

No. 94222-6

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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JESSICA SIMPSON,  
Plaintiff-Appellant,

v.

LINDA GIPSON, PhD., RN  
Defendant-Respondent.

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Answer by Respondent to Petitioner's:

- 1) Motion for Extension of Time to File Petition for Review; and
  - 2) Petition for Discretionary Review
- 

Eric L. Freise, WSBA No. 7126  
Freise & Ferguson PLLC  
19109 36<sup>th</sup> Ave. W., Suite 204  
Lynnwood, WA 98036  
*Counsel for Respondent Linda Gipson, Ph.D., R.N.*

**2. Tables**

**Cases**

*Hagar v Reclamation Dist. No. 108*, 111 U.S. 701, 708 4 S.Ct. 663,  
28 L.Ed. 569 (1884) .....14-15

*Hurtado v People of the State of California*, 110 U.S. 516,  
4 S.Ct. 111, 28 L.Ed 232 (1884) .....14-15

*State v WWJ Corp.*, 138 Wn.2d 595, 980 P.2d 1257 (1999) .....13-14

**Statutes**

RCW 9A.16.110 .....9

RCW 9A.36.041 .....9

**Rules**

RAP 2.5 (a) (3) .....12

RAP 13.4 (a) .....4

RAP 13.4 (b) .....3, 11-12, 16

RAP 18.8.....2, 10

**3. Identity of Petitioner and Respondent**

Petitioner is Jessica Simpson, who was the plaintiff in the trial court and the petitioner in the Court of Appeals and in the Supreme Court.

Respondent is Linda Gipson, PhD, RN, who was the defendant in the trial court and the respondent in the Court of Appeals and in the Supreme Court.

**4. Citation to Court of Appeals Decision.**

On January 17, 2017, the Court of Appeals affirmed the trial court, Court of Appeals cause number 75029-1.

On February 7, 2017, the Court of Appeals denied a motion for reconsideration that was filed by counsel for petitioner.

**5. Relief Sought / Issues Presented for Review**

Denial of petitioner’s Motion for Extension of Time to File Petition for Review—Should a motion for extension of time for filing a petition for discretionary review be granted when there has been no showing of extraordinary circumstances and when the denial of that motion would actually effect justice, not cause a “gross miscarriage of justice?” (RAP 18.8)

Denial of petitioner’s Petition for Review—Should a Petition for Discretionary Review be granted when (1) the petition for discretionary review raises a new argument that was not presented and adequately

developed at the trial court; (2) the petition for discretionary review is not supported by even one citation to applicable authority; (3) the decision of the Court of Appeals is solidly supported by the well-settled law of this state; and (4) the petition does not meet any of the criteria of RAP 13.4 (b)?

**6. Statement of the Case**

This appeal arises first from the trial court's denial of a motion to continue the hearing of a properly noted motion for summary judgment, and, second, from the Court of Appeals' decision affirming the trial court.

The motion for continuance was served four days before the scheduled MSJ and noted for hearing at the same time. It was authored and on the pleading paper of an attorney who appeared in the case for plaintiff-petitioner. The plaintiff-petitioner's moving papers for the motion for continuance made absolutely no reference to any alleged disability or financial hardship. (See appendix 1). During oral argument there was no mention of any alleged disability, although there was one statement that she was "destitute." See appendix 2. Plaintiff-petitioner's lawyer did not even come close to providing the trial court with any fact, citation of authority or legal argument that with more time would create a material issue of fact. That type of information was not provided either in the written motion or during oral argument. In fact, no such information could be provided, because the motion was based on the plaintiff's very own complaints. No

such information was provided to the Court of Appeals and no such information has been provided to the Supreme Court.

The motion for continuance was denied.

The summary judgment motion was then granted, dismissing the plaintiff-petitioner's complaint with prejudice.

A subsequent motion for reconsideration was denied.

Petitioner, represented by the same counsel, then appealed the denial of the motion for continuance to the Court of Appeals, but did not appeal the denial of the motion for reconsideration. The Court of Appeals affirmed the trial court on January 17, 2017.

On February 7, 2017, the Court of Appeals denied a motion for reconsideration that was filed by counsel for petitioner.

Therefore, per RAP 13.4 (a), a petition for discretionary review was due on Thursday, March 9, 2017.

If [a motion to reconsider all or part of the Court of Appeals decision is timely made], the petition for review **must** be filed within 30 days after an order is filed denying a timely motion for reconsideration . . . .

(emphasis added).

Petitioner's counsel withdrew on Thursday, February 23, 2017.

Instead of filing a timely Petition for Discretionary Review, plaintiff-petitioner filed a Motion for Extension of Time to File Petition for

Review on March 6, 2017, three days before the petition was due. That document was obviously prepared by an attorney.

On April 10, 2017, yet another attorney appeared for Petitioner.

That attorney withdrew on April 26, 2017, but obviously prepared the Petition for Discretionary Review that was filed on that same date.

Plaintiff-petitioner's lawsuit against defendant-respondent was the second lawsuit filed by plaintiff-petitioner for the same injuries arising out of the same incident.

During the first lawsuit plaintiff-petitioner had two different sets of attorneys. The first prepared the complaint, which was filed on September 26, 2014. That firm continued to represent petitioner until it withdrew on September 15, 2015. In that first lawsuit plaintiff-petitioner sued the alleged tortfeasor's employer, a hospital, alleging that the tortfeasor, the Chief Nursing Officer of the defendant employer-hospital, injured the plaintiff-petitioner while the tortfeasor-nurse was acting in the course and scope of her employment. That lawsuit was dismissed with prejudice on a summary judgment motion on December 14, 2015. Petitioner was represented by counsel at the hearing on the motion for summary judgment. Petitioner did not appeal that dismissal.

Instead, she filed a second lawsuit, *pro se*, this time against the alleged tortfeasor-nurse, making virtually identical allegations. The

defendant nurse filed a motion for summary judgment, arguing that the second lawsuit was barred by *res judicata*. The factual bases for the MSJ were the plaintiff-petitioner's own complaints in the two lawsuits and the unappealed summary judgment order. The very well established and widely recognized rule of law is that if one sues a principal or an agent for actions performed in the course and scope of the agent's work, but loses that lawsuit, then one cannot sue the other in a second lawsuit arising out of the same incident.

As noted above, four days before the MSJ hearing new lawyers appeared for petitioner and filed a written motion for continuance. At the hearing on the motions for summary judgment and continuance the court listened to the arguments and expressed on the record a very rational basis for denying the motion to continue. The motion for summary judgment was granted and a follow up motion for reconsideration of the denial of the continuance motion was denied. Even then the plaintiff did not provide any fact, citation of authority or legal argument that could create an issue of material fact.

Although petitioner Simpson repeatedly states that she was "strangled," by Dr. Gipson in a hospital room with several people present, is no one else says that.

The truths about this case are: 1) there is no merit to Ms. Simpson's lawsuit; and 2) Ms. Simpson has been unrepresented at times because her case has no merit, not because she allegedly is poor or disabled.

The underlying facts are as follows:

On May 13, 2013, defendant (respondent) Linda Gipson, PhD, RN was employed as the Chief Nursing Officer of Whidbey General Hospital (the true legal name of which is Whidbey Island Public Hospital District No. 1 dba Whidbey General Hospital and Clinics, but for purposes of this answer will be referred to as "Whidbey General Hospital," or "WGH"). CP 42; 325-329.

Island County Superior Court had ordered that Plaintiff Jessica Simpson be placed in involuntary treatment because she was a danger to herself. Island County authorities obtained her admission to Whidbey General Hospital until she could be placed at an appropriate mental health facility. This was difficult, because Ms. Simpson is not welcome at most of the appropriate facilities, so she remained at WGH until near the time of her release.

During the day of May 13, 2013, the last day of the hold, Ms. Simpson was aggressive and abusive. She assaulted a nurse in the morning. At about 1:30 p.m. another "Code Gray" was called when she was tearing up her room, yelling and screaming obscenities, and being non-cooperative.



She needed to be placed in four point restraints and to have medication administered to calm her. A “Code Gray” was called to deal with this emergency.

Dr. Gipson heard this “Code Gray” and went to assist, because she thought that the nurse who had been assaulted in the morning was still in the ER. Ms. Simpson resisted and threatened staff who were trying to care for her.

Chief Nursing Officer Gipson is a person of excellent experience, skill, ability and quality. The declaration that was submitted by her in support of the summary judgment in first lawsuit, *Simpson v WGH*, is attached to this brief as appendix 3. There the court can see for itself her remarkable qualifications and what actually happened with Ms. Simpson on March 13, 2013. In short, Dr. Simpson assisted in caring for Ms. Simpson during the Code Gray. Ms. Simpson, among other things, was threatening the nurses and was positioned such that she could have carried out those threats. In the process of caring for plaintiff Simpson and in order to help redirect her attention from her biting targets (the nurses) and to make it easier to get Ms. Simpson’s left hand restrained so that the nursing staff could inject an anti-anxiety medication, Dr. Gipson put one hand on Ms. Simpson’s shoulder to bring her back forward and she placed the soft part of her other hand on the hard part of Ms. Simpson’s chin. Dr. Gipson did not touch Ms.

Simpson's neck and did not "strangle" her. Later that day Ms. Simpson was examined by a medical doctor and no sign of injury was found. See appendix 4.

For some unknown reason the Island County Prosecuting Attorney, on July 2, 2014, filed a single criminal charge against Dr. Gipson in Island County District Court, Assault 4<sup>th</sup> Degree, RCW 9A.36.041. CP 13-14; 198.

The criminal case was tried to a jury for nine days between April 2 and April 10, 2015. Twenty-seven witnesses, including experts testified, including Ms. Simpson, Dr. Gipson and emergency medicine expert Nathan Schlicher, MD, J.D. The jury returned a verdict of "not guilty." Immediately thereafter the jury was instructed on RCW 9A.16.110 and asked to determine, by a preponderance of the evidence, if the force exerted by Dr. Gipson was lawful. After further deliberation, the jury returned a special verdict, finding by a preponderance of the evidence that Dr. Gipson had used lawful force in the interaction with Ms. Simpson. See Appendix 5. The Court subsequently issued Findings of Fact and Conclusions of Law in which it ordered the State to pay Dr. Gipson's attorney's fees and costs.

7. **Argument**

*(a) Motion for Extension of Time to File Petition for Review*

RAP 18.8 controls motions for extension of time.

**(b) Restriction on Extension of Time.** The appellate court will **only in extraordinary circumstances and to prevent a gross miscarriage of justice** extend the time with which a party must file . . . a notice for discretionary review of a decision of the Court of Appeals . . . .

(emphasis added).

Here plaintiff-petitioner has offered no extraordinary circumstances. She is a *pro se* litigant who has had four sets of lawyers, but who now claims that due to finances and emotional difficulties is incapable of complying with the Rules of Appellate procedure. However, from the volume of emails with which she inundates court and counsel, it is apparent that she is very able to communicate.

Nor has she provided the court with any citation of authority to support that she should be provided additional time.

Finally, the only way to effect justice to this case, once and for all, is to put an end to this case.

Dr. Gipson has had to live through a criminal prosecution. She was acquitted. But most pertinent to this case, the jury made a special finding of fact, by a preponderance of the evidence, that the force she exercised was lawful.

Dr. Gipson, although not a named defendant, then had to endure the first civil lawsuit, wherein her employer was sued for acts she allegedly performed in the course and scope of her employment. That case was dismissed for a number of reasons, one of which was that plaintiff-petitioner had no expert witness to testify that Dr. Gipson's care fell below the standard of care.

Then Dr. Gipson has had to endure yet another civil lawsuit, this time as the named defendant—with the allegations of the complaint and causes of action, insofar as they relate to her, being identical to the complaint in the first civil lawsuit. The trial court made a very reasonable decision on an issue that was addressed to her discretion, expressed a rational basis for her decision and was well within settled law. The Court of Appeals affirmed.

The only way for there to be a gross miscarriage of justice would be to grant plaintiff-petitioner's motion for an extension of time.

*(b) Petition for Discretionary Review*

RAP 13.4 (b) controls when a petition for review will be accepted by the Supreme Court.

**(b) Considerations Governing Acceptance of Review.** A petition for review will be accepted by the Supreme Court only:

(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or

(2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals;  
or

(3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4 (b).

Plaintiff-petitioner has not met any of these criteria.

She is arguing that her alleged status as poor and allegedly “disabled” raises to “a significant question of law” under the Washington or US Constitutions, or that it involves an issue of substantial public interest that should be determined by the Supreme Court.”

At the outset, however, appendices 1 (motion for continuance) and 2 (verbatim report of the proceedings) show that the alleged “barriers to Ms. Simpson’s fundamental right to access to justice” were not even presented to the trial court as part of the motion for continuance, other than a single mention during oral argument that she was “destitute.”

Normally, a party may not raise on appeal an issue not raised or adequately developed at the trial level. But RAP 2.5 (a) (3) allows the appellate court to review claimed error raised for the first time on review that constitutes “manifest error affecting a constitutional right.” As is shown in *State v WWJ Corp.*, 138 Wn.2d 595, 980 P.2d 1257 (1999), this is

a very limited exception. In that case the Court declined to review an untimely and insufficiently developed claim of error that a \$500,000 penalty imposed under state consumer protection statutes violated the excessive fines clause of Eighth Amendment and the Due Process Clause of the Fourteenth Amendment.

**Because RAP 2.5(a)(3) is an exception to the general rule that parties cannot raise new arguments on appeal, we construe the exception narrowly by requiring the asserted error to be (1) manifest and (2) “truly of constitutional magnitude.”** *State v. McFarland*, 127 Wash.2d 322, 333, 899 P.2d 1251 (1995) (quoting *State v. Scott*, 110 Wash.2d 682, 688, 757 P.2d 492 (1988)). RAP 2.5(a)(3) was not designed to allow parties “a means for obtaining new trials whenever they can ‘identify a constitutional issue not litigated below.’ ” *Scott*, 110 Wash.2d at 687, 757 P.2d 492 (quoting *State v. Valladares*, 31 Wash.App. 63, 76, 639 P.2d 813 (1982), *aff’d in part, rev’d in part*, 99 Wash.2d 663, 664 P.2d 508 (1983)). **If the record from the trial court is insufficient to determine the merits of the constitutional claim, then the claimed error is not manifest and review is not warranted.** *McFarland*, 127 Wash.2d at 333, 899 P.2d 1251 (citing *State v. Riley*, 121 Wash.2d 22, 31, 846 P.2d 1365 (1993)). *Cf. State v. Contreras*, 92 Wash.App. 307, 311-14, 966 P.2d 915 (1998).

*McFarland* held an error is manifest if it results in actual prejudice to the defendant. An equally correct interpretation of manifest error was given in *State v. Lynn*, 67 Wash.App. 339, 345, 835 P.2d 251 (1992), where the court stated, **“Essential to this determination is a plausible showing by the defendant that the asserted error had practical and identifiable consequences in the trial of the case.”** Under *Lynn*, an alleged error is manifest only if it results in a concrete detriment to the claimant’s constitutional rights, *and* the claimed error rests upon a

plausible argument that is supported by the record. To determine whether a newly claimed constitutional error is supported by a plausible argument, the court must preview the merits of the claimed constitutional error to see if the argument has a likelihood of succeeding. Reading manifest in this way is consistent with *McFarland* 's holding that exceptions to RAP 2.5(a) should be construed narrowly. The policy behind RAP 2.5(a)(3) is simply this: Appellate courts will not waste their judicial resources to render definitive rulings on newly raised constitutional claims when those claims have no chance of succeeding on the merits.

**Johnson's excessive fines claim involves a genuine constitutional issue, but the record is insufficiently developed to evaluate its merits. Without a developed record, the claimed error cannot be shown to be manifest, and the error does not satisfy RAP 2.5(a)(3). See *Riley*, 121 Wash.2d at 31, 846 P.2d 1365 (declining to consider defendant's Fourth Amendment claim because the record was insufficiently developed to consider the claim).**

138 Wn.2d at 602-03, 980 P.2d 1261 (emphasis added).

Plaintiff-petitioner has not supplied the court with one document that was considered by the trial court which in any way develops the speculative contentions that are now being advanced in her Petition for Discretionary Review.

Nor has she cited even one authority that supports her due process and equal protection contentions.

The only cases she cites are *Hagar v Reclamation Dist. No. 108*, 111 U.S. 701, 708 4 S.Ct. 663, 28 L.Ed. 569 (1884) and *Hurtado v People of the State of California*, 110 U.S. 516, 4 S.Ct. 111, 28 L.Ed 232 (1884). In

*Hagar*, the Supreme Court upheld a California statute that imposed a lien on property that was improved by a local reclamation district, over the due process notice complaints of one of the landowners. In *Hurtado* the Supreme Court upheld a conviction for murder based on an information filed after a magistrate's examination and commitment. The defendant claimed that Due Process required a grand jury for capital crimes, not just an examination and commitment by a magistrate. Neither of these cases has anything to do with the alleged financial or mental/emotional disability condition of a civil litigant.

In her petition she purports to quote *Hagar* at 108, but counsel for defendant-respondent could only find the first two sentences of the quote in *Hagar*. None of the quote was found by the undersigned counsel in *Hurtado*.

What can be found in *Hagar* is the following:

... by 'due process' is meant one which, following the forms of law, is appropriate to the case, and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by the law; it must be adapted to the end to be attained; and wherever it is necessary for the protection of the parties, it must give them an opportunity to be heard respecting the justice of the judgment sought.

111 U.S. at 708.

There is no dispute whatsoever that that prescribed procedure for all motions was followed; that plaintiff-petitioner had sufficient notice and



opportunity to be heard; that the trial judge applied settled law (court rule and appellate decision) and expressed on the record a rational basis for her decision, which, after all, was addressed to her discretion. It is worth noting that this matter is now at its third level of court and at no time has plaintiff-petitioner or any of her lawyers ever provided any court with any fact or citation of authority that would lead a reasonable person to conclude that the motion for summary judgment should not have been granted. The truth is that all parties could spend years and do thousands of dollars of discovery and the outcome of the case would have been the same.

#### **8. Conclusion**

In sum, it is respectfully submitted that plaintiff-petitioner's motion for extension of time for filing a petition for discretionary review should be denied. She has made no showing of extraordinary circumstances. The denial of that motion would actually effect justice, not cause a "gross miscarriage of justice.

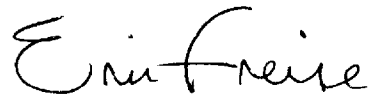
The Petition for Discretionary Review should be denied because:

(1) the petition for discretionary review raises a new argument that was not presented and adequately developed at the trial court; (2) the petition for discretionary review is not supported by even one citation to applicable authority; (3) the decision of the Court of Appeals is solidly supported by

the well-settled law of this state; and (4) the petition does not meet any of the criteria of RPA 13.4(b).

DATED: May 30, 2017.

FREISE & FERGUSON PLLC



By \_\_\_\_\_  
Eric L. Freise, WSBA #7126  
Of Attorneys for Defendant/Respondent  
Linda Gipson, Ph.D, R.N.

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## **Appendix**

- Ap. 1. Plaintiff-petitioner's Motion for Continuance of MSJ hearing, 2-18-16
- Ap. 2 Verbatim Report of Proceeding Motion for Continuance and MSJ, 2-22-16
- Ap. 3 Declaration of Linda Gipson, PhD, RN Supporting Defendant [WGH]'s Motion for Summary Judgment (without exhibits), 11-12-15
- Ap. 4. Declaration of Nathan Schlicher, MD, JD, Supporting Defendant [WGH]'s Motion for Summary Judgment, 11-9-15
- Ap. 5 Special Verdict Form and Instruction, State v. Gipson, I.C. Dist. Ct. No. C14-00093, signed 4-10-15

# Appendix 1

# FAX

<b>Date:</b>	02/18/2016
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<b>Pages including cover sheet:</b>	14
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<b>To:</b>	+12066247999
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<b>NOTE:</b>	
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RECEIVED

FEB 19 2016

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ATTORNEYS AT LAW

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## facsimile transmittal

To: **Mr Eric L. Freise.** Fax: **(206) 624 7999**  
From: **THE RO FIRM P.S.C.** Date: **2/18/16**  
Re: **Simpson vs. Gipson** Pages: **13 INCLUDING COVER**  
Cc:

Urgent     For review     Please comment     Please reply     Please recycle

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**Dear Mr. Freise:**

**Please find attached a Note for Motion, Motion to Continue and motion to Shorten, Declaration of Plaintiff's Attorney, Certificate of Service, Proposed order for granting Plaintiff's motion to Continue, and .Notice of Appearance.**

**Thank you.**

**Respectfully,  
THE RO FIRM, P.S.C.**

**FAX: (206) 319-4470**

**Attn: ADMINISTRATION DIVISION**

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The Honorable Vickie Churchill

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Attorney(s) for Plaintiff

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

JESSICA SIMPSON, and individual  
Plaintiff,

vs.

LINDA GIPSON and JOHN DOE GIPSON,  
husband and wife, and the marital community  
composed, thereof,  
Defendant.

) Case No.: 16-2-00012-1

)  
) **NOTE FOR MOTION CALENDAR**  
) **LCR 77(k)(1)**

) **CLERK'S ACTION REQUIRED**

TO: THE CLERK OF THE COURT  
AND TO: DEFENDANT(S)

PLEASE TAKE NOTICE that the hearing on the motion listed below will be held at the date and time given in the Law & Justice Center, 1<sup>st</sup> Floor, 101 North East 6<sup>th</sup> Street, Coupeville, Washington.

Date: 2/22/16  
Time: 9:30AM  
Room: Dept. 02  
Nature of Motion: MOTION TO CONTINUE

RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of February 2012.

Presented by:  
s/ Victor Ro, Esq.  
WSBA #38984

**PLAINTIFF'S MOTION TO CONTINUE  
AND MOTION SHORTENING TIME OF PLAINTIFF'S  
MOTION TO CONTINUE**

**SIMPSON v. GIPSON**

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\_\_\_\_\_  
Attorney for Plaintiff

**PLAINTIFF'S MOTION TO CONTINUE  
AND MOTION SHORTENING TIME OF PLAINTIFF'S  
MOTION TO CONTINUE**

**SIMPSON v. GIPSON**

**THE RO FIRM, P.S.C.**  
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The Honorable Vickie Churchill

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Attorney(s) for Plaintiff

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

JESSICA SIMPSON, and individual  
Plaintiff,  
vs.  
LINDA GIPSON and JOHN DOE GIPSON,  
husband and wife, and the marital community  
composed, thereof,  
Defendant.

) Case No.: 16-2-00012-1  
)  
) **MOTION TO CONTINUE**  
) **(90 Days)**  
) **MOTION SHORTENING TIME**  
) **(as applicable)**  
)  
)  
) DATE: FEBRUARY 22, 2016  
) TIME: 9:30AM  
) PLACE: ISLAND COUNTY SUPERIOR  
) COURT  
)  
) **WITH ORAL ARGUMENT**

**PLAINTIFF'S MOTION TO CONTINUE  
AND MOTION SHORTENING TIME OF PLAINTIFF'S  
MOTION TO CONTINUE**

**SIMPSON v. GIPSON**

**THE RO FIRM, P.S.C.**  
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1 COMES NOW, Plaintiff, Jessica Simpson, by and through her attorney, Victor Ro, THE  
 2 RO FIRM, P.S.C., hereby requests and moves the court for a MOTION TO CONTINUE and  
 3 if applicable, SHORTENING TIME FOR HEARING based on GOOD CAUSE in efforts to  
 4 preserve judicial resources and in the interests of justice and judicial economy, by setting forth  
 5 Plaintiff's Motion to Continue to said date of February 22, 2016 at 9:30AM, the same date as  
 6 Defendant's Motion for Summary Judgment.

7 **I. RELIEF REQUESTED.**

8 In the interests of justice, reasonableness, and judicial economy, Plaintiff requests the  
 9 court more time for Defendant's Summary Judgment Motion in order for Plaintiff's Attorney to  
 10 prepare. If applicable, Plaintiff requests this motion to be heard on the same date as Defendant's  
 11 Motion for Summary Judgment.  
 12

13 **II. STATEMENT OF FACTS**

14 A summary judgment motion is set to be heard on 2/22/16.

15 In efforts to preserve the exhaustion of court resources, Plaintiff has attempted to contact  
 16 opposing counsel to no avail (cannot leave messages).  
 17

18 **III. STATEMENT OF ISSUES**

- 19 1. SHOULD THE COURT SHORTEN TIME? YES.  
 20 2. SHOULD THE COURT GRANT THE MOTION TO CONTINUE? YES.

21 **IV. EVIDENCE RELIED UPON**

22 **PLAINTIFF'S MOTION TO CONTINUE**  
 23 **AND MOTION SHORTENING TIME OF PLAINTIFF'S**  
 24 **MOTION TO CONTINUE**  
 25 **SIMPSON v. GIPSON**

26 **THE RO FIRM, P.S.C.**  
*A Professional Services Corporation*  
 5400 Carillon Point, Bldg. 5000, 4th Fl.  
 Kirkland, Washington 98033  
 Tel: (206) 319-7072  
 Fax: (800) 515-6818

In addition to the general rules of law, this motion is based on the Court's record, and:

- 1. PLAINTIFF ATTORNEYS FILING OF THE NOTICE OF APPEARANCE ON 2/18/16.
- 2. The Declaration of Plaintiffs' counsel, Victor Ro;
- 3. Files and records, herein.

**V. ARGUMENT**

Plaintiff requests shortening of time due to recent appearance of Plaintiff's Attorney.

Inter alia, the Court should GRANT MOTION TO CONTINUE because:

- 1. Prevent Undue Prejudice to the Plaintiff
- 2. Just Cause
- 3. Interests of Justice

**CONCLUSION**

For the aforesaid reasons, Plaintiff requests that the Court to grant Plaintiff's Motion.

RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of February 2012.

Presented by:  
s/ Victor Ro, Esq.  
WSBA #38984  
**THE RO FIRM, P.S.C.**



Attorney for Plaintiff

**PLAINTIFF'S MOTION TO CONTINUE  
AND MOTION SHORTENING TIME OF PLAINTIFF'S  
MOTION TO CONTINUE**

**SIMPSON v. GIPSON**

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The Honorable Vickie Churchill

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Victor Ro, WSBA #38984  
**THE RO FIRM, P.S.C.**  
5400 Carillon Point  
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Kirkland, Washington 98033  
Telephone: (206) 319-7072  
Facsimile: (800) 515-6818

Attorney(s) for Plaintiff

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

JESSICA SIMPSON, and individual  
Plaintiff,

vs.

LINDA GIPSON and JOHN DOE GIPSON,  
husband and wife, and the marital community  
composed, thereof,  
Defendant.

) Case No.: 16-2-00012-1  
)  
) **MOTION TO CONTINUE**  
) **(90 Days)**  
)  
) **MOTION SHORTENING TIME**  
) **DATE: FEBRUARY 22, 2016**  
) **TIME: 9:30AM**  
) **PLACE: ISLAND COUNTY SUPERIOR**  
) **COURT**  
)

I, Victor Ro, Attorney for Plaintiff, declare as follows:

1. I am over 21 years of age.
2. I am the attorney for the Plaintiff and have personal knowledge of the matters set forth, herein.

**DECLARATION – PLAINTIFF’S ATTORNEY  
PLAINTIFF’S MOTION TO CONTINUE  
AND MOTION SHORTENING TIME OF PLAINTIFF’S  
MOTION TO CONTINUE**

**SIMPSON v. GIPSON**

**THE RO FIRM, P.S.C.**  
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Tel: (206) 319-7072  
Fax: (800) 515-6818

3. In efforts to agree with Defense Counsel, I have attempted to telephone contact him two times (2) to no avail.

I declare, under penalty of perjury under the laws of the State of Washington that the foregoing is true and accurate to the best of my knowledge.

Executed this 18th day of February, 2016, in Kirkland, Washington.

DATED this 18th day of February, 2016.

**THE RO FIRM, P.S.C.**  
Attorneys for Plaintiff

By \_\_\_\_\_



WSBA #38984  
**THE RO FIRM, P.S.C.**  
5400 Carillon Point, Bldg. 5000, 4th Fl.  
Kirkland, WA 98033  
Tel: (206) 319-7072  
Fax:(206) 319-4470

**DECLARATION – PLAINTIFF’S ATTORNEY  
PLAINTIFF’S MOTION TO CONTINUE  
AND MOTION SHORTENING TIME OF PLAINTIFF’S  
MOTION TO CONTINUE**

**SIMPSON v. GIPSON**

**THE RO FIRM, P.S.C.**  
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Fax: (800) 515-6818

**CERTIFICATE**

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I declare that on the 18th day of February, 2016, I sent a copy of Plaintiff's MOTION TO CONTINUE and NOTICE OF APPEARANCE to other parties of record in the manner described below: via Fax/Email

**DEFENDANT: LINDA GIPSON**  
**ERIC FREISE**  
19109 – 36<sup>TH</sup> AVENUE, WEST, SUITE 204  
LYNNWOOD, WA 98036

I hereby certify under penalty of perjury under the laws of the State of Washington that the forgoing is true and correct.

EXECUTED this February 18th, 2016, at Kirkland, WA.

\_\_\_\_\_  
Rebecca Paige , Secretary  
**THE RO FIRM, P.S.C.**

**NOTE FOR TRIAL DOCKET/ARBITRABILITY/JURY DEMAND**  
**CRUZ V. NELLERMOE, ET. AL.**

**THE RO FIRM, P.S.C.**  
5400 Carillon Point  
Bldg. 5000, 4th Floor  
Kirkland, WA 98033  
Tel: (206) 319-7072  
Fax: (206) 319-4470

**CERTIFICATE**

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I declare that on the 18th day of February, 2016, I sent a copy of Plaintiff's MOTION TO CONTINUE and NOTICE OF APPEARANCE to other parties of record in the manner described below: **via Fax/Email**

**DEFENDANT: LINDA GIPSON**  
**ERIC FREISE**  
**19109 – 36<sup>TH</sup> AVENUE, WEST, SUITE 204**  
**LYNNWOOD, WA 98036**

I hereby certify under penalty of perjury under the laws of the State of Washington that the forgoing is true and correct.

EXECUTED this February 18th, 2016, at Kirkland, WA. \*

  
\_\_\_\_\_  
Rebecca Paige, Secretary  
**THE RO FIRM, P.S.C.**

**NOTE FOR TRIAL DOCKET/ARBITRABILITY/JURY DEMAND**

**CRUZ V. NELLERMOE, ET. AL.**

**THE RO FIRM, P.S.C.**  
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The Honorable Vickie Churchill

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Victor Ro, WSBA #38984  
**THE RO FIRM, P.S.C.**  
5400 Carillon Point  
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Kirkland, Washington 98033  
Telephone: (206) 319-7072  
Facsimile: (800) 515-6818

Attorney(s) for Plaintiff

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

JESSICA SIMPSON, and individual  
Plaintiff,

vs.

LINDA GIPSON and JOHN DOE GIPSON,  
husband and wife, and the marital community  
composed, thereof,  
Defendant.

) Case No.: 16-2-00012-1

)  
) **ORDER GRANTING PLAINTIFF'S**  
) **MOTION TO CONTINUE**

) (if applicable: **ORDER GRANTING**  
) **MOTION SHORTENING TIME**)

) DATE: FEBRUARY 22, 2016

) TIME: 9:30AM

) PLACE: ISLAND COUNTY SUPERIOR  
) COURT

) **WITH ORAL ARGUMENT**

**ORDER**

IN THE MATTER of JESSICA SIMPSON, Plaintiff against Defendant LINDA

GIPSON, ET. AL., the Court having reviewed the matter, herein,

**ORDER – GRANTING PLAINTIFF'S MOTION TO CONTINUE**

**SIMPSON v. GIPSON**

**THE RO FIRM, P.S.C.**  
*A Professional Services Corporation*  
5400 Carillon Point, Bldg. 5000, 4th Fl.  
Kirkland, Washington 98033  
Tel: (206) 319-7072  
Fax: (800) 515-6818

1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that Plaintiff's motion is  
2 GRANTED.

3  
4 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

5  
6 Honorable Vickie Churchill  
7 Island County Superior Court Judge  
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23 ORDER – GRANTING PLAINTIFF’S MOTION TO CONTINUE  
24 SIMPSON v. GIPSON

25 THE RO FIRM, P.S.C.  
26 A Professional Services Corporation  
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# Appendix 2

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF ISLAND

JESSICA SIMPSON, an individual,	)	No. 16-2-00012-1
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
LINDA GIPSON, et al.	)	
	)	
Defendant.	)	
	)	
-----	x	

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VERBATIM REPORT OF PROCEEDINGS  
(Motion to Continue, Motion for Summary Judgment)

---

BE IT REMEMBERED that on Monday, February 22, 2016 at 9:30 o'clock, a.m., the above-named and numbered cause came on for a Motion to Continue and a Motion for Summary Judgment hearing on the Law & Motions Calendar before the HONORABLE VICKIE I. CHURCHILL, sitting as judge in the above-entitled Court, at the Island County Courthouse, in the Town of Coupeville, State of Washington.

Victor Ro, Attorney at Law, appeared on behalf of the Plaintiff, Jessica Simpson.

Eric L. Freise, Attorney at Law, appeared on behalf of the Defendant, Linda Gipson.

1           Whereupon, the following proceedings were had:

2           THE COURT: Jessica Simpson versus Linda Gipson,  
3           16-2-00012-1. Is Jessica Simpson --

4           MR. RO: Counsel present, Your Honor.

5           THE COURT: Counsel. Okay. Thank you.

6           MR. RO: She is here, but I had her wait outside  
7           for a second.

8           THE COURT: Okay. Thank you.

9           MR. RO: Good morning.

10          THE COURT: Okay. Just one moment.

11          We have a Local Court Rule that you have to provide  
12          courtesy copies to the judge that's going to be hearing  
13          this.

14          So... Okay. Go ahead.

15          MR. RO: This is Victor Ro for the Plaintiff,  
16          Ms. Jessica Simpson.

17          I don't know if Your Honor would like to hear --

18          THE COURT: I'd like to hear your response.

19          MR. RO: Sure. No problem. Victor Ro for  
20          Ms. Jessica Simpson. We - we just --

21          This is a Motion to Continue. I don't-- Generally,  
22          on motions to continues I would not say that Your - Your  
23          Honor will grant it today. Normally grant that. Just so  
24          that my clients can have an opportunity to advocate the  
25          case.

1 We're asking for this motions for continuance. I  
2 just got on this case. I don't know anything about this  
3 case whatsoever.

4 I just met Mr. Freise today for the first time. It  
5 seems like this is a-- I'm glad to be here in this  
6 venue.

7 We're just asking for a Motion to Continue. I don't  
8 see any-- There's - there's no undue prejudice we believe  
9 to our - to Ms. Simpson. No prejudice that's going to be  
10 confronted by Mr. Freise or his client, as well.

11 We-- Most importantly, we think in the interest of  
12 justice, most importantly we think-- I'm requesting a  
13 90-day continuance. I'm not sure what the trial - docket  
14 says for trial date right now.

15 Is it 2017? Or --

16 MR. FREISE: There's no trial date right now.

17 MR. RO: No trial date set?

18 THE COURT: No. This is a Motion for Summary  
19 Judgment.

20 MR. RO: These are, as you know, large motions  
21 for us to oppose.

22 Once again, I need-- My - my office just got the  
23 file. We just need some time to look at it. We - we just  
24 want to be able to advocate for Ms. Simpson.

25 I think that it's-- There's a long history of

1 something that's been going on. And I'm-- I'm a private  
2 attorney and --

3 THE COURT: Mm-hmm.

4 MR. RO: To say the least, I'm a private  
5 attorney. I'm trying to help her out also and advocate  
6 for her to the best my ability. I'm glad that she has  
7 finally decided to hire counsel on this matter, as well.

8 Also, for the record, Sixth Amendment right to  
9 counsel. Fifth Amendment due process.

10 We just think it would be most-- Just for a  
11 continuance. We understand that they're merits to the  
12 summary judgment motion that must be adjudicated by this  
13 Court.

14 But it's a basic procedural request. We really-- We  
15 really would plea to Your Honor to just grant this,  
16 perhaps a 90-day continuance, so we can at least have a  
17 position and a foot to stand on to advocate for Ms.  
18 Simpson.

19 THE COURT: Okay.

20 MR. RO: Thank you.

21 THE COURT: Thank you.

22 MR. FREISE: Good morning, Your Honor. I'm Eric  
23 Freise. I'm here representing Linda Gipson.

24 Did - did you get our opposition to the motion?

25 THE COURT: I did.

1 MR. FREISE: Okay.

2 THE COURT: I got that.

3 MR. FREISE: All right. Hmm.

4 I'll - I'll do my best to be brief. I'm sure you've  
5 heard that from lawyers millions of times.

6 THE COURT: Do your best.

7 MR. FREISE: Okay. Justice does not require a  
8 continuance of our summary judgment motion.

9 The facts that-- This Court is very able to render a  
10 just decision.

11 The facts that our motion are - is or are based on  
12 are indisputable. They're undisputed.

13 They are Ms. Simpson's Complaint, an Amended  
14 Complaint in the action that was dismissed by Judge  
15 Hancock. Her-- And-- Her Complaint in this action and  
16 Judge Hancock's Order of Dismissal.

17 There is nothing to be gained by - by continuing this  
18 motion. The law-- It - it's purely a question of law.

19 They're not going to be able to come up with any  
20 other facts. And they have not even attempted to do so.

21 In our brief we provided the Court with three cases  
22 that expressly discuss the requirements to get a  
23 continuance on a motion for summary judgment under Rule  
24 56(f).

25 The - the party requesting the continuance must



1 inform the Court of what evidence they expect to produce.  
2 They must inform the Court of what efforts they have made  
3 to get that evidence, why they haven't got the evidence,  
4 and that that evidence will be material.

5 There's nothing in this case that they're going to  
6 produce that, in my opinion -- The Court, of course, will  
7 make her own - make its own decision -- is going to  
8 force - is going to cause the Court not to grant our  
9 summary judgment motion.

10 It's purely a matter of law. And the law is so well  
11 established it's been followed in this state, almost every  
12 other state in the united kingdom.

13 So Linda Gipson has lived with this miserable,  
14 trumped-up situation for a long time now. The Plaintiff  
15 got the Prosecutor to prosecu - to try to prosecute her.  
16 They lost that. She filed her own lawsuit with the  
17 lawyer. The lawyer withdrew. And they got another  
18 lawyer. The - the-- Judge Hancock dismissed it.

19 She filed another lawsuit, this time pro se. As we  
20 all know, if a person wants to be a pro se, they're  
21 expected to follow the same rules as a lawyer does.

22 Now, after-hours Thursday night Mr. Ro sends me his  
23 Motion for a Continuance.

24 They don't tell us any reason why. And, in fact,  
25 Mr. Ro told me this morning that if he's read it, our

1 motion, he's barely skimmed it.

2 Well, the motion is not that long. You could read it  
3 on the ferry coming over here. So I--

4 Justice requires that this case be ended today.

5 Thank you, Your Honor.

6 MR. RO: Quick rebuttal.

7 I appreciate Mr. Freise's response on that.

8 Just for the record, I don't think he's arguing the  
9 sub - substantive value of the - of the summary judgment  
10 motion.

11 We're still on the Motion to Continue; correct, Your  
12 Honor?

13 THE COURT: Right.

14 MR. RO: Okay. Just - just on that, I had-- I  
15 don't disagree with Mr. Freise's issues on the law. I - I  
16 one hundred percent agree with him.

17 But on the issue of a continuance, it's - to me  
18 it's - to us it's simply basic adjudication that your -  
19 that this Court could - could make so at least I could  
20 respond most zealously and vehemently to Mr. Freise's  
21 position on this matter.

22 It would be more in the interest of justice for this  
23 Court. It would be a waste of judicial resources. To put  
24 it to-- Hypothetically, in the event -- And this is in--  
25 this is with great respect for the Court, as well -- in

1 the event that this Motion to Continue is denied, what  
2 will probably happen is we will file an appeal.

3 Probably not a Motion to Reconsider. I don't think,  
4 you would probably do that anyway.

5 File an appeal, if we have to file an Amended  
6 Complaint. And if this goes through a circus of - of  
7 multiple processes, it certainly won't been advantageous  
8 to any of us. It may be advantageous to Mr. Freise's  
9 client in terms of billable work that he might be doing.

10 But certainly Ms.-- My understanding is our client,  
11 she is-- She's-- I - I-- May be destitute, to say the  
12 least. And we are doing the best we can to - to give her  
13 justice.

14 The allegation that I know is that she was choked by  
15 a nurse and that, to me, is something atrocious. In a  
16 Court of Law we think justice should - should - should  
17 prevail. I know I'm speaking a little bit more  
18 subjectively right now.

19 And I-- I believe there was a criminal case that -  
20 that - that had preceded. And the AG's Office, more  
21 importantly right now, is appealing that - I believe is  
22 appealing that case.

23 And just in the very least, all we're asking for is a  
24 Motion to Continue so that Ms. Simpson's lawyer can  
25 prepare for this case and perhaps either amend the

1 Complaint or whatever is necessary to respond to the  
2 summary judgment motion.

3 At least just go through the processes of - of the  
4 Court so that she can use the courts that - that she's  
5 entitled to.

6 Thank you very much.

7 THE COURT: Thank you.

8 I - I understand that your position that this would  
9 have to go up on appeal.

10 The first case-- You have no-- You've given me no  
11 reason for continuing this case other than there may be  
12 something somewhere somehow.

13 I'm denying the Motion to Continue.

14 Now, the Court, in looking at this, went through the  
15 first case and the second case; exact word-for-word except  
16 for the claim against the corporate entity, Whidbey  
17 General Hospital. Or it's now called Whidbey - something  
18 or other. Not Whidbey General.

19 MR. FREISE: Whidbey - Whidbey General Hospital  
20 and Clinics. That - that seems to be the fashion these  
21 days among hospitals, Your Honor.

22 THE COURT: I know. But they changed their name  
23 recently. So...

24 MR. FREISE: Oh, did they?

25 THE COURT: Yes. So you're behind the times.

1 MR. FREISE: I guess I better get up to --

2 THE COURT: You're behind the times.

3 But that - that case was not appealed. And it was  
4 dismissed on summary judgment.

5 So there is res judicata. And I am dismissing--  
6 I'm granting the Motion for Summary Judgment.

7 Okay.

8 MR. RO: Would it-- Even - even a five-day  
9 continuance?

10 THE COURT: Sir, may I hear from you?  
11 Five-day continuance.

12 MR. FREISE: Your Honor, we really want this  
13 case over. This-- It's not going to make any difference.  
14 The - the law is overwhelming. The facts are  
15 indisputable. It's a waste of everybody's time and - and  
16 more torture for poor Dr. Gipson.

17 THE COURT: "Doctor"? I thought she was a  
18 nurse.

19 MR. FREISE: Well, Ph.D.

20 THE COURT: Oh, I see.

21 MR. FREISE: She's a nurse. But she has number  
22 of advanced degrees.

23 THE COURT: I'm - I'm granting the Motion for  
24 Summary Judgment. Thank you. No continuance.

25 MR. FREISE: Thank you, Your Honor.

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We have an order. May I hand it up, Your Honor?

THE COURT: You may.

MR. FREISE: (Proffers order to Court for review and signature.)

MR. FREISE: Thank you, Judge, for the Court's time.

THE COURT: Thank you.

(Hearing concluded.)

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## C E R T I F I C A T E

I, Karen P. Shipley, do hereby certify that the foregoing Verbatim Report of Proceedings was taken by me to the best of my ability and completed on Monday, February 22, 2016, and thereafter transcribed by me by means of computer-aided transcription;

That I am not a relative, employee, attorney or counsel of any such party to this action or relative or employee of any such attorney or counsel, and I am not financially interested in the said action or the outcome thereof.

That I am herewith affixing my seal this 26<sup>th</sup> day of February, 2016.

---

Karen P. Shipley, CSR No. 2051

# Appendix 3



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The Honorable Alan R. Hancock

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

JESSICA SIMPSON, an individual,  
  
Plaintiff,  
  
v.  
  
WHIDBEY ISLAND PUBLIC HOSPITAL  
DISTRICT, a Washington State Corporation,  
  
Defendant.

No. 14-2-00622-0  
  
DECLARATION OF LINDA  
GIPSON, PhD, RN SUPPORTING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGEMENT

LINDA GIPSON, PhD, RN declares and states as follows:

My name is LINDA GIPSON, PhD, RN. I am over 18 years of age, am not a party to this lawsuit, am competent to testify herein and make this declaration from personal knowledge.

I am the Chief Nursing Officer at Whidbey Island General Hospital ("WGH"). I have been in this position for nearly 3 years.

Whidbey Island is classified as a hospital and is governed and licensed by the Department of Health.

I have a Bachelor of Science in Nursing from the University of Maryland; a Master of Science in Nursing from Duke University; an MBA from Cleveland State; and a Ph.D. in Public Health with a focus in Health Policy and Management from the University of South Florida.

1 I am board certified in Advanced Nursing Administration. I have been board certified  
2 in Critical Care Nursing and Emergency Nursing and in Legal Nurse Consulting. I have been  
3 qualified as an expert witness on multiple occasions for hospitals that are defending  
4 themselves against malpractice suits. As such, I have formed and expressed opinions  
5 regarding the clinical care that was provided to patients and whether that care met medical  
6 standards. Exhibit A attached to this declaration is a true and correct copy of my Curriculum  
7 Vitae.

8 I have managed numerous medical facilities over my administrative career including  
9 one psychiatric hospital and several inpatient psychiatric units. My experience managing  
10 psychiatric hospitals included one-on-one contact with patients in those facilities as well as  
11 developing team strategies for caring for those patients.

12 I have a great deal of experience dealing with difficult patients who are a physical  
13 danger to themselves as well as others including those who are a danger to medical staff.  
14 When a patient engages in behavior that is deemed to be extremely combative or dangerous  
15 to themselves or hospital staff, a message announcing a Code Gray is made over the hospital's  
16 public address system. A Code Gray requires an immediate management response.

17 My experience with Code Gray procedure is extensive. I have frequently been an  
18 invited speaker at major national meetings, including meetings of the American College of  
19 Emergency Physicians, on the topic of Code Gray procedure.

20 By virtue of my training and experience, my review of Ms. Simpson's medical and  
21 psychiatric records, including those of her stays at WGH, and by virtue of my personal  
22 knowledge of the events of May 13, 2014, I have formed a number of opinions, some of which  
23 are expressed in this declaration. All such opinions are expressed on a more probable than  
24 not basis. Here are facts and opinions pertinent to WGH's motion for summary judgment.

25 On April 3, 2014, Jessica Simpson ("Ms. Simpson") was admitted to WGH pursuant  
26 to judicial order for a 14 day hold, based on claimed severe suicidal ideation. Ms. Simpson  
has been diagnosed with a borderline personality disorder. An important aspect of providing  
care and treatment for a patient like Ms. Simpson is to keep her safe and make sure she does  
not harm others through her violent behavior.

Ms. Simpson entered the hospital pursuant to an order of Island County Superior Court  
for an involuntary, 14 day hold. Under this order, WGH was charged with keeping her safe  
until she could be successfully transferred to a psychiatric facility. WGH is not a psychiatric  
institution and does not provide psychiatric care. We provide a place for the person until an  
appropriately licensed and staffed facility will accept her. WGH was prohibited from  
discharging Ms. Simpson and she was prohibited from leaving. Exhibit B attached to this  
declaration is a true and correct copy of the paperwork on the order detaining Ms. Simpson  
for involuntary treatment. Through this order, WGH was given consent to provide treatment  
to keep her from hurting herself, others and property.

DECLARATION OF LINDA GIPSON, PhD, RN  
SUPPORTING DEFENDANT'S MSJ - 2

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2 Ms. Simpson has a psychological condition where she frequently cries out for  
3 attention, whether positive or negative. So she will frequently call out that people are hurting  
4 her, choking her, killing her, when no one is even near her. That has been sort of a normal  
5 thing for her to do during each admission. Another behavior which she has frequently  
6 exhibited during her hospitalizations has been persistent threats to call a lawyer or sue WGH.  
Ms. Simpson is also manipulative and completely aware of her actions. She is able to threaten  
and follow-through with complete recollection of the events. She has no remorse for her  
threatening and violent actions.

7 At the time Ms. Simpson entered the hospital on April 30, 2014, I knew a great deal  
8 about Ms. Simpson because part of my supervisory duties is to review violent behavior reports  
9 and incident reports entered by medical staff about violent patients like Ms. Simpson. I read  
10 materials in these reports that indicated that Ms. Simpson had engaged in multiple incidents  
11 of striking, punching and kicking staff members. These records also list multiple acts of biting  
12 or attempted biting by Ms. Simpson. I also became aware of multiple instances where Ms.  
Simpson had spit on staff. Ms. Simpson also had, on multiple occasions, threatened staff with  
specific acts of violence and had followed through with her threats.

13 As a result of Ms. Simpson's violent, self-destructive and chaotic behavior, she  
14 frequently had to be placed in 4-point restraints (all four limbs of a patient are placed in  
cushioned restraints).

15 Whenever Ms. Simpson was a patient at WGH she was the focus of numerous Code  
16 Gray announcements where she was dangerous to staff, to herself or was trying to leave the  
17 facility. Ms. Simpson was adept at getting free from restraints, either fully or partially. In  
18 fact, there were several occasions where she was able to free herself from her restraints and  
then made an attempt to leave the hospital.

19 May 13, 2014, was the last day of Ms. Simpson's 14-day mandatory hold. Her  
20 behavior that day was typical of other visits to WGH. She began acting out more and more  
as the end of the mandatory hold approached.

21 At approximately 7:30 a.m. on May 13, 2014, Ms. Simpson attempted to leave her  
22 room. Supervising Nurse Cindy Holland was present. Ms. Simpson forcefully pushed nurse  
23 Holland into the wall and as a result nurse Holland's shoulder was injured. I learned about  
24 this event later in the morning and instructed nurse Holland to go to the Emergency  
Department to receive treatment.

25 At approximately 1:30 p.m. a Code Gray was called over the public announcement  
26 system for Ms. Simpson's room. Because I believed nurse Holland was in the Emergency  
Department, I responded to the Code Gray.

1 When I arrived at the room the nursing staff had already placed Ms. Simpson in four-  
2 point restraints. The room, however, was in disarray and the curtains had been ripped from  
3 the ceiling. Ms. Simpson was in her bed sitting up at a 45 degree angle. Ms. Simpson was  
4 improperly positioned so that she could easily pitch her body forward and possibly harm  
5 members of the medical staff if she became agitated. While I was discussing the situation  
6 with the staff in the hallway, Ms. Simpson managed to free her left arm from the restraints.

7 Certified Nursing Assistant Ashley DaPrato ("CNA DaPrato") squatted down to eye  
8 level with Ms. Simpson and tried to get Ms. Simpson's left arm back into the restraint. Ms.  
9 Simpson was thrashing all over the place, flinging her torso back and forth, doing everything  
10 to prevent CNA DaPrato from getting her left arm back into the restraint. CNA DaPrato was  
11 unable to get Ms. Simpson's arm restrained.

12 Ms. Simpson was also yelling profanities at the top of her lungs "B---s, "F---ers" and  
13 "C-----s," and at one point yelled, "How would you like me to bite you, you F---ing B---ch."  
14 Immediately after shouting this, she attempted to advance in the direction of CNA DaPrato,  
15 who was at her face level attempting to reapply the restraint to her left arm.

16 As Ms. Simpson was flinging her torso forward, I put one hand on her shoulder to  
17 bring her back forward and I placed the soft part of my hand on the hard part of her chin. The  
18 purposes of this later movement were (1) to re-direct her gaze toward my eyes so that her  
19 attention was taken away from potential biting targets; and (2) to make it easier to get her left  
20 hand restrained so that the nursing staff could inject an anti-anxiety medication, Ativan, that  
21 had been ordered by a physician which hopefully would calm her down.

22 I first learned about this standard technique used to re-direct a patient's attention many  
23 years before I began working at WGH. The technique is typically used to manage the patient's  
24 head and to limit his/her ability to move the upper part of their body.

25 Initially, Ms. Simpson responded by even more cursing and screaming. The nursing  
26 staff was then able to restrain Ms. Simpson's left arm and subsequently, nurse Cammy  
Campbell was able to inject Ms. Simpson in the thigh with Ativan. Shortly after the injection  
was administered we all stepped back.

Shortly after the nursing staff had successfully restrained Ms. Simpson, she was  
examined by the hospitalist, Ngozi Achebe, MD. Dr. Achebe did not find any signs of  
bruising or redness associated with pressure being applied to Ms. Simpson's jaw or neck.

Ms. Simpson remained in four-point restraints until she was successfully transferred  
to another facility later that day.

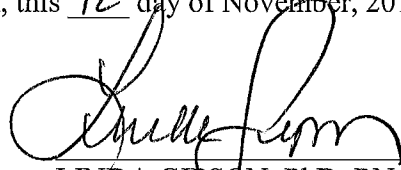
I am an expert in determining whether the proper standard of care was applied by  
nursing staff. With regard to the events of the Code Gray called on May 13, 2014, in my  
opinion, on a more probable than not basis, the actions of the WGH staff were well within

1 standard of care for the treatment of violent patients and of the standard of care for Involuntary  
2 Treatment Act patients.

3 The State of Washington filed a criminal case against me in Island County on a single  
4 charge of fourth degree assault. The trial lasted 9 days. Twenty-seven witnesses testified,  
5 including me and Ms. Simpson. Ms. Simpson appeared to play a big role in the case. The  
6 jury returned a verdict of not guilty and then returned a special verdict finding by a  
preponderance of the evidence that force used I used to restrain Ms. Simpson during the Code  
Gray was lawful.

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

9 EXECUTED at Coupeville, Washington, this 12 day of November, 2015.

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12 LINDA GIPSON, PhD, RN

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# Appendix 4

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The Honorable Alan R. Hancock

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

JESSICA SIMPSON, an individual,  
  
Plaintiff,  
  
v.  
  
WHIDBEY ISLAND PUBLIC HOSPITAL  
DISTRICT, a Washington State Corporation,,  
  
Defendant.

No. 14-2-00622-0  
  
DECLARATION OF NATHANIEL  
R. SCHLICHER, MD, JD, FACEP  
SUPPORTING DEFENDANT’S  
MOTION FOR SUMMARY  
JUDGEMENT

NATHANIEL R. SCHLICHER, MD, JD, FACEP declares and states as follows:

My name is NATHANIEL R. SCHLICHER, MD, JD, FACEP. I am over 18 years of age, am not a party to this lawsuit, am competent to testify herein and make this declaration from personal knowledge.

QUALIFICATIONS

I am a physician, licensed to practice medicine and surgery in the State of Washington. My specialty is Emergency Medicine. My practice is located at St. Joseph’s Medical Center in Tacoma, Washington, a Level II Trauma Center and tertiary care facility. I also practice at a Critical Access Hospital, Snoqualmie Valley Hospital in Snoqualmie, Washington.

My training and experience is as follows. I completed Medical School at the University of Washington School of Medicine in 2006 after completing my Juris Doctorate at the University School of Law in 2002. My residency training was in Emergency Medicine at Wright State University in Dayton, Ohio. After completing residency I returned to

DECLARATION OF NATHAN R. SCHLICHER,  
MD SUPPORTING DEFENDANT’S MSJ - 1

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1 Washington State and to my current practice. I am Board Certified by the American Board  
2 of Emergency Medicine.

3 As a result of my training and experience in Emergency Medicine, I am familiar with  
4 the standard of skill care and learning expected of a provider treating someone like Ms.  
5 Simpson and in the causation of the alleged injuries that she complains of in this lawsuit.

#### 6 MATERIALS REVIEWED

7 As part of the material provided to me in this matter, I have reviewed the following  
8 documents upon which I base my medical opinions:

- 9 1. Jessica Simpson Admission notes from April 30, 2014.
- 10 2. Dr. Huneycutt's Assessment of Ms. Simpson
- 11 3. Report from Gaylene Altman, RN PhD
- 12 4. Report from Dr. Russ Vandenberg
- 13 5. Dr. Achebe's Discharge Summary
- 14 6. Dr. e's Patient Discharge Order on Ms. Simpson
- 15 7. Dr. Achebe's Progress Notes on Ms. Simpson
- 16 8. Linda Gipson's Progress Notes from May 13, 2014.
- 17 9. Island County Police Statements and Records.
- 18 10. Island County District Court Affidavit of Probable Cause.
- 19 11. Record Extraction of violent incidences involving Ms. Simpson from July 2010  
20 to January 2015.
- 21 12. Gipson Special Verdict Form April 10, 2015.
- 22 13. Report of Susan Matt, RN dated October 22, 2014.
- 23 14. Simpson Amended Complaint, November 21<sup>st</sup>, 2014.
- 24 15. State versus Gipson Final Presentation Hearing Transcript June 25, 2015.
- 25 16. Whidbey General Hospital Answer to Complaint, dated December 1<sup>st</sup>, 2014.
- 26 17. American College of Emergency Physicians 2006 Clinical Consensus  
Guidelines Clinical Policy: Critical Issues in the Diagnosis and Management of  
the Adult Psychiatric Patient in the Emergency Department.
18. American College of Emergency Physicians 2014 Position Paper on the Care of  
the Psychiatric Patient in the Emergency Department – A Review of the  
Literature.

21 From the records I have reviewed, Ms. Simpson was admitted to Whidbey General  
22 Hospital on April 30, 2014 for suicidal ideation. She was detained by the County Designated  
23 Mental Health Professional for Involuntary Treatment pursuant to state statute. She has been  
24 diagnosed with a borderline personality disorder and various forms of depression. Her  
25 medical history reflects multiple and recurrent episodes of violent behavior during the times  
26 she has been admitted for care and treatment at Whidbey General Hospital as well as other  
psychiatric care facilities in the state.

On the morning of May 13, 2014, the day of the incident, Ms. Simpson had forcefully  
pushed the supervising nurse, Ms. Holland, into the wall which resulted in an injury to Ms.

DECLARATION OF NATHAN R. SCHLICHER,  
MD SUPPORTING DEFENDANT'S MSJ - 2

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1 Holland's shoulder requiring her to seek medical care. Ms. Simpson had also attempted to  
2 harm herself in the form of hanging herself from the curtain that morning. Prior to Ms. Gipson  
3 applying a jaw hold on Ms. Simpson for the purpose of re-directing Ms. Simpson's attention,  
4 Ms. Simpson threatened to bite the nurses who were in close proximity to her while continuing  
5 to forcefully resist the restraint of her left hand and flinging her upper body around. The  
6 patient in fact had slipped out of her restraints immediately prior to the incident requiring the  
7 additional restraint application. Finally, Ms. Simpson was resisting the Ativan injection  
8 ordered by the provider.

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### OPINIONS

Based upon my knowledge of this case and my years of training and experience in emergency medicine I have formed the following opinions. These opinions are all held and expressed on a more probable than not basis.

First, regarding the care and treatment that Ms. Simpson received at Whidbey General Hospital, including the actions of Linda Gipson, RN, PhD, it complied with the degree of skill, care, and learning expected of reasonably prudent health care providers of their professions acting in the same or similar circumstances at the time in the State of Washington. The patient, Ms. Simpson, had assault a staff member in the morning of the incident. She was placed in restraints in the morning, removed, but escalated again requiring the re-application of restraints. Shortly after that second application, the patient slipped out of the restraints and required an additional intervention. At that point, the patient was escalating with threats with a history of assaultive behavior, combativeness with restraint application, and biting at nurses. The order was given for additional Ativan and the patient was held in a position to protect the staff during the application of restraints and administration of an intramuscular injection. In short, it is my opinion that the care received by Ms. Simpson complied with the standard of care.

Second, it is my opinion, again on a more probable than not basis, that Ms. Simpson sustained no injury or harm as a result of the care she received at Whidbey General Hospital. The application of the restraint technique by Dr. Gipson by all evidence was less than one minute. It was done on the jawline and shoulder, a standard technique to control the head and neck in a restraint process and medication administration in the combative patient. The patient was evaluated immediately after and there were no signs of trauma or injury. In short, there is no evidence that the patient sustained any physical or emotional trauma beyond the stress associated with the standard restraint of a combative psychiatric patient receiving appropriate medical therapy.

Third, it is my opinion, again on a more probable than not basis, that there is no factual basis for the characterization of a standard restraint technique as extreme or outrageous behavior. The immobilization of a patient's head during a restraint is a standard technique when a patient is threatening biting, spitting, or demonstrating other aggressive behavior towards the medical staff. Furthermore, in the patient who is being restrained,

1 immobilization of the torso and head is a standard part of the application of restraints. The  
2 decision to apply the hands to the jaw and shoulder is a standard and reasonable technique.  
3 In short, there is no basis to consider a standard technique used in a standard restraint  
4 process, extreme or outrageous behavior.

4 Fourth, it is my opinion, again on a more probable than not basis, that Whidbey  
5 General Hospital, its agents and employees cared for the patient within the confines of their  
6 medical capacity. Ms. Simpson was a detained mental health patient being boarded in the  
7 medical ward of a Critical Access Hospital. The Hospital is not a licensed psychiatric  
8 facility, does not have a psychiatric room for care of detained patients, or other psychiatric  
9 resources. Despite that, the staff cared for the patient well, treating her with medications,  
10 allowing her to trial times out of restraints until her behavior escalated again, and worked  
11 to arrange her transfer. At all times they provided exceptional care within the standard of  
12 care for a critical access hospital without dedicated psychiatric resources in the care of a  
13 detained boarded psychiatric patient.

11 Fifth, it is my opinion, again on a more probable than not basis, that the  
12 characterization of approximately one minute of a standard restraint process for an agitated  
13 combative psychiatric patient as assault, battery, abuse of a vulnerable person, or medical  
14 negligence is egregious and without merit. Ms. Simpson demonstrated her violent  
15 tendencies on multiple occasions at Whidbey General Hospital including on the morning  
16 of the alleged incident when she assaulted the nurse supervisor. The care of psychiatric  
17 patients is often difficult and dangerous for the medical staff caring for them. It is more  
18 challenging when the patient is not cared for in a psychiatric facility with all of the  
19 resources available.

17 Sixth, it is my opinion, on a more probable than not basis, that the patient was  
18 treated within the confines of the standard of care for psychiatric patients within the legal  
19 requirements of the Involuntary Treatment Act Detention of the patient. The medical staff  
20 was required to provide adequate psychiatric care by the nature of the ITA detention  
21 regardless of the patient's individual desires. Consent for care is provided by the nature of  
22 the involuntary detention and thus Ms. Simpson has no standing upon which to challenge  
23 the provision of that care when it is within the standard of care as in this case.

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

23 EXECUTED at Gig Harbor, Washington, this 9<sup>th</sup> day of November, 2015.

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NATHANIEL R. SCHLICHER, MD, JD, FACEP

DECLARATION OF NATHAN R. SCHLICHER,  
MD SUPPORTING DEFENDANT'S MSJ - 4

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# Appendix 5

INSTRUCTION NO. \_\_\_\_\_

If a defendant's use of force was lawful, as defined in these instructions, the defendant has the right to be reimbursed by the State of Washington for the reasonable cost of all loss of time, legal fees, and other expenses involved in her defense.

In order for the court to award the defendant reasonable costs for the expenses incurred in defending this action, you must find that the defendant has proved the claim of lawful force by a preponderance of the evidence.

When it is said that a claim must be proved by a preponderance of the evidence, it means that you must be persuaded, considering all the evidence in the case, that the claim is more probably true than not true.

For this part of the trial, you will use the following definition of lawful force:

The use of force upon or toward another person is lawful:

Whenever used by any person to prevent a mentally ill, mentally incompetent, or mentally disabled person from committing an act dangerous to any person or in enforcing necessary restraint for the protection or restoration to health of the person; provided the person using force reasonably believes the danger to be imminent. A reasonable belief that there is imminent danger is adequate, even if that belief is mistaken.

The person using the force may employ such force and means as a reasonably prudent person would use under the same or similar conditions as they appeared to the person, taking into consideration all of the facts and circumstances known to the person at the time of and prior to the incident.

*himself with*  
A person is entitled to act on appearances in defending himself or another, if that person believes in good faith and on reasonable grounds that the or another is in actual danger of harm, although it afterwards might develop that the person was mistaken as to the extent of the danger. Actual danger is not necessary for the use of force to be lawful.

You have been provided with a special verdict form to be used in answering the question of whether the defendant has met his *burden* of establishing lawful use of force. *with*  
When you have agreed on a verdict, the presiding juror will sign the special verdict form. You will then notify the bailiff who will escort you into court to declare your special verdict.

IN THE DISTRICT COURT FOR THE STATE OF WASHINGTON  
ISLAND COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

Linda S. Gipson,

Defendant.

No. C14-00093

We, the jury, return a special verdict by answering the following question:

QUESTION: Did the defendant Linda Gipson prove by a preponderance of  
the evidence that the use of force was lawful?

ANSWER: yes. (Write "yes" or "no")

4/10/2015  
DATE

Ashley Taylor  
PRESIDING JUROR

**DECLARATION OF SERVICE**

I declare that I served the forgoing Answer by Respondent to Petitioner's: 1) Motion for Extension of Time to File Petition for Review; and 2) Petition for Discretionary Review on the Pro Se Petitioner below:

Jessica Simpson  
547 Crockett Lake Dr.  
Coupeville, WA 98239  
Email: [symphony231@aol.com](mailto:symphony231@aol.com)

By causing a full, true and correct copy thereof to be sent via USPS and e-mailed on the date set forth.

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

Executed at Lynnwood, Washington, on the 30<sup>th</sup> day of May, 2017.



---

Ann Freise  
Legal Assistant to Eric L. Freise

**FREISE & FERGUSON PLLC**

**May 30, 2017 - 2:29 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 94222-6  
**Appellate Court Case Title:** Jessica Simpson v. Linda Gipson, et al.  
**Superior Court Case Number:** 16-2-00012-1

**The following documents have been uploaded:**

- 942226\_Answer\_Reply\_20170530142059SC756930\_5982.pdf  
This File Contains:  
Answer/Reply - Answer to Motion  
*The Original File Name was Gipson ANSR to Mtn for Extnsn and Pttm for Rvw 17-5-30 w apndx.pdf*

**A copy of the uploaded files will be sent to:**

- ericf@freise-ferguson.com
- symphony231@aol.com

**Comments:**

Answer by Respondent to Petitioner ♦s: 1) Motion for Extension of Time to File Petition for Review; and 2) Petition for Discretionary Review

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Sender Name: Ann Freise - Email: annf@freise-ferguson.com

**Filing on Behalf of:** Eric Louis Freise - Email: ericf@freise-ferguson.com (Alternate Email: )

Address:  
19109 36th Ave. W.  
Suite 204  
Lynnwood, WA, 98036  
Phone: (206) 587-6570 EXT 200

**Note: The Filing Id is 20170530142059SC756930**