

FILED
SUPREME COURT
STATE OF WASHINGTON
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Supreme Court No. 99203-7
Court of Appeals No. 81041-3-1

SUPREME COURT
OF THE STATE OF WASHINGTON

REBEKAH L. HART, individually,

Appellant,

v.

EMILY PRATHER and "JOHN DOE" PRATHER, individually and the marital community comprised thereof; PARKER J. KNAUER, individually; STEVEN KNAUER and PAMILA KNAUER, individually and the marital community comprised thereof; BRAYDEN STANTON and "JANE DOE" STANTON, individually and the marital community comprised thereof; TODD EVANTS and "JANE DOE" EVANS, individually and the marital community comprised thereof; ERIC NELSON and "JANE DOE" NELSON, individually and the marital community comprised thereof; DAVID W. BARKER and "JANE DOE" BARKER, individually and the marital community comprised thereof; and BRITTANY POWELL, individually,

RESPONDENTS.

RESPONDENT ERIC NELSON'S ANSWER TO APPELLANT'S
PETITION FOR DISCRETIONARY REVIEW

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<i>Malarkey Asphalt Co. v. Wyborney</i> , 62 Wn. App. 495, 814 P.2d 1219 (1991), <i>opinion corrected</i> , 62 Wn. App. 495, 821 P.2d 1235 (1991).....	2
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I. IDENTITY OF RESPONDENT

Respondent Eric Nelson respectfully requests that the Court deny the Petition for Discretionary Review filed by Appellant Rebekah Hart. If, however, the Court grants review of Appellant's Petition, Mr. Nelson respectfully requests that the Court also review the issues set forth in Section II of this Answer.

II. ISSUES PRESENTED FOR REVIEW

If the Court holds that the parties against whom judgment is rendered are jointly and severally liable, what is the proper remedy?

If the Court holds that verdict form allowed for allocation of fault to a non-party, what is the proper remedy?

III. STATEMENT OF FACTS RELEVANT TO ANSWER

The Court of Appeals accurately states the facts pertinent to its decision and the issues before the Court.

IV. ARGUMENT

Appellant's Petition for Discretionary Review should be denied. In the event the Court accepts review, the Court should review the appropriate remedy. If the Court holds that judgment should have been entered jointly and severally, the Court should remand the case back to the trial court for entry of judgment of the

jury verdict jointly and severally against those parties who the jury found to have been at fault. Likewise, if the Court holds that the verdict form improperly permitted allocation of fault to a non-party, then the Court should remand the case back to the trial court with instructions for the trial court to allocate the twenty percent proportionally to the parties determined by the jury to be at fault.

An appellate court can alter a jury verdict so long as the court can ascertain the intent of the jury and the final judgment implements that intent. See *Malarkey Asphalt Co. v. Wyborney*, 62 Wn. App. 495, 511, 814 P.2d 1219 (1991), *opinion corrected*, 62 Wn. App. 495, 821 P.2d 1235 (1991).

The intent of the jury is sufficiently set forth in the jury verdict – which was rendered after a seven-week trial – to permit this Court to remand to the trial court with instructions for entry of judgment consistent with the verdict.

As to liability, the jury verdict form clearly finds Respondents Emily Prather, Brayden Stanton, and David Barker liable to Plaintiff. As to damages, there is no dispute that the jury awarded Plaintiff a total of \$433,000, broken down as follows: 1) \$17,000 in past economic and non-economic damages for the period March 1, 2009 to December 2, 2009; 2) \$59,000 in past economic and non-

economic damages for the period December 22, 2009, to April 7, 2013; 3) \$32,000 in past economic and non-economic damages for the period April 7, 2013, to March 22, 2014; and 4) \$325,000 in past and future economic and non-economic damages from March 22, 2014 to present. The only issues addressed in Appellant's Petition for Discretionary Review relate to how these damages should be applied to the parties who the jury found at fault. It would be a substantial waste of judicial resources for the parties to be forced to reargue facts, liability, and damages, where, as here, the jury already resolved those issues. The jury's verdict should be honored, and any remedy should be limited to remand to the trial court.

V. CONCLUSION

The Court should deny Appellant's Petition for Discretionary Review. Nevertheless, *if* the Court grants review, then the Court should also grant review of the issues set forth in Mr. Nelson's Answer, so that the Court may ultimately determine the proper remedy. Mr. Nelson specifically does *not* request review of the issues set forth in the Answer unless the Court grants review of Appellant's Petition.

Respectfully submitted this 3rd day of December,

2020. GORDON THOMAS HONEYWELL LLP

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DECLARATION OF SERVICE

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I DECLARE UNDER THE PENALTY OF PERJURY OF THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

/s/ William Engell
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December 03, 2020 - 11:20 AM

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