

FILED
SUPREME COURT
STATE OF WASHINGTON
6/1/2021 11:18 AM
BY SUSAN L. CARLSON
CLERK

No. 99672-5

SUPREME COURT OF THE STATE OF WASHINGTON

K.M.P., a minor child, by and through her natural mother and custodial
parent, SARAH HALL PINHO,

Respondents/Plaintiffs,

v.

BIG BROTHERS BIG SISTERS OF PUGET SOUND, and MICHAEL
WAYNE SANCHEZ, an individual,

Petitioner/Defendant.

Court of Appeals No. 80293-3-I

RESPONDENT'S OPPOSITION TO PETITION FOR REVIEW

Richard L. Anderson, WSBA #25115
SCHROETER, GOLDMARK & BENDER
500 Central Building
810 Third Avenue
Seattle, Washington 98104
(206) 622-8000

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. STATEMENT OF THE CASE.....	2
III. ARGUMENT	5
A. Petitioner’s Reliance on <i>Leishman v. Ogden Murphy Wallace, PLLC</i> as Demonstrating a Conflict in Supreme Court Decisions is Misplaced.....	5
B. The Court of Appeals Decision Does Not Conflict with <i>Richmond v. Thompson</i>	7
C. <i>Davis v. Cox</i> Invalidated Attorney’s Fees Under a Provision of RCW 4.24.500 that Was Not Utilized By the Trial or Appeals Court in This Case	8
D. Sanchez Was Not Denied the Opportunity for Counsel, to Present Evidence, or to Be Present in Court.....	8
IV. REQUEST FOR ATTORNEYS’ FEES	9
V. CONCLUSION.....	10

TABLE OF AUTHORITIES

	<u>Page(s)</u>
<u>Cases</u>	
<i>In re Dep. of D.L.B.</i> , 186 Wn.2d 103, 376 P.3d 1099 (2016).....	6
<i>K.M.P. by and through Pinho v. Big Brother Big Sisters of Puget Sound</i> , No. 80293-3-I at *8, 483 P.3d 119 (2021).....	4, 8, 9
<i>Leishman v. Odgen Murphy Wallace, PLLC</i> , 196 Wn.2d 898, 479 P.3d 688 (2021).....	5, 7
<i>Richmond v. Thompson</i> , 130 Wn.2d 368, 922 P.2d 1343 (1996).....	7, 8
<i>Samish Indian Nation v. Wash. Dep’t of Licensing</i> , 14 Wn. App. 2d 437, 471 P.3d 261 (2020).....	6
<u>Statutes</u>	
RCW 1.12.050	6
RCW 4.24.500	8
RCW 4.24.510	<i>passim</i>
RCW 4.24.525	8
RCW 26.44.060	6
<u>Rules</u>	
Civil Rule 11	3, 5
RAP 18.1(j).....	9

I. INTRODUCTION

The anti-SLAPP statute, RCW 4.24.510 was enacted to protect individuals who make reports to law enforcement and other government agencies from frivolous and retaliatory litigation brought unjustly by those who want silence their critics. KMP, a nine-year-old girl, reported to her chaperone caregiver that Michael Sanchez, a stranger to her, had sexually assaulted her at Steel Lake Park in Federal Way, Washington. After being arrested, charged, and ultimately convicted of a crime based on KMP's report, Sanchez brought defamation and other similar claims against her.

In the years since pleading guilty, Sanchez has persisted in prolonging the trauma and memory of KMP's abuse without proper evidence or justification. After having his claims dismissed at summary judgment, Sanchez sought relief from the Court of Appeals by arguing that because KMP did not call 911 herself, instead telling the adult she was with Sanchez had molested her, KMP is not entitled to the protections of civil immunity found within RCW 4.24.510, unlike both her caregiver and her mother who relayed her report to law enforcement on KMP's behalf. Now, Sanchez seeks review of Division One's decision, armed only with the argument that he does not agree with its ruling. This Court should deny his request and give effect to the purpose of the anti-SLAPP statute – prohibiting baseless claims of defamation and the like from those who

report matters of concern, like child sexual abuse, to public agencies with the authority and mandate to investigate those reports.

II. STATEMENT OF THE CASE

KMP, a minor, and her mother, as guardian, sued Michael Sanchez after he was convicted of Attempted Child Molestation in the Second Degree in King County Superior Court for an incident involving then nine-year old KMP at Steel Lake Park, in Federal Way, Washington. CP 1-10. After reaching an agreement with co-defendant Big Brothers Big Sisters of Puget Sound, KMP moved to dismiss her claims against Sanchez and terminate the case. CP 425. Sanchez objected to the dismissal and filed several counterclaims, including defamation, false light, and invasion of privacy. CP 437-39.

At the time he filed his counterclaims, Sanchez was a respondent in a Sexually Violent Predator (SVP) civil commitment proceeding under Chapter 71.09 RCW. CP 1023. One of his attorneys in the SVP proceeding was public defender Kenneth Henrikson. *Id.* Mr. Henrikson assisted Sanchez in drafting and filing pleadings in the instant sexual assault/defamation matter before his superiors insisted that he terminate his representation as being outside his charter as a public defender. CP 1026-27. Mr. Henrikson called upon a former colleague, Kenneth Chang, now in

private practice, to represent Sanchez in the defamation counterclaims. CP 1027.

After unsuccessfully attempting to dismiss the defamation counterclaims, KMP's original plaintiff's counsel withdrew from her representation, claiming there was no financial benefit to their law firm from assisting KMP and her mother in defending the defamation counterclaims. CP 628-632. Soon after, KMP acquired pro bono counsel to represent her in defense of those counterclaims. CP 677-82.

KMP's counsel met with Sanchez's counsel in March 2019 in an effort to resolve the matter without further litigation. CP 964-966. Sanchez's counsel was provided with deposition transcripts from the original sexual assault lawsuit and a copy of RCW 4.24.510, the anti-SLAPP statute, and was informed that KMP would seek the statutory remedies provided by the statute, as well as Civil Rule (CR) 11 sanctions against counsel personally, if Sanchez did not agree to dismiss his counterclaims and terminate the litigation. *Id.*

The warnings to Sanchez went unheeded, and only limited discovery was conducted by the parties, including some brief written discovery and a deposition of Sanchez. Shortly thereafter, KMP filed a motion for summary judgment dismissal, contending both that Sanchez had insufficient prima facie evidence of his claims and that KMP was immune from all

counterclaims arising from her report to the police of Sanchez's sexual assault of her, under RCW 4.24.510. CP 853-72.

Oral argument on the summary judgment motion was conducted on June 21, 2019. Verbatim Report of Proceedings (VRP), (6/21/19). The Court made a clear and thorough oral ruling on the motion, some of which was later incorporated into written findings related to the motion for sanctions filed on October 15, 2019. CP 1295-1301. Those oral and written findings reflect that Sanchez presented insufficient evidence that KMP's allegations were false, no evidence that there were any damages proximately caused by KMP's report to her caregivers, and a complete absence of any evidence supporting a finding of actual malice (needed to overcome a privileged communication). VRP 6/21/19, 39:11-41:7. Further, the court concluded that even if Sanchez had presented a prima facie case of defamation, KMP's statements were immune from civil liability under the anti-SLAPP provisions of RCW 4.24.510. VRP 6/21/19, 42:3-43:8.

On appeal, Division One of the Court of Appeals determined that to require a child to make a report of abuse directly to law enforcement, rather than the common experience of first seeking help from a parent or caregiver, would result in an absurd interpretation of the statute and the legislature's intent. *K.M.P. by and through Pinho v. Big Brother Big Sisters of Puget Sound*, No. 80293-3-I at *8, 483 P.3d 119 (2021). Division I also properly

decided that the trial court did not abuse its discretion in denying Sanchez a continuance for new counsel or in imposing CR 11 sanctions. *Id.* at *9-10.

III. ARGUMENT

A. **Petitioner’s Reliance on *Leishman v. Ogden Murphy Wallace, PLLC* as Demonstrating a Conflict in Supreme Court Decisions is Misplaced**

Leishman v. Ogden Murphy Wallace, PLLC held only that a government contractor, and the employees working for that contractor, hired to perform an investigation into employee misconduct were entitled to the anti-SLAPP protections of RCW 4.24.510. 196 Wn.2d 898, 479 P.3d 688 (2021). The fact that *Leishman* arguably expanded the interpretation of “person” within the anti-SLAPP statute has no bearing on the Court of Appeals decision in this matter. In fact, the only reference by the Court of Appeals to *Leishman* was in the context of explaining that the legislature intended for the provisions of the anti-SLAPP statute to shield multiple persons making a “single report or communication” to law enforcement. Sanchez improperly interprets the Court of Appeals to have considered the child KMP and her chaperone Tishman to be part of the same entity or group of persons, and thus misses the point.

Nothing in the Court of Appeals decision in this case demonstrates that neither the chaperone Tishman or the child KMP were only considered a “person” because of their identity as a single group or entity. On the

contrary, it defies logic to fail to consider both Tishman and KMP “persons” for the purposes of RCW 4.24.510. Instead, the Court of Appeals used basic tools of statutory construction and specifically the language of RCW 1.12.050 (“[w]ords importing the singular number may also be applied to the plural of persons and things”) to determine that Tishman and KMP were making the same “communication” to law enforcement about Sanchez’s abuse of KMP, and therefore were entitled to the immunity provided by RCW 4.24.510.

As explained by the Court of Appeals (and completely ignored by Sanchez in his petition for review), the permissibility of considering multiple people, who are making the same or a single report to law enforcement, to be a single “person” within the meaning of RCW 4.24.510 comports with statutory construction principles of avoiding absurd results. *Samish Indian Nation v. Wash. Dep’t of Licensing*, 14 Wn. App. 2d 437, 444, 471 P.3d 261 (2020) (quoting *In re Dep. of D.L.B.*, 186 Wn.2d 103, 119, 376 P.3d 1099 (2016)). In addition, the Court of Appeals decision properly interpreted the legislature’s intent of the anti-SLAPP statute by considering statutes that were closely related to it, like that of the child abuse reporting statute, RCW 26.44.060, which protects caregivers from their relaying of information about child abuse (likely to have been provided to them by the abused child themselves) to law enforcement.

Contrary to Sanchez's contention, the decision of the Court of Appeals to protect children and their caregivers with immunity provided by RCW 4.24.510 is actually entirely consistent with the prior authority of this Court and other Washington appellate decisions on statutory construction. Requiring a child to first communicate her abuse directly to law enforcement to garner the same immunity protections provided to others under anti-SLAPP statute is untenable, and well, frankly absurd. For these reasons, the *Leishman* case does not provide this Court with a valid reason to consider review here.

B. The Court of Appeals Decision Does Not Conflict with *Richmond v. Thompson*

Nothing about the Court of Appeals decision in this case conflicts with *Richmond v. Thompson* whatsoever. 130 Wn.2d 368, 922 P.2d 1343 (1996). Indeed, it is not even clear what part of *Thompson* Mr. Sanchez believes has been implicated here. In this case, the Court of Appeals upheld the determination by the trial court that Sanchez presented only subjective evidence of his own perception that KMP possessed actual malice towards him, and that subjective evidence of this nature is insufficient to demonstrate actual malice for purposes of defeating summary judgment. This finding does not contradict anything about *Richmond v. Thompson*, and further is entirely consistent with Washington cases regarding proof of

actual malice. Thus, any perceived conflict with *Richmond* is illusory and should not be a basis for this Court to grant review.

C. *Davis v. Cox* Invalidated Attorney’s Fees Under a Provision of RCW 4.24.500 that Was Not Utilized By the Trial or Appeals Court in This Case

Sanchez’s next objection relies on RCW 4.24.525, a provision that was both deemed unconstitutional in *Davis v. Cox*, but that also was not utilized here. The fees imposed by the trial court were supported by RCW 4.24.510, which entitles a party prevailing on the anti-SLAPP defense to recover reasonable expenses and attorney fees. In addition, the court shall impose a statutory penalty of \$10,000. *Id.* Why Sanchez continues to argue portions of the statute that are not at issue in this case is unknown.

D. Sanchez Was Not Denied the Opportunity for Counsel, to Present Evidence, or to Be Present in Court

Sanchez’s argument in his petition that he was denied the right to counsel is opaque and undeveloped, saying only that his attorney had a compelling interest in losing the summary judgment motion. He makes this argument absent any evidence in the record and without articulating it further. Similarly, he argues that he was not permitted to be present for the summary judgment hearing, despite a complete lack of evidence that he was denied an opportunity to participate in the hearing. *K.M.P. by and through Pinho v. Big Brother Big Sisters of Puget Sound*, No. 80293-3-I at *12, fn. 41, 483 P.3d 119 (2021). Moreover, the fact that the trial court did not

find the evidence of Sanchez's own subjective perception of KMP's actions at the time of the incident sufficient to defeat summary judgment is not a failure to consider such evidence or provide due process. *Id.* at *9. One may wonder how Sanchez hopes to continue this protracted and harassing litigation by making factually unsupported and legally unsound arguments, but those tactics have served Sanchez's intentions thus far. This Court should not indulge him any further.

IV. REQUEST FOR ATTORNEYS' FEES

A party prevailing on the defense provided for in the anti-SLAPP statute is entitled to an award of attorney's fees and expenses. RCW 4.24.510. As a result, the trial court awarded KMP her statutorily provided for fees and costs. CP 1295-1301. Likewise, KMP was awarded her attorney fees and expenses for prevailing in her appeal to Division One. *K.M.P. by and through Pinho v. Big Brother Big Sisters of Puget Sound*, No. 80293-3-I at *12, 483 P.3d 119 (2021). Similarly, KMP is entitled to her reasonable attorney fees and costs here. RAP 18.1(j). KMP respectfully requests this Court allow for her reasonable attorney fees and expenses on appeal.

V. CONCLUSION

The opinion of the Court of Appeals was neither erroneous nor does it meet the criteria for review by the Supreme Court. Petitioner Sanchez has taken every opportunity to prolong the attack on his child victim of sexual assault by filing appeal after appeal, none of which are based in meritorious legal argument or facts in the record. While Plaintiffs have no doubt they will prevail should review be accepted, they should be permitted to find some reprieve from this ugly chapter in their lives with the knowledge that Mr. Sanchez's retaliation against them for reporting his sexual abuse is finally over. Thus, they respectfully ask this Court that review be denied.

DATED this 1st day of June, 2021.

Respectfully submitted,

SCHROETER, GOLDMARK & BENDER

s/Richard L. Anderson

RICHARD L. ANDERSON, WSBA #25115

Attorney for Plaintiffs/Respondents

810 Third Avenue, Suite 500

Seattle, WA 98104

Phone: (206) 622-8000

Fax: (206) 682-2305

anderson@sgb-law.com

CERTIFICATE OF SERVICE

I certify that on this day, I caused a true and correct copy of the foregoing, along with this Certificate of Service, to be served on the following in the manner indicated:

Peter T. Connick, WSBA #12560
Law Office of Peter T. Connick
12351 Lake City Way NE Ste 203
Seattle, WA 98125-5437
Counsel for Petitioner
Michael Sanchez

- Via Facsimile
- Via First Class Mail
- Via Messenger
- Via Court Electronic Service

Dated this 1st day of June, 2021, in Seattle, Washington.



Victoria Molina, Legal Assistant
Schroeter Goldmark & Bender
810 Third Avenue, Suite 500
Seattle, WA 98104
(206) 622-8000
molina@sgb-law.com

SCHROETER GOLDMARK BENDER

June 01, 2021 - 11:18 AM

Filing Petition for Review

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: Case Initiation
Appellate Court Case Title: K.M.P., et ano. v. Big Brothers Big Sisters of Puget Sound, et al. (802933)

The following documents have been uploaded:

- PRV_Petition_for_Review_20210601111702SC529283_7908.pdf
This File Contains:
Petition for Review
The Original File Name was 869786-signed.pdf

A copy of the uploaded files will be sent to:

- Peterconnick@gmail.com
- mabbutt@sgb-law.com
- molina@sgb-law.com

Comments:

Sender Name: Richard Anderson - Email: anderson@sgb-law.com
Address:
810 3RD AVE STE 500
SEATTLE, WA, 98104-1657
Phone: 206-622-8000

Note: The Filing Id is 20210601111702SC529283