.

PO Box 182
 Sequim, WA 98382

Invoice

Date	Invoice #
6/30/2008	2919

Bill To
Lisle & Clara Hale 550 Hendrickson Road Sequim, WA 98382

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
1.75	06-10-08: Mindi - Met the locksmith at the Hale home to put locking doorknobs on the doors that access the upstairs. While there I noticed that the middle two out of four drawers were missing from a file cabinet in the office areas. There were to boxes that held some files and many empty files. In the master bedroom walk-in closet, I noticed there was a safe in the corner that was open. I opened the door a little wider but it looked empty. I called Michael Hastings and reported this to him. He instructed me to take pictures with the locksmith, Darin McGovern, witnessing, which I did. I then went to Sherwood and told Lisle and Clara what I had done. I told them that Adult Protective Services will be involved and that they should talk with the APS social worker. Lisle said that there have been many long distance calls made on their home phone that they did not authorize, too. Downloaded pictures.	50.00	87.50
0.1	06-10-08: Brenda - Michael Hastings called to advise Mindi that Robert Hale would be calling her regarding the key situation at the Hale home. Robert called to say that he had made arrangements for the daughter, Trisha, to give Mindi a key to the home.	50.00	5.00
0.3	06-11-08: Lori - called Rainshadow and then KWA trying to arrange caregivers. Called Sherwood and asked them to fax face sheet and med list to us. Called Dan Reed to see if he could move their furniture from Sherwood to their house.	50.00	15.00
1	06-11-08: Mindi - Went to check-in with the Lisle and Clara. Kathie Stepp was there and said that Danette's twin sister Denise had visited with Lisle and Clara at length earlier and got them very upset. Clara ended up with a nose bleed. Nelveena from KWA arrived with her caregiver, Kelly, at the same time I did. I had everyone wait out in the hall while I talked with Lisle and Clara. Clara was worried about running out of money. I admitted that the next few days would be expensive but that the caregiver hours will not be set in stone but it's much easier to shorten hours than try to find a caregiver at the last minute. Once I felt they were calmer I allowed Kathie to go back in to say her goodbyes for the night while I and the others stayed in the hall. Once Kathie left I introduced Nelveena and Kelly. By the time we left both Lisle and Clara were in much better spirits, even laughing a bit.	50.00	50.00
Total			

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PO Box 182
Sequim, WA 98382

Invoice

Date	Invoice #
6/30/2008	2919

Bill To
Lisle & Clara Hale 550 Hendrickson Road Sequim, WA 98382

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
0.2	06-12-08: Lori - faxed Nelveena from KWA face sheets, received a phone call from Kathie Stepp with her concerns about the Hales and the conversation that she had with Clara after Denise left. Brenda came in at that time and took over the phone explaining the events of the morning. I called Dan Reed to cancel the move. Made copies of tax return and copies of POA's.	50.00	10.00
0.25	06-12-08: Brenda - Went to Sherwood Assisted Living to get Lisle and Clara ready for their move today. Their son, Donald Hale, was there and stated they were not moving. I told Lisle I would check in later with them.	50.00	12.50
0.5	06-12-08: Brenda - Made the following calls to cancel the move home of Clara and Lisle: Korean Women's Assoc. (caregiver agency), Kathy Stepp (private caregiver), Michael Hastings (Attorney), Rena Keith (Sherwood Assisted Living), Mindi Blanchard (Power of Attorney), Martine Soiseth (Adult Protective Services).	50.00	25.00
0.25	06-13-08: Mindi - Received a call from Lisle at 8:30 p.m. Thursday evening requesting the keys to his home. I asked if he was still at Sherwood. He said "yes" but he needed to get into his home to get financial papers. I told him that I would have the keys delivered Friday morning. I delivered all of the keys to his home to the nurse on duty at Sherwood at 6:30 a.m. Friday morning.	50.00	12.50
32	Copies for the month.	0.07	2.24
28.1	Mileage for the month.	0.55	15.46
3	Postage for the month.	0.41	1.23
	Change locks by Starlite Security on 6-10-08.	214.94	214.94
		Total	\$741.37

**Declaration of Tricia Hale as to Work Bridge Builders Would Have to
Do upon Moving Lisle and Clara Hale Back to Their Home**

After the Hales had been moved back to their home, Bridge Builders, Blanchard and Carpenter planned to provide, and/or would have had to provide, complete extensive home care and home health services and related services so that the Hales would be taken care of in the home. These services included, but were not limited to, those described in the Declaration of Tricia Hale, CP 314 - 316. They are:

- Arrange 24-hour a day, seven-day a week care along with a nurse to monitor and administer their medications and check on them during the night.
- They would have had to be able to get them to and from their doctor appointments and to the hospital, if necessary, as we had to many times in the previous several years.
- Get them to and from Church every Saturday evening.
- They would have had to have someone come in and clean the house, do the laundry, get them up and help them get dressed, help them get to and from the bathroom and clean up after them when they had accidents, including helping them change their underwear and clothes.
- They also needed help with all of their personal things such as showering, teeth brushing, hair care (they couldn't remember to do many of these things any more without being reminded on a regular basis), preparation of all meals and cleanup afterwards, shopping for and acquiring all food, beverage, snacks, and personal care items that they may need. Clara could no longer remember how to brush her teeth, didn't know how to answer the phone and was using the phone (backwards) to try to change channels on the TV.
- Arrange to acquire all of their medications at the least possible cost.
- Fill out and file all paper work for medical related reimbursements from the insurance companies and pay all bills.
- Arrange for the care and upkeep of the house and property.
- Deal with their investment portfolio making decisions as to investments and moving investments around.
- Handle federal and state tax reporting and payments.

- **Answer personal correspondence (even if not initiated by Lisle or Clara - there is a need to keep people informed of what is going on in their lives).**
- **Provide company and human interaction apart from the basic services to them and to and for the property.**

SCANNED-8

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SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLALLAM

ROBERT LISLE HALE, Personal)
Representative of the ESTATE OF LISLE)
HALE, deceased; CLARA HALE, surviving)
spouse of LISLE HALE; ROBERT L. HALE;)
DONALD HALE; and TRICIA HALE,)

Plaintiffs,)

vs.)

BRIDGE BUILDERS, LTD.; MINDI R.)
BLANCHARD and John Doe Blanchard;)
BRENDA CARPENTER and John Doe)
Carpenter; JANET WATRAL and John Doe)
Watal,)

Defendants.)

No. 09 2 00447 4

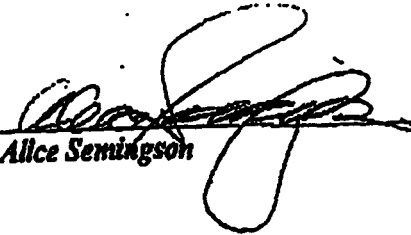
DECLARATION OF ALICE
SEMINGSON

Alice Semingson, under penalty of perjury under the laws of the state of Washington,
declares as follows:

1. I am competent to be a witness in Washington court proceedings.
2. I make the statements herein based upon my own personal knowledge.
3. Attached as Exhibit A is my letter to Stephen K. Eugster of December 26, 2011. This exhibit is incorporated herein by this reference and consists of 5 pages. The matters contained therein are true and correct.

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Signed at Deer Park, Washington on December 27, 2011.


Alice Semington

December 26, 2011

Stephen Eugster

2418 W. Pacific Ave.

Spokane, WA 99201

Re: Robert Lisle Hale, Personal Representative of the Estate of Lisle Hale, deceased, Clara Hale, surviving spouse of Lisle Hale, Robert K. Hale, Donald Hale, and Tricia Hale vs. Bridge Builders Ltd., Mindi Blanchard, Brenda Carpenter, and Janet Watral.

Draft opinion re: Lisle and Clara Hale

To date I have reviewed the following records:

- Notebook entitled Hale V. Bridge Builders Depositions
- Notebook entitled Hale v. Bridge Builders Pleadings
- Amended Complaint Number 1
- WRGCM (Western Region Geriatric Care Management) Pledge of Ethics
- NAPGCM National Association of Professional Care Managers Standards
- Notebook entitled Hale v. Bridge Builders, Interrogatories

I have formulated my opinion based on my review of these records, as well as my training and experience. I reserve the right to alter and/or revise my opinion should further records be provided to me.

I am a Board-Certified Gerontological Registered Nurse with over twenty-five years experience in long-term care, both in "floor" nursing and as a supervisor.

The decision to admit a loved one to a facility can be painful and difficult for the family. It can be emotionally devastating to relinquish care of a parent to strangers. There are often financial worries as well, with children attempting to maximize assets left to provide care. Many family members who admit a loved one to a facility are filled with fear and uncertainty because, most likely, they have never done this before. They may suffer feelings of guilt because they are unable to care for their loved ones, as well as fear of news stories regarding abuse in long-term care. Family members look to the experts—the people who are managing the facility for guidance on how to manage the admission process. They must trust the people they are working with to act in the best interests of their parents and the family.

The people who were trusted to act in the best interests of Lisle and Clara betrayed the trust of the children, as well as the family.

Mindi Blanchard/Brenda Carpenter/Bridge Builders:

Based upon my experience as a Geriatric Care Manager for Honoring Elders in Spokane, as well as my review of the Standards of Care (NAPGCM) and WRCGM Pledge of Ethics, Ms. Blanchard and Ms. Carpenter failed in their management of Lisle and Clara.

The decision to obtain a Power of Attorney without any investigation of their needs or diagnoses was reckless. To promise to facilitate the move within three days is not reasonable. It takes much more time than that to coordinate care needs.

Had Ms. Blanchard reviewed the records, or had an assessment done, she would have known that Lisle had developed open areas on his skin which can be life-threatening. This requires the care of a Licensed Nurse. She would also have discovered that he had needed numerous medication adjustments to control painful gout of his wrist.

- Ms. Blanchard failed to provide and/or coordinate an assessment of care needs for the couple. This was promised by Mr. Hasting, and is accepted Standard of Care for discharge planning. It is also promised on her website: "This starts with assessing your situation so that we can tailor the information and services we provide".
- The Western Region Geriatric Care Managements has a Pledge of Ethics, which Ms. Blanchard has testified that she adheres to. The FIRST item in the pledge states "I will provide ongoing service to you only after I have assessed your needs..." MS. Blanchard and Ms. Carpenter failed to do this.
- Ms. Blanchard promised to provide "assisted living services in the home" as her website indicated. This is misleading, as she has testified that she does not provide this service.
- WRGCM's Pledge of Ethics directs that the Care Manager "must provide services based on your best interest". This was clearly never done by Ms. Blanchard's failure to determine their care needs.
- Standard 2 of the National Association of Professional Geriatric Care Managers states in subsection (5), that the client's decisional capacity should be evaluated. This was not done- another breach in standards.
- Standard 5 of the National Association of Professional Geriatric Care Managers states that the GCM should refrain from entering into a dual relationship if the relationship could reasonably be expected to impair the care manager's competence or effectiveness or may put the client at risk of financial exploitation. A dual relationship is defined as one in which multiple roles exist between provider and client. This standard recognizes the complexity of making financial and other decisions for a client and is a caution against it.
- Standard 7 of the National Association of Professional Geriatric Care Managers states that "The GCM should strive to provide quality care using a flexible care plan developed in conjunction

with the older person and/or client system". Ms. Blanchard testified that she does not do this, but merely leaves it up to whatever agency she brings in.

- It is disturbing that Ms. Blanchard felt that was no conflict in being a POA for healthcare decision-making as well as for finances. There clearly is a conflict when her company is providing the services to keep a client in the home, and billing them for it. She made this determination without any exploration of their need. In my experience, Geriatric Care Managers will accept a power of attorney for *healthcare* only when there is an outstanding need that cannot be met by anyone else. It is forbidden by some companies to seek or accept a power of attorney for finances. There is too much potential for impropriety in that scenario.
- It is also astonishing that this would be undertaken so close to a week-end (Thursday). This is usually avoided by responsible discharge planners, as there are limited resources available on week-ends. For example, their usual physician may not have been available in an emergency.
- As Geriatric Care Managers, they have an obligation to assist in managing the assets in a good steward fashion; the cost for twenty-four hour care, seems ill- thought out. At a conservative rate of \$20/hr, the cost would have been \$14,600 per month for one of them. A second person fee would have added more to that rate. As their dementia progressed, and their needs accelerated, more fees would have been added.

Janet Watral:

- It appears that there is no admission assessment completed for either resident. This is required by WAC 388-78A-2060, licensing rules for Boarding Homes. According to her own testimony, she did not perform an MMSE (Mini-mental status examination). There is no limitation on scope of practice regarding a Registered Nurse performing this test, and in fact, it is commonly done upon admission to a facility, especially when there is a diagnosis of memory loss or dementia. This provides a baseline for the staff to monitor a decline in cognitive abilities. Ms. Watral thinks that doctors only do this. This is incorrect.
- Janet Watral knows, or most certainly should have known that "transfer trauma" is very common when a person with dementia is moved into a facility. There is no indication that this was addressed (per progress notes).
- It is also widely known that people with dementia often have suspicious/paranoid type behaviors. This commonly is centered upon people stealing their things and money. This is covered in DSHS' Specialty Training for Dementia, which Ms. Watral is required to have attended as part of Boarding Home regulations.
- It is also not uncommon for a resident with dementia, particularly when they are under stress (transfer trauma), to become delusional. These are fixed false beliefs that they cannot be talked out of. Standard of Care dictates that the staff provides comfort, reassurance, redirection, and perform an investigation to determine the truth of the delusion. (Children stealing their money).. Regulations do dictate that if a mandated reporter has a reasonable belief that financial exploitation has occurred; they are required to report it. However, the facility has 24

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hours to investigate the validity of the allegation. It does not appear that this was done. Per Ms. Keith's testimony, she seems to think that as a mandated reporter, she is to call the Washington Department of Health. This is incorrect. DSHS (the Department of Social and Health Services) is called.

- Clearly Clara was experiencing some delusional type of behavior when she reported that Lisle was having intense chest pain. Lisle denied that it was intense or appeared to have a cardiac component.
- There are indications from the family that they were told to not come visit their parent for a while to allow them to settle down. While this was common practice several years ago, this is no longer recommended. The family is the main support system and their attention and support can help ease the transition. The facility, under the leadership of Ms. Watral, failed to support the family and the residents properly during this time.
- It is not clear that the physician's order was followed to obtain a Social Services consult after the allegation. This is easily done through many home health agencies, and sometimes even through the local hospital.
- Ms. Watral, when she was advised that the Hale's were leaving, did not notify the physician to assist in the coordination of care. She was the person who should have had the most information regarding their care needs, and should have intervened at this point to assure their health and safety.
- As part of a pattern of disregard for the well-being of Clara and Lisle, there are numerous examples in the parts of the chart that I have that physician-ordered medications and treatments were not administered/assisted with as ordered.
- Ms. Watral knew, or should have known that Lisle needed ongoing monitoring of his severe lower extremity edema (the fluid was seeping out of his legs).
- Ms. Watral knew, or should have known that Lisle needed skilled nursing monitoring of his medications, as well as his bowels. This is why families move their loved ones into assisted living facilities.

It is my opinion that Ms. Blanchard, Ms. Carpenter, and Ms. Watral breached accepted standards of care in their care of Lisle and Clara Hale.

Alice Semington, RN-BC, BS, CALA, CLNC

