NO. 92368-0

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

BESSIE WILLIAMS,
Plaintiff/Appellant,

v.

JOHN DOE, FIRST TRANSIT, INC.; CITY OF TACOMA; CENTRAL BIBLE EVANGELICAL CHURCH,
Defendants/Respondents.

RESPONDENT FIRST TRANSIT'S RESPONSE TO APPELLANT'S PETITION FOR REVIEW BY THE WASHINGTON STATE SUPREME COURT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

TABLE OF AUTHORITIES

Page

WASHINGTON RULES AND REGULATIONS

I. INTRODUCTION AND FACTS

A. Background Facts

Ms. Williams filed her Complaint on October 25, 2011 against First Transit and Central Bible Church. (Clerk's Papers ("CP") at 1 – 4). With respect to First Transit, Ms. Williams alleges that she was driven to the Central Bible Church in a shuttle bus on or about October 26, 2008. (*Id.* at 2, ¶ 9). Ms. Williams alleges that the shuttle driver, Mr. Halsten, was running while pushing her wheelchair on the sidewalk and that she was injured when the wheel of the wheelchair hit a raised crack in the sidewalk, causing the wheelchair abruptly and causing her to fall forward out of the wheelchair. (*Id.*). Ms. Williams alleges that her injuries were caused by First Transit's breach of their duties. (*Id.* at ¶ 12 – 13).

B. Procedural Posture

The procedural history of this litigation has been tortuous. On June 18, 2013, local counsel for Ms. Williams (David Britton), who was the attorney that submitted a *pro hac vice* application for Ms. Williams' Michigan counsel, Ms. Coleman, filed a notice of intent to withdraw. This notice indicated that Mr. Britton no longer was going to represent Ms. Williams or associate with Ms. Coleman. (CP at 377 – 378). Despite the lack of counsel of record for Ms. Williams, First Transit timely served Ms. Coleman and Ms. Williams with a copy of their Motion for Summary

Judgment on August 2, 2013. (CP at 517 – 529, 633 – 650). Both Ms. Coleman and Ms. Williams failed to respond to First Transit's motion by the original deadline of August 19, 2013. (CP at 586 – 599, 602 – 608).

Ms. Williams' new local counsel, Michael Ewetuga, filed a Notice of Appearance on August 21, 2013. (CP at 560, 561). This Notice was not served on First Transit. (CP at 653, ¶ 11). Mr. Ewetuga then contacted First Transit's counsel on August 22, 2013 to request an extension of time to respond. (*Id.*). Although First Transit refused, noting that counsel needed to formally move the court for an extension. However, Ms. Williams failed to file any such request with the trial court prior to the August 30, 2013 summary judgment hearing date. (*Id.*). Instead, Mr. Ewetuga presented himself at the hearing and argued that he had insufficient time to move for an extension because he had other motions on his calendar and had not been feeling well. (Verbatim Transcript of Proceedings ("TP") at 4). Mr. Ewetuga also stated at the hearing that he was new to the matter and additional time should be granted for him to evaluate the claim and assess whether an opposition should be filed. (TP at 8).

The trial court granted Mr. Ewetuga's oral request to extend the deadline by which to respond to First Transit's and Central Bible's respective motions for summary judgment. (TP at 8 – 9). At that time, the

trial court directed Mr. Ewetuga to file and serve a response, or to provide a letter to counsel and the trial court stating that no response would be filed, no later than close of business on September 9, 2013. (*Id.*). As First Transit's Second Reply reflects, no response was received by the end of the day on September 9, 2013. (CP at 586 – 587). Ms. Williams did not file her response and supporting declarations until September 11, 2013 – two days after the deadline set by the trial court. (*Id.*; CP at 654, ¶ 13). Moreover, notwithstanding Mr. Ewetuga's request to the trial court and argument that he needed additional time to evaluate the claim, Ms. Williams' opposition to First Transit's Motion for Summary Judgment was filed by Ms. Coleman. (*CP* at 653 – 654, ¶ 12).

At the second summary judgment hearing on September 20, 2013, Mr. Ewetuga appeared with an e-mail from Ms. Coleman, sent the night before, telling him that she would not be attending the hearing. (TP at 16). The trial court noted that it had not received working copies of the documents filed by Ms. Coleman and that although Ms. Coleman filed the documents, "her admission as *pro hac vice* has not been reaffirmed because Mr. Britton had withdrawn from the case." (TP at 12 – 13).

The trial court held that Ms. Williams' opposition materials were untimely, not in compliance with Pierce County Local Rules as no working copies were provided, and that the trial court could not consider

the filed documents because Ms. Coleman was not licensed in Washington. (TP at 17). The trial court considered the summary judgment motions unopposed and granted both Central Bible's and First Transit's motions for summary judgment. (TP at 18). The trial court also denied Ms. Coleman's e-mail request for a second postponement as moot. (TP at 19). Ms. Williams filed a Motion for Reconsideration on October 1, 2013. (CP at 697 – 715). This motion was untimely as it was filed more than ten days after the trial court entered its Orders on summary judgment, in violation of the Civil Rules. Ms. Williams also failed to serve her Motion for Reconsideration on First Transit or Central Bible. Her motion was denied.

C. Decision of Court of Appeals Division II

Clerk's Papers were prepared on December 5, 2013 pursuant to Ms. Williams' request for review to the Court of Appeals, Division II. (CP at 716 – 719). Ms. Williams failed to timely file her Opening Brief and instead requested an extension of 45 days. Although the appellate court noted that the reasons provided did not support granting an extension, an extension was given until June 9, 2014 in the interest of justice. In her Brief, Ms. Williams alleged that the trial court erred in (1) granting First Transit's Motion for Summary Judgment; (2) granting Central Bible's Motion for Summary Judgment; (3) not granting a short continuance

pursuant to CR 56(f) and CR 6(b); (4) striking the affidavits of Carol Williams and Alkenneth Gurley; and (5) not allowing Ms. Coleman to appear pursuant to APR 8(b).

The Court of Appeals filed its Opinion on August 11, 2015. The court held that: (1) the superior court did not abuse its discretion in striking untimely opposition documents and denying a second continuance because Ms. Williams failed to demonstrate a good reason for delay or delineate evidence that would be established through another continuance that would raise a genuine issue of material fact; (2) under a de novo standard of review, Ms. Williams' *pro hac vice* counsel automatically lost her association with local counsel and her ability to appear in Washington when local counsel withdrew and, therefore, the superior court properly struck opposition materials signed and filed by her; (3) under a de novo standard of review, and considering all evidence available to the superior court including the stricken opposition materials, summary judgment in favor of First Transit was proper because Ms. Williams failed to offer any evidence creating a genuine issue of material fact; and (4) under a de novo standard of review, and considering all evidence available to the superior court including the stricken opposition materials, summary judgment in favor of Central Bible was proper because Ms. Williams failed to raise a genuine issue of material fact related to duty, breach and causation.

D. Appeal for Discretionary Review to Washington Supreme Court Should be Denied

Ms. Williams filed a Petition for Review by the Washington State Supreme Court on September 10, 2015.[1] Therein, she alleges the Court of Appeals erred when it did not review de novo whether First Transit and Central Bible met their initial burden of proof on summary judgment, erred when it incorrectly interpreted APR 8(b) and cancelled her counsel's *pro hac vice* status, and erred when it applied an abuse of discretion standard to the superior court's rejection of untimely opposition materials. As further detailed below, there is no basis or support for any of the alleged errors. The Court of Appeals decision should be upheld.

II. RESPONSE

The Court should deny Ms. Williams' Petition for Review for the following reasons:

A. Court of Appeals' Interpretation of APR 8(b) is Correct

Interpretation of court rules is subject to de novo review. *State v. McEnroe*, 174 Wn.2d 795, 279 P.3d 861 (2012). Courts interpret court rules the same way they interpret statutes, using the tools of statutory construction. *State v. Hawkins*, 181 Wn.2d 170, 332 P.3d 408 (2014). If a

[1] Ms. Williams improperly served an "Amended Petition for Review by the Washington State Supreme Court on December 31, 2015. For the reasons stated below, this "Amended Petition" should be stricken.

court rule's meaning is plain on its face, courts must give effect to that meaning as an expression of the drafter's intent. *Jafar v. Webb*, 177 Wn.2d 520, 303 P.3d 1042 (2013). Simply stated, the starting point for interpretation of a court rule is the rule's plain language and ordinary meaning. *Business Services of America II, Inc. v. WaferTech LLC*, 174 Wn.2d 304, 274 P.3d 1025 (2012). Court rules must be interpreted in a manner that advances the underlying purpose of the rule. *Feature Realty, Inc. v. Kirpatrick & Lockhart Preston Gates Ellis, LLP*, 161 Wn.2d 214, 164 P.3d 500 (2007).

Washington's Admission to Practice Rule 8(b) states that an out-of-state lawyer:

> may appear as a lawyer in any action or proceeding only (i) with the permission of the court or tribunal in which the action or proceeding is pending, and (ii) in association with an active member of the Washington State Bar Association, who shall be the lawyer of record therein, responsible for the conduct thereof, and present at proceedings unless excused by the court or tribunal.

In interpreting APR 8(b), the Court of Appeals correctly applied the de novo review standard. The plain language of the rule requires that any *pro hac vice* counsel have an association with an active member of the Washington State Bar. Giving effect to the rule's plain meaning, the Court of Appeals correctly acknowledged that "failure to meet either requirement [of APR 8(b)] precludes out-of-state counsel's

representation." At the time local counsel withdrew, Ms. Coleman no longer satisfied the requirements of APR 8(b) and, therefore, lost her *pro hac vice* status and ability to practice in Washington. The Court of Appeals' interpretation also advances the purpose of the rule, which is to "reasonably assure the court that the out-of-state attorney is competent, will follow the local rules of practice and procedure, and will act in an ethical and respectful manner." (citing *Hahn v. Boeing Co.*, 95 Wn.2d 28, 34, 621 P.2d 1263 (1980)). The rule is unambiguous in its requirements and the Court of Appeals properly applied it as written.

Despite her claim that the Court of Appeals incorrectly interpreted APR 8(b), Ms. Williams cites absolutely no authority to support such a claim. Given that the Court of Appeals interpreted the rule in accordance with its plain language and gave effect to the drafter's intent, in accordance with Washington law, there is no basis for her challenge to the appellate court's ruling.

Furthermore, Ms. Williams cites no authority to support her claim that "proper notice and an opportunity to be heard" was required before Ms. Coleman was no longer permitted to appear in Washington. In fact, there is no indication under Washington law that APR 8(b) confers a legal or constitutional right (and Ms. Williams cites no such authority). There is no loss of life, liberty or property (or deprivation of any related

substantive right) in this case. See *Board of Regents v. Roth*, 408 U.S. 564, 569 (1972); Washington State Constitution, Art. I, Sec. 3. Out-of-state counsel do not have a right to practice in Washington; even if you meet the association requirement of APR 8(b), trial courts have discretion as to whether to grant an application to practice in Washington. *Hahn v. Boeing Co.*, 95 Wn.2d 28, 34, 621 P.2d 1263 (1980). As a result, Ms. Coleman was not entitled to notice and an opportunity to be heard regarding cancellation of her *pro hac vice* status and the Court of Appeals' ruling should be upheld.

B. Court of Appeals Properly Ruled on Motions for Summary Judgment

1. Court of Appeals Correctly Applied Abuse of Discretion Standard to Striking of Untimely Materials in Summary Judgment Proceeding

Despite Ms. Williams' claims to the contrary, the Court of Appeals' decision is consistent with both *Folsom v. Burger King*, 135 Wn.2d 658, 958 P.2d 301 (1998) and *Keck v. Collins*, 184 Wn.2d 358, 357 P.3d 1080 (2015). As the most recent decision of the Washington Supreme Court on the standard of review applicable to striking untimely submissions in summary judgment proceedings, *Keck* states:

> We hold that the trial court must consider the factors from *Burnet v. Spokane Ambulance*, 131 Wash.2d 484, 933 P.2d 1036 (1997), on the record before striking the evidence. The court's decision is then reviewed for an **abuse of discretion**.

184 Wn.2d at 362 (emphasis added). Ms. Williams cites both *Folsom* and *Keck* in support of her argument that the Court of Appeals erred when it applied an abuse of discretion standard to the trial court's rejection of untimely materials in response to summary judgment. Ms. Williams' argues that, instead, a de novo standard of review should have been applied and that this Court should accept review as the Court of Appeals' decision is in conflict with a holding from the Washington Supreme Court and other appellate court decisions, namely *Folsom* and *Keck*. This argument is flawed for several reasons.

First, Ms. Williams improperly relies on the appellate decision in *Keck v. Collins* (181 Wash. App. 67, 325 P.3d 306 (2014)), which held that a de novo rather than abuse of discretion standard should apply to striking untimely summary judgment materials. However, given the issuance of a Washington Supreme Court decision overruling that holding, the appellate decision no longer is good law. As quoted above, upon review of the *Keck* appellate decision, the Washington Supreme Court held that an abuse of discretion standard (and not a de novo standard) applied.

Second, *Folsom* similarly does not support Ms. Williams' argument that a de novo standard of review applies. While she cites *Folsom* for the proposition that "all trial court rulings made in conjunction

with a summary judgment motions," the Washington Supreme Court in *Keck* expressly distinguished *Folsom*, holding that it applied only to evidentiary rulings on admissibility – not rulings on "timeliness under our civil rules" to which an abuse of discretion standard applies. *Keck*, 184 Wn.2d at 368.

2. To the Extent the Trial Court and Court of Appeals Failed to Analyze the *Burnet* Factors in Striking Untimely Materials, it Resulted in Harmless Error and No Prejudice to Ms. Williams

In *Keck*, the Washington Supreme Court held that the decision to exclude untimely disclosed evidence is a severe sanction requiring the court to consider the three *Burnet* factors on the record. *Id.* at 368 – 369. Failure to do so results in an abuse of discretion. *Id.* (citing *Blair v. Ta-Seattle E. No. 176*, 171 Wn.2d 342, 254 P.3d 797 (2011)). Candidly, neither the trial court nor the Court of Appeals analyzed the *Burnet* factors. However, at most this resulted in harmless error and did not prejudice Ms. Williams or affect the final outcome of the case.

"A harmless error is an error which is trivial, or formal, or merely academic, and was not prejudicial to the substantial rights of the party assigning it, and in no way affected the final outcome of the case." *State v. Wanrow*, 88 Wash. 2d 221, 559 P.2d 548 (1977). Error without prejudice is not grounds for reversal. *Thomas v. French*, 99 Wash.2d 95, 104, 659

P.2d 1097 (1983). The appellant bears the burden of proving that an error was prejudicial. See *Griffin v. West RS, Inc.*, 143 Wn.2d 81, 91,18 P.3d 558 (2001) (appellant must prove error was prejudicial); *Raab v. Wallerich*, 46 Wn.2d 375, 383, 282 P.2d 271 (1955). Error will not be considered prejudicial unless it affects, or presumptively affects, the outcome of the trial. *French*, 99 Wn.2d at 104.

Here, the failure to analyze the *Burnet* factors related to the untimeliness of Ms. Williams' summary judgment opposition materials did not affect the final outcome of the case and, therefore, resulted in harmless error. Both the trial and appellate courts upheld striking Ms. Williams' opposition materials on two independent bases. Thus, even though they did not apply the *Burnet* factors with regard to striking the materials as untimely, such materials would have been stricken anyway based on the fact that they were filed by an attorney who is not licensed in Washington. A decision based upon erroneous ground will be sustained if correct on any ground. *Rockwood Blvd., In re*, 170 Wash. 64, 15 P.2d 652 (1932).

Given that the trial and appellate courts' error related to striking untimely documents would not have changed the outcome of the case (as those documents would have been stricken on another, independent basis), the error was not prejudicial to Ms. Williams. Moreover, Ms. Williams

fails to allege any prejudice in her Petition. Absent evidence of prejudice, there are no grounds for dismissal based on such error.

Furthermore, there can be no prejudice to Ms. Williams where the Court of Appeals considered the stricken evidence in determining whether summary judgment was appropriate. In reviewing the granting of summary judgment, the Court of Appeals reviewed the entire record, including stricken portions, under a de novo standard of review. *See Goodwin v. Wright*, 100 Wash. App. 631, 6 P.3d 1 (2000) (holding evidence called to the attention of the trial court is properly before appellate court, whether or not it was considered by the trial court). Hence, the Court of Appeals properly engaged in the same inquiry as the trial court. *Hodge v. Raab*, 151 Wash.2d 351, 88 P.3d 959 (2004). By reviewing the evidence that Ms. Williams' claims was erroneously stricken, the Court of Appeals eliminated any potential prejudice associated with its decision to uphold the striking of her opposition materials.

C. Court of Appeals Properly Upheld Granting of Summary Judgment

As noted above, the Court of Appeals properly reviewed de novo the trial court's granting of summary judgment, including consideration of the stricken materials. Although Ms. Williams alleges that the Court of

Appeals erred when it did not review de novo whether First Transit and Central Bible met their initial burden of proof on summary judgment, she provides absolutely no argument or evidence in support thereof.

An appellate court may affirm a trial court's disposition of a summary judgment motion on any basis supported by the record. *Redding v. Virginia Mason Med. Ctr.*, 75 Wash. App. 424, 426, 878 P.2d 483 (1994). As acknowledged by the Court of Appeals, a moving party is entitled to summary judgment when there is a "complete failure of proof concerning an essential element of the nonmoving party's case [which] necessarily renders all other facts immaterial. *Cho v. City of Seattle*, 185 Wash. App. 10, 15, 341 P.3d 309 (2014). Here, Defendants' respective Motions for Summary Judgment (and their Briefs to the appellate court) extensively illustrated that Ms. Williams lacked admissible evidence to support her claims. The Court of Appeals reviewed all existing evidence and, in its Opinion, detailed Ms. Williams' failure to present ***any*** evidence in support of duty, breach and causation with respect to both First Transit and Central Bible. As also noted by the Court of Appeal, at most Ms. Williams presented inadmissible affidavits of a speculative and conclusory nature. The Court of Appeals' holding that Ms. Williams presented no evidence to demonstrate any genuine issue of material fact is properly supported by the record.

Finally, in detailing the existing evidence (or lack thereof) and the arguments presented by First Transit and Central Bible, it is clear that they not only met their initial burden on summary judgment, but that the Court of Appeals found so as well. The Court of Appeals properly reviewed the entirety of the summary judgment evidence de novo and upheld a finding in favor of Defendants. Although not expressly stated, a finding that Defendants' met their initial burden of showing Ms. Williams' complete lack of support for her claims is inherent in the Court of Appeals' decision and clear from its discussion of the evidence (and lack thereof).

III. "AMENDED PETITION FOR REVIEW" SHOULD BE STRICKEN

Ms. Williams filed her Petition for Review by the Washington State Supreme Court on October 15, 2015. By letter dated December 4, 2015, the Supreme Court ordered First Transit and Central Bible to serve any responses to such Petition by January 4, 2016. On December 31, 2015 at 4:27 p.m., not even one business day before responses were due, an individual from the e-mail account "youngelizabeth4019@yahoo.com," whom we assume was operating on behalf of Ms. Williams, improperly served an "Amended Petition for Review by the Washington State Supreme Court." Based on First Transit's diligent review, there is no evidence that this "Amended Petition" was filed with the Washington

Supreme Court. The Supreme Court should strike and/or refuse to consider this "Amended Petition" under RAP 10.7 on the following grounds:

First, pursuant to the Rules of Appellate Procedure, Ms. Williams does not have a right to amend her petition for review at a time of her choosing. Moreover, at no point did Ms. Williams move to amend her petition for review under Title 17 of the Rules of Appellate Procedure.

Second, given that there is no provision of the Rules of Appellate Procedure entitling Ms. Williams to serve an amended petition for review, Ms. Williams' "Amended Petition" is untimely under the rules.

Third, the service of an "Amended Petition" causes severe prejudice to First Transit and Central Bible because it raises a number of new issues and arguments. Given that responses to Ms. Williams' original Petition for Review are due on January 4, 2015 and the "Amended Petition" was served on a holiday weekend (with no business days in between service and the due date of responses), there is insufficient time for First Transit to substantively respond to any of the newly raised issues.

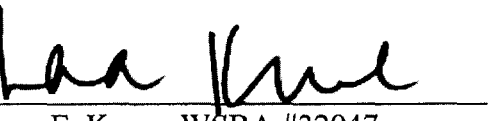
IV. CONCLUSION

Despite Ms. Williams' improper filing of an "Amended Petition," First Transit submits that this Response contains adequate reasons, and support therefore, to uphold the Court of Appeals decision. The Court of

Appeals ruling upholding summary judgment and the striking of Ms. Williams' opposition materials was correct. First Transit respectfully requests that this Court affirm this ruling and deny Ms. Williams Petition for Review.

RESPECTFULLY SUBMITTED this 4th day of January, 2016.

BETTS, PATTERSON & MINES, P.S.

By 

Laura E. Kruse, WSBA #32947
Attorneys for Respondents First Transit, Inc.

CERTIFICATE OF SERVICE

I, Susan Ferrell, declare as follows:

1) I am a citizen of the United States and a resident of the State of Washington. I am over the age of 18 years and not a party to the within entitled cause. I am employed by the law firm of Betts Patterson & Mines, One Convention Place, Suite 1400, 701 Pike Street, Seattle, Washington 98101-3927.

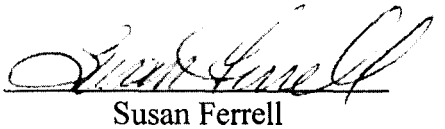
2) By the end of the business day on January 4, 2016, I caused to be served upon counsel of record at the addresses and in the manner described below, the following document:

- **Respondent First Transit's Response to Appellant's Petition for Review by the Washington State Supreme Court**

Counsel for Defendant Central Bible Evangelical Church Stephen G. Skinner Andrews Skinner, PS 645 Elliott Ave W Ste 350 Seattle, WA 98119	By E-mail
Plaintiff Pro Se Bessie Williams 13023 Greenwood Ave. N Seattle, WA 98133	By E-mail (hyprnike@comcast.net) and U.S. Mail

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 4th day of January, 2016.



Susan Ferrell

OFFICE RECEPTIONIST, CLERK

To: Susan Ferrell
Cc: Laura Kruse
Subject: RE: Supreme Court No. 92368-0 - Bessie Williams v. First Transit, et al.

Importance: High

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Supreme Court Clerk's Office

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To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Laura Kruse <lkruse@bpmlaw.com>
Subject: Supreme Court No. 92368-0 - Bessie Williams v. First Transit, et al.

Good Afternoon,

Attached for filing with the Washington State Supreme Court is Respondent First Transit's Response to Appellant's Petition for Review by the Washington State Supreme Court.

If I may be of further assistance, please give me a call at my direct number below (highlighted).

Thank you for your kind assistance.

Susan M. Ferrell
Legal Assistant
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APPENDICE A

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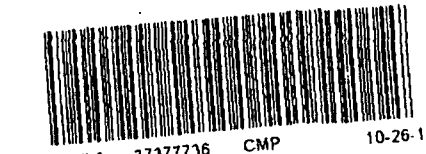

11-2-15017-3 37377736 CMP 10-26-11

PIERCE COUNTY SUPERIOR COURT
KEVIN STOCK
CLERK OF THE SUPERIOR COURT
TACOMA WA

11-2-15017-3

SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

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11-2-15017-3

Paid By: WILLIAMS, BESSIE
Transaction Amount: $230.00

Bessie Williams,
Plaintiff,

V

John Doe, First Transit, Inc, City of Tacoma,
And Central Bible Evangelical Church,
Jointly and Severally,
Defendants.

COMPLAINT

NOW COMES Bessie Williams, in pro se, who states to this court as follows:

COUNT I

1) That Plaintiff is an individual and at the time of the incident mentioned in the complaint was a resident of Tacoma, Pierce County, Washington.

2) Defendant First Transit is a corporation and is now and at all times mentioned in this complaint, a corporation organized and existing under the law of the State of Washington, and doing business in the State of Washington, with an office at 1128 St. Paul Ave., Tacoma, Pierce County , Washington.

3) The Defendant Central Bible Church is a corporation and is now and at all times mentioned in this complaint, a corporation organized and existing under the law of the State of Washington, and located in Tacoma, Washington.

4) The Defendant City of Tacoma is a governmental entity with its place of residence in Pierce County, Washington.

5) All incidents and actions relative to this complaint took place in Pierce County, Washington.

6) The name of defendant John Doe is known to Plaintiff as "Phil". Plaintiff sues that defendant by such fiticious name. Plaintiff believes and based on that belief alleges, that the defendant designated as John Doe is legally responsible for the events and happenings referred to in this complaint and unlawfully caused the injuries and damages to Plaintiff alleged in this complaint. When the full name is discovered, it will be inserted in the complaint by amendment.

7) That Plaintiff is informed believes, and based on that information and belief alleges, that at all times mentioned in this complaint, defendant John Doe was the agent and employee of the co-defendant First Transit, and in doing the things alleged in this complaint, was acting within the course of his employment with First Transit.

8) The amount in damages in this matter exceeds $75,000 and therefore falls within the jurisdiction of the court.

9) That on or about October 26, 2008, defendant John Doe, in the course of his employment with First Transit, drove Plaintiff in a shuttle bus to a location in Tacoma, Washington, specifically a church located at 1414 Huson St., in a shuttle bus. Once they got to the location, defendant Doe assisted Plaintiff in a wheelchair to the door of the church. Defendant was pushing the wheelchair on the sidewalk to the door, when he started running while he was pushing the wheelchair. Despite the Plaintiff's pleas to stop, defendant continued to run as he pushed the wheelchair. The wheel of the wheelchair hit a raised crack in the sidewalk, stopping the wheelchair abruptly and causing the Plaintiff to fall forward out of the wheelchair.

10) Defendant, when he undertook to push plaintiff to the door was in sole control of the wheelchair.

11) Being in sole control of the wheelchair, defendant John Doe owed Plaintiff a duty to push and operate the wheelchair in a safe, prudent and reasonable manner, and not in a manner unduly reckless and unsafe for the Plaintiff.

12) The Defendant Doe failed in its duty to push the Plaintiff in the wheelchair in a safe manner.

13) Contrary to his duties owed to the Plaintiff, Defendant John Doe acted in a grossly negligent manner by running while he was pushing the wheelchair.

14) The Defendant John Doe's actions were a proximate cause of the Plaintiff's injuries.

15) That as a result of the above described incident Plaintiff suffered damages, including but not limited to: emergency room treatment, hospitalization, treatment by doctors, physical therapy, closed head injury, injuries to shoulders and legs, a chipped tooth, medical expenses, disability, pain and suffering, mental distress, anxiety, loss of the joys, pleasures and vitalities of life and the same damages are of a continuing nature.

COUNT II

16) That the Plaintiff, repeats and re alleges Paragraphs 1 through 4 of count I of this complaint with the same force and effect as though set forth herein, in full.

17) That Defendant Central Bible Church is the owner of the property which abuts the sidewalk at 1414 Huson, Tacoma, Washington.

18) That Defendants Central Bible Church and the City of Tocoma owed a duty to maintain the sidewalk in a safe condition for Plaintiff. Regardless of whether the Plaintiff was an invitee or licensee, the Defendants had a duty to warn and protect from unreasonably dangerously conditions, of which Defendants knew or should have known.

19) Although cases such as this may have governmental immunity, there are exceptions to the governmental immunity statute.

20) The raised sidewalk created a dangerous condition which contributed to the accident which caused the Plaintiff's injuries.

21) Defendant failed in its duty to maintain the sidewalk in a safe condition.

22) That the dangerous condition created by the raised sidewalk was a proximate cause of the Plaintiff's injuries.

COUNT III

23) Plaintiff repeats and re alleges paragraphs 1-4 of count I of this complaint with the same force and effect as though set forth therein, in full.

24) Defendant Doe was employed by First Transit at the time of the incident in question.

25) Defendant Doe was acting in the scope of his employment when he committed the negligent act causing the Plaintiff's injuries.

26) First Transit, Inc. had a duty to properly and adequately train and supervise the Defendant.

27) That First Transit failed to properly and adequately train and supervise Defendant John Doe.

28) That as a result of defendant John Doe's negligence, negligence is imputed to First Transit.

Wherefore, Plaintiff demands a judgment and damages in her favor and against all Defendants jointly and severally in an amount to be determined, together with interest, costs, and attorney fees.

Respectfully submitted,

Bessie M. Williams

Bessie M. Williams
Plaintiff, In Pro Se
710 N. 104th St.
Seattle, Washington 98133
(206) 854-4380

Dated: 10/24/11

APPENDICE B

Kruse

RECEIVED
JUN 19 2013
BETTS, PATTERSON & MINES, P.S.

E-FILED
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NO: 11-2-15017-3

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

BESSIE WILLIAMS Plaintiff(s), vs. JOHN DOE Defendant(s)	NO. 11-2-15017-3 NOTICE OF INTENT TO WITHDRAW

TO: Clerk of the Court
AND TO: Laura Elizabeth Kruse, attorney for Defendant, Laura Hawes Young, attorney for Defendant, STEPHEN GIFT SKINNER, attorney for Defendant

NOTICE IS HERBY GIVEN that DAVID J. BRITTON intends to withdraw as attorney for Petitioner/Plaintiff(s) BESSIE WILLIAMS, in the above-entitled action on June 18, 2013. This notice is given pursuant to Civil Rule 71(c) of the Rules for Superior Court.

Withdrawal shall be effective without court order and without the service and filing of any additional papers unless an objection to the withdrawal is served upon the withdrawing attorney prior to the date set forth above.

This case is scheduled for trial, in Pierce County Superior Court, before Judge VICKI L. HOGAN, Department 05, on February 13, 2014.

BRITTON & RUSS, PLLC
535 DOCK STREET, SUITE 108
TACOMA, WA 98402
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The last known name and address of the parties I have been representing are listed below:

BESSIE WILLIAMS
COLEMAN, KATRINA J *PRO HAC VICE*
P O BOX 24193
LANSING, MI 48909

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct: That on June 18, 2013, I mailed a copy of this document to the attorney(s) of record and/or parties at their respective addresses of record.

DATED: June 18, 2013

/s/ DAVID J. BRITTON
DAVID J. BRITTON, #31748
Attorney for Petitioner/Plaintiff(s)

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APPENDICE C

The Honorable Vicki L. Hogan
Trial Date: February 13, 2014
Hearing: August 30, 2013
Time: 9:00 a.m.

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

BESSIE WILLIAMS, Plaintiff, vs. JOHN DOE; FIRST TRANSIT, INC.; CITY OF TACOMA; and CENTRAL BIBLE EVANGELICAL CHURCH, jointly and severally, Defendants.	NO. 11-2-15017-3 DEFENDANTS FIRST TRANSIT, INC.'S AND PHILIP HALSTEN'S MOTION FOR SUMMARY JUDGMENT

I. RELIEF REQUESTED

Defendants First Transit, Inc. and Philip Halsten ("Defendants First Transit") move the Court for an order granting summary judgment in their favor and dismissing them from this action. Plaintiff contends that Defendants First Transit breached their duty to Plaintiff and that such breach caused her injuries. However, Plaintiff cannot prove that Defendants First Transit breached their duty of care to Plaintiff or, if there was a breach, which Defendants First Transit deny, that the breach caused Plaintiff's injuries.

Plaintiff has no evidence that Mr. Halsten failed to exercise reasonable care by wheeling Plaintiff up the sidewalk, rather than loading her back in the shuttle or that Mr. Halsten ran while pushing her up the sidewalk to the front of the Church. Further, if Defendants First

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Transit breached their duty, such breach did not cause the accident or Plaintiff's alleged injuries because Plaintiff caused her accident by failing to keep her feet on the wheelchair footrests. Summary judgment in favor of Defendants First Transit is appropriate because Plaintiff cannot prove these essential elements of her claim.

II. STATEMENT OF FACTS

A. Plaintiff's Complaint.

Plaintiff filed her Complaint on October 25, 2011, against Defendants First Transit and Central Bible Evangelical Church. With respect to Defendants First Transit, Plaintiff alleged that she was driven to the Central Bible Church in a shuttle bus on or about October 26, 2008. Croll Decl. at Ex. A, Complaint, ¶ 9. After they arrived, Plaintiff alleged that she was being pushed in her wheelchair on the sidewalk to the door when Defendant Mr. Halsten "started running while he was pushing the wheelchair." *Id.* Plaintiff further alleged that she pleaded with him to stop running, but that "he continued to run as he pushed the wheelchair." *Id.* Plaintiff also alleged that the wheel of the wheelchair hit a raised crack in the sidewalk, stopping the wheelchair abruptly and causing Plaintiff to fall forward out of the wheelchair. *Id.* Plaintiff alleged that her injuries were caused by Defendants First Transit's breach of their duties. Croll Decl. at Ex. A, Complaint, ¶ 12, ¶ 13 and ¶ 14.

B. Declaration of Philip Halsten.

Mr. Halsten worked as a shuttle driver for First Transit from July 6, 2007 until August 8, 2010. *Id.* He was trained by First Transit to properly address wheelchair bound passengers in compliance with the requirements of the American Disabilities Act. Halsten Decl., ¶ 3. Mr. Halsten currently works as school bus driver for First Student. *Id.*

Bessie Williams was a regular, everyday rider that Mr. Halsten transported to various locations, including churches that she attended. Halsten Decl., ¶ 4. Prior to October 26, 2008,

the date of this incident, he never had any trouble transporting her or problems pushing Ms. Williams to any of her prior locations. *Id.* In fact, prior to October 26, 2008, he never had any problems transporting any of his other wheelchair bound passengers. *Id.*

Ms. Williams had a habit of not keeping her feet on the footrests of her wheelchair, even though Mr. Halsten regularly and routinely reminded her that she needed to do so for safe transport. Halsten Decl., ¶ 5. He estimates that he had to remind her to place her feet on her footrests nearly every time he transported her. *Id.*

On October 26, 2008, the date of the accident, Mr. Halsten transported Ms. Williams to the Central Bible Evangelical Church ("Church") for the first time. Halsten Decl., ¶ 6. On that day, he pulled into the Church's parking lot; he unloaded Ms. Williams from the shuttle van; and then he assisted Ms. Williams into the Church, at her direction. *Id.* Once they were inside the Church, Ms. Williams then remarked that the meeting she was attending was on the second floor of the Church, not on the floor in which they initially entered the building. *Id.*

There was no elevator service in the Church to transport Ms. Williams from the basement floor/first floor, where they entered the Church, to the second floor where Ms. Williams believed the meeting was to occur. Halsten Decl., ¶ 7. As a result, they exited the basement/first floor Church, so that Mr. Halsten could push Ms. Williams in her wheelchair up the sidewalk to the main entrance of the Church to access the second floor. *Id.*

Mr. Halsten felt that it was safe to push Ms. Williams up the sidewalk from the side of the Church to the front of the Church, rather than load her back into the shuttle bus to drive her less than one-half of a block and then offload her again. Halsten Decl., ¶ 8. The sidewalk was a paved sidewalk that ran immediately adjacent and parallel to the side of the Church and then ran immediately in front of the Church, to the main entrance. *Id.* Based upon his training, it was his opinion that it was safer to push Ms. Williams up the sidewalk to the front of the

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Church, rather than reload her back into the shuttle bus to transport her less than one block to the front of the Church and offload her again. *Id.*

It was not physically possible for Mr. Halsten to run while pushing Ms. Williams while going uphill, toward the front of the Church. Halsten Decl., ¶ 9. On that day, he weighed approximately 300 pounds. *Id.* Ms. Williams weighed approximately 250 pounds. *Id.;* Croll Decl. at Ex. B. At Mr. Halsten's weight, and given how much Ms. Williams weighed, he was physically not capable of "running" with her, while pushing her up the sidewalk, as she alleges. *Id.* In fact, he did not run. *Id.* Mr. Halsten was walking while pushing Ms. Williams up the sidewalk, toward the front of the Church. *Id.*

Before he started to push Ms. Williams up the sidewalk toward the front of the Church, Mr. Halsten again reminded Ms. Williams that she needed to put her feet in the wheelchair footrests. Halsten Decl., ¶ 10. Because he was confident she had done so, Mr. Halsten then proceeded to push her up the sidewalk. *Id.* Ms. Williams failed to keep her feet in the footrests and, as he proceeded to push her, she removed her feet from the wheelchair footrests, unbeknownst to Mr. Halsten. Because Ms. Williams did not keep her feet on her wheelchair footrests, her foot got caught on a portion of the sidewalk, causing her to fall forward and out of her wheelchair. Halsten Decl., ¶ 11.

C. Plaintiff's Deposition Testimony.

At her deposition on June 24, 2013, Bessie Williams had little recollection of the details regarding what happened on October 26, 2008. She testified that she told Mr. Halsten not to push her up the hill, because she felt she "was too big for him to go up this hill." Croll Decl. at Ex. C (Williams Dep. 55/14-15). She then said that he was running up the hill, even though she could not say how fast they were going, did not view his legs, and did not see him physically running. Croll Decl. at Ex. C (Williams Dep. 59/14-21). In fact, there were no witnesses.

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Likewise, her recollection of what exactly caused the incident was unclear. Ms. Williams did not remember where Mr. Halsten initially parked. Croll Decl. at Ex. C (Williams Dep. 56/7-15). She did recall seeing a crack or a hole in the sidewalk and could not say which side of her wheelchair hit the crack or if it was both sides. Croll Decl. at Ex. C (Williams Dep. 63/21-23). She also could not say how much time passed between the time she saw the crack and when the incident took place. Croll Decl. at Ex. C (Williams Dep. 63/12-14).. She could not even recall where the incident occurred after being shown photographs of the Church. Croll Decl. at Ex. C (Williams Dep. 66/1-4). At first, Ms. Williams did not have a memory of using her footrests on October 26, 2008. Croll Decl. at Ex. C (Williams Dep. 72/2-24). Then, she later said that she had a memory of her feet being on the footrests. Croll Decl. at Ex. C (Williams Dep. 72/2-24). That said, she testified that she could not recall whether the components making up the wheelchair footrests were actually attached to her chair on the day of the incident. Croll Decl. at Ex. C. (Williams Dep. 70/24-25 and 71/1-5).[1]

III. ISSUES PRESENTED

1. Defendants First Transit are entitled to summary judgment because Plaintiff cannot prove that they breached any duty to her.

2, Defendants First Transit are entitled to summary judgment because Plaintiff cannot prove that any alleged breach caused her injuries.

IV. EVIDENCE PRESENTED

This motion is based upon the Declaration of Kelly A. Croll with attached exhibits and on the records and pleadings on file herein.

[1] At her deposition, Ms. Williams admitted that she did not even have her footrests attached to her wheelchair that day and was not using the footrests. Instead, her feet were just resting on the floor. Croll Decl. at Ex. C (Williams Dep. 74/12-17).

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V. LEGAL AUTHORITY

A. Summary Judgment Standard

CR 56(c) provides in relevant part, "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admission on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Summary judgment must be granted unless the non-moving party comes forward with evidence showing there is a genuine issue of material fact for trial. CR 56(e). This means that a party seeking to avoid summary judgment cannot simply rest upon the allegations of his pleadings; he must affirmatively present admissible, factual evidence upon which he relies. *Mackey v. Graham*, 99 Wn.2d 572, 576, 663 P.2d 490 (1983).

If the plaintiff "fails to make a showing sufficient to establish the existence of an element essential" to his or her case, there can be no genuine issue of material fact. *Davis v. State*, 102 Wn. App. 177, 184, 9 P.3d 1191, *review granted*, 142 Wn.2d 1016, 16 P.3d 1265, *affirmed*, 144 Wn.2d 612, 30 P.3d 460 (2000); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 91 L.Ed.2d 265 (1986). The moving party is entitled to summary judgment when there is a "complete failure of proof concerning an essential element of the nonmoving party's case [which] necessarily renders all other facts immaterial." *Celotex Corp.*, 477 U.S. at 323. Where, as is the case here, a plaintiff fails to prove an essential element of the claim, all other facts are immaterial and summary judgment is appropriate. *Davis*, 102 Wn. App. at 189 (citing *Celotex Corp.*, 477 U.S. at 323) (affirming the lower courts grant of summary judgment in favor of the State when the plaintiff failed to prove that vehicle tracts through sand dunes constituted an "artificial condition" within the Recreational Use Immunity Act).

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Under CR 56(e), Plaintiff cannot simply rely upon the mere allegations of her pleading. Rather, affidavits or other evidence as provided in CR 56 must set forth specific facts showing that there is a genuine issue for trial. *See Kennedy v. Sea-Land Service, Inc.*, 62 Wn. App. 839, 856-57, 816 P.2d 75 (1991) (Plaintiff must produce specific facts of the sort admissible at trial to demonstrate that each and every element of the cause of action can be met).

B. Plaintiff Has No Evidence That Defendants First Transit Breached Any Duty to Her.

Plaintiff's claim in her Complaint against Defendants First Transit is one for negligence. *See* Complaint. Plaintiff must prove four basic elements in a common law negligence case: (1) the existence of a duty, (2) breach of that duty, (3) resulting injury, and (4) proximate cause. *Hansen v. Friend*, 118 Wn.2d 476, 479, 824 P.2d 483 (1992); and *Tincani v. Inland Empire Zoological Soc'y*, 124 Wn.2d 121, 127-28, 875 P.2d 621 (1994). A duty is defined as "an obligation, to which the law will give recognition and effect, to conform to a particular standard of conduct toward another." *Transamerica Title Ins. Co. v. Johnson*, 103 Wn.2d 409, 413-414, 693 P.2d 697 (1985) (*quoting* W. Prosser, *Torts* § 53, at 331 (3d ed. 1964). A common carrier has the highest duty of care to its passengers, but that duty is not unlimited.[2]

Plaintiff cannot prove that Defendants First Transit breached any duty to her. There was no elevator in the Church to reach the second floor, where Ms. Williams believed the meeting was to occur. Halsten Decl., ¶ 7. They therefore had to exit the first floor of the Church, so that Mr. Halsten could push Ms. Williams in the wheelchair on the sidewalk to the main entrance of the Church. *Id.* Mr. Halsten had every reason to believe that it was safe to

[2] For purposes of this motion only, Defendants First Transit concede that they were a common carrier.

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push Ms. Williams up the sidewalk from the side of the Church to the front entrance of the Church. *Id.*

Most importantly, there was no guideline or other requirement that Mr. Halsten load Ms. Williams back into the shuttle bus to drive her less than one-half of a block and then offload her again. Halsten Decl., ¶ 8. The sidewalk was a paved, public sidewalk that ran immediately adjacent and parallel to the side of the Church and then ran immediately in front of the Church, to the main entrance. *Id.* Based on his training, it was his opinion that it was safer to push Ms. Williams up the sidewalk to the front of the Church, rather than reload her back into the shuttle bus to transport her less than one block to the front of the Church, and offload her again. *Id.* Thus, there was no breach of duty based upon Mr. Halsten's decision to not load Plaintiff back into the shuttle again.

Further, there is no evidence that Mr. Halsten was running when he pushed Ms. Williams up the sidewalk. Although Ms. Williams testified that Mr. Halsten was running, her testimony is nothing more than a conclusory statement based upon Ms. Williams' speculation. *See, e.g. Seven Gables Corp. v. MGM/UA Entm't Co.,* 106 Wash.2d 1, 13, 721 P.2d 1 (1986) (Nonmoving party may not rely on speculation, argumentative assertions, "or in having its affidavits considered at face value; for after the moving party submits adequate affidavits, the nonmoving party must set forth specific facts that sufficiently rebut the moving party's contentions and disclose that a genuine issue as to a material fact exists."). Ms. Williams did not see him run, could not estimate how fast he was pushing her, and she did not see his feet to determine whether he was running. There were also no other witnesses. Mr. Halsten's unequivocal testimony is that he was **not** running at the time and, in fact, that he was physically unable to run at his 300 pound weight. However, even if Mr. Halsten did "run" while pushing Ms. Williams up a hill, which Defendants First Transit deny, Ms. Williams has

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no evidence that Defendants First Transit breached any duty to her. Simply saying that Mr. Halsten was running, which he was not, does not mean there that a duty was breached.

Accordingly, Defendants First Transit's Motion for Summary Judgment should be granted on the basis that there was no duty owed to Plaintiff that was breached.

C. Even if Defendants First Transit Breached A Duty, Which They Deny, Plaintiff Caused Her Own Injuries.

A common carrier is not strictly liable to its passengers, nor is it an insurer of its passenger's safety. *Tortes v. King County*, 119 Wn. App. 1, 8, 84 P.3d 252 (2003). Negligence is not presumed or inferred from the mere fact that an accident happened. *Id.*

Just because Ms. Williams was injured is not enough to demonstrate that her injuries were in fact caused by a breach of a duty owned to her. In fact, the evidence indicates that the Plaintiff caused her own fall. There was no injury proximately caused by any breach of duty, as Mr. Halsten exercised due care by repeatedly requesting that Plaintiff keep her feet on the footrests of the wheelchair. The fact is that Plaintiff removed her feet from the footrests as Mr. Halsten pushed her up the sidewalk of the Church. Thus, even if Mr. Halsten was running while pushing Ms. Williams up the sidewalk, which he denies, his alleged act did not cause her to fall out of the wheelchair. Ms. Williams fell out of the wheelchair because she removed her feet from the footrests, thus causing her own injuries.

In short, even if there was a duty breached, which Defendants First Transit deny, there is no evidence that Plaintiffs' injuries were caused by that breach. Accordingly, summary judgment should be granted on the basis that Plaintiff has failed to prove this essential element of her claim regarding causation.

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VI. CONCLUSION

Based upon the above, Defendants First Transit request that the Court enter summary judgment in its favor and dismiss Plaintiffs' claim against them. Just because Plaintiff fell out of the wheelchair does not mean that Defendants First Transit breached any duty to her. Mr. Halsten operated according to his training by wheeling Ms. Williams up the sidewalk, rather than loading her back up in the shuttle to drive her around to the front of the Church. There is no admissible evidence that Mr. Halsten ran while pushing Ms. Williams up the sidewalk. Further, there is no evidence that Mr. Halsten breached any duty, even had "run" with Ms. Williams, which he denies.

Nor is there any evidence that Defendants First Transit alleged breach caused Ms. Williams' injuries. Plaintiff removed her feet from her wheelchair footrests, thus causing her to fall from her wheelchair. Accordingly, Plaintiff cannot establish that Defendants First Transit breached their duty to Plaintiff or that Defendants First Transit's alleged breach caused her injuries.

Because Plaintiff cannot prove these essential elements of her claim – e.g., that a duty was breached or that any alleged breach caused her injuries, Defendants First Transit's Motion for Summary Judgment should be granted and they should be dismissed from this case with prejudice. A proposed form of order is attached hereto and incorporated herein by reference.

DATED this 2nd day of August, 2013.

BETTS, PATTERSON & MINES, P.S.

By _____
Laura E. Kruse, WSBA #32947
Kelly A. Croll, WSBA # 30993
Attorneys for Defendants First Transit, Inc. and Philip Halsten

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APPENDICE D

The Honorable Vicki L. Hogan
Amended Hearing Date: September 20, 2013
Hearing Time: 9:00 a.m.

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

BESSIE WILLIAMS, Plaintiff, vs. JOHN DOE; FIRST TRANSIT, INC.; CITY OF TACOMA; and CENTRAL BIBLE EVANGELICAL CHURCH, jointly and severally, Defendants.	NO. 11-2-15017-3 DEFENDANTS' THIRD REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

The Court has continued to give Plaintiff and her attorneys additional opportunities to remedy their continued disregard for the Court's Orders or the Civil Rules. Despite being given an additional 10-days to submit a response to Defendants' summary judgment motions, they were still unable to timely file it. Instead of filing her response on September 9, 2013, as this Court specifically directed at the August 30, 2013 hearing,[1] Plaintiff's Michigan licensed

[1] For case of reference, a copy of the Court's August 30, 2013 minute entry order is attached to the Kruse Decl. as Exhibit A.

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attorney, Katrina Coleman, who is no longer properly admitted *pro hac vice* to practice in this Court, emailed Plaintiff's Response to Defendants at 5:59 p.m. and 6:03 p.m. on September 10, 2013 – over one day late. And, according to the Court docket, she then filed Plaintiff's Response with the Court on September 11, 2013, two days after the Court-imposed deadline.

This is part of Plaintiff's continuous pattern of failing to comply with the Civil Rules or with the Court's Orders, as reflected by the two discovery sanctions orders already entered against Plaintiff and one of her attorneys. Plaintiff and her attorney's continuous disregard for the Court and the Civil Rules is also reflected by their actions related to this immediate motion practice. Specifically, Ms. Coleman was timely served with Defendants' moving papers on August 2, 2013. Plaintiff and her attorney then failed to timely respond to Defendants' motions on August 19, 2013, the original date by which Plaintiff's response was due according to the Civil Rules. Despite being granted an additional 10-days by which to respond to Defendants' motions, both Plaintiff and her attorneys still failed to timely file a response on September 9, 2013, as directed by this Court on August 30, 2013.[2] Indeed, Ms. Coleman apparently still represented Plaintiff throughout the duration of this litigation, as *she* was the attorney who filed a Response and a declaration on Plaintiff's behalf, albeit two-days late.

No further leniency should be given to Plaintiff or her attorneys. Plaintiff's Response should be stricken as untimely; additional monetary sanctions should be awarded to Defendants; and Defendants' summary judgment motions should be granted.

[2] The genuineness of Mr. Ewetuga's plea to the Court on August 30, 2013 for additional time to evaluate this matter should be questioned. Ms. Coleman was involved in this litigation through the duration of the pending motion, yet Mr. Ewetuga sought additional time to respond to the Motion since *he* was new to the case. At the end of the day, however, the Response was filed by Ms. Coleman, not Mr. Ewetuga. This was not, and never has been, during the pendency of this motion, a case where Plaintiff did not have counsel and was blindsided by Defendants' motions for summary judgment.

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Even if the Court considers Plaintiff's untimely and improperly filed Response, summary judgment should be granted in Defendant First Transit and Phil Halsten's ("Defendants First Transit") favor. Plaintiff has no evidence creating a question of fact as to whether Defendants First Transit breached a duty to her. Despite Plaintiff's self-serving declaration, which contains conclusory and speculative statements and statements which conflict with her deposition testimony, Plaintiff has no facts to prove that Mr. Halsten allegedly ran while pushing her wheelchair up a paved sidewalk. Neither she, nor anyone else, directly witnessed Mr. Halsten allegedly running, and she has no admissible evidence to support her contention that Mr. Halsten "ran" with her in the wheelchair. Plaintiff has no baseline by which to compare Mr. Halsten's rate of speed by which he pushed her wheelchair on the day of the incident, as compared to any other day. Thus, any testimony related to the alleged speed by which Mr. Halsten was running is pure speculation.

Nor did Mr. Halsten breach any duty to Plaintiff by deciding to push her wheelchair up the paved sidewalk, rather than reload her in the shuttle. There is no evidence that he violated any policies or procedures or violated any standard of care in making that decision. Just because Plaintiff fell out of the wheelchair is not evidence that a duty to Plaintiff had been breached. Mr. Halsten acted consistent and in accord with his training when he made that decision.

Even if Mr. Halsten breached a duty to Plaintiff, which he denies, there is no evidence that the breach caused Plaintiff's injuries. Regardless of whatever acts Mr. Halsten took or did not take, it was the fact that there was a crack in the sidewalk that caused Plaintiff to fall from her wheelchair, not the rate of speed at which Plaintiff was pushed up the sidewalk. There is no

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expert testimony to say otherwise. Put simply, it was the crack in the sidewalk that caused Plaintiff to fall from her wheelchair, not any alleged negligence by Defendants First Transit.[3]

II. ADDITIONAL FACTS

This Court should not condone Plaintiff's and her attorneys' continued disregard for the Civil and Local Rules. The procedural history of this litigation has been tortured, as co-Defendant's counsel appropriately pointed out at the initial oral argument on Defendants' motions for summary judgment on August 30, 2013.[4]

Discovery has long been delayed, at no fault of the defendants. For example, despite Defendants' long standing request to take Plaintiff's deposition, beginning in December 2012, her deposition was not conducted until June 24 and June 25, 2013. Plaintiff's counsel, Ms. Coleman, continued to cancel her client's deposition, after agreeing to appear, and also failed to respond to Defendants First Transit's requests for deposition dates.[5]

Plaintiff and her attorneys also failed to supplement and fully answer Defendants First Transit's discovery responses, despite numerous requests to do so. Defendant's first request of Plaintiff to supplement her discovery was in February 2013 and, despite two orders compelling her to do so, she has still yet to fully answer her discovery or tender payment for her discovery violations.[6]

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[3] Defendants First Transit also contend that Plaintiff's declaration is inconsistent as to where her feet were at that time of the incident, since she now states that her feet were on the footrests, footrests which she initially could not recall at her deposition even being on the wheelchair at the time of the incident.

[4] Kruse Decl.

[5] *Id.*

[6] *Id.*

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On May 24, 2013, the Court granted Defendants First Transit's Motion to Compel, and ordered Plaintiff to supplement her written discovery by June 3, 2013 and to pay $2,590 to Defendant First Transit as a discovery sanction. Although her supplemental responses were due on June 3, 2013, as ordered by the Court, Plaintiff's counsel only sent partial responses to Defendant's counsel by fax on June 6, 2013, three days late. She failed to make any payment to Defendant First Transit for her discovery violations.[7]

On July 21, 2013, on Defendant's Motions for Sanctions, the Court then ordered Plaintiff to fully answer her discovery and ordered her to pay an additional $1,100 as a discovery violation, on or before July 10, 2013. Plaintiff and her attorneys have still failed to fully answer her written discovery and have also failed to pay the $3,700 total in sanctions for their ongoing discovery violations.[8]

On June 18, 2013, local counsel for Plaintiff, David Britton, who was the attorney that submitted a *pro hac vice* application for Plaintiff's Michigan counsel, Ms. Coleman, filed a notice of intent to withdraw, indicating that he was no longer going to represent Plaintiff or associate with Ms. Coleman. To date, no other counsel has submitted a pro hac vice application to associate with Ms. Coleman, thus enabling her to appear in this Court. To this extent, Ms. Coleman's response and her declaration, which was filed in opposition to Defendants First Transit's Motion for Summary Judgment, cannot be considered by the Court, as Ms. Coleman is effectively attempting to practice law in Washington without a license.[9] See General Rule 8.

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[7] Ex. B to Kruse Decl. (May 24, 2013 Order); Kruse Decl.

[8] Ex. C to Kruse Decl (July 21, 2013 Order); Kruse Decl.

[9] Kruse Decl.

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Nevertheless, even though Ms. Coleman was not permitted to appear in this Court, Defendants First Transit still timely served her and the Plaintiff with a copy of their Motion for Summary Judgment on August 2, 2013.[10] Thus, despite being timely served with Defendants' motions, Ms. Coleman failed to have a response to Defendants' motion timely filed by the August 19, 2013 deadline.

New local counsel, Mr. Ewetuga, filed a notice of appearance on August 21, 2013, but did not serve it on Defendants. He then contacted Defendants' counsel on Thursday, August 22, 2013, to request an extension of time to respond. Although Defendants refused, noting that counsel needs to move the court for an extension, Plaintiff never filed anything before the August 30, 2013 summary judgment hearing date. Instead, Mr. Ewetuga argued that he had insufficient time to move for an extension because he had other motions on his calendar and had not been feeling well. He also stated at the hearing that because he was new to the matter, additional time should be granted for him to evaluate the claim and assess whether an opposition should be filed. Despite Mr. Ewetuga's implication to the Court and argument that he needed additional time to evaluate the claim, Plaintiff's opposition to Defendants First Transit's summary judgment was filed by Ms. Coleman, the attorney that has represented Plaintiff throughout the duration of this motion practice.

The Court granted Mr. Ewetuga's oral motion to extend the date by which to respond to Defendants' motions for summary judgment, until September 9, 2013. At that time, the Court directed Mr. Ewetuga to file and serve a response – or, a letter to counsel and the Court saying that no response was to be filed - no later than the close of business on September 9, 2013. As Defendants First Transit's Second Reply reflects, **no response was received by the end of the**

[10] Ex. D to Kruse Decl. (Pope Decl. of Service, indicating that Ms. Coleman was served on August 2, 2013 by email and by mail).

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day on September 9, 2013. Instead, Ms. Coleman emailed Plaintiff's response and declarations to Defendants' counsel at 5:59 p.m. and 6:03 p.m. on Tuesday, September 10, in complete disregard to the Court's verbal directive. Plaintiff did not file her response and supporting declarations until Wednesday, September 11, 2013 – two-days after the Court directed those pleadings to be filed and served.

III. ARGUMENT

A. Plaintiff's Response And Declarations Should be Stricken As Untimely And Because Her Michigan Attorney is Not Admitted to Practice in This Court

Ongoing discovery violations and violations of the discovery orders warrant further sanctions, including dismissal of this action and additional monetary relief. In this case, dismissal is appropriate and should be granted based upon the continuous disregard for the orders of the Court, as well as the Civil and Local Rules.[11]

Sanctions permissible under CR 37 (b)(2) include: (1) entry of an order that the facts sought to be discovered by the non-violating party are considered established for the purpose of the action; (2) entry of an order prohibiting the violating party from introducing testimony regarding the facts sought to be discovered by the non-violating party into evidence; (3) dismissal of the action or proceedings. CR 37(b)(2).

Sanctions should be imposed in this case to remedy the prejudice to Defendant and to compensate Defendants for the unnecessary expenses they have and continue incur because of Plaintiff's refusal to follow the Court's orders and the Civil and Local rules. "A spirit of cooperation and forthrightness during the discovery process is mandatory for the efficient

[11] Although this issue was not initially raised in Defendants' moving papers, Plaintiff and her attorneys' continued disregard for the Civil and Local rules has continued. "Sanctions are permitted for unjustified or unexplained resistance to discovery and serve the purposes of deterring, punishing, compensating, and educating a party or its attorney for engaging in discovery abuses." *Fisons*, 122 Wn.2d at 356.

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functioning of modern trials." *Johnson v. Jones*, 91 Wn. App. 127, 132-133, 955 P.2d 826 (1998); *Washington State Physicians Ins. Exch. Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 342, 858 P.2d 1054 (1993). CR 37 provides the rules which give the discovery process its teeth. *Jones*, 91 Wn. App. at 133. Because Plaintiff continues to fail to comply with the two Court orders relating to her discovery violations, dismissal of this matter on this basis alone is warranted.

Further, failure to timely file a pleading, especially after being given one extension to do so, warrants that pleading being stricken. *Colorado Structures, Inc. v. Blue Mountain Plaza, LLC*, 159 Wn. App. 654, 660, 246 P.3d 835 (2011) (holding that the trial court did not abuse its discretion for striking untimely pleading). This Court should not consider a Response brief and supporting materials that were not timely and properly filed and served. The Civil rules and Local rules are in place to facilitate to facilitate consistency and fairness, whether a party is appearing pro se, is represented by an out-of- state attorney *pro hac vice*, or is an attorney new to the matter.

Here, both the Plaintiff and her attorneys have disregarded to the Court's order to either file an opposition on or before September 9, 2013 or send a letter indicating that no response would be filed. Instead, Plaintiff and her attorneys continue to take advantage of the Court's leniency, resulting in prejudice to Defendants. Plaintiff did not ask for another extension of time, did not contact Defendants First Transit's attorneys to advise of the delay, and failed to provide any excuse as to why – again – her response was not timely filed.[12] Absent excusable neglect, which does not exist here, Plaintiff's untimely pleadings should be stricken. *Colorado Structures, Inc.*, 159 Wn. App. at 660 ("However, once a deadline has passed, courts can accept

[12] Kruse Decl.

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late filings only if a motion is filed explaining why the failure to act constituted excusable neglect"); CR 6(b)(2) (requiring "excusable neglect" to support a motion to enlarge time); *Davies v. Holy Family Hosp.*, 144 Wn. App. 483, 500, 183 P.3d 283 (2008) ("Importantly, however, once the adverse party misses the original deadline set forth in CR 56(c), a showing of excusable neglect is required under CR 6(b)(2).") Plaintiff has not offered any explanation for her failure to timely file a Response and supporting documents.

The pattern of indifference to the orders of the Court, as well as the Civil and Local Rules, has continued throughout this litigation. Accordingly, the untimely and improperly filed Response and supporting materials should be stricken and this case should be dismissed with prejudice. Further, Ms. Coleman is no longer admitted to practice in Washington, as her *pro hac vice* application expired when Mr. Britton withdrew from this case. Any pleadings filed by her should be stricken. GR 8.

B. Plaintiff's Inconsistent and Conclusory Self-Serving Declaration Does Not Create A Question of Fact To Defeat Summary Judgment

As discussed above, Plaintiff's Response and supporting documents should be stricken because they were untimely and because they were improperly filed by an attorney who is no longer admitted *pro hac vice* in this case. Even if the Response and supporting documents are considered, Defendant's Motion for Summary Judgment should still be granted.

Plaintiff improperly attempts to create a question of fact about whether Mr. Halsten was running by providing testimony by declaration that conflicts and is inconsistent with her deposition testimony. To the extent her declaration conflicts with her deposition testimony, it should be stricken and not considered by the Court. When a party has given clear answers to unambiguous [deposition] questions which negate the existence of any genuine issue of material fact, that party cannot thereafter create such an issue with an affidavit that merely

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contradicts, without explanation, previously given clear testimony." *See Marshall v. A C & S Inc.*, 56 Wn. App. 181, 185 (1989) (citing *Van T. Junkins & Assocs., Inc. v. U.S. Indus, Inc.*, 736 F.2d 656, 657 (11th Cir. 1984)); *Overton v. Consol. Ins. Co.*, 145 Wn.2d 417, 430 (2002). "Self-serving affidavits contradicting prior depositions cannot be used to create an issue of material fact." *McCormick v. Lake Washington Sch. Dist.*, 99 Wn. App. 107, 111, 992 P.2d 511 (1999).

Plaintiff's untimely declaration states that Mr. Halsten "was going too fast" because "saw things pass by [her] quickly" and that she felt "the wind." In her June 24, 2013 deposition, however, Plaintiff was unable to provide any facts to support her contention that Mr. Halsten was running while pushing her wheelchair up the sidewalk. Most generally, she either did not recall or could not provide any testimony related to the speed by which she was being pushed. \. Instead, all she continued to say is that he was going too fast because he was running.

Specifically, when asked how fast Mr. Halsten was pushing her, she testified that she did not remember.[13] This question was asked of her more than once and, again, she testified that she did not know how fast Mr. Halsten was pushing her and, instead, rambled on about how she felt:

> Q. But you don't know how fast you were going?
>
> A. No, I – no, I don't. Phil was running.[14]

[13] Ex. E to Kruse Decl. (Williams Dep. at 57:22-24).
[14] Ex. E to Kruse Decl. (Williams Dep. at 59:20-21).

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When pressed further for facts to support her contention that Mr. Halsten was running, such as what rate of speed he was traveling, Plaintiff deflected and failed to substantive response:

> Q. Are you telling me that just based on speed, you feel that he was running, the speed that were you traveling up the hill?
>
> A. Well, he said he pumped iron – pump iron every day. He was able to handle that.
>
> Q. Okay. I'm just trying to figure out how you –
>
> A. I understand that, yes.
>
> Q. So you just felt that the speed was too fast?
>
> A. I don't know what I felt. I don't know.
>
> Q. I guess I'm trying to figure out how you – how you know he was running, or why you're saying he was running?
>
> A. He was running.[15]

At no point did Plaintiff testify about "the wind" (which, by the way, could have been wind blowing naturally from a weather event) or about what she saw while having her wheelchair pushed up the hill on the sidewalk by Mr. Halsten.[16] It is inappropriate for Plaintiff to now attempt to support her conclusory and speculative contention that Mr. Halsten was running with inconsistent and conflicting declaration testimony.

Nevertheless, even if the Court were to consider Plaintiff's declaration, she still has not created a question of fact as to whether Mr. Halsten was running. As noted above, simply because she may have felt "the wind" does not mean that Mr. Halsten was running. "[T]he

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[15] Ex. E to Kruse Decl. (Williams Dep. at 58:20-25; 59:1-6).

[16] As an aside, Plaintiff also testified that she is blind.

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wind" could have been simply a weather event, and nothing more. Further, just because "she saw things pass by [her] quickly" means nothing more than she was being pushed in a wheelchair, where "things" would pass by her more quickly than if she was using her walker.[17] Her declaration does not substantiate the contention that Mr. Halsten was running. Indeed, Plaintiff has no baseline by which to compare the speed of her wheelchair as it was traveling on this instance, as compared to any other times her wheelchair had been pushed by Mr. Halsten. Although Plaintiff could recall having been transported by Mr. Halsten in the past, she could not recall where Mr. Halsten had transported her or whether he ever transported her in a wheelchair.[18] Absent any baseline by which to compare the rate of speed on this instance, her testimony related to speed is nothing more than speculation. *See, e.g., Seven Gables Corp. v. MGM/UA Entm't Co.,* 106 Wn.2d 1, 13, 721 P.2d 1, (1986) (Non-moving party may not rely upon speculation, argumentative assertions or in having affidavits considered at face value, but must set forth specific facts that sufficiently rebut the moving party's contentions and demonstrate that a genuine issue of material fact exists).

Nor does the declaration of Carol Williams establish that Mr. Halsten was running. She claims that because she had to get "momentum" to push her mother up a small incline at some point, that Mr. Halsten must have been running up the paved sidewalk. Ms. Williams' declaration lacks foundation and is pure speculation. Ms. Williams was not at the scene at the time of the incident, did not witness the incident, nor did anyone else witness the incident. She also provides no basis for her statements related to the level of the incline of that sidewalk, as compared to any other incline where she pushed her mother; the weight of Plaintiff; or the size

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[17] Plaintiff testified that she was also using a walker at this time. Ex. E to Kruse Decl. (Williams Dep. at 44:21-23).

[18] Ex. E to Kruse Decl. (Williams Dep. at 53:20-25;54:1-14;56:23-25;57:1;60:6-11).

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or strength of Mr. Halsten or her size or strength. Further, Ms. Williams provides no estimate as to the steepness of the incline, nor can she, and she is not an expert in this field. ER 702 ("a witness *qualified as an expert* by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."). Thus, testimony offered by Ms. Williams does not create a question of fact as to whether Mr. Halsten ran while pushing Plaintiff up the sidewalk.

In the end, all that remains are Plaintiff's conclusory and speculative statements that Mr. Halsten was running and - without more – these self-serving statements do not create a question of fact as to whether Mr. Halsten breached a duty.[19] *Id.* Put simply, just because Plaintiff says that Mr. Halsten was running, she has no evidence that he was, in fact, doing so. There is simply no evidence to refute Mr. Halsten's unequivocal assertion that he was not running, or that he could not run given his weight and Plaintiff's size. Because Plaintiff cannot prove that a duty was breached by Defendants First Transit, Defendants' motion for summary judgment should be granted.

C. Plaintiff Has No Evidence That Mr. Halsten Breached Any Duty When He Decided to Push Her Wheelchair Up the Sidewalk

Plaintiff has presented no evidence or expert testimony that Mr. Halsten breached any duty to Plaintiff when he decided to push Plaintiff's wheelchair up the paved sidewalk toward the front of the church, rather than load her back into the shuttle. As Mr. Halsten testified, his decision to push Plaintiff's wheelchair up the paved sidewalk was consistent with his training and was in accord with First Transit's policies and procedures. Decl. of Philip Halsten, ¶ 8.

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[19] In fact, Plaintiff's testimony that Mr. Halsten was running directly conflicts with her initial contention that she felt that Mr. Halsten could not push her up the hill because of her weight. She testified that she "was too big for him to go up this hill." Ex. E to Kruse Decl. (Williams Dep. at 55:6-20). To testify that Mr. Halsten ran with her up the hill, when she felt that he could not push her at all initially, does not make sense.

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Plaintiff has no expert to support her contention that Mr. Halsten should have reloaded her in the shuttle, rather than push her up the paved sidewalk toward the front of the church, nor has she presented any evidence that any policies or procedures were violated. Just because Plaintiff now says she asked to be placed back in the shuttle does not mean that Mr. Halsten breached a duty to her by pushing her up the sidewalk instead.

As discussed in Defendant's Motion for Summary Judgment in more detail, simply because Plaintiff fell out of the wheelchair does not mean that Mr. Halsten's decision to push her up the paved sidewalk was in breach of any duty. *See, Walker v. King County Metro*, 126 Wn. App. 904, 908-09, 109 P.3d 836 (2005) (additional citation omitted) (A common carrier is not the insurer of its passenger's safety, and negligence should not be presumed or inferred from the mere happening of an accident). In the absence of any specific facts which show that there was a policy or procedure in place that was violated, Mr. Halsten's decision was a proper and reasonable exercise of his discretion and was consistent with his training. To survive a motion for summary judgment, a party must respond to the motion with more than conclusory allegations, speculative statements, or argumentative assertions of the existence of unresolved factual issues. *Id.* at 909 (additional citation omitted). Plaintiff has failed to do so here. Summary judgment dismissal is warranted because there is no evidence that Defendants First Transit beached any duty to Plaintiff.

D. Plaintiff Cannot Prove That Defendants First Transit Caused Her Injuries

There is also no evidence that Defendants First Transit's alleged breach of a duty caused Plaintiff to fall from her wheelchair. As Plaintiff contends, it was the fact that her wheelchair hit a crack in the sidewalk that caused her to fall from her wheelchair. As stated by Plaintiff, "The wheelchair stopped as the wheel hit the crack and I felt myself leave the chair and go in the air." Thus, even if Mr. Halsten was traveling at a speed greater than a walk,

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which Defendants First Transit deny, there is no evidence that the speed of the wheelchair caused Plaintiff to fall. Instead, it was the fact that the wheelchair impacted the crack in the paved sidewalk that caused her fall. Thus, even if Defendants First Transit breached a duty to Plaintiff, which they deny (as there is no evidence that they did so), there is also no evidence that any alleged breached caused Plaintiff to fall from her wheelchair.

In addition, the Court should again disregard Plaintiff's self-serving declaration where she now states that her feet were on the footrests at the time of the incident. Significantly, in her deposition, Plaintiff initially testified that she could not recall whether the wheelchair even had its footrests on it at the time of the incident or whether she used them that day.

Q. Okay. Did your wheelchair at that time have footrests?

A. I don't remember that.

Q. Okay. Did you use footrests?

A. I do use them, yes.

Q. Do you have a memory of using them on that day?

A. No.

Plaintiff continued to testify that she still had no memory of the footrests being on her wheelchair:

Q. Okay. So do you have a memory of whether or not the footrests were installed on the wheelchair as of October 26, 2010, the day of this incident?

A. Yes.

Q. They were on the wheelchair?

A. I can't remember, but. . .[20]

[20] Ex. E to Kruse Decl. (Williams Dep. at 70:20-25;71:1-5;71::24-25;72:1-4).

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It was not until asked whether her feet touched the sidewalk, did she then testify that her feet were on the footrests, apparently the same footrests she previously could not remember having been on the wheelchair.[21]

Defendants First Transit concedes that Plaintiff's declaration relating to her where her feet were located likely creates a question of fact relating to whether her feet caused her harm. However, given Plaintiff's testimony, when compared to her declaration, the only thing that is clear is that Plaintiff's memory of where her feet were at the time of the incident is suspect and the veracity of her declaration should be called into question. When viewing Plaintiff's testimony and declaration collectively, she cannot prove that any alleged breach by Defendants First Transit caused her alleged injuries. Summary judgment dismissal should be granted.

E. Additional Monetary Sanctions Should Be Ordered Against Plaintiff and Her Attorneys

In an effort to avoid repetition, Defendants First Transit incorporates the Additional Fact section above detailing Plaintiff and her attorney's continued disregard for the Civil Rules, the Local Rules, and the Court's Orders. Defendants' counsel had to travel to the initial summary judgment motion hearing on August 30, 2013, even though no opposition and no motion for an extension had been filed. As a result, Defendants' counsel each sought $500 as a sanction for having to appear at that hearing.

Now, again, Defendants' counsel will have to travel to Pierce County for the second summary judgment hearing on September 20, 2013, even though Plaintiff and her attorneys cannot even timely file an opposition despite being given another 10-days to do so. As a result, Defendants First Transit's counsel seeks an additional $1665, for having to address Plaintiff's untimely filed opposition and for having to appear at a second hearing on September 20, 2013.

---

[21] Ex. E to Kruse Decl. (Williams Dep. at 72:14-25;73:1-9).

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IV. CONCLUSION

Plaintiff's response should be stricken as untimely and improperly filed. Defendants' summary judgment motion should be granted, because there is no evidence that Defendants First Transit's breached their duty of care to the Plaintiff. Further, given Plaintiff and her attorneys, both Mr. Ewetuga and Ms. Coleman continued disregard for the Court's Order and the Civil Rules, all three should be ordered to pay Defendant First Transit $2,165 as a sanction for failing to following the Civil Rules, Local Rules and the Court's August 30, 2013 Order, in addition to the $3,700 Plaintiff and her attorneys already owe Defendants Frist Transit as a discovery sanction.

DATED this 16th day of September, 2013.

BETTS, PATTERSON & MINES, P.S.

By: */s/ Laura E. Kruse*
Laura E. Kruse, WSBA #32947
Attorneys for Defendants

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CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of Kitsap County. I am over 18 years of age and not a party to this action. My business address is One Convention Place, Suite 1400, 701 Pike Street, Seattle, WA 98101-3927.

On the date indicated below, I caused a true and correct copy of the attached document to be served in the manner noted upon:

Michael Ewetuga Law Office of Michael Ewetuga 1401 S. Union Ave. Tacoma WA 98405 Michael@thetacomalawyer.com	Attorney for Plaintiff __ Via Mail XX Via Messenger __ Via Facsimile: __ Via Email	XX __ __	Copy Only Original Original + Copy
Stephen G. Skinner Andrews Skinner, P.S. 645 Elliott Ave. West, Suite 350 Seattle, WA 98119 Stephen.Skinner@andrews-skinner.com Liz.curtis@andrews-skinner.com	Attorney for Deft Central Bible Evangelical Church XX Via Mail __ Via Messenger __ Via Facsimile: XX Via Email	XX __ __	Copy Only Original Original + Copy
Katrina J. Coleman Law Office of Katrina J. Coleman P. O. Box 24193 Lansing, MI 48909 Email: hyprnike@comcast.net	Co-Counsel for Plaintiff XX Via Mail __ Via Messenger __ Via Facsimile XX Via Email	XX ___	Copy Only Original

DATED this 16th day of September, 2013 at Seattle, Washington.

Cynthia Daniel
Legal Assistant
cdaniel@bpmlaw.com

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APPENDICE E

The Honorable Vicki L. Hogan
Trial Date: February 13, 2014
AMENDED Hearing Date: September 20, 2013
Time: 9:00 a.m.

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

BESSIE WILLIAMS, Plaintiff, vs. JOHN DOE; FIRST TRANSIT, INC.; CITY OF TACOMA; and CENTRAL BIBLE EVANGELICAL CHURCH, jointly and severally, Defendants.	NO. 11-2-15017-3 DEFENDANTS FIRST TRANSIT, INC.'S AND PHILIP HALSTEN'S SECOND REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

The Court heard argument on Defendants' joint Motions for Summary Judgment on August 30, 2013. At that time, Plaintiff had not submitted a response in opposition to Defendants' Motion nor had Plaintiff moved the Court for an extension of time to file an opposition. Nevertheless, the Court granted Plaintiff additional time – an additional two-weeks, by which to file an opposition to Defendants' Motion.

According to the Court's August 30, 2013 oral ruling and the Minute Entry Plaintiff's response to Defendants' Motions for Summary Judgment was due on Monday, September 9, 2013. Plaintiff did not file a response and no response was received by these Defendants. Accordingly, summary judgment dismissal of this matter should be granted. Plaintiff's cause of action against Defendants should be dismissed with prejudice.

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Further, Plaintiff still owes $3,700 to Defendants First Transit, Inc. and Philip Halsten for her discovery violations. The Court entered two orders, one on May 24, 2013, granting Defendants' Motion to Compel and Request for Costs, and the second on June 21, 2013.

Pursuant to the May 24, 2013 Order, Plaintiff and her former attorney were ordered to pay Defendants $2,590 for attorney's fees incurred in having to file a motion to compel discovery. Plaintiff failed to pay Defendants the amount ordered by June 3, 2013, as also ordered. Once Plaintiff failed to pay and failed to answer discover by June 3, 2013, Defendants filed a Motion for Sanctions against Plaintiff for failing to comply with the Court's May 24, 2013 Order.

On June 21, 2013, the Court granted Defendants' Motion and ordered Plaintiff and her attorney to pay an additional $1,100, plus the $2,590, for a total of $3,700, to Defendants by or before July 10, 2013. Plaintiff has so far failed to pay any amount ordered by the Court and should not be permitted to shirk this obligation now. She filed this lawsuit, and then failed to follow the Civil Rules. The Court should continue to enforce the prior discovery orders to pay the full $3,700 by or before September 13, 2013.

In addition, because Defendants were required to unnecessarily appear for the hearing on August 30, 2013, additional terms in the amount of $500 should be awarded to these Defendants.

A revised proposed Order is attached.

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DATED this 10th day of September, 2013.

BETTS, PATTERSON & MINES, P.S.

By s/ Laura E. Kruse
Laura E. Kruse, WSBA #32947
Kelly A. Croll, WSBA # 30993
Attorneys for Defendants First Transit, Inc. and Philip Halsten

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APPENDICE F

THE HONORABLE VICKI L. HOGAN
HEARING DATE: SEPTEMBER 20, 2013
HEARING TIME: 9:00AM

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR PIERCE COUNTY

BESSIE WILLIAMS,

Plaintiff,

v.

JOHN DOE, FIRST TRANSIT, INC.; CITY OF TACOMA; and CENTRAL BIBLE EVANGELICAL CHURCH, jointly and severally,

Defendants.

NO. 11-2-15017-3

DEFENDANT CENTRAL BIBLE EVANGELICAL CHURCH'S SECOND REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

I. REPLY

Plaintiff has not responded to Defendant CENTRAL BIBLE EVANGELICAL CHURCH'S Motion for Summary Judgment, which was filed and served on Plaintiff Bessie Williams, Pro Se, by mail on August 2, 2013. *See Certificates of Service attached to Defendant's Motion for Summary Judgment, Declaration of Louis Diana, and Declaration of Stephen Skinner in Support*, in the Court file. Courtesy copies of the motion, declarations and exhibits also were emailed and mailed to plaintiff's former counsel of record, Katrina J. Coleman. *Id.* Counsel Michael Ewetuga eventually appeared on behalf of Plaintiff.

Initially, Plaintiff's response to the motion was due on or before August 19, 2013. CR 56.

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On August 30, 2013, the Court heard oral argument on Defendant's motion for summary judgment. The Court granted Plaintiff additional time to file a response to the motion for summary judgment. Specifically, the Court ordered Plaintiff to file a response, if any, by no later than September 9, 2013. (*See* Minute Order of 8-30-2013). Given that Plaintiff never filed or served a response to Defendant's motion for summary judgment even after being provided with additional time, Defendant's unopposed motion for summary judgment should be granted in its entirety. (*See generally* Court's docket—no response filed).

In addition, because this Defendant was required to unnecessarily appear for the August 30, 2013 hearing, terms in the amount of $500 should be awarded to this Defendant.

A revised Proposed Order reflecting the pleadings and documents filed in regard to the motion is submitted with this Reply.

DATED this 10th day of September, 2013.

ANDREWS • SKINNER, P.S.

WSBA#42054

By _____ for:
STEPHEN G. SKINNER, WSBA # 17317
Attorney for Defendant
645 Elliott Ave. W., Ste. 350, Seattle, WA 98119
Tel: 206-223-9248 ▪ Fax: 206-623-9050
stephen.skinner@andrews-skinner.com

DECLARATION OF SERVICE

I, Sally Gannett, hereby declare as follows:

1. That I am a citizen of the United States and of the State of Washington, living and residing in King County, in said State, I am over the age of eighteen years, not a party to the above-entitled action, and competent to be a witness therein.

2. On the 10th day of September, 2013, I caused a copy of the attached to be served upon the following in the manner noted:

Attorney for Plaintiff: Michael Ewetuga 1401 S. Union Ave. Tacoma, WA 98405 Fax: 253-759-4759 michael@thetacomalawyer.com ***Via Email, Fax and US Mail***	**Courtesy Copy:** Katrina J. Coleman PO Box 24193 Lansing, MI 48909 hyprnike@comcast.net ***Via Email and US Mail***
Attorneys for Defendant First Transit: Laura E. Kruse Betts Patterson & Mines, PS 701 Pike Street, Suite 1400 Seattle, WA 98101-3927 lkruse@bpmlaw.com ***Via Email and US Mail***	

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 10th day of September, 2013 at Seattle, Washington.

/s/Sally Gannett
Sally Gannett, Legal Assistant
Andrews Skinner
645 Elliott Ave W, #350, Seattle, WA 98119
206.223.9248 /ph 206.623.9050 /fax
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Attachment A to Defendant Central Bible Evangelical Church's Second Reply In Support Of Motion For Summary Judgment

[Revised] [Proposed] Order Granting Motion

THE HONORABLE VICKI L. HOGAN
HEARING DATE: SEPTEMBER 20, 2013
HEARING TIME: 9:00AM

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR PIERCE COUNTY

BESSIE WILLIAMS,

Plaintiff,

v.

JOHN DOE, FIRST TRANSIT, INC.; CITY OF TACOMA; and CENTRAL BIBLE EVANGELICAL CHURCH, jointly and severally,

Defendants.

NO. 11-2-15017-3

[PROPOSED] ORDER GRANTING DEFENDANT CENTRAL BIBLE EVANGELICAL CHURCH'S MOTION FOR SUMMARY JUDGMENT

THIS MATTER, having come on duly and regularly for hearing before the undersigned Judge of the above-entitled Court on Defendant Central Bible Evangelical Church's Motion for Summary Judgment, and the Court having reviewed the following:

1. Defendant Central Bible Evangelical Church's Motion for Summary Judgment;

2. Declaration of Stephen Skinner in support of Motion for Summary Judgment;

3. Declaration of Louis Diana in support of Motion for Summary Judgment;

4. Defendant Central Bible Evangelical Church's Reply on Motion for Summary Judgment;

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5. Defendant Central Bible Evangelical Church's Second Reply in Support of Motion for Summary Judgment; and being otherwise fully advised in this matter, it is hereby

ORDERED, ADJUDGED AND DECREED that Defendant Central Bible Evangelical Church's motion for summary judgment is GRANTED in its entirety and all claims asserted against Defendant Central Bible Evangelical Church are hereby dismissed with prejudice.

ORDERED, ADJUDGED AND DECREED that Plaintiff and her counsel must pay Defendant $500 in terms for causing Defendant's counsel to appear for the original August 30, 2013 hearing on this motion. Plaintiff and her counsel must pay the $500 in terms by or before September 20, 2013.

DATED this _____ day of _____, 2013.

_____
JUDGE VICKI I. HOGAN

Presented by:
ANDREWS • SKINNER, P.S.

WSBA # 42054

By /s/ for: _____
STEPHEN G. SKINNER, WSBA # 17317
Attorney for Defendant
645 Elliott Ave. W., Ste. 350, Seattle, WA 98119
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stephen.skinner@andrews-skinner.com

Approved as to form:
LAW OFFICE OF MICHAEL EWETUGA

By _____
MICHAEL EWETUGA, WSBA #37596
1401 S. Union Ave., Tacoma, WA 98405
253-235-9034/phone

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BETTS, PATTERSON & MINES, P.S.

By_____
LAURA E. KRUSE, WSBA #32947
Attorneys for Defendants First Transit and Philip Halsten (aka John Doe)
701 Pike St, Ste 1400, Seattle, WA 98101-3927
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lkruse@bpmlaw.com

Andrews • Skinner, P.S.
645 Elliott Ave. W., Ste. 350
Seattle, WA 98119
Tel: 206-223-9248 • Fax: 206-623-9050

APPENDICE G

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

BESSIE WILLIAMS, Plaintiff, vs. JOHN DOE; FIRST TRANSIT, INC.; CITY OF TACOMA; and CENTRAL BIBLE EVANGELICAL CHURCH, Jointly and severally Defendants.	NO. 11-2-15017-3 NOTICE OF APPEARANCE

TO: THE CLERK OF THE ABOVE-ENTITLED COURT;

AND TO: THE PROSECUTING ATTORNEY

COMES NOW MICHAEL O. EWETUGA, of the LAW OFFICE OF MICHAEL EWETUGA, and gives notice of appearance as attorney for the above-named Plaintiff, and requests that all further pleadings in this action be served upon him at 1401 S Union Ave, Tacoma, Washington 98405.

DATED August 20, 2013

/s/ Michael Ewetuga
Michael O. Ewetuga, WSBA #37596
Attorney for Defendant

Law Office of
Michael Ewetuga
1401 S. Union Ave
Tacoma, WA 98405
(253) 235-9034; Fax (253) 759-4759
Email: michael@thetacomalawyer.com

APPENDICE H

The Honorable Vicki L. Hogan
Trial Date: February 13, 2014
Hearing: September 20, 2013
Time: 9:00 a.m.

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

BESSIE WILLIAMS, Plaintiff, vs. JOHN DOE; FIRST TRANSIT, INC.; CITY OF TACOMA; and CENTRAL BIBLE EVANGELICAL CHURCH, jointly and severally, Defendants.	NO. 11-2-15017-3 DECLARATION OF LAURA E. KRUSE IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I, Laura E. Kruse, am competent to testify to the matters set forth herein and make this declaration of my own personal knowledge and belief.

1. I am one of the attorneys representing Defendant First Transit and Phil Halsten in the above-captioned matter.

2. Attached hereto as **Exhibit A** is a true and correct copy of the Court's August 30, 2013 Minute Entry.

3. The procedural history of this litigation has been tortured, as co-Defendant's counsel appropriately pointed out at the initial oral argument on Defendants' motions for summary judgment on August 30, 2013.

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4. Discovery has long been delayed, at no fault of either Defendant. For instance, despite Defendants' long standing request to take Plaintiff's deposition, beginning in December 2012, her deposition was not conducted until June 24, 2013 and June 25, 2013. Plaintiff's counsel, Ms. Coleman, continued to cancel her client's deposition, after agreeing to appear, or failed to respond to Defendants First Transit's numerous requests for deposition dates.

5. Plaintiff and her attorneys then failed to supplement and fully answer Defendants First Transit's discovery responses, despite numerous requests to do so. Indeed, Defendant's first request of Plaintiff to supplement her discovery was in February 2013 and, despite two orders compelling her to do so, she has still yet to fully answer her discovery or tender payment for her discovery violations.

6. On May 24, 2013, the Court granted Defendants First Transit's Motion to Compel, ordered Plaintiff to supplement her written discovery by June 3, 2013 and to pay $2,590 to Defendant First Transit as a discovery sanction. Although her supplemental responses were due on June 3, 2013, as ordered by the Court, Plaintiff's counsel only sent partial responses to Defendant's counsel by fax on June 6, 2013, three days late. She also failed to tender payment to Defendant First Transit for her discovery violations. Attached hereto as **Exhibit B** is a true and correct copy of the Court's May 24, 2013 Order.

7. On June 21, 2013, on Defendant's Motions for Sanctions, the Court then ordered Plaintiff to fully answer her discovery and ordered her to pay an additional $1,100 as a discovery violation, by or before June 10, 2013. Plaintiff and her attorneys have still failed to fully answer her written discovery and have also failed to pay $3700 total for their ongoing discovery violations. Attached hereto as **Exhibit C** is a true and correct copy of the Court's June 21, 2013 Order.

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8. On June 18, 2013, local counsel for Plaintiff, David Britton, who was the attorney that submitted a *pro hac vice* application for Plaintiff's Michigan counsel, Ms. Coleman, filed a notice of intent to withdraw, indicating that he was no longer going to represent Plaintiff or associate with Ms. Coleman.

9. To date, no other counsel has submitted a *pro hac vice* application to associate with Ms. Coleman. To this extent, Ms. Coleman's response and her declaration, which was filed in opposition to Defendants First Transit's Motion for Summary Judgment, cannot be considered by the Court, as Ms. Coleman is effectively attempting to practice law in Washington without a license and without permission to do so.

10. Nevertheless, even though Ms. Coleman was not permitted to appear in this Court, Defendants First Transit still timely served her and the Plaintiff with a copy of their Motion for Summary Judgment on August 2, 2013. Attached as **Exhibit D** is a true and correct copy of my legal assistant's Declaration of Service, indicating that both Ms. Coleman and Plaintiff were served with Defendants' motion on August 2, 2013. Thus, despite being timely served with Defendants' motions, Ms. Coleman failed to timely file a response to Defendants' motion by the August 19, 2013 deadline.

11. New local counsel, Mr. Ewetuga, filed a notice of appearance on August 21, 2013, but did not serve it on Defendants. He then contacted Defendants' counsel on Thursday, August 22, 2013, to request an extension of time to respond. Although Defendants refused, noting that counsel needs to move the court for an extension, Plaintiff never filed anything before the August 30, 2013 summary judgment hearing date.

12. Instead, as this Court likely remembers, Mr. Ewetuga argued that he had insufficient time to move for an extension because he had other motions on his calendar and because he was not feeling well, and argued that since he was new to the matter, that additional

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time should be granted for him to evaluate the claim and assess whether an opposition should be filed. Mr. Ewetuga's argument implied that Plaintiff did not have any representation while the motion was pending and, thus, could not timely respond. Despite Mr. Ewetuga's implication to the Court and argument that he was going to evaluate the claim, Plaintiff's opposition to Defendant First Transit's summary judgment was filed by Ms. Coleman, the attorney who has represented Plaintiff throughout the duration of this motion practice.

13. The Court graciously granted Mr. Ewetuga's oral motion to extend the date by which to respond to Defendants' motions for summary judgment, until September 9, 2013. At that time, the Court directed counsel to file and serve a response – or, a letter to counsel and the Court saying that no response was to be filed - no later than the close of business on September 9, 2013. As Defendants First Transit's Second Reply reflects, **no response was received by the end of the day on September 9, 2013.** Instead, Ms. Coleman emailed Plaintiff's response and declarations to Defendants' counsel at 5:59 p.m. and 6:03 p.m. on Tuesday, September 10, in complete disregard to the Court's Order. Even more telling of Plaintiff's disrespect for the Court, is that Plaintiff did not file her response and supporting declarations until Wednesday, September 11, 2013 – two-days after the Court directed those pleadings to be filed and served.

14. Plaintiff and her attorneys continue to take advantage of the Court's leniency, causing Defendants' attorneys inconvenience and prejudice in being able to defend this matter. For instance, had Plaintiff timely filed her opposition on September 9, as directed by the Court, Ms. Croll, an associate at Betts, Patterson & Mines, had time set aside on Tuesday, September 10, to prepare Defendants' reply. Instead, because Plaintiff's response was not received until after the close of business on September 10, I had to adjust my work and personal schedule to work over the weekend, in order to timely file this reply. Plaintiff did not ask for another

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extension of time, did not contact us to advise of their intended delay, and failed to provide any excuse as to why – again – her response was not timely filed.

15. Attached hereto as **Exhibit E** are true and correct copies of certain pages of Ms. Williams Deposition, taken on June 24 and June 25, 2013.

16. At the August 30, 2013 hearing, Defendants' counsel jointly sought sanctions for having to unnecessarily appear at the hearing in the amount of $500. Defendants First Transit renews that request for sanctions here. Defendants First Transit also seeks an additional $1655 for having to prepare this reply and for having to attend the second summary judgment hearing on September 20, 2013. I spent 6 hours preparing this reply and expect to spend at least 3 hours driving to and from Pierce County and in having to attend the second hearing.

I declare the foregoing to be true and accurate to the best of my knowledge under penalty of perjury.

Laura E. Kruse

Executed this 16th day of September, 2013,
at Seattle, Washington.

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CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of Kitsap County. I am over 18 years of age and not a party to this action. My business address is One Convention Place, Suite 1400, 701 Pike Street, Seattle, WA 98101-3927.

On the date indicated below, I caused a true and correct copy of the attached document to be served in the manner noted upon:

Michael Ewetuga Law Office of Michael Ewetuga 1401 S. Union Ave. Tacoma WA 98405 Michael@thetacomalawyer.com	Attorney for Plaintiff __ Via Mail XX Via Messenger __ Via Facsimile: __ Via Email	XX Copy Only __ Original __ Original + Copy	
Stephen G. Skinner Andrews Skinner, P.S. 645 Elliott Ave. West, Suite 350 Seattle, WA 98119 Stephen.Skinner@andrews-skinner.com Liz.curtis@andrews-skinner.com	Attorney for Deft Central Bible Evangelical Church XX Via Mail __ Via Messenger __ Via Facsimile: XX Via Email	XX Copy Only __ Original __ Original + Copy	
Katrina J. Coleman Law Office of Katrina J. Coleman P. O. Box 24193 Lansing, MI 48909 Email: hyprnike@comcast.net	Co-Counsel for Plaintiff XX Via Mail __ Via Messenger __ Via Facsimile XX Via Email	XX Copy Only ___ Original	

DATED this 16th day of September, 2013 at Seattle, Washington.

Cynthia Daniel
Legal Assistant
cdaniel@bpmlaw.com

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EXHIBIT A

9/3/2013 22473 20064

IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

BESSIE WILLIAMS

Plaintiff(s)

vs.

JOHN DOE

Defendant(s)

Cause Number: 11-2-15017-3

MEMORANDUM OF JOURNAL ENTRY

Judge/Commissioner: VICKI L. HOGAN
Court Reporter: RAELENE SEMAGO
Judicial Assistant/Clerk: ANDREW SHANSTROM

WILLIAMS, BESSIE	Michael Ewetuga	Attorney for Plaintiff/Petitioner
DOE, JOHN	Laura Elizabeth Kruse	Attorney for Defendant
FIRST TRANSIT INC	Laura Elizabeth Kruse	Attorney for Defendant
CITY OF TACOMA		
CENTRAL BIBLE EVANGELICAL CHURCH	STEPHEN GIFT SKINNER	Attorney for Defendant

Proceeding Set: Motion - Summary Judgment
Proceeding Outcome: Continued
Resolution:

Outcome Date: 08/30/2013 9:32

Clerk's Scomis Code: HCNTU
Proceeding Outcome code: CONT
Resolution Outcome code:
Amended Resolution code:

IN THE SUPERIOR COURT, PIERCE COUNTY, WASHINGTON

BESSIE WILLIAMS

vs.

JOHN DOE

Cause Number: 11-2-15017-3
MEMORANDUM OF JOURNAL ENTRY

Judge/Commissioner:
VICKI L. HOGAN

MINUTES OF PROCEEDING

Judicial Assistant/Clerk: ANDREW SHANSTROM
Court Reporter:RAELENE SEMAGO
Start Date/Time: 08/30/13 9:22 AM

August 30, 2013 09:22 AM Court set for defendants' motions for summary judgment. Attorney Michael Ewetuga present for plaintiff. Attorney Laura Kruse present for defendants First Transit and Halston. Attorney Stephen Skinner present for defendant Central Bible Evangelical Church.

09:23 AM ATP Ewetuga addresses court, including motion to continue today's motions for summary judgment.

09:24 AM ATD Skinner's response, noting objection to motion to continue.

09:25 AM ATD Kruse's response, joining in objection to motion to continue.

09:27 AM Further argument from ATP Ewetuga on motion to continue.

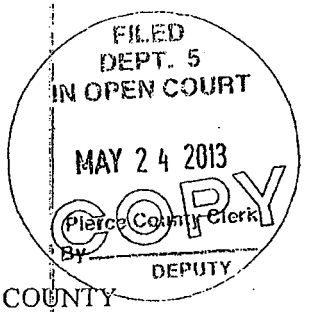
09:29 AM Court issues ruling: motion to continue granted. Court orders motions for summary judgment set over to September 20, 2013, and orders plaintiff's responses (if any) to motions due September 9. Court notes defendants will not need to submit new working copies.

09:31 AM ATD Skinner requests terms; ATD Kruse joins request. Court reserves ruling on issue of attorneys' fees.

End Date/Time: 08/30/13 9:32 AM

EXHIBIT B

The Honorable Vicki L. Hogan
Trial Date: February 13, 2014
Hearing Date: May 24, 2014
Time: 9:00 a.m.



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

BESSIE WILLIAMS,

Plaintiff,

vs.

JOHN DOE; FIRST TRANSIT, INC.; CITY OF TACOMA; and CENTRAL BIBLE EVANGELICAL CHURCH, jointly and severally,

Defendants.

NO. 11-2-15017-3

[PROPOSED] ORDER GRANTING DEFENDANTS FIRST TRANSIT, INC.'S AND PHILIP HALSTEN'S MOTION TO COMPEL PLAINTIFF'S RESPONSES TO DISCOVERY AND REQUEST FOR COSTS

THIS MATTER, having come before the above-captioned Court on May 24, 2013 and this Court having heard oral argument from counsel and having considered the pleadings and files herein, as well as the following materials, and being otherwise fully advised in the premises:

1. Defendants First Transit, Inc.'s and Philip Halsten's Motion to Compel Plaintiff's Responses to Discovery and Request for Costs;

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2. Declaration of Laura E. Kruse in Support of Defendants First Transit, Inc.'s and Philip Halsten's Motion to Compel Plaintiff's Responses to Discovery and Request for Costs and attached exhibits;

3. Defendants First Transit, Inc.'s and Philip Halsten's Reply in Support of Motion to Compel Plaintiff's Responses to Discovery and Request for Costs;

It is ORDERED, ADJUDGED and DECREED that

Defendants First Transit, Inc.'s and Philip Halsten's Motion to Compel Plaintiff's Responses to Discovery and Request for Costs is GRANTED:

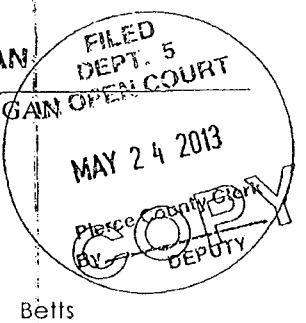
1) Plaintiff shall respond to First Transit's Interrogatories and Requests for Production to Plaintiff by or before ~~May 31,~~ June 3 2013, which is five (5) court days of the hearing on this Motion; and

2) Plaintiff and Plaintiff's counsel, Katrina Coleman, must pay Defendants First Transit their reasonable attorney's fees, in the amount of $2,590, which was incurred in pursuing this discovery and in having to bring this Motion. Payment shall be made to the law firm of Betts, Patterson & Mines, P.S. in trust for Defendant First Transit, Inc. by ~~May 31,~~ June 3 2013, which is five (5) court days of the hearing on this Motion.

LODGED IN OPEN COURT this _____ day of _____, 2013.

VICKI L. HOGAN

THE HONORABLE VICKI L. HOGAN



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Presented by:

BETTS, PATTERSON & MINES, P.S.

By _____

Laura E. Kruse, WSBA #32947
Kelly A. Croll, WSBA #30993
Attorneys for Defendants First Transit, Inc. and Philip Halsten

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One Convention Place
Suite 1400
701 Pike Street
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EXHIBIT C

The Honorable Vicki L. Hogan
Trial Date: February 13, 2014
Hearing Date: June 21, 2013
Time: 9:00 a.m.

COPY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

BESSIE WILLIAMS,

Plaintiff,

vs.

JOHN DOE; FIRST TRANSIT, INC.; CITY OF TACOMA; and CENTRAL BIBLE EVANGELICAL CHURCH, jointly and severally,

Defendants.

NO. 11-2-15017-3

~~[PROPOSED]~~ ORDER GRANTING DEFENDANTS FIRST TRANSIT, INC.'S AND PHILIP HALSTEN'S MOTION FOR SANCTIONS FOR FAILURE TO COMPLY WITH THE COURT'S MAY 24, 2013 ORDER

THIS MATTER, having come before the above-captioned Court on June 21, 2013 and this Court having heard oral argument from counsel and having considered the pleadings and files herein, as well as the following materials, and being otherwise fully advised in the premises:

1. Defendants First Transit, Inc.'s and Philip Halsten's Motion for Sanctions for Failure to Comply with the Court's May 24, 2013 Order;

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2. Declaration of Kelly A. Croll in Support of Defendants First Transit, Inc.'s and Philip Halsten's Motion for Sanctions for Failure to Comply with the Court's May 24, 2013 Order;

3. Plaintiff's Response to Defendants' Motion;

4. Defendants' Reply in Support of Motion for Sanctions; and

5. Declaration of Kelly A. Croll, with attached exhibits, For Reply in Support of Defendants' Motion for Sanctions,

It is ORDERED, ADJUDGED and DECREED that

Defendants First Transit, Inc.'s and Philip Halsten's Motion for Sanctions for Failure to Comply with the Court's May 24, 2013 Order is GRANTED; it is further

ORDERED, that Plaintiff and Plaintiff's attorney, Ms. Coleman, willfully failed to comply with the Court's May 24, 2013 Order; it is further

~~ORDERED, that Plaintiff and Plaintiff's attorney, Ms. Coleman, should be held in contempt for their willful failure to comply with the Court's May 24, 2013 Order; it is further~~

ORDERED, that Plaintiff shall provide full and complete discovery responses to Defendants First Transit, Inc. and Philip Halsten on or before ~~June~~ July 10, 2013, which is five (5) court days of the hearing on this Motion; it is further

ORDERED, that Plaintiff and Plaintiff's attorney, Ms. Coleman, shall pay Defendants First Transit their reasonable attorney's fees as a sanction for their willful failure to comply with the Court's May 24, 2013 Order, in the amount of $1,110.00, which are fees incurred by

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Defendants First Transit in having to file this Motion. Plaintiff and Plaintiff's attorney, Ms. Coleman, now owe Defendants First Transit attorney's fees in the amount of $3,700, which represents sanctions for their failure to comply with their discovery obligations and for their willful failure to comply with the Court's May 24, 2013 Order; and it is further

ORDERED, that Plaintiff and Plaintiff's attorney, Ms. Coleman, shall tender payment in the amount of $3700 to the law firm of Patterson & Mines, P.S. in trust for Defendant First Transit, Inc. by ~~June 28~~ July 10, 2013, which is five (5) court days of the hearing on this Motion.

LODGED IN OPEN COURT this _____ day of _____, 2013.

VICKI L. HOGAN

THE HONORABLE VICKI L. HOGAN

FILED
DEPT. 6
IN OPEN COURT
JUN 21 2013
Pierce County Clerk
By _____ DEPUTY

Presented by:

BETTS, PATTERSON & MINES, P.S.

By _____
Laura E. Kruse, WSBA #32947
Kelly A. Croll, WSBA #30993
Attorneys for Defendants First Transit, Inc. and Philip Halsten

[PROPOSED] ORDER GRANTING DEFENDANTS FIRST TRANSIT, INC.'S AND PHILIP HALSTEN'S MOTION FOR SANCTIONS FOR FAILURE TO COMPLY WITH ORDER ENTERED MAY 24, 2013

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EXHIBIT D

The Honorable Vicki L. Hogan
Trial Date: February 13, 2014
Hearing: August 30, 2013
Time: 9:00 a.m.

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

BESSIE WILLIAMS,

Plaintiff,

vs.

JOHN DOE; FIRST TRANSIT, INC.; CITY OF TACOMA; and CENTRAL BIBLE EVANGELICAL CHURCH, jointly and severally,

Defendants.

NO. 11-2-15017-3

DECLARATION OF SERVICE

I am a citizen of the United States and a resident of Snohomish County. I am over 18 years of age and not a party to this action. My business address is One Convention Place, Suite 1400, 701 Pike Street, Seattle, WA 98101-3927.

On August 2, 2013, I caused a true and correct copy of the below-named pleadings to be served in the manner indicated below upon the following counsel and pro se plaintiff:

Katrina J. Coleman
Law Office of Katrina J. Coleman
530 S Pine Street
Lansing, MI 48933

Betts
Patterson
Mines
One Convention Place
Suite 1400
701 Pike Street
Seattle, Washington 98101-3927
(206) 292-9988

And to

Katrina J. Coleman
P. O. Box 24193
Lansing, MI 48909

hyprnike@comcast.net

Ms. Coleman was served via both email and USPS Priority Mail, with postage thereon fully prepaid on each envelope.

Stephen G. Skinner
Andrews Skinner, P.S.
645 Elliott Ave. West, Suite 350
Seattle, WA 98119

Stephen.skinner@andrews-skinner.com
Liz.curtis@andrews-skinner.com

Mr. Skinner was served via email and by priority mail, with postage thereon fully prepaid.

Ms. Bessie Williams
710 North 104th St.
Seattle, WA 98133

Ms. Williams was served via hand-delivery by ABC Legal Messengers.

Pleadings Served:

- Defendants First Transit, Inc.'s and Philip Halsten's Motion for Summary Judgment;
- Declaration of Kelly A. Croll and attached exhibits in Support of Defendants' Motion for Summary Judgment;
- Attachment A: [Proposed] Order Granting Motion for Summary Judgment;
- Declaration of Phil Halsten;
- [This] Declaration of Service.

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(206) 292-9988

I declare under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my information and belief.

DATED this 2nd day of August, 2013 at Seattle, Washington.

Denise Mary Pope, Legal Assistant

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EXHIBIT E

Deposition of Bessie M. Williams - Vol. I

Williams v. John Doe, et al.

June 24, 2013

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THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR PIERCE COUNTY

BESSIE WILLIAMS, Plaintiff, vs. JOHN DOE; FIRST TRANSIT, INC.; CITY OF TACOMA; and CENTRAL BIBLE EVANGELICAL CHURCH, jointly and severally, Defendants.	)	No. 11-2-15017-3

VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION

OF

BESSIE M. WILLIAMS

(Volume I)

Taken at 701 Pike Street, Suite 1400

Seattle, Washington

DATE TAKEN: JUNE 24, 2013

REPORTED BY: SHELBY KAY K. FUKUSHIMA, CCR #2028

A P P E A R A N C E S

FOR THE PLAINTIFF:

KATRINA J. COLEMAN
Attorney at Law
530 South Pine Street
Lancing, Michigan 48933
517.402.5502
hyprnike@comcast.net

FOR FIRST TRANSIT, INC., AND PHIL HALSTEN:

LAURA E. KRUSE
Betts, Patterson & Mines
701 Pike Street
Suite 1400
Seattle, Washington 98101
206.292.9988
lkruse@bpmlaw.com

FOR CENTRAL BIBLE EVANGELICAL CHURCH:

LAURA HAWES YOUNG
Andrews Skinner
645 Elliott Avenue West
Suite 350
Seattle, Washington 98119
206.223.9248
laura.young@andrews-skinner.com

ALSO PRESENT:

STEPHEN CRACKER, Videographer

* * * * *

remember.

Q. How long ago was it?

A. In '07, I -- in '07.

Q. And where were you when you fell?

A. In front of my house.

Q. Do you remember the circumstances as to why you fell?

A. No. I got out of the car, and I -- I remember Sharon opened the car door, and that's -- and I fell.

Q. And you were a passenger in the vehicle?

A. Yes.

Q. Do you current -- you don't -- do you currently drive?

A. No, no.

Q. Okay.

A. No.

Q. Do you -- when was the last time -- do you have a driver's license?

A. No.

Q. Okay. Have you ever driven?

A. Yes.

Q. Okay. When was the last time you drove?

A. Oh, about nineteen -- thirty -- thirty years ago maybe.

Q. Okay.

A. Thirty, forty.

use the wheelchair?

A. I don't remember that now.

Q. Was it before or after the fall of 2007?

A. Before -- I -- I don't remember.

Q. Okay. In October 2008, were you able to walk without any type of assistance, or did you need mobility assistance in October of 2008?

A. Will you repeat that again?

Q. Prior to the October 2008 incident, did you need any type of other mobility services like -- assistance such as a cane or a walker, or were you primarily using a wheelchair at that point prior to the October 2008 accident?

A. Before the accident?

Q. Before the accident.

A. I was walking.

Q. And how did you walk?

A. I was walking.

Q. Without any assistance?

A. No -- excuse me. Perry would hold his hand out. Before the accident I was walking (indicating).

Q. Okay. Before the accident, did you have to use any type of walker?

A. I had a walker. I -- I had a walker there.

Q. Okay. And did you use a walker prior to October 2008?

Q. Okay. Do you remember when that you were informed to not use the fork?

A. No. I -- no.

Q. At any point prior to October of 2008, did you own a cane, or was it the fork that you only owned?

A. Somebody gave me that fork.

Q. Do you remember when you needed assistance to walk? When you started to need assistance to walk, what time period that was?

A. No, I don't remember.

Q. Okay. It was before October of 2008, though, correct, where you needed assistance to walk?

A. I don't remember.

Q. Okay. The shuttle driver, Phil, could you describe for me what he looked like?

A. I don't remember what Phil looked like.

Q. Okay. Anything of -- any character -- was he a big guy? Tall? Heavy?

A. I don't remember now.

Q. Okay. And you said he -- he has -- he had driven you before, correct?

A. Yes.

Q. And do you recall where he had taken you before?

A. Pardon me?

Q. Where he had taken you before?

A. No.
Q. And how many times he had taken you? Do you have any memory of that?
A. No.
Q. Were you in a wheelchair in the prior incident where he had -- he was taking you places in the shuttle?
A. I don't remember that either.
Q. Okay. So before the October of 2008 incident, do you have a memory of Phil pushing you at all in the wheelchair?
A. (Witness shakes head.)
Q. Prior to the October of two thousand --
A. Before?
Q. Yeah, before.
A. I don't remember.
Q. So you testified that you told Phil three times not to push you up the hill?
A. Three times.
Q. Why were you -- why did you tell him three times not to push you up the hill?
A. I've lost about 35 pounds that's why. I was a big woman.
Q. Do you know how much you weighed on that day --
A. No.
Q. -- approximately?
A. It was in the 200s.

Q. Do you know how much you weigh currently?
A. Maybe about 199. Maybe two-oh-something.
Q. Okay. But you believe you were 35 pounds heavier than you were today?
A. Yes.
Q. Okay. So I guess just to -- I don't want to testify for you, so what were you concerned with about your weight was what? Being pushed up the hill? That caused you concern?
A. Yeah, yes. Some -- I don't remember what. I -- I don't remember what the concern was, but I feel that I -- I don't know what was happening that day.
Q. So but you told him three times not to push you up?
A. Three times.
Q. And but you don't know why you told him not to do that?
A. No. I -- I -- no. I know -- I felt I was too big for him to go up this hill.
Q. So you were -- you were concerned that he couldn't push you up the hill?
A. Yes, dear.
Q. Okay. Was there anything else causing you concern about the -- the scene of the situation other than that you being too big? Is there anything else that caused you concern?
A. I feel he should have put me back on the shuttle.
Q. Why?

A. Safety.
Q. Okay. Then what would he have done if he put you back on the shuttle?
A. Took me around --
Q. Okay.
A. -- to the front.
Q. So he dropped you -- he -- he initially went to a different spot, correct?
A. The first place he went was into the back.
Q. Of the church?
A. Of the church.
Q. Was there a parking lot there?
A. I don't -- I don't know.
Q. Okay. So did he pull into the parking lot?
A. I don't remember.
Q. Okay. Do you remember where he -- he took you off the shuttle? Was that in a parking lot, or was that on the street?
A. I was at the church.
Q. Okay. But were you in a parking lot of the church, or were you on the street, a side street of the church?
A. I -- I -- I don't remember that.
Q. And if I understand correctly, you don't have any memory as to whether or not Phil ever put you in a wheelchair before this day?

A. No.
Q. Okay. Up until that time where he -- you disembarked from the shuttle, do you have any --
MS. COLEMAN: Excuse me. Could you clarify "disembarked"?
BY MS. KRUSE:
Q. After the time that you got off the shuttle, when Phil took you off the shuttle, were you concerned at all by anything that Phil did when he took you off the shuttle?
A. That day?
Q. Yeah, up to that point.
A. No.
Q. Okay. Do you know who it was that told you that you could not enter the church at that point?
A. I don't remember him.
Q. Okay. You also testified that Phil was running with you?
A. He was, yes. He was running up -- it was a hill. He was running up the hill.
Q. Okay. While pushing you?
A. Yes.
Q. Do you know how fast he was going?
A. Miles? I -- I don't remember, dear, but it was -- I feel it was too fast for him to stop --
Q. Did you --

A. -- because...
Q. Sorry.
A. Excuse me.
Q. Go ahead. I'm sorry.
A. Excuse me.
Q. No. You were testifying, so I don't want to interrupt.
You felt that it was too fast for him to stop?
A. Yes.
Q. And you remember having that feeling before the accident occurred?
A. Yes. I -- yes.
Q. And I guess what's your basis for knowing that he was running versus walking? I mean, how do you -- how are you measuring that? How are you knowing that he was running?
A. Would you -- please, would you speak again?
Q. Yeah. I'm trying to figure out -- he's pushing you, correct, so you're in front of him?
A. Yes.
Q. Are you telling me that just based on speed, you feel that he was running, the speed that you were traveling up the hill?
A. Well, he said he pump iron -- pump iron every day. He was able to handle that.
Q. Okay. I'm just trying to figure out how you --

holding on. I -- I -- I remember. This is about the only thing that I can remember. I have horrible nightmares. I'm not -- I don't sleep. I remember that. I remember that.

And -- and -- he was running, dear. He was running to get up that hill (indicating).

Q. So prior to this incident, just so I make sure, you have no memory of -- of Phil pushing you in a wheelchair before, correct, prior to October of 2008?

A. No.

Q. Okay.

A. No.

MS. COLEMAN: You okay?

THE WITNESS: I'm all -- I'm all right.

MS. COLEMAN: We've been going a while.

Do you need a break or are you okay?

MS. KRUSE: Yeah. We've been going for a while.

Do you need a break?

THE WITNESS: We can break.

MS. KRUSE: Okay.

THE VIDEOGRAPHER: This ends DVD No. 1 of the deposition of Bessie Williams. The time is 10:58 a.m. We're going off the record.

(A break was taken from 10:58 a.m. to 11:13 a.m.)

THE VIDEOGRAPHER: We are back on the record. The

Q. If you flip to 1H, it's the last picture, do you see the gentleman standing on the end of the sidewalk?
A. (Witness reviews document.)
Q. Do you see that person standing on the end?
A. This, here (indicating)?
Q. Yeah. Do you know who that person is?
A. No.
Q. Okay. Does this sidewalk at all reflect -- does this sidewalk reflect where the incident occurred, or is that not your memory?
A. That's not my memory.
Q. So you -- once the impact occurred with the wheelchair and the -- and the hole, as you've described it -- and you can't tell me what size the hole is; is that correct?
A. That's correct.
Q. Could you tell me if it was a difference in height? Was there like a -- one part was higher or lower on the sidewalk?
A. I don't remember.
Q. And you don't know what part of your wheelchair impacted the hole? Meaning, was it the left tires? Right tires? Both tires?
A. I don't remember.
Q. Okay. Did your wheelchair at that time have footrests?

A. I don't remember that.
Q. Okay. Did you use footrests?
A. I do use them, yes.
Q. Do you have a memory of using them on that day?
A. No.
Q. Have you ever -- with regard to that wheelchair, had you ever removed your footrests? Are the footrests removable?
A. Yes.
Q. Have you ever removed them?
A. No, I have never.
Q. Had you ever had them removed?
A. They have been re -- yes.
Q. Well, on what occasions have they been removed?
A. On what occasion? I don't know. I don't -- to probably -- I don't know. To clean or -- or -- I remember -- excuse me -- one time Val took them off because the wheelchair was squeaking.
Q. Was that before October of 2008?
A. Yes.
Q. Okay. Did he ever -- were they replaced after that?
A. Yes.
Q. Okay. Was that before October of 2008?
A. Yes.
Q. Okay. So do you have a memory of whether or not the footrests were installed on the wheelchair as of October 26,

2008, the day of this incident?
A. Yes.
Q. They were on the wheelchair?
A. I can't remember, but...
Q. Okay. If you were not using the footrests, would your feet have touched the ground?
A. I -- I don't know.
Q. Just a general -- in general.
If you're in that wheelchair and you were not using the footrests, would your feet, then, touch the ground?
A. Yes.
Q. Okay.
A. Yes.
Q. Do you have any memory of your feet hitting the ground along the sidewalk?
A. No.
Q. Okay. No memory, or you don't think it happened?
A. I had my foot -- my feet up on them.
Q. Up on?
A. On the -- the footrests. Someone put them up there; always would put them up there.
Q. Okay. So now you do have a memory of your feet being on the footrests?
A. Yes, I -- I do.
Q. Okay. Okay. Because it's different from what you

previously testified.

A. I -- I know, but -- Perry put them up there, yes, because he always take care my wheelchair, my footrests.

Q. Oh, okay. Was Perry with you at this time of the incident?

A. Not -- no. That -- that's it.

Q. So you don't know whether or not Perry --

A. Perry was not with me when the accident took -- took...

Q. Took place?

A. Yes.

Q. But you believe Perry put your feet on the footrests before the incident?

A. He always would do that.

Q. Do you have a memory of him doing that on that day?

A. (Witness nods head.)

Q. You have to verbalize your answer.

A. Yes.

Q. Okay. And at what point did -- was that before or after you went to church the first time?

A. Both times.

Q. Was Perry -- where did you get picked up by the shuttle bus?

A. In front of my house.

Q. Was Perry at your house when you got picked up?

APPENDICE I

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

BESSIE WILLIAMS, Plaintiff, vs. JOHN DOE, FIRST TRANSIT, Inc; CITY of TACOMA; and CENTRAL BIBLE EVANGELICAL CHURCH, Defendants.	Superior Court No. 11-2-15017-3 Court of Appeals No. 45504-8-II

VERBATIM TRANSCRIPT OF PROCEEDINGS

August 30, September 20, 2013
Pierce County Superior Court
Tacoma, Washington
Before the
HONORABLE VICKI L. HOGAN

Raelene Semago
Official Court Reporter
930 Tacoma Avenue
334 County-City Bldg.
Department 5
Tacoma, Washington 98402

REPORTED BY: RAELENE SEMAGO, CCR, RPR, CMRS

APPEARANCES

FOR THE PLAINTIFF:

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FOR FIRST TRANSIT:

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FOR CENTRAL BIBLE EVANGELICAL CHURCH:

STEPHEN G. SKINNER
Andrews Skinner, P.S.
645 Elliott Ave. W., Suite 350
Seattle, Washington 98119

BE IT REMEMBERED that on Friday, August 30, 2013, the above-captioned cause came on duly for hearing before the **HONORABLE VICKI L. HOGAN**, Judge of the Superior Court in and for the County of Pierce, State of Washington; the following proceedings were had, to wit:

<<<<<< >>>>>>

THE COURT: Then this is number one, Andy. All right. This is Cause No. 11-2-15017-3. Mr. Ewetuga, you are here representing Bessie Williams?

ME. EWETUGA: That is correct, Your Honor.

THE COURT: All right. And then we've got for First Transit and the Halstens?

MS. KRUSE: I am Laura Kruse.

THE COURT: That's why there are so many lawyers. And for Central Bible, Defendant Central Bible?

MS. SKINNER: Steve Skinner, Your Honor.

THE COURT: All right. The two Defendants have moved for Summary Judgment.

Mr. Ewetuga, where are we? I didn't get any reply from the Plaintiff.

ME. EWETUGA: I just filed the Notice of Appearance last week, Your Honor, and I called counsel to see if we can agree to move today's date to enter that

date, so unfortunately, you are looking at the filing. I talked to counsel, who is out of state, and as of last week I was preparing for a motion -- actually two motions -- that I had in two separate courts on Monday and Tuesday, and which was why I called, because I wasn't also feeling too good. So I was thinking that we can do that without having to come to court today, so as to give me a chance to look at the file.

THE COURT: All right. Who wants to go first, Central Bible or First Transit and Halsten?

MS. SKINNER: I am happy to go first, Your Honor.

THE COURT: Central Bible?

MR. SKINNER: Yes.

THE COURT: Okay.

MR. SKINNER: We have moved for Summary Judgment, separate motions for Summary Judgment.

THE COURT: It sounds like what Mr. Ewetuga is asking for is an undocketed but motion to continue based upon recent appearance and sounds like some health issues here this last week.

MR. SKINNER: Your Honor, first of all, I would note for the record that we were never served with a Notice of Appearance for Mr. Ewetuga. We came across this just checking the docket to confirm that there had been no

responsive filings with respect to our motion.

We found out there was a Notice of Appearance filed there. It was never served on our office, but nonetheless when we filed our reply with the Court we also served it on Mr. Ewetuga because we did see his name in the court file. But that being said, this case has, as the Court is aware, has had kind of a tortured history, one that has resulted in the Court sanctioning the Plaintiff for delays in discovery.

It's our position is that it's time just to move this ahead, and we would oppose any continuance of the motion that we filed, and I presume First Transit would take the similar position.

THE COURT: All right. Thank you. Where is First Transit and the driver, Halsten?

MS. KRUSE: Your Honor, we join with Central Bible with regard to the opposition as well. This case initially was filed in 2011. I believe, to my memory, there's been at least two trial continuances already, possibly three. We have been dealing with a pro hac vice attorney who is now no longer permitted to appear since that local counsel withdrew.

The motion was properly served on Bessie Williams with a courtesy copy to that attorney in Michigan. We did not get notice as well of the attorney's Notice of Appearance.

What we did receive on Thursday of last week was a telephone call which then prompted us to look at the docket to see who was appearing, and who the gentleman was who was actually calling us.

At that point that's when we realized that a notice of appearance was filed, and I believe that even maybe improperly docketed. I think it says it's being served on the Prosecuting Attorney's Office too. So with respect to the Notice of Appearance, it is patently not proper at this point.

We did actually -- I had an associate that did call the attorney and advised him that we were not willing to agree to a continuance at this point. And even at that point there was still time to move for a continuance. We weren't willing to stipulate to it because we were -- as counsel has pointed out, this has been a tortured case. We have twice moved for discovery sanctions. Right now there is an outstanding order for $3,700 due to our client for discovery violations. It took us an extremely long time to even get the Plaintiff's deposition noted with several cancellations. To this day we don't even have the check from Plaintiff's counsel to satisfy the $3,700, from Plaintiff or Plaintiff's counsel, a former Plaintiff's counsel out of Michigan to satisfy the outstanding discovery violations.

Trial is quickly approaching again in February. With the holidays coming up, there is no expert reports. There is no written discovery done on any of our clients. The case needs to be put to rest.

THE COURT: All right. Thank you.

Mr. Ewetuga, anything further on your motion to continue?

MR. EWETUGA: Your Honor, I did send the notice. I mailed copies of the Notice of Appearance. The notice is improper, that is something that I can do because it was done in a hurry because of what was happening to counsel in Michigan who called me. And because I had these other cases that I was doing, and I wanted to file a Notice of Appearance. If Your Honor would check LINX, I actually filed it on behalf of the Defendants, then had to refile it on behalf of the Plaintiff because there was something that was -- because she told me of the motions coming up and the need for somebody to stand in.

I don't know what has been going on in the case, but after I talked to counsel and she told me about the sanctions, I talked to counsel out of state in Michigan and she said they are making efforts to pay the sanction that was imposed by the Court. And she said that she tried to get in contact with counsel about some time to pay that.

But, Your Honor, what are we asking, respectfully,

like I said, if I feel in my opinion that this is a frivolous case, I will be the first to say because I am not interested in wasting the Court's time. But I would like an opportunity to actually look at the file, and if this is the case I will not -- I will not be pushing forward with a case that I believe to be frivolous.

So I am asking for a short time for me to be able to look at the file and file a response to the motions that were filed if need be, and go from there.

THE COURT: All right. Thank you. Certainly the Court is sympathetic with both positions. Clearly in calling this case on what we expected was an uncontested portion of the docket, I didn't expect that there was opposition because we received nothing. We did not even receive a working copy of any Notice of Appearance.

Be that as it may, obviously the Court would prefer to have the case resolved on the merits rather than on a technical failure to respond position. And so I will give you three weeks, Mr. Ewetuga. I will set this over to September 20th. I have all the working papers from Central Bible and First Transit and Halsten, and no one needs to docket it. However, I am going to require that your response would be due by the 10th of September, which is -- or, excuse me -- by the 9th, 11 days before the hearing, which would have been the requirement for this motion but

for new counsel appearing. So you need to get your working copies to both attorneys, and to my Judicial Assistant by the 9th of September, if there is a response.

On the other hand, if there is no response that you are going to submit you need to notify counsel in writing that that's your position, so that they are not waiting, wondering if you have evaluated and have no reply. In which case, then you can then submit your orders and I would grant Summary Judgment based upon Mr. Ewetuga's evaluating the case and determining there is no basis to go forward with either response.

So no one needs to note anything. It's set over in LINX to the 20th, and that's the deadline for your reply. Notification, either way, your reply on both motions to counsel September 9th, or advisement that it's not -- you are not responding, and then you can send in your orders once you have that response after the 9th and you don't need to appear on the 20th.

All right. Any questions?

MS. KRUSE: Your Honor, just to clarify, if a response is received, I assume that we have the appropriate period to submit a reply?

THE COURT: Yes, I tried to look at enough time. It's not the full 28 days, but I am not going to go out to the 27th of September because of other matters

docketed. So it gives Mr. Ewetuga some time to investigate, and not a lot, and see whether or not there is an appropriate response on these two motions. All right.

MR. SKINNER: Your Honor, may I ask for additional relief here?

THE COURT: Yes.

MR. SKINNER: In being brought in today and hearing of this request for a continuance comes as a surprise and expense to my client. We would ask the Court award terms in the amount of $500 to compensate us for having to come down here twice for a motion that should have been heard rightfully today under the proper scheduling.

THE COURT: All right. I am going to reserve on that issue, see where we are on the 20th. It may very well be that there is no court appearance needed on the 20th, but I will make a note that I not only saved your working copies, but I will reserve on attorney fees at that time.

I mean, clearly, there is an issue with notice for everyone, but everyone is here and the Court was able to at least consider the undocketed motion to continue on the issue.

MS. KRUSE: Defendants First Transit join in on that.

THE COURT: I got that, figured it out.

MR. SKINNER: Thank you, Your Honor.

(End of hearing.)

BE IT REMEMBERED that on Friday, September 20, 2013, the above-captioned cause came on duly for hearing before the **HONORABLE VICKI L. HOGAN**, Judge of the Superior Court in and for the County of Pierce, State of Washington; the following proceedings were had, to wit:

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THE COURT: All right. This is Cause No. 11-2-15017-3. Why don't we have everyone identify themselves for the record.

MR. EWETUGA: Good morning, Your Honor. For the record, I am Michael Ewetuga here for the Plaintiff.

THE COURT: All right. And then for, I guess, First Transit and Halsten.

MS. KRUSE: Laura Kruse from Betts Patterson, Your Honor, here for First Transit and Mr. Halsten.

THE COURT: For Central Bible?

MR. SKINNER: Good morning, Your Honor. Steve Skinner.

THE COURT: All right. This is basically a continuation of the Defendant's Motion for Summary Judgment. Mr. Ewetuga appeared on the date of the Summary Judgment, the Court gave latitude to allow him to respond. The Court did not receive from Mr. Ewetuga any working

papers or response. What I did receive through Central Bible's reply was that there had been documents filed by pro hoc vice under Mr. Britton that had not been -- her admission as pro hoc vice had not been reaffirmed because Mr. Britton had withdrawn from the case and new application, consistent with the requirements for a pro hac vice applicant had not been satisfied as of today. So that's where I think we are.

So I think that procedurally we have that first issue and that hurdle to get over. And since Central Bible brought that to the forefront in its materials, I should probably hear from your first.

MR. SKINNER: Thank you, Your Honor. As we pointed out in our reply submission, there was -- the Court previously ordered the Plaintiff on their -- in response to the informal request for a continuance of the last hearing to file a response, responsive briefing to both Summary Judgment motions, not later than, I believe that it was September 9th. We did not receive anything until September 11, two days after the Court's deadline for the submission, and of course, that submission was not from the counsel of record, member of the bar, Mr. Ewetuga, but it, in fact, was a submission from the previously admitted Katrina Coleman out of Michigan who is no longer pro hac vice in this case. Looking at the docket when Mr. Britton withdrew

from the case, it effectively terminated her admission into this case.

She has not submitted any additional admission papers. She is not of record, and we would take the position that not only is the submission untimely, but it's completely improper because it was not submitted by a member of the Washington Bar or somebody who is specially admitted to the case. And for that reason it should not be considered by the Court in responding to either motion that's currently pending before the Court.

THE COURT: All right. And then First Transit and Halsten, I assume, would join in that motion?

MS. KRUSE: Correct, and I believe that our reply addresses both of those issues, less so -- more on the timing aspect of it, just for the fact that the Court was very specific when they continued -- when it continued the motion prior to say that the submission needs to be in, or some sort of directive needs to be into the Court and to the parties by the 9th, and it did not happen.

THE COURT: All right. So that's where we are, Mr. Ewetuga. What is your rely on this on behalf of Ms. Williams?

MR. EWETUGA: Your Honor, first I would like to say that this is my first contact with this kind of proceeding. I am not really used to that, and I was

contacted by Ms. Coleman to put in a Notice of Appearance because she would like somebody from the jurisdiction to participate in this case. And so when Your Honor made the order for us to file a reply to the Defendant's motion, I conveyed that to Ms. Coleman. And what we agreed on was that she was going to prepare the reply. She was going to email them to me so I can take a look at them, and see if I agree with what she is saying.

I did impress it on her that the case has been in the stage that it's been. It was time for us to be serious about the case and file the necessary papers that we needed to file. And when that did not happen, my first reaction was to file a notice of withdrawal, because I am not used to doing stuff like wasting the Court's time. It's not something that I enjoy doing, and it is not something that I will do. And when she did that, I told her that that was not what we agreed on, and at that time my children were visiting from Africa, so there was no time that I was going to -- and you can see on my Facebook that my kids were here, and they were with me for four months. I was trying to be a loyal participant, but at the same time, something I am not used to.

Then she said she was going to come and actually do the motion, which did not happen. What I got was an email yesterday apologizing for putting me in this position and

asking the Court to -- because she said the declaration that she sent to me, which of course, I got yesterday. So if you will -- if the Court will permit, I will just show the Court what I got in the mail, and the email itself. I was going to make copies, but I only have that one.

THE COURT: All right. Well, I have the declaration indicating she was unavailable to appear. It doesn't address the real issue.

MR. EWETUGA: Exactly, and because of that, Your Honor, what I thought was if the Court is minded to go on with the Defendant's application, the time that I got this yesterday, which was like 6:00 p.m. or 7:00 p.m.

THE COURT: I see that.

MR. EWETUGA: So I have read the one that I was able to actually read was that of the Defendant, an identical motion, and because of that I finally had two hours of sleep, just in case the Court decides that this was going to go on because I don't want to give the impression that I am joining anyone in wasting the Court's time, and so because, I mean, based on the motion itself and the fact that I might seem unorganized every now and then, so if the Court is wanting to go on with this, I would suggest that we take the motion of Central Bible first and perhaps do the other motion next week, if the Court wants to do that.

THE COURT: Well, here is where I think we are on the primary issue which has many sub parts. First of all, Ms. Coleman's materials were untimely. The deadline was very clear, and the Court is not suggesting, Mr. Ewetuga, this is your fault in any way, but her materials were untimely, first of all. They, apparently, were received September 11th, coupled with the untimeliness, there was no compliance with the Pierce County Local Rules. I never received any working copies.

The second thing that happened was when Mr. Britton withdrew, it left Ms. Coleman's actual participation in this case -- I don't know what else to say -- it canceled it. He had sponsored the pro hac vice application, which the Court granted because of his assurances to the Court the compliance with the rules, the Washington State Bar Association and the required Rules of Professional Conduct for, in essence, an unlicensed lawyer in Washington, which is what Ms. Coleman is, although she has a license in another state.

So with that, her materials were not applicable to the case because the Court can't consider them. She is, in essence -- they are not even, I guess you could consider them amicus curiae --

MR. EWETUGA: An interloper.

THE COURT: -- a party to say I have an

interest in this case as an individual. And so it leaves us in a position with basically unopposed Summary Judgment motions which -- and I appreciate that was the discussion we had last time Mr. Ewetuga was that there was a basis for submitting documents that you would do so, and if not, then the Summary Judgments would be granted. I didn't hear argument on the Summary Judgments last time because of the request to continue.

I think that the posture that that leaves us in is that the Summary Judgments both for Central Bible and First Transit and Halsten are granted. The Court reserved on the issue of attorney fees, which I think Central Bible brought up for having to appear with then the Court setting the matter over to give Mr. Ewetuga a chance to look into the case and see what could be a potential rebuttal, or response to the Summary Judgment to raise a genuine issue of material fact.

So it is an unusual situation that I think everyone finds themselves in, Mr. Ewetuga, as well as defense counsel. And so I think that that's where we are. Summary Judgment for both of you is granted, and I am ready to sign an order and award $500 in attorney fees that were requested.

I believe that that resolves the case, and I actually lost the trial date. My screen went blank.

MS. KRUSE: Your Honor, I have raised the issue of the $3,700 outstanding, and I don't know how that plays out with the discovery sanctions that have been ordered prior.

THE COURT: The order still stands in place. It doesn't change that --

MS. KRUSE: Okay.

THE COURT: -- at all. So that would remain. All prior orders are still in effect, and that would be really the same one that is included.

MS. KRUSE: I am going to have to revise my order.

THE COURT: I guess the final issue we didn't talk about, and it was inherent in my granting the Summary Judgment for all the reasons that I did, clearly, late submission for another postponement was received. Mr. Ewetuga got that email last night at 7:13 p.m., please request a short postponement and a phone conference where she can appear by phone. I think that issue is moot. One, she is not licensed, and two, there are no materials that the Court can consider in granting Summary Judgment from her because of all of the reasons I already indicated. But I didn't want to leave that request open. I am denying that request.

MS. KRUSE: Your Honor, one last thing. Is

there a date certain as to when payment should be made with regard to the $500 each for us, and then with regard to our $3,700?

THE COURT: Well, I think within 60 days would be appropriate for both.

MS. KRUSE: All right. Thank you.

THE COURT: You're welcome.

(End of hearing.)

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

BESSIE WILLIAMS, Plaintiff, vs. JOHN DOE, FIRST TRANSIT, Inc; CITY of TACOMA; and CENTRAL BIBLE EVANGELICAL CHURCH, Defendants.	Superior Court No. 11-2-15017-3 Court of Appeals No. 45504-8-II

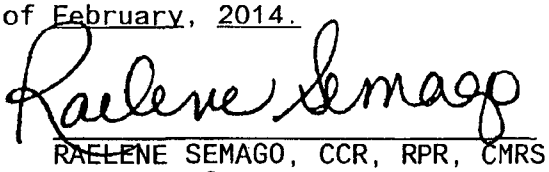
IN AND FOR THE COUNTY OF PIERCE

REPORTER'S CERTIFICATE

STATE OF WASHINGTON)
) ss
COUNTY OF PIERCE)

I, Raelene Semago, Official Court Reporter in the State of Washington, County of Pierce, do hereby certify that the forgoing transcript is a full, true, and accurate transcript of the proceedings and testimony taken in the matter of the above-entitled cause.

Dated this 19th day of February, 2014.



RAELENE SEMAGO, CCR, RPR, CMRS
Official Court Reporter
CCR #2255

APPENDICE J

JUDGE VICKI HOGAN

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

BESSIE WILLIAMS,

Plaintiff,

vs.

JOHN DOE; FIRST TRANSIT, INC.; CITY OF TACOMA; and CENTRAL BIBLE EVANGELICAL CHURCH, jointly and severally,

Defendants.

NO.11-2-15017-3

MOTION FOR RECONSIDERATION/ REHEARING

Plaintiff, Bessie Williams, by and through her attorneys respectfully requests that this Court reconsider its ruling on September 20, 2013. The court granted defendants' motion for summary judgment after ruling that Pro hac vice attorney Katrina Coleman was not properly admitted to the case, striking her motion and affidavits served and filed, and treating the defendants' motion for summary judgment as unopposed after making a finding that the evidence submitted by the defendants was uncontroverted.

Issue presented: 1) Whether the court erred when it ruled that Michigan attorney Katrina Coleman was not properly admitted in the case?

This court ruled that Michigan counsel Katrina Coleman was not properly in the case. Plaintiff contends that counsel is properly admitted in this case. Counsel was admitted in this case on May 25, 2012 (see attached exhibit), and her pro hac vice status has not been terminated or revoke by any court order prior to the date of the summary motion judgment. There is nothing in APR 8 that says that pro hac vice counsel must

reapply and pay another fee once local counsel withdraws. In fact APR (8) (b)(1) states: "payment of the required fee shall only be necessary upon a lawyer's first application to any court or tribunal in the same case. Additionally, nothing in the rule says that the attorney admitted pro hac vice must reapply once local counsel withdraws. Neither counsel has stated any authority to the contrary. "A visiting attorney who meets the qualifications set forth in the rules shall be treated as any local attorney". Hahn v Boeing, 95 Wash 2nd 28, 33 (1980). With no authority presented to the contrary, it is Plaintiff's position that Katrina Coleman is properly admitted to the case, and was working with local counsel who filed an appearance on or about August 20, 2013. The court erred by ruling otherwise without giving counsel notice and opportunity to be heard prior to making its ruling.

Issue presented: **2) Whether the court erred by granting summary judgment without considering the pleadings, interrogatories, depositions and other evidence in the record, once the court deemed the motion unopposed?**

It is clear from the court's ruling that it did not consider all of the evidence in the record before making its ruling. A motion for SJ will be granted when there is ***no*** genuine issue of material fact ***and*** the moving party is entitled to judgment as a matter of law. Hubbard 146 wash 2nd 699. The court must consider all facts and reasonable inferences in the light most favorable to the nonmoving party. Our Lady of Lords 120 wash 2nd 439; Laplante 85 Wash 2nd 154. If there is an issue as to credibility summary judgment must be denied. Rounds v Union Banker's Insurance, 22 Wash App 613 (1979).

Summary Judgment is inappropriate if reasonable minds might reach different conclusions. Kline v Famous Chicken 94 Wash 2d 255. If no genuine of material fact exists it must then be determined whether the moving party is entitled to judgment as a matter of law. Cr 56(c). The court must consider the pleadings, answers to interrogatories, depositions, documents, and affidavits, if any on file. Id. Summary is appropriate only if from all the evidence reasonable persons could reach only one conclusion. Afoa v Port of Seattle, 160 Wash App 234 (2011). Plaintiff was not allowed to point out facts in the record to show facts showing summary judgment was inappropriate.

The court record in the instant case contains pleadings, answers to interrogatories, deposition testimony and affidavits. A review of that evidence clearly establishes genuine issues of material fact. Plaintiff states in her complaint, answers to interrogatories and her deposition testimony that Phil Halsten was running while he pushed her wheelchair; that it was the raised crack in the sidewalk that caused the wheelchair to stop, causing her to go into the air and land on the ground; that she saw the crack in the sidewalk as she got closer to it; that she was being pushed so fast that she can't recall how much time passed from the time she first saw the crack until she fell out of her chair; that she had to be lifted off of the ground after the fall; and that she suffered pain and memory issues as a result of the fall. (See First Transit's Exhibit C, Central Bible's Exhibit A and Plaintiff's Exhibit B). First has not met its initial burden that there is no issue of material fact. The court did not find that there was no genuine issue of material fact and the moving party was entitled to summary judgment as a matter of law. CR 56(c). It ruled that because it was considering the motion as unopposed, it was granting summary judgment, because the evidence was uncontroverted. Uncontroverted means there is no dispute; unquestionable, without doubt.

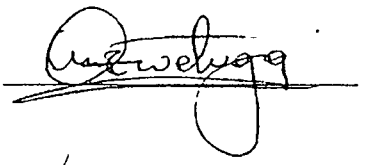
There is more than enough evidence in the record to show there is a dispute, there is a doubt, and that reasonable minds could differ. Defendants have not established their burden of establishing no genuine issue of material fact; as such that summary judgment is inappropriate. Young v Key Pharmaceuticals, 112 Wash 2nd 216. The defendant's papers are themselves insufficient to support a motion for summary judgment or, on their face reveal a genuine issue of material fact. Hamilton v Keystone Tankship Corp., 539 F2d 684. (1977).

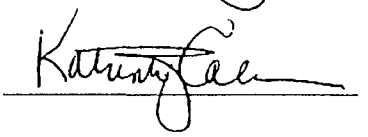
The court did not consider all of the evidence in the record before making its ruling. Defendant has not shown that there this no genuine issue of material fact. Anderson v Liberty Lobby, Inc. 477 US 242. An issue is genuine if the evidence is such that a reasonable could return a verdict for the nonmoving party. Anderson at 248.

The court's grant of summary judgment is not supported by the record. Even when a motion is unopposed, the court still must view the record and find that the moving party

has met its initial burden and it must find that the moving party established that there was no genuine issue of material fact. Preston v 55 Wash 2d 683. That was not done in the instant case. Plaintiff respectfully asks that the court reconsider its ruling regarding Katrina Coleman's Pro hac vice status and its ruling on the summary judgment motion.

Dated this 30th day of September

By: 

By 

JUDGE VICKI L. HOGAN

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

BESSIE WILLIAMS,

Plaintiff,

vs.

JOHN DOE; FIRST TRANSIT, INC.; CITY OF TACOMA; and CENTRAL BIBLE EVANGELICAL CHURCH, jointly and severally,

Defendants.

NO.11-2-15017-3

DECLARATION OF KATRINA COLEMAN

I, Katrina Coleman, states as follows:

1. I am over 18 years old and competent to testify to the matters set forth herein and make this declaration of my own personal knowledge and belief.
2. I am one of the attorneys for the Plaintiff Bessie Williams in the above referenced matter.
3. Attached as Exhibit A is a true copy of the order admitting Katrina Coleman to practice in Washington with Pro hac vice status, dated May 25, 2013.
4. Attached as Exhibit B is a true and correct of excerpts of Bessie's Williams' answers to interrogatories that are on file with the court.

I declare the foregoing to be true and accurate to the best of my ability.

Dated this 30th day of September, 2013.

/s/ Katrina Coleman

Katrina Coleman Pro Hac Vice #

DECLARATION OF SERVICE

I, Katrina Coleman, declare as follows:

1. That I am a citizen of the United States and of the State of Michigan, living and residing Ingham County, and competent to be a witnesss therein.

2. On the 30th day of September, 2013, I caused a copy of the attached to be served upon the following in the manner noted.

Laura E. Kruse
Betts Patterson & Mines, PS
701 Pike Street, Suite 1400
Seattle, WA 98101-3927
Via US Mail

Stephen Skinner
Andrew Skinner, P.S.
645 Elliott Ave. W, #350 Seattle, WA 98119
Via US Mail

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 30th day of September, 2013.

Katrina Coleman

Katrina Coleman
530 S. Pine
Lansing, MI 48933

EXHIBIT A

applicant, and present at proceedings in this matter unless excused by the court.

3. I have submitted a copy of this motion together with the required fee of $250 to the Washington State Bar Association, 1325 4th Ave., Ste. 600, Seattle, WA 98101-2539.

4. I have complied with all of the requirements of APR 8(b).

5. I have read the foregoing motion and certification and the statements contained in it are full, true and correct.

Signed on May 25, 2012 at Tacoma, Washington.

Moving Party

ORDER

It is hereby ORDERED that the Applicant for Limited Admission pursuant to APR 8(b) listed above is admitted to practice as a lawyer in this proceeding. The Moving Party shall be the lawyer of record herein, is responsible for the conduct hereof, and shall be present at all proceedings unless excused by this court.

Dated May 25, 2012.

CRAIG ADAMS
COURT COMMISSIONER

Judge/Commissioner/Clerk

EXHIBIT B

INTERROGATORY NO. 14:

List and describe any disabilities you were suffering from at the time of the incident giving rise to this matter. As part of your answer, state the date upon which you began suffering from each disability and whether you are still suffering from it.

Supplement Answer: Objection to the term "disability", as it is vague and it is not clear what is being sought. What do you mean by "disability"? Please clarify. To the best of Plaintiff's recollection the disability is related injuring her back.

INTERROGATORY NO. 15:

Describe in detail the facts and circumstances of the incident giving rise to the claims which you are making in this matter. As part of your answer, state in detail all facts upon which you claim First Transit and/or the First Transit driver would be legally liable to you for the damages which you are claiming.

Supplemental Answer: On or about October 26, 2008, bus driver Phil Halsten, in the course of his employment, drove Plaintiff in a shuttle bus to her location in Tacoma, WA. Once they got to the location, the bus driver started pushing the Plaintiff in her wheelchair toward the entrance of the building. He then started running as he pushed the wheelchair. The wheel of the wheelchair hit a raised crack in the sidewalk, and the Plaintiff fell out of the wheelchair.

INTERROGATORY NO. 16:

State the names, addresses, and telephone numbers of all persons having knowledge of any facts pertaining to or relevant to the incident giving rise to your claim and provide a summary of the facts known or believed to be known by each of the persons listed in your

Supplemental Answer: Names include but are not limited to Eddie Gurly, Kayla (LNU), Phil Halsten. Plaintiff cannot recall at this time the facts from these witnesses other than the fact that they were present, but ongoing discovery is likely to reveal those facts.

Betts Patterson Mines
One Convention Place
Suite 1400
701 Pike Street
Seattle, Washington 98101-3927
(206) 292-9988

Supplemental Answer: Copies are attached.

INTERROGATORY NO. 19:

Have you, your attorneys, or investigators obtained any statements, whether oral, written, or recorded, from any person pertaining to the incident giving rise to this matter or any damages which you are claiming? If so, describe who took them, when they were taken, and who the witness was.

REQUEST FOR PRODUCTION NO. 3:

Produce all of the statements, transcriptions, and summaries thereof identified in your response to the preceding interrogatory.

INTERROGATORY NO. 20:

List and describe any and all mental or physical injuries, illnesses, diseases, symptoms, or conditions which you claim were caused by the incident giving rise to this matter. As part of your answer, state the date when you first became aware of each injury, illness, disease, symptom, or condition and the dates during which you suffered from each of them.

Betts Patterson Mines
One Convention Place
Suite 1400
701 Pike Street
Seattle, Washington 98101-3927
(206) 292-9988

INTERROGATORY NO. 3: State each and every fact which you rely upon to support your claim that defendant Central Bible Evangelical Church is the owner of the property that abuts the sidewalk at 1414 Huson, Tacoma, as alleged in Paragraph 17 of your Complaint.

ANSWER: city assessors office. Discovery is ongoing. Plaintiff will supplement as it receives additional information

INTERROGATORY NO. 4: Identify all persons who may have knowledge of any of the facts set forth in your answer to the preceding Interrogatory. Please include address, telephone number and a summary of the general knowledge of each person identified.

ANSWER: Discovery ongoing

REQUEST FOR PRODUCTION NO. 2: Please produce copies of each and every document that supports your answer to Interrogatory No. 3.

RESPONSE:

INTERROGATORY NO. 5: State each and every fact which you rely upon to support your claim that defendant Central Bible Evangelical Church owed a duty to maintain the sidewalk in a safe condition, and had a duty to warn and protect from unreasonable dangerous conditions, of which it knew or should have known, as alleged in Paragraph 18 of your Complaint.

ANSWER: the church has a duty to maintain the property for its members + visitors + keep it in a safe condition for those who enter the property for service, etc...

Andrews • Skinner, P.S.
645 Elliott Ave. W., Ste. 350
Seattle, WA 98119
Tel: 206-223-9248 • Fax: 206-623-9050

INTERROGATORY NO. 21: If you contend that you cannot participate in hobbies or activities because of the Incident, please identify with specificity the hobbies or activities in which you can no longer participate, including the frequency with which you participated in those hobbies or activities prior to the Incident, why you can no longer participate in those hobbies or activities, and, if applicable, with whom you participated in those hobbies or activities.

ANSWER:

Some of the things that I am no longer able to do because of the incident include:

Cooking and baking for others, cleaning my house, traveling out of state at least twice per year, going to events and functions, participating in church activities and social activities with friend (i.e bingo, the movies etc.), shopping, dancing, and babysitting.

Andrews • Skinner, P.S.
645 Elliott Ave. W., Ste. 350
Seattle, WA 98119
Tel: 206-223-9248 • Fax: 206-623-9050

INTERROGATORIES AND REQUESTS FOR PRODUCTION

INTERROGATORY NO. 1: Do you contend that you suffered physical pain as a result of any injury sustained in the Incident? If so:

a. Set forth the nature of the physical pain;
b. Set forth the date you first experienced the physical pain;
c. State those from which you have recovered and the approximate date of your recovery; and
d. For all continuing complaints, state whether the complaint is subsiding, remaining the same, or becoming worse, and state the frequency and duration of the complaint.

ANSWER: Shoulder pain, headaches, neck pain, back pain, pain all over body

INTERROGATORY NO. 2: Do you contend that you suffered any permanent disability as a result of any injury sustained in the Incident? If so:

a. Set forth the nature of your disability;
b. Set forth the date you first experienced the disability; and
c. Identify any person who has knowledge of any fact pertaining to your disability.

ANSWER: I am still being tested and cannot Contend that at this time

REQUEST FOR PRODUCTION NO. 1: Please produce copies of each and every document that supports your answer to the preceding interrogatory.

RESPONSE:

Discovery is ongoing

Andrews • Skinner, P.S.
645 Elliott Ave. W., Ste. 350
Seattle, WA 98119
Tel: 206-223-9248 • Fax: 206-623-9050

INTERROGATORY NO. 6: Identify all persons who may have knowledge of any of the facts set forth in your answer to the preceding Interrogatory. Please include address, telephone number and a summary of the general knowledge of each person identified.

ANSWER: Discovery ongoing

REQUEST FOR PRODUCTION NO. 3: Please produce copies of each and every document that supports your answer to Interrogatory No. 5.

RESPONSE:

INTERROGATORY NO. 7: State each and every fact which you rely upon to support your claim that the raised sidewalk created a dangerous condition which contributed to the accident which caused your injuries, as alleged in Paragraph 20 of your Complaint.

ANSWER: The raised crack was the cause of the wheelchair turning over after it's wheel hit the raised crack.

INTERROGATORY NO. 8: Identify all persons who may have knowledge of any of the facts set forth in your answer to the preceding Interrogatory. Please include address, telephone number and a summary of the general knowledge of each person identified.

ANSWER: Eddie Gurley 253-355-7257
Kayla (LNH)

Andrews • Skinner, P.S.
645 Elliott Ave. W., Ste. 350
Seattle, WA 98119
Tel: 206-223-9248 • Fax: 206-623-9050

REQUEST FOR PRODUCTION NO. 4: Please produce copies of each and every document that supports your answer to Interrogatory No. 7.

RESPONSE: Discovery ongoing.

INTERROGATORY NO. 9: State each and every fact which you rely upon to support your claim that defendant Central Bible Evangelical Church failed in its duty to maintain the sidewalk in a safe condition, as alleged in Paragraph 21 of your Complaint.

ANSWER: The church had a duty to maintain & keep safe. The crack was not repaired & my wheel chair which hit the crack causing me to fall out.

INTERROGATORY NO. 10: Identify all persons who may have knowledge of any of the facts set forth in your answer to the preceding Interrogatory. Please include address, telephone number and a summary of the general knowledge of each person identified.

ANSWER: Eddie Gurley. discovery is ongoing

REQUEST FOR PRODUCTION NO. 5: Please produce copies of each and every document that supports your answer to Interrogatory No. 9.

RESPONSE: Same as above

INTERROGATORY NO. 11: State each and every fact which you rely upon to support your claim that the dangerous condition created by the raised sidewalk was a proximate cause of your injuries, as alleged in Paragraph 22 of your Complaint.

Andrews · Skinner, P.S.
645 Elliott Ave. W., Ste. 350
Seattle, WA 98119
Tel: 206-223-9248 · Fax: 206-623-9050

Objection: Plaintiff is a lay person & does not understand what proximate cause is. Notwithstanding the objection, she would state that defendant has maintained the property for years & failed to keep sidewalk safe. The wheel chair wheel caught the raised crack.

ANSWER:

INTERROGATORY NO. 12: Identify all persons who may have knowledge of any of the facts set forth in your answer to the preceding Interrogatory. Please include address, telephone number and a summary of the general knowledge of each person identified.

ANSWER: Phil the First Transit driver

REQUEST FOR PRODUCTION NO. 6: Please produce copies of each and every document that supports your answer to Interrogatory No. 11.

RESPONSE:

INTERROGATORY NO. 13: Identify the reason why you were going to 1414 Huson, Tacoma, Washington on the day of the incident that is the subject of the Complaint.

ANSWER: for an afternoon church event

INTERROGATORY NO. 14: Do you contend that you did not see the alleged raised crack referenced in paragraph 9 of your Complaint? Please state every fact which you rely upon to support your answer.

ANSWER: No I do not contend that I did not see the raised crack.

Andrews • Skinner, P.S.
645 Elliott Ave. W., Ste. 350
Seattle, WA 98119
Tel: 206-223-9248 • Fax: 206-623-9050

INTERROGATORY NO. 15: State each and every fact which you rely upon for your assertion that Central Bible Evangelical Church knew or should have known about the raised crack in the sidewalk referred to in paragraph 9 of your Complaint.

ANSWER: If the church has maintained the property by shoveling, cutting grass etc., they should have seen the crack. Discovery is on going.

REQUEST FOR PRODUCTION NO. 7: Please produce copies of each and every document that supports your answer to Interrogatory No. 15.

RESPONSE:

INTERROGATORY NO. 16: State each and every fact to support your allegation that the raised crack referenced in paragraph 9 of your Complaint was an unreasonable dangerous condition? My wheelchair hit the crack.

ANSWER: The crack contributed to the accident causing my injuries.

REQUEST FOR PRODUCTION NO. 8: Please produce copies of each and every document that supports your answer to Interrogatory No. 16.

RESPONSE:

Andrews•Skinner, P.S.
645 Elliott Ave. W., Ste. 350
Seattle, WA 98119
Tel: 206-223-9248 • Fax: 206-623-9050

DECLARATION OF SERVICE

I, Katrina Coleman, declare as follows:

1. That I am a citizen of the United States and of the State of Michigan, living and residing Ingham County, and competent to be a witnesss therein.

2. On the 30th day of September, 2013, I caused a copy of the attached to be served upon the following in the manner noted.

Laura E. Kruse
Betts Patterson & Mines, PS
701 Pike Street, Suite 1400
Seattle, WA 98101-3927
Via US Mail

Stephen Skinner
Andrew Skinner, P.S.
645 Elliott Ave. W, #350 Seattle, WA 98119
Via US Mail

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 30th day of September, 2013.

Katrina Coleman

Katrina Coleman
530 S. Pine
Lansing, MI 48933

APPENDICE K

26383 12/5/2013 88882

11-2-15017-3 41660827 CLPP 12-05-13

FILED
IN COUNTY CLERK'S OFFICE
A M DEC - 5 2013 P M
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

BESSIE WILLIAMS Plaintiff vs JOHN DOE FIRST TRANSIT INC CITY OF TACOMA CENTRAL BIBLE EVANGELICAL CHURCH Defendant	December 5, 2013 No 11-2-15017-3 Court of Appeals No · 45504-8 CLERK'S PAPERS PER REQUEST OF APPELLANT TO THE COURT OF APPEALS, DIVISION II

HONORABLE EDMUND MURPHY
Trial Judge

WILLIAMS, BESSIE
710 N 104TH ST
SEATTLE, WA 98133

PRO SE APPELLANT

Laura Elizabeth Kruse
701 Pike St Ste 1400
SEATTLE, WA 98101-3927

ATTORNEY FOR RESPONDENT

dsgckpsup rpldesign

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

BESSIE WILLIAMS *Plaintiff* vs JOHN DOE FIRST TRANSIT INC CITY OF TACOMA CENTRAL BIBLE EVANGELICAL CHURCH Defendant	December 5, 2013 No . 11-2-15017-3 Court of Appeals No : 45504-8 CLERK'S PAPERS PER REQUEST OF APPELLANT TO THE COURT OF APPEALS, DIVISION II

Index

Index

Index

Index

Index

APPENDICE L

No. 455048

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

BESSIE M. WILLIAMS,

Plaintiff-Appellant,

vs.

JOHN DOE; FIRST TRANSIT,INC; CITY OF TACOMA; and CENTRAL BIBLE EVANGELICAL CHURCH, jointly and severally,

Defendants- Respondents.

BRIEF OF APPELLANT

Bessie M. Williams, Pro Se
P.O. Box 24193
Lansing, MI 48909
(419) 699-0288

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Rules

I. ASSIGNMENTS OF ERROR

1) The trial court erred by granting summary judgment to First Transit and John Doe. CP 694-696. (September 20, 2013).

2) The trial court erred by granting summary judgment to Central Bible Evangelical Church. RP 691-693. (September 20, 2013).

3) The trial court erred by striking the affidavits of Carol Williams and Alkenneth Gurley. RP 17-19.

4) The trial court erred in not granting a continuance, pursuant to 56(f) and CR 6(b). RP 16-20.

5) The trial court erred by refusing to allow pro hac vice counsel to continue to appear in the case. RP 16-20.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1) Is there a genuine issue of material fact for trial which would prevent summary judgment regarding First Transit's and John Doe's claims?

2) Is there a genuine issue of material fact for trial which would prevent summary judgment regarding Central Bible Evangelical Church's claims?

3) Did the trial court err by not granting a continuance pursuant to 56(c) and CR 6 (b)?

4) Did the trial court err in refusing to allow Appellant's pro hac vice counsel to continue to appear in the case pursuant to APR 8 (b)?

III. STATEMENT OF FACTS

Appellant Bessie Williams (Appellant) filed a complaint against First Transit, John Doe (Halsten) and Central Bible Evangelical Church (Central Bible) on October 25, 2011. She states that on October 26, 2008, she was being transported by John Doe, an employee of First Transit by bus to a church event at Central Bible. CP 2 paragraph 9; After they arrived at the church . She states that the driver Halsten was pushing her wheelchair on the sidewalk to the door of the church, he started running as he pushed the wheelchair. Id. Despite Appellant's pleas to stop, Defendant Halsten continued to run as he pushed the wheelchair. Id. The wheel of the wheelchair hit a raised crack in the sidewalk, causing the wheelchair to stop abruptly, causing the wheelchair to stop abruptly and causing Plaintiff to fall forward out of the wheelchair. Id. Plaintiff says that she felt herself in the air after she left the wheelchair. CP 534-555. At her deposition, Ms Williams indicated that Halsten was "running up the hill" and the she "felt it was going to fast for him to stop". Id. She begged him several times to stop running while pushing her and he told her that it was okay because he pumped iron. Id. She stated that she was scared for her life and that the wheelchair hit a crack in the sidewalk, came to an abrupt stop and she felt herself fly out of the wheelchair; she landed face down. She suffered numerous injuries from this accident. CP 2. As a result of this accident, some of the injuries Plaintiff suffered, include: a bruised forehead, a chipped tooth, a closed head injury, and injured leg and shoulders. CP 2, paragraph 15.

On August 2, 2013 both Respondents file a motion for summary judgment. CP 534-555; 500-512. The motion was scheduled for August 30, 2013. That motion was

rescheduled, as new counsel had just come into the case on behalf of Appellant. Respondents objected to the rescheduling because counsel filed a late notice of appearance. RP 3-10. The motion was rescheduled to September 20, 2013. The court informed. Appellant's new counsel, to respond to the motion by September 9, 2013 or send opposing counsel letters indicating that he would not oppose the motion. RP 8-9. On September 20, 2013, all parties appeared for the hearing. Appellant's counsel indicated to the court that Appellant's pro hac vice counsel from Michigan was not able to appear, and presented to the court a declaration from the out of town counsel, explaining to the court, the reason she couldn't be present; that declaration further asked the court for a short continuance and to schedule a phone conference so that she could be present telephonically. RP 12-19. The court denied the request indicating that since Appellant's pro hac vice counsel was no longer permitted to appear, the request was a moot point; that any document she submitted could not be considered by the court. RP 17. (those documents included: affidavits opposing summary judgment from Alkenneth Gurley and Carol Williams). RP 617-619,620-622. Appellant's local counsel then indicated to the court that in light of Appellant's pro hac vice counsel situation, he had prepared for one of the motions and was ready to proceed if the court wished. The court likewise denied the request to proceed, indicating that since the documents submitted by Appellant's pro hac vice counsel were not being considered, she was treating the motion as unopposed. RP 12-19. The court then entered summary judgment for the respondents, without indicating what documents or other evidence was called to the attention of trial court before the judgment was entered. RAP 9.12.

V. ARGUMENT

A. The trial court's rulings on summary are subject to de novo review

An order granting summary judgment is subject to review de novo, and the appellate court engages in the same inquiry as the trial court. Folsom v Burger King, 135 Wn.2d 658 (1998). Summary judgment is only warranted when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. CR 56 (c). The burden is on the party seeking summary judgment to demonstrate the absence of a genuine issue of material fact. Folsom, 135 Wn.2d at 663. All of the facts and reasonable inferences must be viewed in the light most favorable to the nonmoving party. Ruvalcaba v Kwang Ho Baek, 175 Wn. 2d 1, 6. (2012). The de novo standard of review encompasses "all trial court rulings made in conjunction with a summary judgment motion". Folsom, at 663.

B. The trial court erred in granting summary judgment on First Transit's claims that there is no evidence of breach of duty and that Appellant caused her own injuries.

First Transit moved for the trial court to grant summary judgment as they suggest that there was no evidence that Respondent Halsten breached his duty to the Appellant. A party who moves for summary judgment on the ground that the nonmoving party has no evidence must affirmatively show the absence of evidence in the record. Celotex Corp. v Catrett, 477 U.S. 317 (1986).

Appellant's complaint addresses the breach of duty by Halsten as well as the interrogatories, and portions of her deposition testimony on file with the court. CP 1-4, 379-391, 534-555, There was no affirmative showing that there was an absence of

evidence in the record. This evidence on file and called to attention of the court, clearly establishes that Halsten breached his duty to Appellant, when he started running as he continued to push her wheelchair on an uphill sidewalk. Appellant says Halsten was running while he pushed the wheelchair, Halsten says he was not; clearly a disputed fact that is material. CP 530-533. First Transit also claims that Appellant caused her own injuries, as they allege that she put her foot down as the wheelchair was moving, causing her foot to catch a portion of the sidewalk and this is what caused her to fall out of the wheelchair. Id. Appellant say the wheelchair wheel hit the raised crack in the sidewalk causing it to abruptly stop, causing her to fall out of the wheelchair. CP 1-4, 534-555. Again, the facts as to what caused Appellant's injuries are disputed. Based on these disputed facts, summary judgment was inappropriate and should be reversed. jury to decide, not the trial court. There is evidence in on file which supports Williams' contention there is a genuine issue of material fact. The court erred in granting summary judgment.

C. The court erred in granting summary judgment Central Bible's claims.

CR 56 (c) states the moving party must meet its initial burden that the evidence on file establishes that there is no genuine issue as to any material fact and that they are entitled to summary judgment as a matter of law. Central does not establish that there is no genuine issue of material fact, as they cannot overcome that a dispute exists as to whether trees existed prior to October 26, 2008. Louis Diana states in his affidavit that there was no tree near the accident cite on October 26, 2008. However he doesn't state what the condition of the land in the area of the accident cite was prior to October 26,

2008. They have presented no evidence that there were never any trees in the vicinity of the accident prior to October 26, 2008. Additionally, Alkenneth Gurley in his affidavit stated that there is currently a tree that is planted 8-10 feet away from the raised crack in the sidewalk. RP 617-619. He also stated that he has seen others trip and fall in the same cracks area that Appellant fell from her wheelchair, and that the cracks can't really be seen until a person is almost right on top of the crack. RP 617-619. This takes him out of the special use doctrine category and raises a question of fact whether the current tree that is 8- 10 feet away, caused the defective condition of the sidewalk or whether any trees in the vicinity of the accident prior to October 26, 2008 caused the defective condition of the sidewalk. There is no duty to inspect property and no liability to the land owner so long as the land remains in it natural condition, i.e, the land has not been changed by any act of a human being. Rosengren v City of Seattle, 149 Wn. App. 565 (2009). There has been no evidence produced that this land remains in its natural condition and has not been changed by any act of a human being. Thus, Central Bible would have a duty to inspect and maintain the premises. A genuine issue of material fact exists for summary judgment purposes where reasonable minds could differ on the facts which control the outcome of the case. Wilson v Steinbachk 98 Wash 2d 434, 437 (1982); Ranger Ins v Pierce County, 164 Wash 2d 545 (2008).The affidavit of Louis Diana is insufficient to establish that no duty existed and does not establish that Central Bible is entitled to summary judgment as a matter of law. The court erred in granting summary judgment.

D. The court erred in not granting a short continuance pursuant to CR 56(f) and CR 6 (b).

Here, the Appellant's affidavit's were not considered by the court in making its summary judgment ruling, because it reasoned that Appellant's pro hac vice counsel's status to appear in her court had been cancelled when the original local counsel with whom she associated withdrew from the case. RP 17. Although Appellant's pro hac vice counsels had a good reason for not being present at the September 20th hearing, which she submitted by declaration (of which the court did not read the reason for the unavailability into the record), and an explanation for the untimely filings the court choose to deny the request for a short continuance and treat the motion as unopposed, granting summary judgment on a technicality for failure to timely respond. RP 8. The Respondents did not indicate that they would have been prejudiced in any way by a short continuance and the court did not find that there would be any prejudice by granting a short postponment. RP 12-17. Thus, the court erred in not granting short continuance.

E. The trial court erred by not allowing Appellant's pro hac vice counsel to appear pursuant to APR 8(b).

At the time of the hearing Septebmber 20, 2013 , Appellant's pro hac vice counsel's status had not been revoked, teminated or cancelled, after having a limited license to practice in the instant case. CP 50-52. At the hearing, Appellant's current local counsel, Mr. Ewetuga submitted a document indicating that counsel wasn't able to be present that the court, and in response, the court indicated that "Ms. Coleman's participation is this case... is cancelled", and as such the material she submitted are "not

applicable to the case because the court can't consider them". RP 17. However, there is nothing in the rule that indicates that once admitted, pro hac vice status is terminated counsel once the local counsel, who is associated with pro hac vice counsel, withdraws from the case. Appellant's pro hac vice counsel did subsequently associate with Appellant's current local counsel, who is an active member of the Washington State Bar and as such Ms. Coleman's pro hac vice status to appear in the instant matter is still active. Thus, the court erred in not allowing Appellant' pro hac vice counsel to appear and its ruling should be reversed.

CONCLUSION

Based on the foregoing arguments, Appellant respectfully asks this court to reverse the trial court, vacate summary judgment orders, and remand the case for trial.

Dated this 7th day of June,

Bessie M Williams

Bessie M. Williams, Pro Se

WASHINGTON STATE COURT OF APPEALS
DIVISION TWO

BESSIE WILLIAMS,

Appellant,

vs.

JOHN DOE; FIRST TRANSIT, INC; CITY OF TACOMA; and CENTRAL BIBLE EVANGELICAL CHURCH, jointly and severally,

Appelles.

NO. 45504-8-II

DECLARATION OF SERVICE

I certify that on June 10, 2014 I caused a copy of Appellant's brief and Reporting Papers to be served by First Class Mail upon:

Laura Kruse
Betts Patterson Mines
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Suite 1400
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Andrews Skinner, P. S.
645 Elliot Ave., Ste. 350
Seattle, WA 98119

Dated this 10th day of June 2014.

Bessie M. Williams

APPENDICE M

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

BESSIE WILLIAMS,

Appellant,

v.

JOHN DOE, FIRST TRANSIT, INC.; CITY OF TACOMA; and CENTRAL BIBLE EVANGELICAL CHURCH,

Respondents.

No. 45504-8-II

UNPUBLISHED OPINION

SUTTON, J. — Bessie Williams appeals the superior court's summary judgment orders dismissing her negligence claims against First Transit, Inc. and Central Bible Evangelical Church. Williams argues that the superior court (1) abused its discretion in refusing to grant a second continuance of the summary judgment motions filed by First Transit and Central Bible, (2) abused its discretion in striking filings by her formerly admitted pro hac vice counsel, and (3) erred in granting summary judgment in favor of First Transit and Central Bible.

We hold that the superior court did not abuse its discretion in refusing to grant a second continuance of the summary judgment motions and that it properly struck the unauthorized filings by Williams's formerly admitted pro hac vice counsel. Because Williams failed to raise a genuine issue of material fact, we affirm the superior court's summary judgment orders dismissing Williams's negligence claims against First Transit and Central Bible.

FACTS

I. BACKGROUND FACTS

On or about October 26, 2008, a shuttle van operated by First Transit drove Williams to Central Bible. The driver of the shuttle van and employee of First Transit, Philip Halsten, pulled into the Central Bible parking lot, unloaded Williams from the van, and, at her request, assisted her into the church. Halsten pushed Williams in her wheelchair uphill along the paved public sidewalk to the main entrance of the church. As Halsten was pushing the wheelchair up the sidewalk, the wheel of the wheelchair hit a raised crack in the pavement, abruptly stopping the wheelchair, and causing Williams to fall forward out of the wheelchair.

Williams filed a complaint for negligence against First Transit, Central Bible, the City of Tacoma, and "John Doe"[1] for personal injuries she suffered after falling from her wheelchair on a public sidewalk adjacent to property owned by Central Bible. Williams alleged that First Transit breached its duty of care to her. Williams also alleged that Central Bible and the City of Tacoma negligently failed to maintain the public sidewalk abutting Central Bible's property in a safe condition and failed to warn and protect her from unreasonably dangerous conditions.

II. WILLIAMS'S COUNSEL

After Williams filed her lawsuit pro se, David Britton, a Washington licensed attorney, moved for limited pro hac vice admission of Katrina Coleman, a Michigan licensed attorney under

[1] The "John Doe" here is Philip Halsten, driver of the First Transit shuttle van. Halsten and First Transit, represented by the same counsel, joined in their answer to the complaint and in their summary judgment motion. Clerk's Papers (CP) at 5. We refer collectively to Halsten and First Transit as First Transit.

Admission to Practice Rule (APR) 8(b).[2] The superior court granted the motion. Britton and Coleman filed a joint notice of appearance on Williams's behalf. After the court awarded discovery sanctions against Williams for failing to provide discovery responses, Britton withdrew. Michael Ewetuga, a Washington licensed attorney, then filed a notice of appearance on Williams's behalf. But Ewetuga did not file a motion for pro hac vice re-admission of Coleman, Williams's Michigan counsel. Ewetuga later withdrew from representing Williams.

III. First Transit's and Central Bible's Summary Judgment Motions

On August 2, 2013, First Transit and Central Bible filed separate motions for summary judgment. The court set a hearing for both summary judgment motions on August 30, 2013. Williams failed to file an opposition to the motions by that date and, when First Transit and Central Bible appeared to argue the unopposed motions, Ewetuga orally moved to continue the hearing. The court granted the continuance, set a new hearing date for September 20, and ordered that, by September 9, Williams must respond or give notice that she will not oppose the summary judgment motions.

Neither First Transit nor Central Bible received a response to their summary judgment motions by the September 9 deadline; they asked the superior court to grant their unopposed

[2] APR 8(b) provides, in pertinent part:

> A member in good standing of, and permitted to practice law in, the Bar of any other state . . . may appear as a lawyer in any action or proceeding only (i) with the permission of the court or tribunal in which the action or proceeding is pending, and (ii) in association with an active member of the Washington State Bar Association, who shall be the lawyer of record therein, responsible for the conduct thereof, and present at proceedings unless excused by the court or tribunal.

motions and to award fees for having to appear on August 30. Two days later, after the court's deadline to file opposition materials, First Transit and Central Bible received Williams's two untimely responsive briefs and three supporting declarations. But these filings were submitted by Williams's formerly-admitted pro hac vice counsel in Michigan, not by Ewetuga, her new Washington counsel.

First Transit and Central Bible moved to strike Williams's opposition materials as untimely; and strike the briefs because they were signed by Williams's formerly-admitted pro hac vice counsel, Coleman. They argued that Coleman was no longer authorized to participate in the case because Britton, the attorney with whom she had associated with under APR 8(b), had withdrawn. At the hearing on the motion to strike, Williams's new Washington counsel, Ewetuga, informally requested a second continuance, and indicated that Coleman had a conflict and could not appear at the hearing, but the superior court denied the request for a second continuance.

The superior court ruled that Williams's two opposition briefs and three declarations were untimely and failed to comply with the court rules. The superior court also concluded that Britton's withdrawal from the case canceled Coleman's pro hac vice admission to practice in Washington. Because Williams failed to timely file her opposition materials under CR 56, the superior court

considered only First Transit's and Central Bible's submissions[3] and ruled that their summary judgment motions were unopposed. The superior court granted First Transit's and Central Bible's

[3] The order granting summary judgment in favor of First Transit shows that the superior court considered the following materials:

1. Defendants First Transit, Inc.'s and Phil Halsten's Motion for Summary Judgment;
2. Declaration of Kelly A. Croll in Support of the Motion for Summary Judgment, with exhibits;
3. Declaration of Philip Halsten in Support of the Motion for Summary Judgment;
4. Defendants First Transit, Inc.'s and Phil Halsten's Reply Motion for Summary Judgment;
5. Defendants First Transit, Inc.'s and Phil Halsten's Second Reply in Support of Motion for Summary Judgment;

. . . .

12. Defendants First Transit, Inc.'s and Phil Halsten's Third Reply in Support of Motion for Summary Judgment; and
13. Declaration of Laura E. Kruse in Support of the Third Reply of Defendants' Motion for Summary Judgment, with exhibits.

CP at 694-96.

The order granting summary judgment in favor of Central Bible shows that the superior court considered:

1. Defendant Central Bible Evangelical Church's Motion for Summary Judgment;
2. Declaration of Stephen Skinner in support of the Motion for Summary Judgment;
3. Declaration of Louis Diana in support of the Motion for Summary Judgment;
4. Defendant Central Bible Evangelical Church's Reply on Motion for Summary Judgment;
5. Defendant Central Bible Evangelical Church's Second Reply in Support of Motion for Summary Judgment;

. . . .

11. Defendant Central Bible Evangelical Church's Third Reply in Support of Motion for Summary Judgment.

CP at 691-93.

In both of its orders granting summary judgment to First Transit and Central Bible, the superior court crossed out Williams's submissions because it previously struck them from the record as noncompliant with the rules.

summary judgment motions. The superior court also granted First Transit's and Central Bible's requests for attorney fees, awarding Central Bible $500 in fees and costs, and awarding First Transit $4,200 in fees and costs. Williams moved for reconsideration, but the superior court denied that motion. On October 21, 2013, Williams filed a pro se notice of appeal.

ANALYSIS

Williams argues that the superior court (1) abused its discretion in not granting her a second continuance and in striking the opposition materials filed and signed by her formerly-admitted pro hac vice counsel and (2) erred in granting summary judgment in favor of First Transit and Central Bible.

First Transit and Central Bible respond that the superior court did not abuse its discretion in denying the second continuance under CR 56(f) and in striking the unauthorized opposition materials signed by Coleman. They also argued that they owed no duty to Williams, did not breach any duty to her, and that their actions were not a proximate cause of injury or damages to Williams. We agree with First Transit and Central Bible.

I. CONTINUANCE OF SUMMARY JUDGMENT MOTIONS

CR 56(c) requires that a party opposing a summary judgment motion file a response no later than 11 days before the motion hearing. If the party opposing a summary judgment motion submits an affidavit stating that she is unable to present facts essential to her opposition, then the court may order a continuance "if the nonmoving party shows a need for additional time to obtain additional affidavits, take depositions, or conduct discovery." *Bldg. Indus. Ass'n of Wash. v. McCarthy*, 152 Wn. App. 720, 742, 218 P.3d 196 (2009); CR 56(f). We review a superior court's

decision to deny a motion for a continuance for a manifest abuse of discretion. *Doyle v. Lee*, 166 Wn. App. 397, 403-04, 272 P.3d 256 (2012).

A superior court does not abuse its discretion if it denies a motion for a continuance because "'(1) the requesting party does not offer a good reason for the delay in obtaining the desired evidence, (2) the requesting party does not state what evidence would be established through the additional discovery, or (3) the desired evidence will not raise a genuine issue of material fact.'" *Old City Hall LLC v. Pierce County AIDS Found.*, 181 Wn. App. 1, 16, 329 P.3d 83 (2014) (quoting *Turner v. Kohler*, 54 Wn. App. 688, 693, 775 P.2d 474 (1989)). "'A trial court abuses its discretion if its decision is manifestly unreasonable or based upon untenable grounds or reasons.'" *State v. Garcia*, 179 Wn.2d 828, 846, 318 P.3d 266 (2014) (quoting *State v. Lamb*, 175 Wn.2d 121, 127, 285 P.3d 27 (2012)).

Williams argues that neither party suffered any prejudice from her late filed opposition materials. Williams failed to timely oppose the summary judgment motions by the first deadline of August 30th or the second extended deadline of September 9th, and the responses she did file on September 11 were untimely and signed by her formerly admitted pro hac vice counsel, who no longer had authority to appear in Washington because local counsel had withdrawn.

We hold that under CR 56(f), the superior court did not abuse its discretion in refusing to grant a request for a second continuance because Williams fails to demonstrate (1) a good reason for her requested delay and (2) what evidence would be established through another continuance that would raise a genuine issue of material fact. *Old City Hall*, 181 Wn. App. at 16.

II. PRO HAC VICE COUNSEL

Williams also argues that the superior court abused its discretion in ruling that her formerly admitted pro hac vice counsel lost her ability to represent Williams when Williams's associated local counsel withdrew, and in striking her opposition materials, including her two briefs and three declarations. Williams argues that there is nothing in APR 8(b) that requires a court to terminate counsel's pro hac vice status once associated local counsel withdraws from the case. First Transit and Central Bible respond that APR 8(b) allows pro hac vice counsel to appear only in association with local counsel and that, once local counsel withdrew, pro hac vice counsel lost her association and her ability to appear in Washington. We agree with First Transit and Central Bible.

We review de novo the interpretation of APR 8(b) to determine whether pro hac vice counsel's representation terminates when associated local counsel withdraws. *See State v. McEnroe*, 174 Wn.2d 795, 800, 279 P.3d 861 (2012) (we interpret court rules de novo). In Washington, an out-of-state lawyer:

> [M]ay appear as a lawyer in any action or proceeding only (i) with the permission of the court or tribunal in which the action or proceeding is pending, and (ii) in association with an active member of the Washington State Bar Association, who shall be the lawyer of record therein, responsible for the conduct thereof, and present at proceedings unless excused by the court or tribunal.

APR 8(b). APR 8(b) permits an attorney to appear in an action or proceeding only with the court's permission and in association with local counsel; failure to meet either requirement precludes out-of-state counsel's representation. The purpose of the rule is to reasonably assure the court that the out-of-state attorney is competent, will follow the local rules of practice and procedure, and will act in an ethical and respectful manner. *Hahn v. Boeing Co.*, 95 Wn.2d 28, 34, 621 P.2d 1263 (1980).

On June 18, 2013, Williams's local counsel, Britton, filed a notice of intent to withdraw and terminate Williams's representation. Up to that point, every appearance or filing performed by Coleman was done in association with Britton; once Britton withdrew, Coleman was no longer in association with an active member of the Washington State Bar, as required by APR 8(b), and thus Coleman could no longer appear pro hac vice. The superior court ruled,

> [W]hen Mr. Britton withdrew, it left Ms. Coleman's actual participation in this case -- I don't know what else to say -- it canceled it. He had sponsored the pro hac vice application, which the Court granted because of his assurances to the Court the compliance with the rules, the Washington State Bar Association and the required Rules of Professional Conduct for, in essence, an unlicensed lawyer in Washington, which is what Ms. Coleman is, although she has a license in another state.

Verbatim Transcript of Proceedings (VRP) at 17.

APR 8(b) permits pro hac vice counsel to appear only in association with local counsel; there is no requirement for a court to affirmatively terminate out-of-state counsel's pro hac vice status. Under APR 8(b), Coleman automatically lost her pro hac vice association with local counsel when Williams's local counsel withdrew, the superior court properly precluded Coleman's representation and properly struck Williams's opposition materials signed and submitted by Coleman.[4]

Williams argues that the superior court erred in striking all five of her filings and in refusing to consider them at summary judgment. The superior court struck these filings as untimely and

[4] In her Clerk's Papers, Williams designated five filings struck by the superior court: Williams's Response to First Transit's Motion for Summary Judgment; Williams's Response to Central Bible's Motion for Summary Judgment; and the declarations of Carol Williams, Alkenneth Gurley, and Katrina Coleman.

submitted by out-of-state counsel, who was not admitted to practice in Washington, and thus the court could not accept the documents. The superior court did not abuse its discretion.

III. SUMMARY JUDGMENT MOTIONS

We review a summary judgment ruling de novo, engaging in the same inquiry as the superior court. *Ruvalcaba v. Kwang Ho Baek*, 175 Wn.2d 1, 6, 282 P.3d 1083 (2012). Summary judgment is warranted only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); *Wilkinson v. Chiwawa Cmtys. Ass'n*, 180 Wn.2d 241, 249, 327 P.3d 614 (2014). The party seeking summary judgment must demonstrate the absence of a genuine issue of material fact, *Ruvalcaba*, 175 Wn.2d at 6, and the moving party is entitled to summary judgment only when there is a "complete failure of proof concerning an essential element of the nonmoving party's case [which] necessarily renders all other facts immaterial." *Cho v. City of Seattle*, 185 Wn. App. 10, 15, 341 P.3d 309 (2014) *review denied*, 183 Wn.2d. 1007 (2015) (quoting *Young v. Key Pharms., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989)).

We take the facts and make reasonable inferences in the light most favorable to the nonmoving party. *Ruvalcaba*, 175 Wn.2d at 6. But under CR 56(e),[5] a party opposing summary judgment cannot simply rely upon the mere allegations of its pleadings to overcome summary

[5] CR 56(e) provides, in part:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of a pleading, but a response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

judgment; rather, the party opposing summary judgment must present declarations, affidavits or other evidence as provided in CR 56 to set forth specific facts showing that there is a genuine issue of material fact for trial. CR 56(e); *Keck v. Collins*, 181 Wn. App. 67, 91 n.9, 325 P.3d 306 (2014), *review granted*, 181 Wn.2d 1007 (2014). If reasonable minds can reach only one conclusion, summary judgment is appropriate. *Old City Hall*, 181 Wn. App. at 10.

In Williams's negligence actions against First Transit and Central Bible, she has the burden of proving "'(1) the existence of a duty owed to the complaining party, (2) a breach of that duty, (3) a resulting injury, and (4) that the claimed breach was a proximate cause of the injury.'" *Jackson v. City of Seattle*, 158 Wn. App. 647, 651, 244 P.3d 425 (2010) (quoting *Burg v. Shannon & Wilson, Inc.*, 110 Wn. App. 798, 804, 43 P.3d 526 (2002)). We review de novo whether a duty exists. *Arnold v. Saberhagen Holdings, Inc.*, 157 Wn. App. 649, 661, 240 P.3d 162 (2010).

A. WILLIAMS'S CLAIMS RELATED TO FIRST TRANSIT

Williams alleged in her complaint that First Transit failed in its duty "to properly and adequately train and supervise" Halsten, whose negligence caused her injuries, and consequently whose "negligence [was] imputed to First Transit." Clerk's Papers (CP) at 3. But in her deposition, Williams did not know how fast Halsten was pushing her; she only recalled that he was running. Instead, Williams relies upon her daughter Carol Williams's declaration to speculate about the speed that Halsten was running and the speed at which Williams could have been traveling when the accident occurred. But a non-moving party may not rely upon speculation and argumentative assertions. *Grant County Port Dist. No. 9 v. Wash. Tire Corp.*, ___ Wn. App. ___, 349 P.3d 889, 893 (2015). And in order to be admissible under ER 701, a lay person's opinion must be "rationally based." *State v. Fallentine*, 149 Wn. App. 614, 624, 215 P.3d 945 (2009).

Carol Williams was not present at the time of the accident, her statements lack foundation, are speculative, are not rationally based under ER 701, and are not admissible. We agree that the superior court properly struck her declaration as untimely. But even if the superior court had considered her declaration on summary judgment, this court can only consider evidence that is admissible under CR 56. *See Sisley v. Seattle School Dist. No. 1*, 171 Wn. App. 227, 233, 286 P.3d 974 (2012). Williams did not offer any other evidence that would create a genuine issue of material fact as to duty, breach, or causation by First Transit. Thus, the superior court did not err in granting summary judgment dismissal in favor of First Transit.

B. WILLIAMS'S CLAIMS RELATED TO CENTRAL BIBLE

Williams also argues that the superior court erred in granting summary judgment in favor of Central Bible. She alleges that Central Bible "failed in its duty to maintain the sidewalk in a safe condition," thereby proximately causing her injuries. CP at 3. Central Bible argued that it did not owe a duty to Williams because (1) it was an adjacent property owner, (2) it did not use its sidewalks for any "special purpose" or insert an artificial condition on the land, and (3) the crack was an open and obvious danger of which Central Bible had no prior knowledge. Br. of Resp't (Central Bible) at 15. We hold that Williams failed to raise a genuine issue of material fact demonstrating a duty, breach, or causation by Central Bible. Thus, the superior court did not err in granting summary judgment dismissal in favor of Central Bible.

1. No duty of care: no special use of the sidewalk

Whether a duty exists is a question of law that we review de novo. *Arnold*, 157 Wn. App. at 661. Generally, an owner or occupant of land abutting a public sidewalk is not an insurer of the safety of pedestrians using the sidewalk, and maintenance of public sidewalks is the city's responsibility. *Rosengren v. City of Seattle*, 149 Wn. App. 565, 575, 205 P.3d 909 (2009). But a duty can arise when an abutting property owner makes special use of a public sidewalk; the property owner must then exercise reasonable care so that the owner's special use does not create unsafe conditions for pedestrians using the sidewalk. *Rosengren*, 149 Wn. App. at 571; *Groves v. City of Tacoma*, 55 Wn. App. 330, 332, 777 P.2d 566 (1989). A duty can also arise if the property owner "causes or contributes to the condition" on the public sidewalk. *Rivett v. City of Tacoma*, 123 Wn.2d 573, 579, 870 P.2d 299 (1994). The plaintiff has the burden of establishing the existence of a duty. *Jackson*, 158 Wn. App. at 651.

Williams does not argue or present evidence that Central Bible made special use of the sidewalk; rather, she argues that the tree on Central Bible's property caused the defect to the public sidewalk. Williams relies on the declaration from Alkenneth Gurley, a church attendee present that day. Gurley stated,

> There is a tree planted 8-10 feet from the raised cracks in the sidewalk where the incident took place.
>
> [] I have a background in horticulture. I can state that based on my experience, it is possible that the roots of a tree in such close proximity to the raised cracks in the sidewalk could have caused damage to the sidewalk.

CP at 618.

But the superior court properly struck Gurley's declaration as untimely, speculative, inadmissible lay testimony under ER 701, and submitted by an attorney who was no longer authorized to practice before the court; and even if the court had considered his declaration on summary judgment, Gurley's statements were inadmissible under CR 56. *Grant County Port Dist.*, 349 P.3d at 893; *Fallentine*, 149 Wn. App. at 624; *Sisley*, 171 Wn. App. at 233. Nor did Williams provide adequate foundation to admit Gurley's declaration as expert opinion under ER 702-704. *Johnston-Forbes v. Matsunaga*, 181 Wn.2d 346, 357, 333 P.3d 388 (2014) (expert opinions lacking proper foundation should be excluded). And Williams presented no other evidence that the tree caused the crack in the sidewalk or that Central Bible's use of the sidewalk created an artificial condition.

2. No duty of care: "known or obvious" condition

Central Bible also argues that it owed no duty to Williams because the crack in the sidewalk was a "known or obvious" condition and that, even if Williams were an invitee, Central Bible would not be liable for her injuries. Br. of Resp't (Central Bible) at 21. Central Bible presented unrebutted evidence that Williams could see the crack as she approached, based on her own admissions in her deposition. When she was asked if, "on the day of the incident, did [she] observe[d] anything on the sidewalk that caused [her] concern prior to" the incident, she responded, "[w]ell, I remember seeing . . . I saw a -- it was a hole or crack." CP at 505. We agree with Central Bible that Williams presented no evidence to demonstrate a genuine issue of material fact on this issue.

A landowner's liability to invitees "is limited by the RESTATEMENT (SECOND) OF TORTS § 343A(1), which provides: "A possessor of land is not liable to . . . invitees for physical harm

caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness." *Degel v. Majestic Mobile Manor, Inc.*, 129 Wn.2d 43, 50, 914 P.2d 728 (1996) (quoting *Tincani*, 124 Wn.2d at 139; RESTATEMENT (SECOND) OF TORTS § 343A(1) (1965)). Even if the condition was open and obvious, in limited circumstances, a possessor of land may be liable if he or she "should anticipate the harm despite such knowledge or obviousness." RESTATEMENT (SECOND) OF TORTS § 343A(1) (1965). "Distraction, forgetfulness, or foreseeable, reasonable advantages from encountering the danger are factors which trigger the landowner's responsibility to warn of, or make safe, a known or obvious danger." *Tincani*, 124 Wn.2d at 140.

Williams did not argue that the crack was concealed, nor did she present evidence to the superior court that the condition was not known or obvious. *Degel*, 129 Wn.2d at 50. She failed to present a genuine issue of material fact showing that even if she were an invitee, the crack was not known or obvious to her. *See Jackson*, 158 Wn. App. at 651-52.

CONCLUSION

We hold that the superior court did not abuse its discretion in refusing to grant a second continuance of the summary judgment motions and that it properly struck the unauthorized filings by Williams's formerly admitted pro hac vice counsel. Because Williams failed to raise a genuine

issue of material fact, we affirm the superior court's summary judgment orders dismissing Williams's negligence claims against First Transit and Central Bible.

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.

Sutton, J.
SUTTON, J.

We concur:

Johanson, C.J.
JOHANSON, C.J.

Bjorgen, J.
BJORGEN, J.