Supreme Court No. 98259-7

THE SUPREME COURT
OF THE STATE OF WASHINGTON

From Court of Appeals No. 362094
Consolidated with Court of Appeals No. 362108

From Chelan County Superior Court No. 162001232
Hon. Kristen M. Ferrera

JENNIFER CURTIN, GLEN CURTIN and BECKY CURTIN,

Plaintiffs / Respondents,

v.

CITY OF EAST WENATCHEE,

Defendant / Petitioner.

PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF CASES

Washington Cases

Federal Cases

Other State Cases

STATUTES

COURT RULES

OTHER AUTHORITIES

A. IDENTITY OF PETITIONERS

Petitioner is the City of East Wenatchee.

B. CITATION TO COURT OF APPEALS DECISION

The Court of Appeals filed a published opinion on Feb. 6, 2020. (No. 1 to the attached Appendix.) The opinion is published at *Curtin v. City of East Wenatchee,* -- Wn.App. --, -- P.3d --, 2020 WL 582148 (Wn.App. 2020). The Court of Appeals held: "Under Washington law, both parent and child are entitled to seek recovery for pre-majority medical expenses." (Slip opinion at 2.)

The trial court entered an order on June 21, 2018. (No. 2 to the attached Appendix.) The trial court held:

> Plaintiff Jennifer [Curtin] cannot claim premajority medical expenses. Such expenses belong to Plaintiff Jennifer Curtin's parents.

No. 3 to the attached Appendix is the Complaint.

C. ISSUES PRESENTED FOR REVIEW

1. Is an adult entitled to recover pre-majority medical expenses in a tort action when the adult's parents are barred by the statute of limitations from recovery of the pre-majority medical expenses?

2. When an unemancipated minor does not contract for medical care, is the minor liable to those providing medical care to the minor?

3. Is the decision of the Court of Appeals in conflict with decisions of the Supreme Court?

D. STATEMENT OF THE CASE

The opinion by the Court of Appeals sets forth the facts leading to the trial court's order denying the minor's right to seek pre-majority medical expenses. On Dec. 9, 2009, when Jennifer Curtin was 14-years-old, she was struck by a car driven by Leo Agens while crossing a street in the City of East Wenatchee. Jennifer incurred extensive medical expenses before she attained the age of 18. On Feb. 4, 2016 -- more than six years after the occurrence -- a Complaint was filed in Chelan County Superior Court by Jennifer and her parents, Glen Curtin and Becky Curtin. At the time the Complaint was filed, Jennifer was 20-years-old. Jennifer brought her lawsuit on her own as an adult and did not need a parent as guardian ad litem to bring the suit on her behalf.

The claims of Jennifer's parents were dismissed because they were barred by the three-year statute of limitations that applied to them. The trial court granted partial summary judgment holding

that Jennifer was not entitled to seek pre-majority medical expenses because those expenses could only be recovered by Jennifer's parents.

E. ARGUMENT

1. An adult is not entitled to recover pre-majority medical expenses in a tort action when the adult's parents are barred by the statute of limitations from recovery of the pre-majority medical expenses.

The Supreme Court has never overruled the law that two causes of action arise when a minor is injured: (1) one in favor of the minor for pain and suffering and permanent injury and (2) the other in favor of the parent for loss of services during minority and expenses of treatment. *Flessher v. Carstens Packing Co.,* 105 Wash. 694, 695, 179 Pac. 100 (1919) (rule stated); *Flesher v. Carstens Packing Co.,* 96 Wash. 505, 509, 165 Pac. 397 (1917) (rule stated); *Harris v. Puget Sound Elec. Railway,* 52 Wash. 299, 300-01, 100 Pac. 841 (1909) (rule stated).[1]

In *Handley v. Anacortes Ice Co.,* 5 Wn.2d 384, 105 P.2d 505 (1940), the Washington Supreme Court held that a minor's medical

[1] The *Harris* opinion has been cited for the rule that "the courts all agree that if the parties are in the usual situation with respect to recovery . . . the parent, and not the child, may recover the damages [for medical expenses]." Annot., *What items of damages*

bills are damages to be recovered only by the minor's parents. Reinhard Lehne, a minor, was seriously injured when he was struck by a foul ball and "suffered a skull fracture, which necessitated a serious surgical operation [with] the lad's parents incurring medical and surgical expenses." 5 Wn.2d at 388. The Court stated that the boy could recover for any impairment after he reached the age of majority and if he was "emancipated from parental control prior to that time . . . his earnings would be his own." *Id.* at 396. The Court noted that the jury was properly instructed.

> [T]he jury were told . . . they should return separate verdicts upon the **two causes of action** set forth in respondents' complaint – first, for damages suffered by the respondent minor, and **second, to compensate respondent parents for necessary expense in connection with doctor's bills, etc., incurred on account of the child's injuries.**

Id. (Emphasis added.) The Washington Supreme Court then affirmed separate jury verdicts in favor of the minor and the minor's parents. *Id.* at 397. "We find no error in the record of which appellant Oakley can complain," the Court concluded. *Id.*

The Restatement (Second) of Torts § 703 (1977) states:

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on account of personal injury to infant belong to him and what to parent, 37 A.L.R. 11 (1925 – updated weekly) at § III(c).

> One who by reason of his tortious conduct is liable to a minor child for illness or other bodily harm is subject to liability to
>
> (a) the parent who is entitled to the child's services for any resulting services or ability to render services, and to
>
> (b) the parent who is under a legal duty to furnish medical treatment for any expenses reasonably incurred or likely to be incurred for the treatment during the child's minority.

42 Am.Jur.2d *Infants* § 141 (2d ed. – updated February 2020) states:

> Generally, a minor does not have a cause of action for his or her medical expenses because the parents possess the exclusive right to recovery for a minor's premajority medical expenses.

Citing Flessher, supra, and *Donald v. City of Ballard,* 34 Wash. 576, 76 Pac. 80 (1904), the Court of Appeals suggested that the general rule was in doubt when it stated:

> Yet there had been cases where a parent, as guardian ad litem in the child's action, had sought and recovered expenses to which he was entitled as a parent. When this happened, case law held that the parent was deemed to "have emancipated his [child] in so far as the right to recover damages which were included in the [child's] suit is concerned."

Fortson-Kemmerer v. Allstate Ins. Co., 198 Wn.App. 387, 403-04, 393 P.3d 849 (2017), *rev. denied* 189 Wn.2d 1039, 409 P.3d 1071 (2018). *Fortson-Kemmerer* involved an underinsured motorist

claim brought by an adult. There was not a guardian ad litem involved. The case did not involve whether an adult like Jennifer could recover pre-majority medical expenses which were the responsibility of a parent.

The Court of Appeals in the case at bar relied upon two decisions of the Supreme Court that did not squarely address the issue raised in this case: *McAllister v Saginaw Timber Co.,* 171 Wash. 448, 18 P. 41 (1933) and *Flessher v. Carstens Packing Co.,* 96 Wash. 505, 165 P. 397 (1917). **The cases both involve claims for a minor's medical expenses brought by a guardian ad litem.** The cases do not involve an adult seeking to recover pre-majority medical expenses when a guardian ad litem was not involved.

McAllister – William McAllister, a minor, was injured when a car he was driving collided with a horse that defendant timber company negligently permitted to stray upon the highway. 171 Wash. at 448. Suit was brought by the minor's mother on behalf of the minor. *Id.* A judgment for $2,600 was entered on a verdict. *Id.* at 449. The verdict included $100 for the fee of a physician. *Id.* at 451. Defendant objected to the award of the physician's bill

because William's "mother, personally, and not himself, became liable for such physician services." *Id.* The Supreme Court stated:

> While the mother, we may concede, would be liable to the physician for such services and could recover therefrom from the timber company as an item of damages suffered by her, it does not follow that William was not equally liable therefor to the physician. Manifestly, those services were "necessaries" in that legal sense for which William, a minor, became liable. Rem. Rev. Stat. § 5829 . . . . William's mother claiming this item of damage as his guardian ad litem for his benefit, it seems plain, will estop her from again claiming it for her own benefit. So, the timber company is not prejudiced by the award in favor of William.

Id. There was no indication that the lawsuit was filed more than three years after the occurrence. The mother as guardian ad litem could have recovered William's medical expenses. *See Flessher, infra.* Importantly, the "necessaries" doctrine was not necessary to reach the result because when a guardian ad litem brings suit on behalf of a minor child the guardian ad litem is entitled to recover the minor's medical expenses. *See Flessher, infra.*

Flessher – Mabel Flessher, the minor daughter of Charles Flessher, became sick after eating defendant packing company's meat. 96 Wash. at 506. A lawsuit was styled Mabel Flessner, Plaintiff, by Charles Flesher, Guardian ad Litem v. Carstens Packing Company, Defendant . *Id.* The complaint sought:

> (a) Expense of the [father] for medical treatment for his daughter; (b) expense incurred in caring for, or nursing, his daughter; and (c) for loss of services.

Id. The case was peculiar because the lawsuit had been removed to federal district court where there was a judgment on a verdict for $1,250. *Id.* at 507. The Supreme Court stated it appeared that the claims in the federal action were made "for medical attendance, loss of services during the period of minority, and expenses for care or nursing" but the action did not include "items of expense for medical attendance and care." *Id.* at 510. The Supreme Court added:

> Since these items were not litigated in any form in the federal court action, it cannot be said that the appellant [Charles] authorized a recovery for such items therein, and is therefore estopped from maintaining the present action.

Id. The opinion did not state or imply that Mabel, the minor, was allowed to recover pre-majority medical expenses on her own without a guardian ad litem. Suit had to be filed on the minor's behalf by a guardian ad litem. It was Mabel's father as the guardian ad litem -- and not the minor -- who was allowed to claim Mabel's medical expenses. Moreover, there is no indication that the lawsuit was filed more than three years after the occurrence. The *Flessher* court stated at 509:

> The law is that, when a minor is injured, **two causes of action** arise, **one in favor of the minor for pain and suffering and permanent injury, the other in favor of the parent for** loss of services during minority or **expenses of treatment.** These actions may be joined or tried separately.

(Emphasis added.) The *Flessher* court stated that when a father *as guardian ad litem* brings a suit for injuries to a minor "for damages which would otherwise be recoverable by the father" then

> the father has emancipated his [minor child] in so far as the right to recover damages which were included in the [minor child's] suit. . . . That the father consented to this recovery by the [minor child] is manifest, since he himself caused the action to be brought in his own name as guardian ad litem, and specifically included the item of damage here under discussion.

Id. at 509-10, *quoting Donald v. City of Ballard,* 34 Wash. 576, 577-78, 76 Pac. 80 (1904). Here, a guardian ad litem did not bring a claim on behalf of an unemancipated minor for pre-majority medical expenses. When the lawsuit was filed, Jennifer was an adult bringing an action on her own.

The Court of Appeals in the case at bar cited the common law rule that a minor's parents hold the exclusive rights to recover a child's medical expenses. (Slip opinion at 5, *citing State of West*

Virginia ex rel. Packard v. Perry, 655 S.E.2d 548, 554 (W.V. 2007).[2] The Court of Appeals then cited out-of-jurisdiction cases that allow the recovery of pre-majority medical expenses when parent claims are barred by the statute of limitations. (Slip opinion at 5, *citing Est. of Est. of DeSela v. Prescott Unified Sch. Dist. No. 1,* 249 P.3d 767, 769-70 (Ariz. 2011) and *Boley v. Knowles,* 905 S.W.2d 86, 90 (Mo. App. 1995).

The Court of Appeals was not entitled to overrule the decisions of the Washington Supreme Court based upon out-of-jurisdiction opinions. The Court of Appeals created new case law in conflict with cases decided by the Washington Supreme Court. The *Packard* court acknowledged:

> [T]he majority of states continue to adhere, in some form, to the common-law rule that "[w]here a minor child is injured by the wrongful act or omission of another, the parent, and only the parent, ordinarily has a right of action for loss of services of the child and other pecuniary damages sustained in consequence of such injury."

655 S.E.2d at 556, *quoting* 67A C.J.S. *Parent and Child* § 331 (2002) and *citing Blue Cross and Blue Shield of Alabama v. Bolding ex rel. Bolding,* 465 So.2d 409, 412 (Ala. App. 1984) ("Ordinarily,

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[2] The *Packard* court went on to hold that "the right to maintain an action to recovery pre-majority medical expenses . . . belongs

the father may recover in a separate suit for the loss of his child's services and for medical expenses incurred in treating his child. The minor is not entitled to such a recovery."); *Nat'l Bank of Comm. v. Quirk,* 918 S.W.2d 138, 151 (Ark. 1996) (a child does not have an independent right to recovery medical expenses); *Brent v. Hin,* 561 S.E.2d 212, 215 (Ga. App. 2002) ("the right to recover a minor's medical expenses in a tort action is vested solely in the child's parents"); *Primax Recoveries, Inc. v. Atherton,* 851 N.E.2d 639, 642 (Ill. App. 2006) ("any claim for medical expenses incurred in treating a minor for injuries sustained due to a tortfeasor's negligence belongs to the parents, rather than to the child."), *appeal den.* 857 N.E.2d 638 (Ill. 2006). *Betz v. Farm Bur. Mut. Ins. Agency of Kansas, Inc.,* 8 P.3d 756, 760 (Kan. 2000) ("Generally, the right to seek medical expense damages for an injured child belongs to the parents, rather than to the child."); *Palmore v. Kirkland Lab., Inc.,* 527 P.2d 391, 396 (Or. 1974) ("It is generally held that the medical expenses incurred due to the negligent injury of an minor unemancipated child are damages suffered by the parent and not the child."). In footnote 10 the *Packard* court also cited cases from Alaska, Colorado, Delaware, Iowa, New

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both to the minor and the minor's parents . . . ." 665 S.E.2d at 561.

Hampshire, North Carolina and Wisconsin holding that a claim for a minor's medical expenses is a claim owned by the parent and not by the child.

2. When a minor does not contract for medical care, the minor is not liable to those providing medical care.

The Court of Appeals may have based its opinion in part by a statement set forth in *McAllister v. Saginaw Timber Co.,* 171 Wash. 448, 451, 18 Pac. 41 (1933), in which the Court stated that medical expenses are "necessaries" for which the minor became liable. (This statement can be considered to be dicta because it was not necessary for the Court to reach its decision. As explained above, the minor was represented by a guardian ad litem, who had authority to seek the minor's pre-majority medical expenses.) The *McAllister* court cited former Rem. Rev. Stat. § 5829, which provided: "A minor is bound, not only by contracts for necessaries, but also by **his contracts,** unless he disaffirms them within a reasonable time after he attains majority . . . ." (Emphasis added.) The statute is re-codified at RCW 26.28.030. **The statute speaks to contracts *actually made* by a minor.** "A minor is . . . capable of **making contracts.**" *Wise v. Truck Ins. Exchange,* 11 Wn.App. 405, 408, 523 P.2d 431 (1974), *rev. denied* 84 Wn.2d 1006 (1974).

(Emphasis added.) However, the purpose of this statute "is **to protect the infant** against improvidence and folly, because his mind and judgment are immature." *Id., quoting with approval Snodderly v. Brotherton,* 173 Wash. 86, 90, 21 P.2d 1036 (1933). (Emphasis added.)

Under Washington law, an unemancipated minor must actually "make" a contract to be potentially bound to pay for medical services. *Wise,* 11 Wn.App. at 408. Such a contract cannot be formed by implication. Unemancipated minors are presumed to be incompetent to make medical decisions. *In re Cassandra C.,* 112 A.3d 158, 170, 316 Conn. 476, 497 (Conn. 2015). The United States Supreme Court has recognized:

> Most children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care and treatment. Parents can and must make those judgments.

Parham v. J.R., 442 U.S. 584, 603 (1979).

> The requirement that medical care be provided to a minor only with the consent of the minor's parent or guardian remains the general rule, both in California and throughout the United States.

Am. Acad. of Pediatrics v. Lungren, 16 Cal.4th 307, 314-15, 940 P.2d 797, 66 Cal.Rptr.2d 210 (Cal. 1997).

Here, the contract to provide medical care to Jennifer was a contract made by her parents. RCW 26.16.205, which imposes civil liability on parental property for expenses of family and education of children, has been held to be broad enough to include "necessaries" which include necessary medical expenses of dependent minor children. *State v. Williams,* 4 Wn.App. 908, 912, 484 P.2d 1167 (1971). The "parents bear the primary responsibility for the support of their children." *In re Dependency of Schermer,* 161 Wn.2d 927, 959, 169 P.3d 452 (2007). "In particular, a parent remains financially responsible for a dependent child's medical expenses." *Id.* It is the duty of parents – not the unemancipated minor -- to provide for a child's "necessaries." RCW 26.16.205 ("The expenses of the family . . . are chargeable upon the property of both spouses . . . .")

While necessaries can in some situations become an obligation of a minor, the contract for the necessaries must actually be made by the minor. Here, Jennifer did not enter into any contract of her own for medical care.

3. The decision of the Court of Appeals is in conflict with decisions of the Supreme Court.

In light of the above, review of the decision by the Court of Appeals' decision is warranted under RAP 13.4(b)(1), which provides that a petition for review may be granted when "the decision of the Court of Appeals is in conflict with a decision of the Supreme Court."

Here, the Court of Appeals effectively overruled the Supreme Court by adopting out-of-state case law from West Virginia, Arizona and Missouri. The Court of Appeals is bound to follow precedent of the Supreme Court even if the Court of Appeals concludes that the law should be changed. *Cf. East Bay Sanctuary Covenant v. Trump,* 2020 WL 962336, *5 (9th Cir. 2020) ("Published decisions of this court become law of the circuit, which is binding authority that we and the district courts must follow until overruled."); *Hart v. Massanari,* 266 F.3d 1156, 1175 (9th Cir. 2001) ("A district court bound by circuit authority . . . has no choice but to follow it, even if convinced that such authority was wrongly decided.").

The decision by the Court of Appeals directly conflicts with the Supreme Court's decisions in cases in which this Court held that that a claim for an unemancipated minor's medical expenses is a claim owned by the minor's parents – not by the minor. As

explained above, the Court of Appeals decision relied upon two decisions of the Supreme Court that did not squarely address the issue raised in this case.

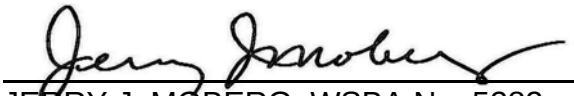
An Appendix is attached to this Petition for Review. The Appendix consists of the challenged opinion by the Court of Appeals, the trial court's order and the Complaint.

F. CONCLUSION

The Court should grant this Petition for Review.

RESPECTFULLY SUBMITTED this 4th day of March, 2020.

MOBERG RATHBONE KEARNS, P.S.



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CERTIFICATE OF SERVICE

I certify that I emailed a copy of the foregoing to:

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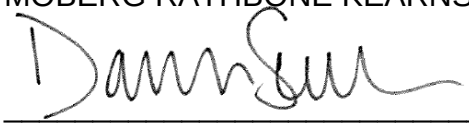
DATED this 4th day of March, 2020 at Ephrata, WA.

MOBERG RATHBONE KEARNS, P.S.



DAWN SEVERIN, PARALEGAL

THE SUPREME COURT
OF THE STATE OF WASHINGTON

JENNIFER L. CURTIN, INDIVIDUALLY, AND GLEN CURTIN AND BECKY CURTIN, JOINTLY, Plaintiffs / Respondents, v. CITY OF EAST WENATCHEE, Defendant / Petitioner.	No. _____ **APPENDIX**

Respondent City of East Wenatchee submits this Appendix to the Petition for Review.

DATED this 4th day of March, 2020.

MOBERG RATHBONE KEARNS, P.S.

JERRY J. MOBERG, WSBA No. 5282
JAMES E. BAKER, WSBA No. 9459
Attorneys for Defendant / Petitioner City of East Wenatchee

1. Slip opinion by the Court of Appeals, Division III.
2. Trial court's order dated June 21, 2018.
3. Plaintiffs' Complaint.

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EXHIBIT 1

FILED
FEBRUARY 6, 2020
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

JENNIFER L. CURTIN, individually, Petitioner, GLEN CURTIN and BECKY CURTIN, jointly, Appellants, v. CITY OF EAST WENATCHEE; and LEO AGENS and "JANE DOE" AGENS, and the marital community thereof, Respondents, DOUGLAS COUNTY; STATE OF WASHINGTON DEPARTMENT OF TRANSPORTATION; and UNKNOWN JOHN AND JANE DOES 1-10, jointly and individually, Defendants.	)	No. 36209-4-III (consolidated with No. 36210-8-III) PUBLISHED OPINION

PENNELL, A.C.J. — Jennifer Curtin and her parents, Glen and Becky Curtin, sued the City of East Wenatchee and Leo Agens (collectively Respondents) for personal injuries sustained by Jennifer Curtin while she was a minor child. In addition to general

damages, both Ms. Curtin and her parents sought compensation for pre-majority medical expenses as part of their claim for special damages. The Curtins' suit was filed more than three years after Jennifer Curtin was injured, but within three years of her 18th birthday. The Respondents successfully moved for summary judgment by arguing that only Ms. Curtin's parents had standing to bring a claim for pre-majority medical expenses, and their claims were time-barred by our state's three-year statute of limitations.

We disagree with the trial court's disposition in part. Under Washington law, both parent and child are entitled to seek recovery for pre-majority medical expenses. But in this case, that claim was timely only as to Jennifer Curtin, who benefitted from tolling of the statute of limitations until she reached 18 years of age. We therefore affirm the trial court's summary judgment dismissal of the claims of Ms. Curtin's parents, reverse the trial court's denial of summary judgment on proximate cause and special damages as it relates to Jennifer Curtin, and remand for further proceedings.

BACKGROUND

On December 9, 2009, 14-year-old Jennifer Curtin was crossing a street in East Wenatchee, Washington, when she was struck by a car operated by Leo Agens. Ms. Curtin was injured and required extensive medical treatment. At least a portion of

Ms. Curtin's medical expenses were covered by her parents' healthcare insurance provider.

In February 2016, within three years of Ms. Curtin's 18th birthday, Ms. Curtin and her parents brought suit against Mr. Agens and the city of East Wenatchee.[1] Ms. Curtin sought recovery for pain and suffering, medical expenses, and emotional distress. The parents sought recovery for damages related to medical expenses, loss of services, and loss of filial consortium.

The parties filed cross motions for summary judgment. The Respondents argued (1) Ms. Curtin's pre-majority medical expenses could be recovered only by her parents, and (2) the parents could no longer seek any recovery because their claims were barred by the statute of limitations. The Curtins' motion was limited to the issues of proximate cause and special damages, in the form of medical expenses. The trial court determined that the parents' claims were barred by the statute of limitations, that Jennifer Curtin did not have standing to recover damages for her childhood medical expenses, and that the combination of those rulings mooted the Curtins' motion for summary judgment as to proximate cause and special damages.

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[1] The Curtins alleged the City had failed to "design, repair, revise, and maintain the unmarked crosswalk and roadway in a reasonably safe condition." Clerk's Papers at 11. That allegation is not before the court.

This court granted discretionary review to Jennifer Curtin. Because the trial court's rulings disposed of the claims made by Glen and Becky Curtin in their entirety, we also recognized the parents' ability to directly appeal the adverse summary judgment as a matter of right. The cases were thereafter consolidated for review.

ANALYSIS

Jennifer Curtin's claim for pre-majority medical expenses

The parties agree that Jennifer Curtin's suit for damages is timely under RCW 4.16.080(2) and RCW 4.16.190 because it was brought within three years of her 18th birthday. The dispute is over a portion of Ms. Curtin's claims. Specifically, the question is whether Ms. Curtin may recover damages for medical expenses incurred prior to her 18th birthday. The Respondents argue, and the trial court agreed, that pre-majority medical expenses can be recovered only by a child's parents since the parents are financially responsible for the child's care and maintenance. *See* RCW 26.16.205. We review this legal question de novo. *Smith v. Bates Tech. Coll.*, 139 Wn.2d 793, 800, 991 P.2d 1135 (2000).

The Respondents' arguments against standing are based on the common law. The common law rule was a minor's parents held the exclusive rights to recover a child's medical expenses. *See State ex rel. Packard v. Perry*, 221 W. Va. 526, 532, 655 S.E.2d

548 (2007). The reasoning was that a child had no standing to recover pre-majority medical expenses unless the parents had assigned the child that right or the child had been emancipated. *Id.* at 534. The common law approach has been criticized as inefficient, illogical, and unfair. *Id.* at 538. s*ee also Estate of DeSela v. Prescott United Sch. Dist. No. 1*, 226 Ariz. 387, 389-90, 249 P.3d 767 (2011); *Boley v. Knowles*, 905 S.W.2d 86, 90 (Mo. Ct. App. 1995). The critique notes that the only benefit of the common law approach is that it avoids risk of a double recovery—a benefit that can be achieved by measures less drastic than depriving an aggrieved person of recovery. *Id.*

In a series of prescient decisions, our high court declined to follow the common law approach. In *McAllister v. Saginaw Timber Co.*, 171 Wash. 448, 451, 18 P.2d 41 (1933), the Supreme Court held the right to recover for pre-majority medical expenses lies with both a parent and child. The court reached this determination without qualification; the child in *McAllister* had not been emancipated and the court did not reason that the child's mother had refused support or assigned her right of recovery. *Id.* Instead, *McAllister* held that because medical expenses are legal "'necessaries,'" the parent and child hold equal rights and responsibilities. *Id.* The court also noted the shared right to recovery for pre-majority medical expenses must not work an injustice by permitting double recovery. *Id.*

McAllister is consistent with the earlier Supreme Court decision in *Flessher v. Carstens Packing Co.*, 96 Wash. 505, 165 P. 397 (1917). *Flessher* recognized that injury-related expenses can sometimes be claimed by both a minor and a parent. *Id.* at 509. When multiple claims are made, they need not be joined or tried together. *Id.* However, if a minor recovers certain expenses, a principle of de facto emancipation will apply and the parent will not be able to come to court later and claim the same expenses. *Id.*

Respondents seek refuge in *Handley v. Anacortes Ice Co.*, 5 Wn.2d 384, 105 P.2d 505 (1940) and *Harris v. Puget Sound Electric Railway*, 52 Wash. 299, 100 P. 841 (1909), but neither decision is inconsistent with the rule articulated in *McAllister*. *Handley* and *Harris* recognized that when a child is injured, the parent and the child may both have causes of action. *Handley*, 5 Wn.2d at 396; *Harris*, 52 Wash. at 300-01. Recovery of pre-majority medical expenses is generally a claim made by the parent who has paid the expenses; *Harris* and *Handley* referred to the right as such. But neither *Harris* nor *Handley* controverted *McAllister*'s clear rule (implicit in *Flessher*) that the right of recovery lies with the minor in addition to the minor's parents.

The trial court's ruling that Jennifer Curtin lacked standing to assert a claim for pre-majority medical expenses was in error. Ms. Curtin may sue to recover for any

damages, including pre-majority medical expenses, arising out of the alleged negligence of the Respondents.

Statute of limitations applicable to the parents' claims

While the parties agree Jennifer Curtin's complaint was timely because it was filed within the three-year limitations period of RCW 4.16.080(2) extended by the minor tolling provision of RCW 4.16.190, they disagree as to whether her parents' claims are timely. Glen and Becky Curtin argue that because they had a right to join their daughter's lawsuit, the tolling statute applicable to Jennifer Curtin extends to them. The Respondents counter that the tolling of the statute of limitations is plaintiff-specific, and therefore does not apply to the parents. We agree with the Respondents.

As the name implies, a statute of limitations' meaning is determined solely by statute, not common law. *See Fast v. Kennewick Pub. Hosp. Dist.*, 187 Wn.2d 27, 32-33, 384 P.3d 232 (2016). Washington's statutory code contains a catch-all limitations provision. RCW 4.16.080(2). That provision applies when a cause of action is not specifically covered by another limitations statute. *Stenberg v. Pac. Power & Light Co.*, 104 Wn.2d 710, 720-21, 709 P.2d 793 (1985).

Here, Glen and Becky Curtin sought compensation for damages sustained as a result of an injury to their child. Former RCW 4.24.010 (1998). Although this statute

recognizes that parents have standing to make such a claim, it does not specify a limitations period for doing so. The tolling provision of RCW 4.16.190 is "person" specific in that it only applies to those who meet that statute's criteria. It therefore does not apply to a parent who is not disabled or under the age of 18. Given this statutory landscape, it is apparent the usual three-year statute of limitations period applies to a parent's claim for general injuries to a child.

Requiring parents, but not minor children, to abide by the general limitations period of RCW 4.16.080(2) is consistent with the objectives of the statutory limitations scheme. The purpose of a statute of limitation is "to compel prompt litigation." *Stenberg*, 104 Wn.2d at 721. It is reasonable to require a competent adult to take prompt action once they become aware of the basis for a legal claim. Doing so ensures a dispute will be resolved while evidence is accessible and memories are fresh. It also frees potential defendants of fears about "litigation unlimited by time." *Id.* But strict application of statutes of limitation is not always fair; not everyone is capable of promptly bringing suit. Minors and incapacitated persons are not legally competent to bring claims on their own behalf. *See* RCW 4.08.050-.060. For this reason, RCW 4.16.190 pauses, or "tolls," the statute of limitations until the injured person attains competency, so children and incapacitated persons can bring claims on their own behalf, if no one else has done so.

The tolling provision of RCW 4.16.190 is not premised on the theory that the injury to the child or disabled person does not occur until the child reaches majority or the person is no longer under disability. If that were true, then a cause of action on behalf of a minor or incapacitated person would be prohibited during the tolling period. But that is not the case. RCW 4.08.050-.060. Instead, RCW 4.16.190 is a protective measure designed to safeguard the rights of a minor child or disabled person whose parent or guardian fails to take timely action on their behalf. Because RCW 4.16.190 protects a minor or disabled person from a parent's or guardian's inaction, it cannot logically be read to permit a parent or guardian who has failed to take timely action to bootstrap their own otherwise untimely claim to the minor or disabled person's claim. We therefore affirm the trial court's dismissal of the claims of Glen and Becky Curtin.

Proximate cause and special damages

Because the trial court granted summary judgment to the Respondents as to the parents' claims and ruled that Jennifer Curtin lacked standing to assert a claim for pre-majority medical expenses, it never reached the merits of the Curtins' summary judgment motion regarding proximate cause and special damages. Consequently, as a court of appellate review, we decline to address this issue. We instead remand for further proceedings in the trial court for a resolution on the merits.

CONCLUSION

The trial court's summary judgment dismissal of the claims of Glen and Becky Curtin is affirmed. We reverse the denial of the motion for summary judgment on proximate cause and special damages as it relates to Jennifer Curtin. This matter is remanded for further proceedings consistent with the terms of this decision.

Pennell, A.C.J.

WE CONCUR:

Korsmo, J.

Siddoway, J.

EXHIBIT 2

HON. KRISTEN M. FERRERA
Hearing Date: 4:00 p.m. June 21, 2018

FILED
JUN 21 2018
Kim Morrison
Chelan County Clerk
COPY

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

JENNIFER L. CURTIN, INDIVIDUALLY, AND GLEN CURTIN AND BECKY CURTIN, JOINTLY, Plaintiffs, vs. CITY OF EAST WENATCHEE, AND DOUGLAS COUNTY, AND STATE OF WASHINGTON DEPARTMENT OF TRANSPORTATION, AND LEO AGENS, AND "JANE DOE" AGENTS, THE MARITAL COMMUNITY THEREOF, AND UNKNOWN JOHN AND JANE DOES 1-10, JOINTLY AND INDIVIDUALLY; Defendants.	NO. 16-2-00123-2 **ORDER ON DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT RE CLAIMS OF GLEN AND BECKY CURTIN (PARENTS) AND CLAIMS OF JENNIFER CURTIN (CHILD)**

THIS MATTER coming before the Court upon (a) Defendant City of East Wenatchee's motion for summary judgment as to the claims of Plaintiffs Glen and Becky Curtin (Parents) and (b) Defendant City of East Wenatchee's motion for summary judgment as to the claims of Plaintiff Jennifer Curtin (Child), which motions were joined in by Defendant Agens, and also Plaintiff Jennifer Curtin's motion for summary judgment regarding $194,147.38 in medical expenses, Plaintiff

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and Defendants appearing by and through counsel, and the Court having entertained the argument of counsel and having reviewed the files and records including:

1. Defendant City of East Wenatchee's motion for summary judgment re claims of Parents and memo in support of motion dated Nov. 6, 2017.

2. Defendant City of East Wenatchee's notice striking and re-setting civil motion hearing re motion for summary judgment re claims of Parents dated Jan. 19, 2018.

3. Defendant City of East Wenatchee's motion for summary judgment of the claims of Plaintiff Jennifer Curtin, memo in support of motion and declaration of counsel for Defendant City dated Jan. 19, 2018.

4. Declaration of Thomas G. Ballard, P.E., in support of Defendant City of East Wenatchee's motion for summary judgment of the claims of Plaintiff Jennifer Curtin dated Jan. 16, 2018.

5. Declaration of Steven C. Lacy in support of Defendant City of East Wenatchee's motion for summary judgment of the claims of Plaintiff Jennifer Curtin, dated Jan. 16, 2018.

6. Defendant Agens' joinder in Defendant City of East Wenatchee's motion for summary judgment dated March 2, 2018.

7. Plaintiffs' response to Defendant City's motion for summary judgment for dismissal of claims of Jennifer Curtin and memo in support of motion with (a) excerpts of the deposition transcript of Plaintiff Jennifer Curtin, (b) excepts of the deposition transcript of Defendant Leo Agens, (c) Defendant Agens' signed answers to Plaintiffs' second set of interrogatories to Defendant Agens, (d) declaration of Eric J. Hunter, P.E., with exhibits, and (e) declaration of Richard M. Balgowan, P.E., with exhibits – dated March 2, 2018.

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8. Declaration of Paul B. Apple in support of Plaintiffs' response to Defendant City's motion for summary judgment for dismissal of claims of Jennifer Curtin and memo in support of motion with Exhibit A and 1-15 – dated March 5, 2018.

9. Plaintiffs' response to Defendant City of East Wenatchee's motion for summary judgment re claims of Parents and memo in support of motion dated March 6, 2018.

10. Declaration of Paul B. Apple in support of Plaintiffs' response to Defendant City of East Wenatchee's motion for summary judgment re claims of parents and memo in support of motion dated March 6, 2018.

11. Defendant City's motion to strike inadmissible testimony, memo in support of motion and declaration of counsel dated March 9, 2018.

12. Defendant City's reply to Plaintiff Parents' response to Defendant City's motion for summary judgment dated March 12, 2018.

13. Defendant City's reply to Plaintiff Child's response to Defendant City's motion for summary judgment dated March 12, 2018.

14. Plaintiffs' response to Defendant City's motion to strike inadmissible testimony, memo in support of response and declaration of Plaintiffs' counsel dated March 13, 2018.

15. Declaration of Steven D. Weier in support of Plaintiffs' response to Defendant City's motion to strike inadmissible testimony dated March 13, 2018.

16. Defendant City's reply to Plaintiffs' response to Defendant City's motion to strike inadmissible testimony dated March 16, 2018.

17. Defendant City's supplemental memo re public duty doctrine filed on March 20, 2018.

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18. Plaintiffs' response to Defendant City's supplemental memo dated March 22, 2018.

19. Defendant City of East Wenatchee's response to Plaintiffs' motion for summary judgment of proximate cause and special damages dated May 22, 2018.

20. Plaintiffs' reply to Defendants' response to Plaintiff's motion for summary judgment of proximate cause and special damages dated May 24, 2018.

21. Declaration of Paul Apple filed on May 25, 2018.

22. Plaintiffs' supplemental brief in response to Defendant City of East Wenatchee's motion for partial summary judgment re dismissal of Plaintiffs' medical specials dated June 11, 2018.

23. Second supplemental declaration of Paul B. Apple in support of Plaintiffs' supplemental brief in response to Defendant City of East Wenatchee's motion for partial summary judgment re dismissal of Plaintiffs' medical specials dated June 11, 2018 and filed on June 11, 2018.

24. Defendant City's response to Plaintiffs' memo re child's pre-majority medical expenses dated June 14, 2018.

25. Defendant Agens' response/reply to Defendant City's motion for summary judgment re parents' claims dated June 14, 2018 and filed on June 14, 2018.

26. _____.

27. _____.

AND THE COURT being fully advised, and good cause appearing; now, therefore:

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IT IS HEREBY ORDERED that Defendant City's motion for summary judgment as to liability of Defendant City to Plaintiff Jennifer Curtin be and is **DENIED.**

IT IS FURTHER ORDERED that Defendant City's and Defendant Agens' motions for summary judgment as to the claims of Plaintiffs Glen and Becky Curtin being extinguished due to the expiration of the statute of limitations be and are **GRANTED.**

IT IS FURTHER ORDERED that Plaintiff Jennifer Curtin's motion for summary judgment that plaintiff Jennifer Curtin incurred $149,147.38 as reasonable and necessary medical expenses as a direct and proximate cause of the motor vehicle pedestrian collision on December 9, 2009 is DENIED because Plaintiff-Jennifer cannot claim premajority medical expenses. Such expenses belong to Plaintiff Jennifer Curtin's parents.

Done in open court
this 21st day of June, 2018

HON. KRISTIN M. FERRERA
CHELAN COUNTY SUPERIOR COURT JUDGE

Presented by:

JERRY MOBERG & ASSOCIATES, P.S.

JAMES E. BAKER, WSBA No. 9459
Attorneys for Defendant City of East Wenatchee

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EXHIBIT 3

E-FILED
FEBRUARY 04, 2016
KIM MORRISON
CHELAN COUNTY CLERK

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

JENNIFER L. CURTIN, individually, and GLEN CURTIN and BECKY CURTIN, jointly,

Plaintiffs.

-vs.-

CITY OF EAST WENATCHEE, and DOUGLAS COUNTY, and STATE OF WASHINTON DEPARTMENT OF TRANSPORTATION, and LEO AGENS, and "JANE DOE" AGENS, the martial community thereof, and UNKNOWN JOHN AND JANE DOES 1-10, jointly and individually,

Defendants.

Case No.: 16-2-00123-2

COMPLAINT

COMES NOW, Plaintiffs, by and through their attorneys of record herein, Steven D. Weier, and Paul B. Apple of The Law Offices of Steven D. Weier, PS, for causes of action against Defendants, alleges as follows:

I. PARTIES

1.1 Jennifer Curtin. At the time of this incident on or about December 9, 2009, plaintiff, Jennifer L. Curtin was a minor child.

1.2 Pursuant to RCW 4.16.190 and 4.16.250, plaintiff Jennifer Curtin's claims are tolled

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until three (3) years after her eighteenth birthday.

1.3 Glen Curtin and Becky Curtin. At the time of this incident, plaintiffs Glen Curtin and Becky Curtin were the parents of Jennifer L. Curtin, then a minor child.

1.4 Pursuant to RCW 4.16.190 and 4.16.250, plaintiff parents Glen and Becky Curtin's claims under RCW 4.24.010 are also tolled until three (3) years after plaintiff Jennifer L. Curtin's eighteenth birthday.

1.5 At all relevant times Plaintiffs were residents of the City of East Wenatchee, Douglas County, Washington.

1.6 City of East Wenatchee. At the time of the negligent acts alleged herein and at all relevant times, defendant City of East Wenatchee was a municipality in Douglas County, Washington. All actions or inactions complained of and taken by defendant, City of East Wenatchee, its employees and agents, were done with the knowledge and consent on behalf of the defendant, City of East Wenatchee.

1.7 Douglas County. At the time of the negligent acts alleged herein and at all relevant times, defendant, Douglas County was a County Government in Washington. All actions or inactions complained of and taken by defendant, Douglas County, its employees and agents, were done with the knowledge and consent on behalf of the defendant, Douglas County.

1.8 State of Washington, Department of Transportation. At the time of the negligent acts alleged herein and at all relevant times, defendant, State of Washington, Department of Transportation, (herein referred to as State of Washington) is a state government agency in Washington. All actions or inactions complained of and taken by defendant, State of Washington, its employees and agents, were done with the knowledge and consent on behalf of the defendant, State of Washington.

1.9 Leo Agens and "Jane Doe" Agens. At all times mentioned herein, defendants, Leo Agens, and "Jane Doe" Agens, whose true identity is currently unknown, were at all times pertinent

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hereto, husband and wife, forming a marital community under the laws of the State of Washington. All acts alleged herein done by either said defendant were done for and on behalf of their martial community.

1.10 John and Jane Does 1-100. At all times mentioned herein, there may be other individuals, unknown to plaintiffs but possibly known to defendants; City of East Wenatchee; Douglas County; State of Washington; and or their employees, agents, or independent contractors of said defendants, that were working within their scope of employment, within their authority as agents of said defendants, or as independent contractors for said defendants who may also have participated in the alleged actions and omissions and who bear responsibility for the damages claimed. These defendants are referred to as John and Jane Does 1-100. All acts alleged herein done by defendants John and Jane Does 1-100 were done for and on behalf of said defendants; City of East Wenatchee; Douglas County; State of Washington; and or their employees, agents, or independent contractors.

II. JURISDICTION AND VENUE

2.1 The incident complained of herein occurred in the City of East Wenatchee, Douglas County, Washington.

2.2 Subject matter jurisdiction. This court has subject matter jurisdiction of this action pursuant to RCW 2.08.010; RCW 4.92.010; RCW 4.12.020; and RCW 36.01.050.

2.3 Personal jurisdiction. This court has personal jurisdiction over all the parties of this action.

2.4 Venue. Venue in Chelan County, Washington is proper pursuant to RCW 4.12.020 and RCW 36.01.050 as one of the named defendants is Douglas County in this case.

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III. CLAIM COMPLIANCE

3.1 All plaintiffs previously filed individual "Claim for Damages" with each said defendants; City of East Wenatchee; Douglas County; State of Washington in compliance with RCW 4.96. et seq.

3.2 All the "Claim for Damages" forms of plaintiff Jennifer Curtin were signed and verified by Jennifer Curtin and her attorneys.

3.3 All the "Claim for Damages" forms of plaintiffs Glen and Becky Curtin were signed and verified by Glen and Becky Curtin and their attorneys.

3.4 All said "Claim for Damages" forms filed by plaintiff Jennifer Curtin were filed on September 8, 2015, for City of East Wenatchee; on September 5, 2015, for Douglas County; on September 8, 2015 for State of Washington.

3.5 All said "Claim for Damages" forms filed by plaintiffs Glen and Becky Curtin were filed on October 5, 2015, for City of East Wenatchee; on October 5, 2015 for Douglas County; on October 7, 2015, for State of Washington.

3.6 More than sixty (60) days have lapsed since all of the plaintiffs' claims were filed with said defendants: City of East Wenatchee; Douglas County; State of Washington.

IV. FACTS

4.1 On or about December 9, 2009, at approximately 6:16 p.m., in the city of East Wenatchee, Douglas County, Washington, Plaintiff Jennifer Curtin (herein referred to alternately as Jennifer) was walking with a group of friends near the intersection of Grant Road and S. Grover.

4.2 On said date and time where Grant Road meets the intersection of N. Georgia / S. Grover Street, there was an unmarked crosswalk across Grant Road illuminated only by street lights.

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4.3 On said date and time, the nearest marked crosswalks from the intersection of Grant Road and S. Grover was one quarter (¼) of a mile to the west at Grant Road and Eastmont, and three quarters (¾) mile to the east at Grant Road and Kentucky.

4.4 On said date and time, after waiting for vehicle traffic to clear, Jennifer Curtin and her friends proceeded to cross the first and second westbound lanes of Grant Road in the unmarked crosswalk at the intersection of Grant Road and S. Grover.

4.5 On said date and time, as the pedestrians including Jennifer crossed the center left turn lane between the eastbound and westbound lanes of Grant Road, a pickup truck traveling east approached (and seeing the group of children crossing at the corner) and stopped completely in the left side eastbound lane of Grant Road to allow the pedestrians to cross. In addition a vehicle traveling immediately behind the pickup truck also stopped.

4.6 On said date and time, two of the children ahead of Jennifer continued to cross Grant Road and made it safely across the final eastbound lane of Grant Road to the sidewalk at S. Grover.

4.7 On said date and time as Jennifer and her two other friends were still in the process of crossing the final eastbound lane of Grant Road, the defendant Leo Agens driving his motor vehicle approached the intersection at or near the posted speed limit of 35 miles per hour.

4.8 On said date and time, defendant Leo Agens, was travelling eastbound on Grant Road approaching the intersection of S. Grover Street / Georgia Street; and saw one pedestrian cross the roadway ahead and began to slow his vehicle but continued to travel 25 mph.

4.9 On said date and time, defendant Leo Agens saw the stopped vehicle to his left and paid no attention to the truck stopped at the intersection since there was no traffic light, no crosswalk signal and no stop sign directing him to do so.

4.10 On said date and time, defendant Leo Agens, passing the stopped traffic to his left, failed to stop and yield-the-right-of-way to plaintiff Jennifer Curtin who was a pedestrian in

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the unmarked crosswalk, striking Jennifer. Upon impact she rolled up the defendant Agens' car windshield and then was thrown twenty (20) feet forward severely injuring her.

4.11 Prior to December 9, 2009, defendants including State of Washington, Douglas County and City of East Wenatchee were responsible for the zoning and approval of property development and implementation of traffic control measures, projects and improvements from the intersection of Grant Road and S. Grover from one quarter (¼) of a mile to the west at Grant Road and Eastmont, and three quarters (¾) mile to the east at Grant Road and Kentucky.

4.12 Based on the increase of vehicle traffic on Grant Road due to commercial, public and residential property development, and totality of the circumstances, it became difficult for pedestrians to cross Grant Road safely.

4.13 The defendants State of Washington, Douglas County and City of East Wenatchee had a duty to design, construct, maintain and repair the public roads from the intersection of Grant Road and S. Grover from one quarter (¼) of a mile to the west at Grant Road and Eastmont, and three quarters (¾) mile to the east at Grant Road and Kentucky to keep them in a reasonably safe condition for ordinary travel by pedestrians and vehicles.

4.14 The unmarked crosswalk at Grant Road and the intersection of N. Georgia / S. Grover Street, was hazardous and unsafe for travel by pedestrians including the plaintiff Jennifer Curtain.

4.15 Prior to December 9, 2009, defendants, State of Washington, Douglas County, and City of East Wenatchee, knew or should have known of hazardous and unsafe condition of the unmarked crosswalk and of the need to install a fully signalized pedestrian crossing at the unmarked crosswalk.

4.16 According to the May 27, 2008 East Wenatchee Council Meeting Minutes, Councilmember McCourt expressed concerns regarding crossing Grant Road at Georgia Avenue. She said it had been brought to her attention and she would like to know if the City could place

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crosswalks at that location so that pedestrians coming from south of Grant Road could cross to the park. Mr. Mauseth said that Randy Asplund from RH2 Engineering has looked into that issue and will would touch base with Mr. Asplund to find out what procedures can be taken. Counsel discussed different options to alleviate the situation.

4.17 According to the July 22, 2008 East Wenatchee Council Meeting Minutes, Mayor Lacy said a crosswalk on Grant Road is a more difficult proposition and will require more study because sometimes crosswalks are more dangerous if they are placed in an area that may create a hazard rather than a solution. Mr. Mauseth said he has been looking into this as well at the 10th Street NE and Grover Avenue area.

4.18 The defendants State of Washington, Douglas County, and City of East Wenatchee, did eventually install a traffic signal controlled mid-block crosswalk on Grant Road near N. Georgia / S. Grover Street. The installation of a traffic signal controlled crosswalk occurred approximately two and a half (2 ½) years after the need was discussed at the May 27, 2008 council meeting.

4.19 Prior to December 9, 2009, The defendants State of Washington, Douglas County, and City of East Wenatchee, failed to take reasonable measures to correct the dangerous condition created with the unmarked crosswalk at Grant Road and the intersection of N. Georgia / S. Grover Street, and in the alternative failed to warn of the dangerous condition of the unmarked crosswalk where plaintiff Jennifer Curtin was struck and injured.

4.20 The defendants State of Washington, Douglas County, and City of East Wenatchee, had notice of the need for a traffic sign controlled mid-block crosswalk on Grant Road near N. Georgia / S. Grover Street. The need was foreseeable and the delay of two and half (2 ½) years in installing a traffic signal controlled crosswalk was unreasonable, negligent and a proximate cause of injury to the plaintiffs.

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V. CAUSES OF ACTION

5.1 The allegations contain in paragraphs 1.1- 4.20 are re-alleged, as set forth fully herein.

5.2 All defendants to this action owed all the plaintiffs a duty.

5.3 All defendant to this action breached said duty owed to all the plaintiffs.

5.4 Said breach duty proximately caused damages to all the plaintiffs.

A. Negligence of Defendant Leo Agens and "Jane Doe" Agens.

5.5 Duty. Defendant Leo Agens owed a duty to exercise reasonable care in operating his motor vehicle, in complying with all traffic rules, regulations and legal requirements to yield to pedestrians crossing in an crosswalk (whether marked or unmarked) to avoid hitting other vehicles or pedestrians lawfully traveling upon the roadway.

5.6 Breach of Duty/Causation and Damages: Jennifer Curtin. Defendant Leo Agens breached the duties alleged in paragraph 5.5, when he violated RCW 46.61.235 and failed to yield the right of way to pedestrian crossing in a unmarked crosswalk, allowing his vehicle to strike and seriously injure plaintiff Jennifer Curtin. As a direct and proximate cause of this breach, the plaintiff, Jennifer Curtin sustained severe and permanent injuries, severe physical pain and suffering, mental and emotional distress, medical expenses, and other special and general damages in an amount to be proven at trial.

5.7 Breach of Duty/Causation and Damages: Glen and Becky Curtin. Defendant Leo Agens breached the duties alleged in paragraph 5.5, when he violated RCW 46.61.235 and failed to yield the right of way to pedestrian crossing in a unmarked crosswalk, allowing his vehicle to strike and seriously injure plaintiff Jennifer Curtin. As a direct and proximate cause of this

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breach, the plaintiffs' Glen and Becky Curtin incurred medical expenses in support of their minor daughter, Jennifer Curtin who sustained severe and permanent injuries, severe physical pain and suffering, and loss of services, support, love and companionship to the parent-child relationship, in an amount to be proven at trial.

B. Breach of Defendants City of East Wenatchee, Douglas County, State of Washington, duty to design, repair, revise and maintain the unmarked crosswalk and roadway in a reasonably safe condition for ordinary travel.

5.8 The allegations contain in paragraphs 1.1- 5.7 are re-alleged, as set forth fully herein.

5.9 Duty. Defendants City of East Wenatchee; Douglas County; State of Washington, owed a duty to exercise reasonable care in the design, construction, maintenance, revision and repair of its public roads and streets to keep them in a reasonably safe condition for ordinary travel. This duty included designing, constructing, maintaining, revising and repairing the unmarked crosswalk Jennifer Curtin was using at the time of the accident such that the crosswalk would be reasonably safe for pedestrians.

5.10 Defendants City of East Wenatchee; Douglas County; State of Washington, had a duty under Washington State law to comply with the standards of the Manual of Uniform Traffic Control Devices (MUTCD) as codified in WAC 468-95.

5.11 The United States Code of Federal Regulations (CFR) Title 23 Highways, Section 655.603 requires that states follow the Manual on Uniform Traffic Control Devices (MUTCD). The Revised Code of Washington (RCW) 47.36.030 requires that agencies in Washington State follow uniform standards for the placement of traffic control devices. Washington Administrative Code (WAC) 468-95 makes the 2009 MUTCD that standard.

5.12 Breach of Duty/Causation and Damages: Jennifer Curtin. The Defendants City of East Wenatchee; Douglas County; State of Washington, breached the duties alleged in

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paragraphs, 1.1 through 5.7, and by doing so created an unmarked crosswalk and roadway, which was not in a reasonable safe condition for ordinary travel by pedestrians and vehicles. As a direct and proximate cause of this breach, the plaintiff, Jennifer Curtin sustained severe and permanent injuries, severe physical pain and suffering, mental and emotional distress, medical expenses, and other special and general damages in an amount to be proven at trial.

5.13 Breach of Duty/Causation and Damages: Glen and Becky Curtin. The Defendants City of East Wenatchee; Douglas County; State of Washington, breached the duties alleged in paragraph 1.1, through 5.7, and by doing so created an unmarked crosswalk and roadway which was not in a reasonable safe condition for ordinary travel by pedestrians and vehicles. As a direct and proximate cause of this breach, the plaintiffs' Glen and Becky Curtin incurred medical expenses in support of their minor daughter, Jennifer Curtin who sustained severe and permanent injuries, severe physical pain and suffering, and loss of services, support, love and companionship to the parent-child relationship, in an amount to be proven at trial.

VI. ABSENCE OF COMPARATIVE FAULT

6.1 The above-described collision was the sole and proximate cause of the negligent acts of Defendants. Therefore, Plaintiff Jennifer Curtin was not at all comparatively at fault for this collision, or for the injuries and damages that resulted therefrom. Defendant(s) herein are therefore individually and/or jointly and severally 100% liable for Plaintiffs' injuries and damages resulting from this accident.

VII. ABSENCE OF NON-PARTY "AT FAULT" ENTITIES

7.1 Defendant(s) are the only "at fault" entities or potentially "at fault" entities (as that term is defined in RCW 4.22.015) in this accident. There are no non-party "at fault" entities

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who are in any way or percentage "at fault" for this accident and/or for plaintiffs' injuries and damages resulting therefrom.

VIII. DAMAGES

8.1 As a direct and proximate cause of the negligence and carelessness of the Defendants, and each of them, plaintiff, Jennifer Curtin was hurt and injured in her health, strength and activity, sustaining injury to her body and person, all of which injuries have caused, and continue to cause, Plaintiff great mental, physical and emotional pain and suffering and all her special and general damages, in a sum to be established according to proof at trial.

8.2 As a further direct and proximate result of Defendants' negligence and carelessness as herein alleged, Plaintiffs Glen and Becky Curtin incurred damages under RCW 4.24.010 in the form of medical expenses in support of their minor daughter, Jennifer Curtin who sustained severe and permanent injuries, severe physical pain and suffering, and loss of services, support, love and companionship to the parent-child relationship, and all their special and general damages in a sum to be establish according to proof at trial.

IX. LIMITED WAIVER

9.1 Pursuant to RCW 5.60.060(4)(b) and the provisions of the Uniform Health Care Information Act, RCW 42.17 and RCW Chapter 70, Plaintiff Jennifer Curtin hereby waives the physician-patient privilege only after 90 days, and insofar as necessary to place any and all alleged damages at issue at time of trial, as might be required by any act or statute or case law interpreting said statutes or acts in the State of Washington. This limited waiver does not constitute a waiver of any of the Plaintiff's constitutional or statutory rights and defendants are not to contact any treating physician, past, present, or future, without first notifying counsel for Plaintiff, as required by and in compliance with the Uniform Health Care Information Act, so that they might bring the matter to the attention of the Court and secure appropriate relief to

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include limitations and restrictions upon any such Defendants' desire or intent to contact past or subsequent treating physicians ex parte, or otherwise.

9.2 Plaintiff Jennifer Curtin further states that Loudon v. Mhyre, 110 Wn.2d 675, 756 P.2d 138 (1988) and Kime v. Niemann, 64 Wn.2d 394 (1964), are the correct law governing waiver of physician-patient privilege in this state, and that the Uniform Health Care information Act, RCW 42.17 and RCW Chapter 70 sets forth the legal procedures required to secure a Plaintiff's medical records and any related health care information.

X. AMENDMENT

10.1 Plaintiff reserves the right to amend this complaint either before or during trial, including, but not limited to, other damages incurred or other theories of liability.

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XI. PRAYER FOR RELIEF

As a direct and proximate result of the carelessness and negligence of the Defendant, Plaintiff sustained bodily injuries and great pain and suffering, and other general and special damages in an amount to be proven at trial.

WHEREFORE, Plaintiff prays for the following relief:

11. 1 For judgment against the Defendants jointly and individually for general and Special damages in an amount to be proven at trial;

11.2 For costs and reasonable attorneys' fees in an amount to be fixed by the Court

11.3 For such other and further relief as the court deems just and proper.

Dated this 29 day of January, 2016.

LAW OFFICES OF
STEVEN D. WEIER, PS

By: _____

Steven D. Weier, WSBA# 22160
Paul B. Apple, WSBA #21846
Attorneys for Plaintiffs

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MOBERG RATHBONE KEARNS

March 04, 2020 - 3:50 PM

Transmittal Information

Filed with Court:	Court of Appeals Division III
Appellate Court Case Number:	36209-4
Appellate Court Case Title:	Jennifer Curtin, et al v. City of East Wenatchee, et al
Superior Court Case Number:	16-2-00123-2

The following documents have been uploaded:

- 362094_Petition_for_Review_20200304154640D3957045_7686.pdf
  This File Contains:
  Petition for Review
  The Original File Name was Curtin _ Petition to Supreme Court for Review.pdf

A copy of the uploaded files will be sent to:

- jbaker@mrklawgroup.com
- paul@weierlaw.com
- pmoberg@mrklawgroup.com
- steven@weierlaw.com
- tbuchner@weierlaw.com
- tom@dadkp.com

Comments:

Good Afternoon: I have submitted for filing the Petition for Review to the Supreme Court. I have sent a check payable to the Washington State Supreme Court in the amount of $200.00 via Fed Ex Tracking # 8152 9710 7651

Sender Name: Dawn Severin - Email: dseverin@mrklawgroup.com
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