SUPREME COURT NO. 100390-1

No. 80662-9

COURT OF APPEALS
OF THE STATE OF WASHINGTON,
DIVISION ONE

ASHA SINGH, personally and as Personal Representative of the Estate of NARENDRA P. SINGH,

Petitioner,

v.

STATE OF WASHINGTON, a governmental entity; UNIVERSITY OF WASHINGTON, a Washington State entity, and JOHN DOES 1-5,

Respondents.

ON APPEAL FROM KING COUNTY SUPERIOR COURT

RESPONDENT UNIVERSITY OF WASHINGTON'S ANSWER TO PETITION FOR REVIEW

Seth Berntsen, WSBA #30379
Hathaway Burden, WSBA #52970
SUMMIT LAW GROUP PLLC
315 Fifth Avenue South, Suite 1000
Seattle, WA 98104
(206) 676-7000
Attorneys for State of Washington and University of Washington

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

I. INTRODUCTION

Petitioner fails to present an issue of substantial public interest warranting this Court's review under RAP 13.4(b)(4). The unpublished Court of Appeals decision rejecting Petitioner's contract, tortious interference, and wage claims is limited to the unique facts presented by this case: University of Washington faculty member Dr. Narenda Singh became incapacitated and subsequently died during which time his daughter impersonated him to secure a licensing agreement for his research.

Unable to satisfy the criteria for review, Petitioner attempts to rewrite both the issues on appeal and the record by arguing brand new legal theories and improperly relying upon materials that were not before the trial court on summary judgment. For all of these reasons, this Court should deny Petitioner's petition for review.

II. COUNTER STATEMENT OF THE CASE

A. FACTUAL BACKGROUND

1. University Research Faculty Must Generate Research Funding.

Dr. Singh was employed as research faculty in the University's Department of Bioengineering ("Department") from 1998 until he died in 2016. CP 723-28. Under the University's Faculty Code ("FC"), research faculty do not have tenure and are subject to annual appointments. CP 724-25, 734-36. Their "primary responsibility" is to conduct research, and they are "expected to take active roles in generating research funding." CP 734-36, 739. Research faculty do not receive a salary from University funds, but instead are required to fully support their compensation through research funding. CP 725. Failure to maintain sufficient funding can result in non-renewal or removal. CP 725, 740-44.

2. Dr. Singh Struggles to Generate Research Funding.

Dr. Singh struggled to obtain research funding for much of his career. CP 725. In April 2012, he requested the University reduce his appointment to 50% FTE given his low level of research funding and activity. CP 725-26, 771. The University approved the request. CP 725-26. The following year, the University provided "bridge funding" because Dr. Singh had not generated enough funding to cover his salary. CP 726-27. Still unable to pay his own salary when the bridge funding ended in 2014, the Department voluntarily paid 50% of his salary, but advised him that his faculty employment might end if he did not obtain research funding. CP 726, 775.

Dr. Singh eventually secured a grant for research concerning "Mobile Phone Use and DNA Damage." CP 726. The grant provided the minimum funding the University required from approximately January 1, 2015, until September 18, 2015. CP 726. When it ended, however, Dr. Singh had no funding whatsoever. CP 726-27.

3. Dr. Singh Is Incapacitated and Later Dies.

On January 13, 2016, Dr. Singh had a major medical event while at home. CP 1123-26, 2992-97.[1] Dr. Singh was brought to Swedish Hospital and remained there for some time. *Id*. Dr. Singh's wife, Petitioner Asha Singh, later advised Department Administrator Ruth Woods that Dr. Singh was "quite ill" and hospitalized, but she did not provide further details.[2] CP 693.

The following month, Dr. Singh's wife advised Woods that Dr. Singh was "still comatose" and requested family medical leave for him, initially for several months, and then through January 13, 2017—a full year after the incident. CP 693, 705-15. The leave requests were signed by one of Dr. Singh's physicians who represented that Dr. Singh would be "incapacitated for a single, continuous period of time"—for the entire next year. CP

[1] CP 2992-97 were filed under seal in accordance with the Health Insurance Portability and Accountability Act.

[2] In order to avoid confusion, the University refers to Dr. Singh's wife and children by their first names but intends no disrespect in doing so.

693, 705-15.[3] The University approved the requests. CP 693, 1129-30.

In February 2016, the Singh family had Dr. Singh discharged and transported to India. CP 1127-28, 1188-93. Dr. Singh remained there until his death on December 2, 2016. CP 1127-28, 1191-93, 2418. It is undisputed that Dr. Singh was unable to work or conduct research after he fell gravely ill on January 13, 2016. CP 974-75, 1131, 1152-53, 1187.

4. Dr. Singh's Adult Daughter Impersonates Him to Secure a License Agreement which the University Is Forced to Cancel Upon His Death.

In early 2016, while Dr. Singh was comatose in India, his adult daughter, Himani Singh ("Himani"), repeatedly posed as Dr. Singh for the purposes of licensing Dr. Singh's research to a private company. In March and April 2016, Himani accessed Dr. Singh's University email account and sent a series of emails from

[3] The questions on the completed forms are difficult to read but can be deciphered by reference to a clear version of the same blank form. CP 1258-59.

it to a private company called Applied Biological Materials ("ABM"). In these emails, Himani, posing as Dr. Singh, purported to express Dr. Singh's interest in licensing to ABM a cell line known as "RTN" for short. CP 1069-71. For instance, she wrote:

> I apologize for the delay in responding to your email and I thank you for getting in touch. Developing the RTN cell line was the basis for my interest in cancer stem cells and studying chemotherapy resistance. I would be interested in collaborating with you and furthering this endeavor. Please let me know how you would like to proceed.
>
> …
> Narendra P. Singh

CP 1071, 972-73, 977-81. Himani did not disclose her identity or that her father was incapacitated and in India. CP 975-76, 986-89, 1016-17.

Again, posing as her father, Himani then submitted to the University's CoMotion Department, which manages University intellectual property, paperwork necessary to allow the University to commercialize the RTN cell line and attempt to

license it to ABM. CP 845-46, 916-21, 982-86. Himani completed the "Record of Innovation and Assignment Form" in which she described, using the first person, how Dr. Singh developed the cell line while working at the University with the University's "bridge funding." CP 845, 916-21, 982-86. She applied her father's electronic signature to the document and, in doing so, affirmatively represented that Dr. Singh had assigned *all rights* in the RTN cell line to the University and further warranted that Dr. Singh would assist the University in the evaluation and possible commercialization of it. CP 916-21, 982-86. Himani did not advise CoMotion that she, not her father, completed the form, or that her father was incapacitated and unable to work. CP 986.

Unaware of Dr. Singh's condition or the forged paperwork, CoMotion spent several months negotiating a licensing agreement with ABM which was finalized in October 2016. CP 843-47, 1054-74, 1581-97. Had CoMotion known that

Dr. Singh was incapacitated, it would not have entered into the ABM contract. CP 846.

In November and December 2016, still unaware of Dr. Singh's grave condition and subsequent death, CoMotion repeatedly emailed Dr. Singh requesting that he ship the cell materials to ABM with the appropriate "technical information" necessary for ABM to successfully culture the cells. CP 1582-83, 1599-1600. This could only be performed by someone like Dr. Singh with the necessary personal knowledge of and experience with this particular biological material. CP 1582-83. Neither Dr. Singh nor anyone on his behalf responded to these requests. CP 1582-83.

In March 2017, CoMotion learned that Dr. Singh had died in December. CP 1582-83. As Dr. Singh was the only person with the necessary personal knowledge of the cell lines and the "technical information" for successfully culturing the cells, his death meant that the biological material could not be delivered to ABM. CP 845-46, 1582-83. Consequently, the University

agreed with ABM to terminate the agreement and refund ABM's $1,000 "upfront fee." CP 846, 1583. ABM did not pay the University any licensing fees. CP 846, 1583.

5. The Singh Family Accesses Secure University Laboratory Space

While Dr. Singh was incapacitated and in India, Dr. Singh's adult children repeatedly used a University cardkey to access the secured laboratory where Dr. Singh worked. CP 1017-22, 1000-04. Knowing that Dr. Singh was incapacitated, and concerned about improper access to secured areas, the Department deactivated the cardkey. CP 693-94, 717, 839. Thereafter, Dr. Singh's adult son, Arun Singh "(Arun"), aggressively and threateningly confronted Woods about accessing the laboratory space. CP 693-94. Woods, fearing for her personal safety, contacted University SafeCampus, a violence prevention group. *Id*.

6. The University Returns Dr. Singh's Personal Property to the Singh Family

On January 17, 2017, attorney Lauren Parris Watts of Helsell Fetterman LLP ("Helsell"), purporting to represent the Singh family, informed University counsel that Dr. Singh had passed away. CP 1025-27. Watts requested that Dr. Singh's wife be allowed to obtain "personal items" Dr. Singh ostensibly purchased with personal funds. *Id*. The University requested the Singh family provide documentation showing Dr. Singh's ownership of any particular items. CP 1029. On February 14, 2017, the University provided the Singh family with more than three boxes of Dr. Singh's personal items. CP 1029-37, 840.

Over the next several months, University personnel meticulously catalogued all remaining records kept in Dr. Singh's office and identified any additional materials that might belong to Dr. Singh. CP 840-41. On June 16, 2017, the University provided the Singh family with more than 40 additional boxes of materials which appeared to be Dr. Singh's personal property. CP 841, 1042-44.

B. PROCEDURAL HISTORY

On September 14, 2018, Petitioner Asha Singh, both in her personal capacity and as Personal Representative of the Estate of Dr. Singh, commenced this action. CP 2416-37. The original Complaint purported to allege intentional and negligent infliction of emotional distress, breach of contract, tortious interference with business expectancy, failure to pay wages, failure to accommodate a disability, and trespass to chattels/conversion. CP 2416-37.

On September 3, 2019, the trial court granted the University's motion for summary judgment, dismissing all claims. Petitioner appealed the summary judgment rulings and a number of other trial court rulings, including two sanctions orders issued against Petitioner for discovery violations.

On August 16, 2021, the Court of Appeals issued a unanimous, unpublished decision affirming all trial court rulings, but reversed as to the accommodation claim. On October 20,

2021, the Court of Appeals denied Petitioner's Motion for Reconsideration.

The Petition for Review followed. It seeks review of the trial court's summary judgment dismissal of Petitioner's breach of contract, tortious interference, and wage claims.

III. ARGUMENT

A. The Court of Appeals' Decision Does Not Implicate a Substantial Public Interest

As a threshold matter, the Court should deny review because the unpublished Court of Appeals decision does not involve an issue of "substantial public interest" as required by RAP 13.4(b)(4).

Contrary to Petitioner's assertion, this case does not implicate broad questions generally applicable to all faculty at the University or other state institutions. Nothing in the Court of Appeals' unpublished opinion applies beyond the limited set of unfortunate circumstances presented here: While Dr. Singh was gravely ill and incapacitated, his adult daughter posed as him to

kick-start a licensing agreement between the University and ABM for a cell line developed by her father. When the University later learned of Dr. Singh's death, it determined that it could not perform the licensing agreement and terminated the contract in consultation with ABM. Neither the facts nor legal issues presented raise issues of broad public import necessitating review by this Court.

B. This Court Should Disregard Materials Not Called to the Attention of the Trial Court on Summary Judgment.

Petitioner improperly relies on materials that were not before the trial court on summary judgment. RAP 9.12 provides that an appellate court, "[o]n review of an order granting or denying a motion for summary judgment…will consider *only* evidence and issues called to the attention of the trial court." (Emphasis added). The rule is designed to ensure that appellate courts "engage in the same inquiry as the trial court." *Washington Fed'n of State Employees v. Office of Financial Mgt.*, 121 Wn.2d 152, 157, 849 P.2d 1201 (1993). Here,

Petitioner disregards this limitation and improperly cites Clerk's Papers which were not before the trial court on summary judgment.[4] Petitioner also cites and attaches journal articles—styled as "other authorities"—that were not before the trial court or the Court of Appeals. Pet. for Review, pp. 5, 6, 7, 20. The Court should disregard these materials. RAP 9.12.

C. Petitioner's Evolving Breach of Contract Theories Were Not Before the Trial Court and, Regardless, Do Not Warrant Review by This Court.

1. Petitioner Abandoned Her Arguments at the Trial Court and Continues to Raise New Theories on Appeal

Petitioner now asserts a breach of contract claim that is unrecognizable from what she pled and pursued below. In her Complaint and discovery responses, Petitioner premised her breach of contract claim on the University's alleged failure to

[4] The following Clerk's Papers cited in the Petition for Review were not before the trial court on summary judgment, but were submitted more than a month later in response to a separate motion for attorneys' fees: CP 2315, 2322, and 2326.

pay Dr. Singh royalties on the licensing agreement with ABM. CP 2416-29 (Original Complaint ¶¶ 3.8, 5.2-5.4, "*Defendant breached the terms of the Agreement with Dr. Singh when it failed to pay Dr. Singh his royalty payments."*) (emphasis added), 236-49 (First Amended Complaint, ¶¶ 3.8, 5.2-5.4), 1207-09 (Plaintiff's response to interrogatory no. 9); CP 1207-09, 1227-28 (interrogatories 23-24); *see also* CP 1373. Lacking any factual support for this theory, Petitioner concocted a completely new argument for the first time in response to the University's summary judgment motion—that the University breached contractual obligations to Dr. Singh by not properly "administering" the ABM license agreement. CP 1421-24.

On appeal, Petitioner pivoted again, largely abandoned these theories, and improperly argued for the first time that the University breached a contract with Dr. Singh by allegedly destroying "Dr. Singh's Work," without identifying that "work." Br. of Appellant, p.11. Without success at the Court of Appeals, Petitioner *now* asks this Court to accept review to determine

whether the University breached a unilateral contract by destroying the RTN cell line - a cell line she has *never* before alleged the University destroyed. Pet. for Review, pp. 19-23.

The Court should not need to consider the theories Petitioner advanced for the first time at the Court of Appeals or in her Petitioner for Review. *Kirby v. City of Tacoma*, 124 Wn. App. 454, 469-72, 98 P.3d 827 (2004); *Molloy v. City of Bellevue*, 71 Wn. App. 382, 385-86, 859 P.2d 613 (1993); *Wingert v. Yellow Freight Sys., Inc.*, 146 Wn.2d 841, 853, 50 P.3d 256 (2002); *State v. King*, 167 Wn.2d 324, 329, 219 P.3d 642, 645 (2009); RAP 2.5(a). Regardless, the Court of Appeals appropriately rejected Petitioner's claim.

2. The Court of Appeals Correctly Concluded that University Guidance Memoranda Did Not Create a Binding, Unilateral Contract.

The Court of Appeals properly rejected Petitioner's shifting breach of contract claim. Petitioner initially claimed on appeal that the University violated Grants Information

Memorandum ("GIM") 37, by allegedly destroying "Dr. Singh's work."[5] The Court of Appeals disagreed noting that GIM 37 "is a guidance document," which, in any event, the University followed. Unpublished Opinion, pp. 7-9. This decision does not create "a conflict in the law," as Petitioner claims, because it is supported by case law and the record.

GIM 37 (CP 902-08) announces only broad and general guiding principles; it provides "principles regarding Research Data" and must be read "in conjunction with applicable laws, contract terms, and University policies." CP 902.[6] Broad principles such as those set forth in GIM 37 are insufficient to create a unilateral contract. *See Quedado v. Boeing Co.*, 168 Wn.

[5] Petitioner also argued that the University breached a contract by failing to pay Dr. Singh royalties, which the Court of Appeals rejected. Petitioner has abandoned that argument in her Petition for Review.

[6] Petitioner has also abandoned her arguments that University policies other than GIM 37 created a unilateral contract such as the PIC Policy and the Record of Innovation and Assignment form signed by Dr. Singh's daughter, Himani. Accordingly, the University does not address these arguments here.

App. 363, 367, 276 P.3d 365 (2012) ("general statements of company policy" do not create an implied contract).

Petitioner's reliance on cases where courts have recognized unilateral contracts is misplaced as they concern policies that promise "specific treatment in specific situations." *Thompson v. St. Regis Paper Co.*, 102 Wn.2d 219, 685 P.2d 1081 (1994) (employer's "promise of specific treatment in specific situations" in employment policies can alter at-will employment relationship and create binding contract); *see also Storti v. University of Washington*, 181 Wn.2d 28, 330 P.3d 159 (2014) (finding contract created where University explicitly promised faculty raises and faculty relied upon that promise in performing work). But here, GIM 37 does not make any specific promise about how it will handle research data where, as here, faculty become incapacitated and subsequently die. Thus, the Court of Appeals correctly concluded that GIM 37 is "a guidance document." Unpublished Opinion, pp.7-9.

3. The University Acted in Conformity with GIM 37 and University Policy

Even if GIM 37 created a unilateral contract, the Court of Appeals did not err in concluding that the University complied with it, including key provisions which Petitioner selectively ignores.

First, GIM 37 affirms that generally all "Research Data" is owned by the University. CP 903. Second, while the Principal Investigator ("PI") "generally" determines who has access to Research Data, GIM 37 provides that, "*where necessary to assure needed and appropriate access, the University has the option to take custody of any or all Research data.*" CP 904 (emphasis added).

Third, GIM 37 provides that, "in the event the PI is not available to address questions regarding Research Data, then the matter may be referred to the appropriate University official, such as the chair or the PI's department and/or unit administering the research, the dean, and the Vice Provost for Research, in that order." CP 904.

The record makes clear that the University acted in conformity with GIM 37. After Dr. Singh's incapacitation in January 2016 and until his death in December, he was "not available to address questions" regarding his research. Furthermore, given his incapacitation, the University could take custody of all research data, which it owned. CP 904. It was therefore entirely appropriate under GIM 37 for the Department to manage issues concerning the research data, including who had access to the RTN cell line.

The University also acted in accordance with its contract management rights under the Record of Innovation and Assignment form, signed by Himani, purportedly on behalf of Dr. Singh. CP 916-921. That document, in addition to expressly assigning the RTN cell line to the University, made clear that: (1) Dr. Singh agreed to personally "assist" CoMotion in the commercialization of the RTN cell line and (2) the University, through CoMotion, would "manage all commercialization efforts," including "license negotiations" and "contract

management" concerning the RTN cell line assigned to the University. CP 920. Thus, the University had the unfettered discretion to "manage" the licensing of the RTN cell line and the ABM license agreement. This necessarily included the right to terminate the agreement when Dr. Singh was unavailable to "assist."

In short, the University acted in accordance with its own guidance memoranda and pursuant to the express management authority Dr. Singh expressly delegated to it.

4. Petitioner's New Theory that the University Improperly "Destroyed" the RTN Cell Line Is Improper and Unsupported by the Evidence.

Petitioner advances another new argument in her Petition for Review to support the current iteration of her ever-evolving contract claim. Petitioner now argues for the first time that the University "destroyed" the RTN cell line. Petitioner *never* argued at the trial court or the Court of Appeals that the University destroyed the RTN cell line, which was generated

with University funds and which it irrefutably owned. CP 850-63, 916-21, 982-86, 1231-33.

As the Court of Appeals properly recognized, Petitioner failed to demonstrate that the University "destroyed" any of Dr. Singh's work or property. Unpublished Decision, p.7. Petitioner cannot salvage her claim with unsupported assertions like "Singh identified that the University improperly destroyed her late husband's licensed ARTN cell line." Pet. for Rev. at 22 (citing nothing). There is simply nothing in the record to demonstrate that the cell line was in Dr. Singh's laboratory when he fell ill, that Dr. Singh owned the cell line, or that the University destroyed it.

What the record makes clear is that, upon Dr. Singh's illness, the Department locked up the laboratory space for safety purposes. CP 782-83. Although there did not appear to be any active research in the laboratory, Department personnel ensured frozen cells remained frozen through regular delivery of liquid nitrogen for roughly 1.5 years. *Id*. After learning of Dr. Singh's

death, the University then returned to the Singh family all of Dr. Singh's personal effects and property—more than 40 boxes. CP 839-41. And, in accordance with University health and safety policy, Department personnel then discarded the chemicals and hazardous materials remaining in Dr. Singh's former laboratory space. CP 784-85. Petitioner has failed to present any evidence that the University destroyed the RTN cell line, as she now claims for the first time.

D. The Court of Appeals Properly Concluded that the University Did Not Tortiously Interfere

The trial court and the Court of Appeals properly rejected Petitioner's untenable tortious interference claim. Petitioner claims that the University's "own actions" prevented it from performing the ABM licensing agreement, interfering with Dr. Singh's business expectancy through "an improper purpose or means." Pet. for Review, pp. 24-25. The trial court and Court of Appeals properly rejected this very argument.

As described above, Dr. Singh's total incapacitation and subsequent death prevented the University from fulfilling its obligations under the agreement with ABM. CP 1582-83. CoMotion understood that Dr. Singh was the only person with the unique personal knowledge and experience to locate and ship the RTN cell line with the appropriate culturing instructions. CP 845-46, 1582-83. CoMotion emailed Dr. Singh four separate times asking him to ship the materials. CP 1582-83, 1599-1601. Neither he nor anyone from his family responded. CP 1582-83, 1505. When CoMotion learned of Dr. Singh's death, ABM and the University jointly agreed to terminate the licensing agreement. CP 846, 1264-65, 1583. ABM had the contractual right to terminate the agreement at any time for any reason with only 30 days advance notice (CP 1594, ¶8.1), and the University had the unfettered right to "contract management." CP 920.

Petitioner cites no evidence that the *joint* decision to terminate the ABM agreement due to Dr. Singh's death was made for an improper purpose or through improper means as is

required to prevail on a tortious interference claim.[7] "Exercising in good faith one's legal interests is not improper interference." *Leingang v. Pierce County Med. Bureau, Inc.*, 131 Wn.2d 133, 157, 930 P.2d 288 (1997). This joint decision was reasonable under the circumstances and termination was expressly permitted by the license agreement itself. CP 1594.

Furthermore, Petitioner cannot premise her tortious interference claim on the ABM-University agreement. First, "[a] party cannot tortiously interfere with its own contract." *Reninger v. Dep't of Corrections*, 134 Wn.2d 437, 448, 951 P.2d 782 (1998); *see also Houser v. City of Redmond*, 91 Wn.2d 36, 39, 586 P.2d 482 (1978).

Second, the ABM-University agreement expressly precluded derivative claims by third parties like Dr. Singh. CP

[7] CP 2322 cannot be considered on appeal because it was not part of the summary judgment record but submitted in response to a post summary judgment motion for attorneys' fees. RAP 9.12. Had that record been properly brought before the trial court, the University would have presented evidence refuting Petitioner's characterization of it.

1592-97. That agreement provides: "No Third Party Beneficiaries" and defines "third party" as "any individual or entity other than the University and Licensee [ABM]." CP 1592, 1596. Dr. Singh was unquestionably a "third party" under the ABM agreement. Hence, his Estate cannot bring a claim thereunder.

Finally, as the trial court and the Court of Appeals properly found, Petitioner presented no *admissible* evidence on summary judgment that any other faculty member or person was available or qualified to identify and properly ship the RTN cell material to ABM with the unique culturing instructions. Unpublished Opinion, p.8. Petitioner claims that Dr. Pollack and an unidentified former lab assistant offered to carry on Dr. Singh's research. Pet. for Review, p.26. But Petitioner improperly relies on inadmissible hearsay and other records which were indisputably not before the trial court on its September 3, 2019 summary judgment order. *Id.* at p.26., *citing* CP 1737

(inadmissible hearsay statement by Pollack to Arun Singh),[8] CP 2315-16 and 2326 (records submitted to the trial court on October 8, 2019 in response to unrelated motion for attorneys' fees not challenged on appeal). This Court can only consider those admissible records which were before the trial court on summary judgment. RAP 9.12.

In any event, this untimely and inadmissible "evidence" does not demonstrate that any particular person was available *and qualified*[9] to identify and ship to ABM the cellular material with the appropriate culturing instructions.

The trial court and Court of Appeals properly rejected Petitioner's tortious interference claim, and there is no basis to grant review of the same.

---

[8] Petitioner has never challenged the trial court's finding that Petitioner's summary judgment materials were rife with inadmissible hearsay and speculation (VRP at 16-17).

[9] There is no evidence that the Singh family (as purportedly proposed by Dr. Pollack at CP 2315-16) or an unidentified former University employee could carry on Dr. Singh's research or knew how to culture the RTN cell line.

E. The Court of Appeals Properly Rejected Petitioner's "Teaching Wage" Claim.

Petitioner claims that the trial court and Court of Appeals erred in rejecting her claim that the University failed to pay Dr. Singh for "teaching wages." Petitioner is incorrect, and this Court should not grant review.

As a threshold matter, the Court of Appeals correctly held that Petitioner's "teaching wage" claim was not properly before the Court because it was not raised in the Complaint. Petitioner failed to even address this fundamental issue in the Petition for Review.

Petitioner's original and amended complaints asserted wage claims premised upon the (false) allegation that the University failed to pay Dr. Singh *license agreement royalties* – a claim which fails for the reasons set forth above. CP 243-44 ("Defendants have violated [wage statutes] by failing to make the payments set out in the paragraphs above"), 2425-26 (¶¶7.2, 8.2). Verified interrogatory responses confirmed this was Petitioner's only wage theory. CP 1207-09, 1227-28 (interrogatories 23-24).

Accordingly, the University was not on notice that Plaintiffs claimed the University failed to pay Dr. Singh wages *for teaching activities* and Plaintiffs improperly raised the theory for the first time in response to summary judgment. *Pac. Nw. Shooing Park Ass'n v. City of Sequim*, 158 Wn.2d 342, 352-53, 144 P.3d 276 (2006) (PNSPA); *Kirby*, 124 Wn. App. at 469-72; *Dewey v. Tacoma Sch. Dist. No. 10*, 95 Wn. App. 18, 23-26, 974 P.2d 847 (1999); *Molloy*, 71 Wn. App. at 385-86. Hence, the alleged failure to pay teaching wages not properly before the trial court or the Court of Appeals.

Moreover, Petitioner failed to create a genuine issue of material fact below suggesting that the University failed to pay Dr. Singh "teaching wages." Petitioner failed to present any admissible evidence that Dr. Singh taught compensable courses at any time after July 16, 2015, the statute of limitations cut-off for wage claims.[10] *Seattle Prof'l Eng'g Emps. Ass'n v. Boeing*

[10] Actions against governmental entities such as the University require a prior tort claim notice, which tolls the statute of

Co., 139 Wn.2d 824, 837, 991 P.2d 1126 (2000); *Mitchell v. PEMCO Mut. Ins. Co*., 134 Wn. App. 723, 737, 142 P.3d 623 (2006); RCW 4.16.080(3). Moreover, Petitioner also presented no admissible evidence that the University *ever* failed to compensate Dr. Singh for *any* teaching activities.

In short, the trial court and the Court of Appeals properly rejected Petitioner's "teaching wage" claim. This claim was never properly before the trial court, or the Court of Appeals. In any event, there was no admissible evidence to support it.

IV. CONCLUSION

For the reasons set forth herein, the Court should deny the Petition for Review. The fact-intensive decisions at-issue do not involve an issue of substantial public interest and are not in conflict with any decision of this Court or the Court of Appeals. Further, the trial court properly granted summary judgment

---

limitations for 60 days. RCW 4.96.020(4). Hence, any conduct prior to July 16, 2015—three years and sixty days prior to the date Plaintiffs filed this action—is time barred.

dismissal of the challenged claims, and the Court of Appeals properly affirmed the same.

DATED this 19th day of January, 2022January, 2022.

This document contains 4,759 words, excluding the parts of the document exempted from the word county by RAP 18.17.

Respectfully submitted,

SUMMIT LAW GROUP PLLC

By 

Seth Berntsen, WSBA #30379
Hathaway Burden, WSBA #52970
SUMMIT LAW GROUP PLLC
315 Fifth Avenue South, Suite 1000
Seattle, WA 98104
(206) 676-7000
SethB@summitlaw.com
HathawayB@summitlaw.com
Attorneys for Respondents State of Washington and University of Washington

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury according to the laws of the State of Washington that on this date she caused to be served a copy of the foregoing RESPONDENT UNIVERSITY OF WASHINGTON'S ANSWER TO APPELLANT'S PETITION FOR REVIEW ***via*** the Court's e-service on the following:

Aaron Paul Orheim
Talmadge/Fitzpatrick
2775 Harbor Ave SW Unit C
Seattle, WA 98126-2168
Aaron@tal-fitzlaw.com
Counsel for Appellant

Rory D. Cosgrove
Carney Badley Spellman, P.S.
701 Fifth Avenue, Suite 3600
Seattle, WA 98104-7010
(206) 622-8020
cosgrove@carneylaw.com
weinberg@carneylaw.com
Counsel for Appellant

DATED this 19th day of January, 2022.

Dominique Barrientes, Legal Assistant
DominiqueB@summitlaw.com

4863-8815-2836, v. 4

SUMMIT LAW GROUP

January 19, 2022 - 4:07 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	100,390-1
Appellate Court Case Title:	Asha Singh v. State of Washington, et al.

The following documents have been uploaded:

- 1003901_Answer_Reply_20220119160636SC648667_9938.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was UWs Answer to Appellants Petition for Review.pdf

A copy of the uploaded files will be sent to:

- Aaron@tal-fitzlaw.com
- cosgrove@carneylaw.com
- hathawayb@summitlaw.com
- litdocket@foster.com
- matt@tal-fitzlaw.com
- phil@tal-fitzlaw.com
- weinberg@carneylaw.com

Comments:

Sender Name: Dominique Barrientes - Email: DominiqueB@summitlaw.com
Filing on Behalf of: Seth J Berntsen - Email: sethb@summitlaw.com (Alternate Email: dominiqueb@summitlaw.com)

Address:
315 Fifth Avenue So.
Suite 1000
Seattle, WA, 98104
Phone: (206) 676-7000

Note: The Filing Id is 20220119160636SC648667