Supreme Court No. 102076-7

SUPREME COURT
OF THE STATE OF WASHINGTON

Court of Appeals No. 83541-6-I

GARRET SCHIREMAN, in his individual capacity, and as executor for THE ESTATE OF LOREN E. SCHIREMAN,

Petitioner,

v.

CHRISTOPHER P. WILLIAMS,

Respondent.

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

The petitioner is Garret Loren Schireman ("Mr. Schireman") in his capacity as the personal representative of the Estate of Loren Schireman (the "Estate"). The beneficiaries of the Estate are Garret Schireman, Cheryl Hill, and Judy Schireman.

II. CITATION TO COURT OF APPEALS DECISIONS

The Court of Appeals, Division One's March 17, 2023 opinion is attached as Appendix 1. The May 8, 2023 denial of Appellant's Motion for Reconsideration is attached as Appendix 2. The first was a unanimous decision and the second was a majority decision.

III. ISSUES PRESENTED FOR REVIEW

Issue 1: Do the broad and seemingly contradictory expansions of the *Daugert* doctrine, which eliminate the right to have a jury decide issues of duty, breach, damages, and facts, reconcile with the spirit of *Daugert v. Pappas* or the Washington Constitution's guarantee of an inviolate right to a jury?

Issue 2: Should Division One have vacated a unanimous jury verdict on the grounds that *Daugert* required the trial judge to decide proximate cause, where neither party asked the trial judge to decide proximate cause, both parties asked the jury to decide proximate cause, and both parties stipulated to the propriety of the proximate cause jury instruction?

IV. STATEMENT OF THE CASE

Washington residents have an inviolate right to a jury. Const. art. I, § 21. However, there are times in legal malpractice cases when that right must yield. *Daugert v. Pappas*, 104 Wn.2d 254 (1985). When proximate cause turns on a legal question too esoteric for a jury to decide, the parties can ask the trial judge to decide proximate cause. That does not mean a party can demand a *jury* decide proximate cause, wait to see if the verdict is favorable, and then complain on appeal that *Daugert* should have applied to get the unfavorable verdict vacated.

That is what Mr. Williams did. He demanded a jury, moved to convert the bench trial into a jury trial, and stipulated

to the proximate cause jury instruction. He compelled jurors to spend two weeks of their lives reviewing his extrinsic evidence and hearing his arguments. It was not until the jury he demanded rendered a unanimous verdict against him that he first complained his *Daugert* rights had been violated because proximate cause turned, in part, on the interpretation of a premarital agreement. Since he never asked the trial judge to decide proximate cause, he assigned error to motions that had nothing to do with his *Daugert* rights, as well as the proximate cause jury instruction to which he stipulated.

Division One became preoccupied with the substantive issues surrounding *Daugert* and overlooked the fact that Mr. Williams was shopping for outcomes. It held that the trial judge erred by giving the proximate cause jury instruction instead of deciding proximate cause himself, even though nobody asked him to do that. After vacating the unanimous verdict, Division One dismissed Mr. Schireman's case on the merits of the

premarital agreement without hearing his legal analysis on those merits.

This Court has a strong interest in policing the effects of *Daugert*. In the thirty-eight years since it decided *Daugert*, the Divisions of the Court of Appeals have issued conflicting opinions, expanding and contracting the right to have a jury decide issues of duty, breach, damages, and even facts. The confusion seems to result in a disproportionate number of unpublished opinions, even as those opinions continue to constrict the right to a jury. This case represents the high-water mark of that confusion because Division One eliminated the right to a jury retroactively.

As the final authority on the Washington Constitution, this Court is the last guarantor of Washingtonians' rights. As the regulator of the legal profession, it is the public's safeguard against that industry. There is no body better suited to address the issue of attorneys trying to excuse themselves from the constitutional rights of Washington plaintiffs. Trial judges need

guidance on the issue if they are going to be held in error for not deciding proximate cause *sua sponte*. The public needs to know how and when their lawyers will be held responsible for mistakes. The Supreme Court should grant review.

The facts in the Division One opinion are mostly correct, but they gloss over a few important points.

a. The Jury's Verdict Was Not Unreasonable

i. The premarital agreement stated that Alice Forrister must pay Loren Schireman's heirs to "purchase" his interest in the Arlington house.

Loren and Charlene Schireman married in 1954. RP 866. They raised three children in Everett, Washington. *Id.* Charlene died in the early 1990's, and Loren married Alice Forrister in 1997. Ms. Forrister had a net worth of $5,417,500 and Loren had $678,893. Ex. 2 at 3; 18-21. Loren earned his assets and his pension while raising a family with Charlene. *See* RP 868:15-16.

On December 15, 1997, Loren and Alice executed a premarital agreement (the "PMA"). Ex. 2. The PMA stated they had already begun constructing a house before their upcoming

marriage (the "Arlington Residence"). Ex. 2 at 7. They repeatedly expressed that they wanted their separate interests in the house to remain separate for their children to inherit:

1. The "Separate Property" section lists the "Arlington Residence" twice, both under separate "Assets" and separate "Liabilities";[1]
2. The PMA stated that each spouse has a "one-half-interest and one-half obligation" toward the house (Ex. 2 at 7);
3. The PMA identified the house as a "joint venture," implying two separate interests instead of a marital community (*Id.*);
4. Ms. Forrister made a loan to Loren Schireman to pay his half of the home loan fifteen years *after* the marriage, implying separate interests (Ex. 3); and

[1] The "Separate Property" section of the agreement (Ex. 2 at 3-5) refers to "Schedule I" for the list of separate property, where the house is listed twice. Ex. 2 at 18.

5. Regardless of whether the house was separate or community property, the PMA's Survivorship Paragraph detailed what to do when a spouse died. Ex. 2 at 8. It read, "[i]n the event of the death of one of the parties…the surviving party shall have a right to purchase the deceased party's interest in the subject property…by tendering to the heirs…one-half (1/2) of the then fair market value of the property…" *Id.*

ii. Mr. Williams responded to a dispositive motion with a two-page brief and conceded the case in his motion for reconsideration.

Loren Schireman died in 2016. Ms. Forrister sued his estate in a TEDRA action. Ex. 4. Ms. Forrister asked the TEDRA court to award her Loren's half of the house without tendering anything to his heirs. *Id.* at 4. In contrast to the specific language holding otherwise, her argument was based upon ambiguous language about a loan. *Cf.* Ex. 4 at 3:3-7; Ex. 2 at 7, ¶2.

If neither party puts the case into mediation, a TEDRA petition becomes a dispositive motion, summarily decided in a

hearing on the merits. RCW 11.96A.100(8). Mr. Williams did not put the case into mediation. Instead, he responded to the dispositive motion with a two-page brief. Ex. 5. He did not address most of the points favoring his client. He did not provide any legal analysis. He just framed the dispute and then "agree[d] to have the matter transferred to TEDRA," which does not make sense. *Id.* At oral argument, he was blindsided when opposing counsel argued the merits of the PMA. RP 891:14-898:7.

After losing, he filed a motion for reconsideration. Ex. 8. It appears that he still did not grasp the merits. Instead of identifying the language showing the house was separate property, he unnecessarily conceded the house was "community property." Ex. 8 at 5:5; 5:24. He lost again.

b. Mr. Williams Insisted on Having a Jury Decide Proximate Cause

The Estate sued Mr. Williams for malpractice. On September 12, 2019, the trial court assigned a bench trial. CP 2028-2029. On September 25, 2019, Mr. Williams responded

with a jury demand. CP 2025-2027. On December 13, 2019, he moved to convert the bench trial to a jury trial. CP 2022-2024.

On November 1, 2021, Mr. Williams submitted his Trial Brief.[2] CP 1044. Rather than inform the judge he should decide proximate cause, his brief explicitly stated that deciding proximate cause was the jury's "fundamental inquiry." CP 1051:18-1052:2. Nowhere did he broach the topic of the trial judge deciding proximate cause. CP 1044-1052.[3]

c. Mr. Williams' Assignments of Error Had Nothing to Do with His Daugert Rights

When the jury rendered a verdict against him, Mr. Williams appealed. He assigned error to the denial of his CR 12 motion, his CR 50 motion, and the judge's decision to give Jury Instruction No. 9. Brief of Appellant ("BOA") at 4.

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[2] The trial was continued for eighteen months due to the difficulty of assembling a jury during COVID.

[3] The trial judge twice offered to decide proximate cause. Mr. Schireman agreed, but Mr. Williams declined. Brief of Respondent ("BOR") at 29-30.

i. The CR 12 motion was based on an improper collateral estoppel argument rejected in Washington, California, and New York.

Mr. Williams claims his *Daugert* rights were violated when the trial court denied his CR 12 motion. BOA at 21-22. His CR 12 motion was a motion for collateral estoppel. CP 1029-1042. It mentioned *Daugert* only once in passing. CP 1036:12. Nowhere did it suggest the trial judge should decide proximate cause. CP 1029-1043. Nowhere did it even mention "proximate cause." *Id*. Except for one section pertaining to the attorney judgment rule (CP 1036-1037), his entire argument advocated for collateral estoppel. CP 1033-1042.

Mr. Williams' collateral estoppel theory has been and should be rejected. His theory is that because the TEDRA court already interpreted the meaning of the PMA, that interpretation is fixed and cannot be revisited in a negligence proceeding based upon his failure to brief the court. CP 1038-1042. That theory would foreclose any remedy a plaintiff has when her attorney elicits a negative outcome by failing to inform the Court. It has

been rejected by appellate courts in Washington, California, and New York. *See Paradise Orchards Gen. P'ship v. Fearing*, 122 Wn. App. 507 (Div. 3, 2004); *Ruffalo v. Patterson*, 234 Cal. App. 3d 341 (Cal. Ct. App. 1991); *Avon Dev. Enterprises Corp. v. Samnick*, 286 A.D.2d 581, 730 N.Y.S.2d 295 (2001). The trial court properly denied the motion in a considered explanation. RP 724:18-729:10.[4]

ii. The CR 50 motion explicitly stated the jury should decide proximate cause.

After the plaintiff rested, Mr. Williams made an oral CR 50 motion. RP 231:19-238:10. The proximate cause section began by stating the *jury's* role was to decide proximate cause: "…he must show the jury that but for Mr. Williams's argument, the court would have found in Mr. Schireman's favor. That is from *Daugert v. Pappas,* your Honor...." RP 235:20-24 (italics added).

[4] Mr. Williams' motion was also procedurally deficient. *See also Schireman v. Williams*, 83541-6-I, 2023 WL 2645875, at *8 n. 7 (Wn. Ct. App., Mar. 27, 2023)

The remainder of his proximate cause argument merely sought to impose a subjective standard for deciding cause instead of the objective standard recognized in case law: "[t]he parties in the case nor the jury can enter the underlying court's mind and speculate as to….what Judge Bowden would have done." RP 236:3-13; *but see Brust v. Newton*, 70 Wn. App. 286, 293 (Div. 1, 1993) ("the purpose…is not to recreate what a particular judge or fact finder would have done. Rather, the jury's task is to determine what a reasonable judge or fact finder would have done" (citing *Daugert v. Pappas*, 104 Wn.2d 254, 258 (1985)).

The trial court denied the motion in another considered explanation. RP 244:24-247:20.

iii. Both parties tried to instruct the jury on proximate cause and both parties stipulated to the legality of the jury instruction given.

Division One found the trial court erred by giving Jury Instruction No. 9 instead of having the judge decide proximate cause for himself, but it did not clarify how he would have known to do that when both the parties presented proximate cause

instructions. *Schireman v. Williams*, 83541-6-I, 2023 WL 2645875, at *7 (Wn. Ct. App., Mar. 27, 2023). It gave no advice on how to avoid error in that situation in the future.

Both parties gave the trial court proximate cause instructions and both parties stipulated to the legality of Jury Instruction No. 9. Mr. Williams proposed a WPI proximate cause instruction that did not establish either an objective or subjective standard for determining cause. CP 267. Mr. Schireman raised concerns that Mr. Williams would try to confuse the jury by invoking a subjective standard during closing argument. RP 488:15-489:9.[5] Mr. Schireman asked for Jury Instruction No. 9 because it explicitly set an objective standard based on *Brust* and *Daugert*.[6] CP 291. The language of that instruction comes directly from Division One's decision in *Brust*, 70 Wn. App. at 293 ("the jury's task is to determine what a reasonable judge or

[5] For additional briefing why that instruction was necessary, please see BOR at 26-27.

[6] Previously titled, "Jury Instruction No. 13" in the Report of Proceedings

fact finder would have done"). The trial judge asked Mr. Williams about the *Brust* instruction, "is it an incorrect statement of the law, though?" RP 488:9-10. Mr. Williams' counsel responded, "I would say no, your Honor..." RP 488:11-12. Citing Mr. Williams' stipulation, the trial court gave Jury Instruction No. 9. RP 490:21-491:14.

V. ARGUMENT

a. This Court Should Grant Discretionary Review to Resolve Conflicts and Problems Developed Within *Daugert* Jurisprudence

i. The Divisions of the Court of Appeals conflict with *Daugert,* conflict with each other, and conflict with their own case law.

The Washington State Constitution holds, "[t]he right of trial by jury shall remain inviolate." Const. art. I, § 21. The right to a jury is the only inviolate right in the Washington Constitution.

Daugert v. Pappas found a narrow exception to that right. In that case, proximate cause turned on the issue of whether the Supreme Court would have granted certification and given a

favorable ruling but for the malpractice. *Daugert*, 104 Wn.2d at 255–56. The Court reasoned, "a judge is in a much better position to make these determinations." *Id.* at 258–59.

Since *Daugert* was decided, the Divisions of the Court of Appeals have issued conflicting language regarding when and how to apply *Daugert*. They disagree about whether to eliminate the right to a jury on issues of duty, breach, damages, and even facts. They disagree about whether to do so when the issues turn on any legal issue, a purely legal issue, or a legal issue requiring special expertise.

Division One has two lines of differing jurisprudence. One year after *Daugert* was decided, Division One began a line of case law eliminating the right to a jury on issues of duty and breach. *Halvorsen v. Ferguson*, 46 Wn. App. 708, 712-713 (Div. 1, 1986) ("Although questions of negligence and proximate causation are usually for the jury…the initial determination, reserved solely for the court, is whether the attorney erred"); *see also Hager v. Law Offices of Bruce W. Hilyer, P.S.*, 52577-8-I,

2004 WL 1988086, at *5 (Wn. Ct. App., Sept. 7, 2004) (unpublished opinion) ("A determination of whether an attorney erred regarding a legal matter is a question of law for the judge."); *Taylor v. Goddard*, 49164-4-I, 2002 WL 31058539, at *3 (Wn. Ct. App., Sept. 16, 2002) (unpublished opinion).

In contrast, *Brust v. Newton* seemed to limit *Daugert* by holding that juries can decide uncomplicated legal questions. In that case, the trial court took the issues of proximate cause and damages away from the jury because they turned on 1) whether a premarital agreement was enforceable, and 2) which damages formula to use. *Brust*, 70 Wn. App. at 288-289. Reversing, Division One distinguished that case from *Daugert*: "neither the damages determination nor the proximate cause issue raises a comparable need to engage in an analysis of the law." *Id.* at 292. Furthermore, it gave explicit instructions on how to decide proximate cause in similar cases. *Id.* at 293 ("the *jury's* task is to determine what a reasonable judge or fact finder would have done" (italics added)). However, in 2018, Division One appeared

to hold that any legal analysis whatsoever converts cause-in-fact into a question of law. *Rabbage v. Lorella*, 5 Wn. App. 2d 289, 296 (Div. 1, 2018) ("this is a question of cause in fact, but because it requires legal analysis, it is appropriately decided as a matter of law...").

Division Two has followed the *Brust* model by maintaining the right to a jury unless "special expertise" is required to decide a legal issue. *Nielson v. Eisenhower & Carlson*, 100 Wn. App. 584, 594 (Div. 2, 2000). It has explicitly held the jury can decide some questions of law. *Hipple v. McFadden*, 161 Wn. App. 550, 557-561 (Div. 2, 2011) (holding that the jury could decide whether the continuous-representation rule and discovery rule tolled the statute of limitations).

Division Three holds polarized positions. Until recently, *Lavigne v. Chase, Haskell, Hayes & Kalamon, P.S.*, 112 Wn. App. 677 (Div. 3, 2002) held the right to have a jury decide proximate cause should be denied only when it "involves a pure matter of law." *Id.* at 683. However, in 2016, Division Three held

that the judge is the "trier-of-fact" and must decide "the case" when there are *any* underlying legal issues. *Slack v. Luke*, 192 Wn. App. 909, 916-918 (Div. 3, 2016) ("the judge is trier-of-fact when the underlying case within a case presents a legal issue"; "[w]here the underlying cause of action presents a legal question, a judge must decide the case rather than a jury").

Furthermore, it seems that the confusion is leading to an increase in unpublished opinions, even as those opinions continue expanding *Daugert*. In Division One, where most legal malpractice claims are filed, seven of the last ten legal malpractice opinions involving *Daugert* were unpublished. *See generally Schireman*, 2023 WL 2645875; *Eskridge v. Fletcher*, 78013-1-I, 2019 WL 2578624 (Wn. Ct. App., June 24, 2019); *Ma v. Robison*, 78537-1-I, 2019 WL 2422119 (Wn. Ct. App., June 10, 2019); *Kevin F. v. Skinner & Saar, P.S.*, 77516-2-I, 2019 WL 355725 (Wn. Ct. App., Jan. 28, 2019); *Butler v. Thomsen*, 76536-1-I, 2018 WL 6918832 (Wn. Ct. App., Dec. 31, 2018); *Munoz v. Bean*, 72794-0-I, 2016 WL 885043 (Wn. Ct. App., Mar. 7, 2016);

and *Beck v. Grafe*, 67641-5-I, 2013 WL 1460555 (Wn. Ct. App., Apr. 8, 2013).

ii. *Daugert* poses other problems that have gone unresolved.

Daugert also poses problems this Court may not have contemplated in 1985.

Impracticality of Counterfactual Analysis: Proximate cause in a legal malpractice case turns on whether the plaintiff would have been victorious but for the negligence. That requires the fact-finder to hypothesize about a counterfactual scenario in which the negligence did not occur. However, that scenario does not end with a single legal decision. There are numerous legal decisions that would have been made in the counterfactual case between the moment of negligence and the plaintiff's counterfactual victory. If the trial judge is expected to inventory all those legal questions and decide each, that is not made clear in the case law. Should she decide every counterfactual motion to compel, summary judgment motion, motion *in limine*, motion to admit evidence, that would have been raised? If so, it seems

like the defendant could burden the analysis by exaggerating the number of motions and appeals she would have filed.

Pits Judges Against One Another: Mr. Williams repeatedly tried to pit the trial judge against the TEDRA judge by reminding him that allowing the case to proceed would be an insult to the TEDRA judge's intelligence and legacy. *See, e.g.*, CP 1038 ("*Judge Bowden would magically have transformed his opinion and ruled in favor of Schireman* if only Judge Bowden had been smart enough to figure out this theory") (italics in original); *see also* CP 1042.

The reality is that any time a plaintiff brings a malpractice claim for failure to brief a judge, he or she is necessarily implying the judge in the underlying case made the wrong decision. Since legal malpractice claims are usually filed in the same county where the malpractice occurred, asking the trial judge to decide proximate cause means asking her to decide her colleague ruled erroneously. While most judges are not susceptible to such prejudice, Mr. Williams' relentless commitment to that theme

indicated he thought others are. In contrast, a jury is less likely to feel the same fidelity to the judge in the underlying action.

Deciding Proximate Cause *Sua Sponte*: In this case, Division One held the trial court erred for not deciding proximate cause even though no party asked the judge to do so. It gave the court no instruction on what to do differently in the future. If judges are generally instructed to familiarize themselves with *Daugert* so that they can intervene *sua sponte,* they should know that so they are not held in error in retrospect.

iii. Proposed solution: the Court should raise the standard for quality expert testimony instead of eliminating the right to a jury.

Lawyers are the only professionals who do not have to answer to juries on the element of proximate cause in their malpractice cases. Accountants do. Dentists do. Even in the most complicated medical malpractice cases, the courts do not invite a specialist to decide proximate cause. They trust expert witnesses to educate juries through the adversarial process and trust educated juries to make sound decisions.

If this Court wants to incorporate the wisdom and education of judges into questions of proximate cause for legal malpractice cases, it should raise the standard in expert testimony and let judges gatekeep that testimony for methodological soundness. Right now, Washington State uses the permissive *Frye* test to screen expert testimony. *See State v. Copeland*, 130 Wn.2d 244, 251 (1996). The *Frye* test allows experts to base their conclusions exclusively on non-falsifiable considerations, like "knowledge" and "experience." In contrast, the federal courts now use the *Daubert* standard. *See Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786 (1993). Rather than allow experts to dictate their conclusions to juries, *Daubert* requires the expert to identify a methodological and often peer-reviewed approach *leading* the jury to the expert's conclusions.

This Court should give trial judges the power to exclude testimony that relies exclusively on non-falsifiable bases and require a sound methodology screened by the trial judge. There

is no reason why retired appellate judges and law professors cannot serve as experts and educate juries, just as experts do in other professional malpractice cases. It makes more constitutional sense to have judges screen the information juries hear than to remove the right to a jury. Doing so, the Court can preserve the fundamental right to a jury while fostering new jurisprudence and peer-reviewed methodologies to improve the quality of expert testimony in all professional malpractice cases.[7]

b. This Court Should Reinstate the Jury Verdict So Mr. Williams' Tactic Is Not Repeated

Mr. Williams was represented by experienced legal-malpractice trial counsel who knew *Daugert*. He made a decision not to raise his *Daugert* right to have the judge decide proximate cause until he lost the jury trial. His appellate brief then conflated his rights under *Daugert* with the proper denial of his unrelated motions. BOA at 3-4; 20-21; 33-40. This Court should not tolerate that tactic. A party who commits to a jury trial and never

[7] Mr. Schireman respectfully requests to expound on the contours of a new expert standard in a supplemental brief.

asks the judge to decide proximate cause should not be allowed a second bite at the apple after the verdict is rendered. The legal malpractice community is not large. It sees what happened in this case. If Mr. Williams' tactic is allowed to succeed, it may be repeated elsewhere and Division One's opinion could be used to justify it.

c. This Court Should Reinstate the Jury Verdict Because It Is Not Unreasonable

Mr. Williams wanted a jury to decide proximate cause. He compelled a jury of Boeing engineers, healthcare workers, and other professionals to spend two weeks of their lives hearing his defenses and reviewing his extrinsic evidence. [8] They evaluated his mental acuity, honesty, and presentability. They heard his expert and listened to every argument he wanted to make during in-person closing arguments. After deliberating for several hours, they concluded that the survivorship paragraph should

[8] Both parties acknowledged there were issues of fact when they used extrinsic evidence to help the jury determine proximate cause. BOR at 30-33.

govern and rendered a verdict in favor of Mr. Schireman. RP 642:9-10.

Reasonable people can arrive at that conclusion. The survivorship paragraph explicitly stated that the surviving spouse must "purchase" the deceased spouse's half interest. Ex. 2 at 8. *See also* Section IV(a)(1), *supra*. The idea that Loren Schireman wanted all that specific language modified through ambiguous, general language without even saying so can be rejected by reasonable people.

In contrast, Division One did not hear Mr. Schireman's legal analysis. Instead, it tried to glean his analysis from his expert testimony at trial. *Schireman*, 2023 WL 2645875 at *7. Most problematically, it rejected all the extrinsic evidence used in the case because "neither party argues the language was ambiguous," which it gleaned from a statement Mr. Schireman's expert made about the *totality* of the PMA, not the specific language. Division One vacated a jury verdict because the issue

turned on legal analysis and then declined to consider the very analysis that persuaded the jury.

Courts should only take an issue away from the jury when no reasonable person could find in favor of the non-moving party. *Coogan v. Borg-Warner Morse Tec Inc.*, 197 Wn.2d 790, 799 (2021). It is improbable that all the jurors were unreasonable. They gave their time and their employers' time and took their roles seriously. They made sound decisions supported by the record. Their decision was founded on explicit language stating Ms. Forrister had to tender one-half of the value of the house to Loren's children. Neither Ms. Forrister nor Mr. Williams nor Division One has ever answered Mr. Schireman's legal analysis supporting their conclusions. Mtn. for Reconsideration 22-30.

VI. CONCLUSION

Being a Washington lawyer is a privilege. Washington residents must hire legal counsel for some of the most important problems they face in life. They hire them when they are facing financial ruin, seeking redress for catastrophic injuries, and

facing years in prison. Yet no matter how high the stakes may be, they cannot hire anyone they like. They can represent themselves or they can hire WSBA-licensed attorneys. As a result, Washington lawyers enjoy less competition and higher fees. Implied in that trade-off is the assurance that they will commit less negligence and be held responsible when they fall short.

After thirty-eight years of *Daugert,* Washingtonians do not know how and when their counsel will be held responsible for mistakes that greatly affect their lives. It is not even clear to them if they will enjoy their constitutional right to a jury. Judges do not know when or how to apply *Daugert*, especially if they are expected to apply it *sua sponte*. The Divisions of the Court of Appeals are issuing contradictory and confusing language affecting and constricting one of the most sacrosanct rights in the Washington Constitution.

There are times when the Court's abstinence from a legal issue fosters thoughtful jurisprudence in the laboratory of appellate courts, but in this case there is no substitute for the

Supreme Court. There is no body better positioned to scrutinize this topic. There is no better opportunity to address it than this case, where *Daugert* was expanded retroactively even though the parties presented extrinsic evidence and never asked the judge to decide proximate cause. The Court should scrutinize the concept of the legal community excusing itself from jury review. It should consider the susceptibility for abuse, optics, and the public's trust. It should consider ways to take advantage of judges' legal education and training without sacrificing the right to a jury.

At a minimum, Mr. Schireman respectfully requests this Court reinstate the unanimous jury verdict. Mr. Williams' motions were properly denied. Furthermore, he showed no requisite harm in the trial court choosing one proximate cause instruction over another. The trial court gave the instruction it did based on Mr. Williams' stipulation that it was a "[]correct statement of the law." Mr. Williams never raised the topic of the

judge deciding proximate cause and he should not be allowed to do so for the first time after seeing the jury verdict.

This document contains 4,769 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 7th day of June, 2023.

Respectfully submitted,

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Appendix 1

FILED
3/27/2023
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

GARRET SCHIREMAN, in his individual capacity, and as executor for THE ESTATE OF LOREN E. SCHIREMAN, Respondent, v. CHRISTOPHER WILLIAMS, Appellant.	No. 83541-6-I DIVISION ONE UNPUBLISHED OPINION

CHUNG, J. — Christopher Williams provided legal representation to Garret Schireman by responding to a TEDRA[1] petition filed by Alice Forrister, wife of Garret's late father Loren Schireman, in a dispute as to the character of real property.[2] The court awarded the house to the deceased's wife as community property based on its interpretation of a premarital agreement and Loren's will. Acting for himself and as personal representative for Loren's estate, Garret sued Williams for legal malpractice, alleging Williams failed to properly respond to the TEDRA petition with arguments supporting a claim to the house as separate property. The malpractice case proceeded to jury trial, where the jury found that

[1] Trust and Estate Dispute Resolution Act, chapter 11.96A RCW

[2] Garret and Loren share a last name. We refer to them by first name for clarity. Additionally, we use Alice's first name for simplicity, because the record references Alice Forrister, Alice Schireman, and Alice Forrister-Schireman. We intend no disrespect.

Williams had been negligent and proximately caused the Estate to lose its share of the house.

However, the character and disposition of the property is a question of law properly reserved to the trial court, rather than a jury. Based on the premarital agreement, we conclude as a matter of law that the house became community property upon Loren and Alice's marriage. More thorough work by attorney Williams could not have changed this outcome. Garret cannot demonstrate proximate cause to sustain the verdict. We reverse and remand for dismissal of his claim.

FACTS

I. Premarital Agreement and Will

In December 1997, Loren Schireman executed a will "in contemplation of [his] upcoming marriage to Alice Forrister." The Will included a section entitled "bequest to future spouse" that read:

> This bequest is made with the contemplation of marriage to ALICE FORRISTER, I hereby give, devise and bequeath unto my future wife, ALICE FORRISTER, any community property of my estate, whether real or personal, and wheresoever situated provided she survives me by ninety (90) days.

This section concluded with an acknowledgement and ratification of an attached Premarital Agreement (PMA). The Will devised the remainder of Loren's Estate to his three children from his first marriage, including his son Garret Schireman.

Three days after Loren signed the Will, Loren and Alice both signed the PMA. The PMA stated "ALICE and LOREN plan to marry in the near future." The

document included two schedules of assets—one for Alice's separate property and one for Loren's separate property. Alice and Loren agreed to relinquish any right to the other's separate property. As to community property, Alice and Loren agreed to create a joint bank account for family necessities, living expenses, and the purchase of any agreed community property. Absent a future written agreement, the parties would contribute equally, and contributions would be considered community property. All funds from the joint account would go to the surviving spouse.

The PMA also addressed the construction of Alice and Loren's new residence. The pertinent section, Article V, established that, "[a]t the time of execution of this Agreement, the parties are actively involved in a joint venture relative to the purchase and construction of a residence [in] Arlington, Washington." The home was purchased in the names of "Loren Schireman, a single person, and Alice M. Forrister, a single person." The property purchase was financed through a promissory note executed by both Alice and Loren that was secured by a deed of trust against the lot. The loan for the construction of the home was signed only by Alice and secured by her separate property. The PMA set out expectations for the Arlington house:

> Both parties acknowledge they have actively participated in the decision to purchase the subject lot and pursue the construction of a residence thereon, and they desire that such lot acquisition and construction be considered a joint venture of the parties, wherein each party does in fact have a one-half (1/2) interest therein and a one-half (1/2) obligation associated therewith. To the extent one of the parties fails to make contributions consistent with his/her share of the underlying obligation, the party who is not delinquent may

> make the contribution on behalf of the noncontributing party and thereafter it shall be considered to be a non-interest-bearing loan owed by the noncontributing party to the contributing party. In the event of the parties' marriage, this asset thereafter will be considered to be a community asset. To the extent that one party has contributed (or does contribute) disproportionately to the purchase and construction of the residence, the party who has made a greater contribution shall be entitled to a constructive lien against the community interest in such asset of the other party to the extent of the outstanding non-interest-bearing loan.
>
> In the event of the death of one of the parties, the other party shall have the right to use, occupy and reside thereon for a period of up to one (1) year from the date of death of the other party. . . Furthermore, during the one (1) year period following the death, the surviving party shall have a right to purchase the deceased party's interest in the subject property by tendering to the heirs, successors, assigns or estate of the surviving party an amount equal to one-half (1/2) of the then fair market value of the property, subject to adjustment as necessary as it relates to any outstanding non-interest-bearing loan owed by one party to the other as the result of any disproportionate contribution.

Loren and Alice married soon after signing the PMA. More than a decade later, Loren signed a promissory note in favor of Alice for payment on the Arlington house. The promissory note specified:

> Upon my demise, my estate shall pay to my wife, Alice M. Schireman, the amount of $35,000.00, which is the total she invested in the payoff of the loan for our residence at the above named address. This money shall be paid to Alice prior to the division of assets as listed in any existing will and/or codicil regarding the handling of my estate.

Loren died May 5, 2016, and his Estate went to probate with one of his daughters acting as personal representative until she was removed at her request. Garret then moved to be named personal representative of the Estate. He disputed the characterization of the Arlington house and its disposition to

Alice, arguing the house should have been included in the Estate and divided among the other beneficiaries.

II. TEDRA Action and Attorney Williams's Representation

Alice filed a petition under the Trust and Estate Dispute Resolution Act (TEDRA) requesting transfer of the Arlington house to Alice and $35,000 from the Estate as agreed in the promissory note. The TEDRA petition argued that Loren and Alice entered into a PMA, "in which they agreed that they were constructing a residence [in] Arlington, Washington. The Prenuptial Agreement then states at Article V, 'In the event of the parties' marriage, this asset thereafter will be considered to be a community asset.' "

Garret hired attorney Christopher Williams to represent him in the ongoing dispute over the Estate. Williams[3] filed a two-page reply to the TEDRA petition objecting to the inclusion of the home as community property, noting the PMA states Alice has the right to purchase Loren's one-half interest in the property. The reply brief also stated that "Garret Schireman agrees to have the matter transferred to TEDRA."

The trial court determined the Arlington house was "community property as defined by the Premarital Agreement," and Loren's Will devised all community property to Alice. The court ordered transfer of the Arlington house to Alice, payment of $35,000 on the promissory note from the Estate to Alice, and

[3] In this section, "Williams" refers to Christopher Williams acting as legal representative for Garret and the Estate.

awarded $1,658.00 in attorney's fees and costs to Alice. The court's minute entry summarized its findings and includes the statement, "the intent of the testator is clear and unambiguous. The court sees no need for a trial and to burden the heirs when their claim is so tenuous."

Williams subsequently filed a motion for reconsideration, making the argument that the PMA establishes the parties' intention that the Arlington house was a joint venture with each party owning half interest as separate property. Williams also argued that awarding the house to Alice as community property conflicted with a survivorship provision of the PMA. Despite these statements, Williams conceded, "There is no dispute that the house is community property." Williams again requested the matter be "transferred to TEDRA" so the Estate could attempt to resolve the ambiguities of the Will. Williams also challenged the order for lack of notice to the Estate, as it had not yet appointed Garret as personal representative at the time of the hearing. The trial court denied the motion for reconsideration "with respect to the court's analysis and adjudication with regard to the" Arlington house. The court granted reconsideration on the issue of the $35,000 payment on the promissory note, concluding the obligation should be pursued as a claim against the Estate after proper notice to the personal representative.

Williams did not appeal the court's decisions and sent a letter to Garret confirming this decision. The Estate subsequently agreed to pay Alice the $35,000 for the promissory note.

III. Trial Court Proceedings on Malpractice Claim

In July 2018, Garret filed a legal malpractice action against Williams on behalf of himself and Loren's Estate. Garret[4] alleged that Williams "did not take the TEDRA petition as seriously as was merited and consequently failed to abide by the standard of care. . . . Williams made no legal defense or attempt to rebut the petition's claims whatsoever."

Williams elected to have the issues tried by a jury. After extensive delay due to the COVID-19 pandemic, the parties finally proceeded to trial on the legal malpractice claim in November 2021. On the first day of trial, Williams filed a "motion in limine re CR 12(h)(2)" requesting dismissal for failing to state a claim. Williams argued his "decision-making squarely falls under [the] attorney judgment rule and reflects reasonable care irrespective of Plaintiff's absurd and novel theory of the case." He claimed Garret's theory was too speculative to support a legal malpractice claim. Williams also raised collateral estoppel, asserting that Garret sought to relitigate the failed TEDRA action. The trial court denied the motion, and the case proceeded to trial.

To establish the malpractice claim, Garret elicited testimony about Williams's duty of care, the quality of the representation, and interpretation of the PMA from attorney Duncan Connelly, a trust and estate attorney whose practice focuses on "working with clients to draft and interpret estate planning

[4] We refer to Garret and the Estate as Plaintiffs-Respondents in the malpractice action collectively as "Garret."

documents." Connelly described several rules of contract interpretation to the jury. He then used the rules to explain his interpretation of the PMA to the jury, raising several issues within the PMA that Williams failed to raise in support of Garret's position that the house was community property.

First, Connelly testified that the Arlington house is listed on Alice's schedule of separate property, but it is not mentioned in the community property and debt section of the PMA. The parties refer to the construction of their house as a "joint venture" in which they each have a one half interest and obligation. According to Connelly, the structure and language of this section of the PMA supports interpreting each's one half interest as separate property, because "[m]arital communities don't enter into joint ventures with themselves. . . . [Y]ou could have two spouses dealing with their own separate property going in on a joint venture . . . [but] it wouldn't make sense for it to be a community effort that way."

Connelly also discussed the survivorship provision in the PMA, which allowed the surviving party to live in the house for a year after the death of the other, and thereafter to purchase the deceased's half interest from the heirs. Connelly testified that the survivorship paragraph was consistent with the characterization of the house as separate property and would be irrelevant if the house was community property.

Additionally, the PMA established a loan provision if one party paid more money because the other could not contribute their full half. In the context of this

loan provision, Connelly testified about an interpretation that Williams now calls the "this asset" theory. The PMA provides:

> To the extent one of the parties fails to make contributions consistent with his/her share of the underlying obligation, the party who is not delinquent may make the contribution on behalf of the noncontributing party and thereafter it shall be considered to be a non-interest-bearing loan owed by the noncontributing party to the contributing party. In the event of the parties' marriage, this asset thereafter will be considered to be a community asset. To the extent that one party has contributed (or does contribute) disproportionately to the purchase and construction of the residence, the party who has made a greater contribution shall be entitled to a constructive lien against the community interest in such asset of the other party to the extent of the outstanding non-interest-bearing loan.[5]

According to Connelly, "this asset" did not refer to the Arlington house as stated in the TEDRA petition. Instead, "this asset is referring to that noninterest-bearing loan, the exact asset that was mentioned immediately preceding it in the sentence before it." The loan, rather than the house, became community property upon marriage. Connelly explained that this interpretation made sense under the last antecedent rule, and for the PMA as a whole.[6] He also opined that on a more-probable-than-not basis, the outcome of the TEDRA petition would have been different if Williams had met the standard of care.

After Garret presented his case-in-chief, Williams moved for a judgment as a matter of law under CR 50. He argued that Garret failed to prove a breach of

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[5] (emphasis added).

[6] Connelly reasoned that if "this asset" referred to the house, Alice "ends up getting more than the full value of the house. She's getting the entirety of the house, and then she's also getting paid the promissory note on top of that." Connelly then opined that his interpretation "is a more reasonable, less arbitrary, and less absurd result."

the standard of care or proximate cause. According to Williams, his response to the TEDRA petition was short, but "frame[d] the issue, and dispute to the court." Additionally, Williams claimed there was no evidence on the record that anything he could have done would have resulted in a different outcome. The trial court denied the motion.

Williams's defense relied extensively on the testimony of expert Karen Bertram who "disagree[d] strongly" with Connelly's theory that "this asset" referred to the non-interest bearing loan. Bertram testified that based on her experience and the unambiguous nature of the documents, the provision meant "if the parties got married, the house would be considered a community asset." She explained that Connelly's theory "makes no sense," because "if there's a loan between two spouses, even if they're married . . . one spouse has the—the debt, which is their personal separate property liability, and the other spouse has essentially an account receivable which is an asset, which is their separate property. It can't be community property." Bertram opined on a more-probable-than-not basis, that the outcome of the case would not have been any different if Williams had raised the "this asset theory."

At the conclusion of the testimony, the jury returned a verdict for Garret. The jury found that Williams was negligent and his negligence was the proximate cause of the damage to Garret and the Estate. The jury awarded Garret and the Estate the stipulated damages of $211,658.

Williams appeals.

DISCUSSION

After Garret presented his case-in-chief, Williams brought a CR 50 motion for a judgment as a matter of law.[7] A court may grant a motion for judgment as a matter of law when "there is no legally sufficient evidentiary basis for a reasonable jury to find or have found for that party with respect to that issue" and the claim "cannot under the controlling law be maintained without a favorable finding on that issue." CR 50(a)(1). Judgment as a matter of law is appropriate only when no competent and substantial evidence exists to support a verdict." Paetsch v. Spokane Dermatology Clinic, P.S., 182 Wn.2d 842, 848, 348 P.3d 389 (2015). "A judgment as a matter of law requires the court to conclude, 'as a matter of law, that there is no substantial evidence or reasonable inferences to sustain a verdict for the nonmoving party.' " Id. at 848 (quoting Indus. Indem. Co. of Nw. v. Kallevig, 114 Wn.2d 907, 915-16, 792 P.2d 520 (1990)).

We review judgments as a matter of law de novo. Paetsch, 182 Wn.2d at 848. We construe all facts and reasonable inferences in favor of the nonmoving party. Id. Substantial evidence is evidence sufficient to persuade a fair-minded, rational person that the declared premise is true. Davis v. Microsoft Corp., 149 Wn.2d 521, 531, 70 P.3d 126 (2003).

[7] Along with his motions in limine, Williams brought a CR 12(h)(2) that functioned as a belated CR 12(b)(6) motion to dismiss for failure to state a claim. Williams filed the motion on November 1, 2021, to be heard the next day. The parties debated whether the motion was properly brought under CR 12(b)(6) instead of under CR 56 as a motion for summary judgment. We do not condone the filing of a dispositive motion, disguised as a motion in limine, one day before its hearing. Nevertheless, we may review the merits of Williams's claims as an appeal of the CR 50 motion.

> To recover for legal malpractice, the plaintiff must establish:
>
> (1) The existence of an attorney-client relationship which gives rise to a duty of care on the part of the attorney to the client; (2) an act or omission by the attorney in breach of the duty of care; (3) damage to the client; and (4) proximate causation between the attorney's breach of the duty and the damage incurred.

Hizey v. Carpenter, 119 Wn.2d 251, 260-61, 830 P.2d 646 (1992). Proximate causation consists of two elements—legal causation and cause in fact. Legal causation "rests on considerations of policy and common sense as to how far the defendant's responsibility for the consequences of its actions should extend." Taggart v. State, 118 Wn.2d 195, 226, 822 P.2d 243 (1992). Cause in fact requires the plaintiff to establish the act at issue likely caused the injury. Nielson v. Eisenhower & Carlson, 100 Wn. App. 584, 591, 999 P.2d 42 (2000).

For legal malpractice, "proximate cause boils down to whether the client would have fared better but for the attorney's negligence." Lavigne v. Chase, Haskell, Hayes & Kalamon, P.S., 112 Wn. App. 677, 683, 50 P.3d 306 (2002). Determining cause in fact for legal negligence involving a litigation matter requires a "trial within a trial." Dang v. Floyd, Pflueger & Ringer, PS, No. 83002-3, slip op. at 18, (Wash. Ct. App. October 17, 2022) (published) https://www.courts.wa.gov/opinions/pdf/830023.pdf. "The trial court hearing the malpractice claim merely retries, or tries for the first time, the client's cause of action which the client asserts was lost or compromised by the attorney's negligence, and the trier of fact decides whether the client would have fared

better but for such mishandling." Daugert v. Pappas, 104 Wn.2d 254, 257, 704 P.2d 600 (1985).

In most cases, the question of cause in fact is for the jury. Id. However, "the unique characteristics of a legal malpractice action may, under some circumstances, make that general rule inapplicable." Brust v. Newton, 70 Wn. App. 286, 290, 852 P.2d 1092 (1993). Such circumstances include when a determination of proximate cause raises the need to engage in an analysis of law. Id. at 292; Daugert, 104 Wn.2d at 258. "[T]he line between questions for the judge and those for the jury in legal malpractice actions has generally been drawn between questions of law and questions of fact." Brust, 70 Wn. App. 290-91.

Garret's malpractice claim stems from the TEDRA court's determination that the Arlington house was community property bequeathed to Alice under the terms of the Will and the incorporated PMA, rather than ruling that the Estate had a half-interest in the house as Loren's separate property. The characterization of the Arlington house as either separate or community property is central to the malpractice claim. This determination requires interpretation of the Will and the PMA.

The characterization of property is a question of law. In re Marriage of Watanabe, 199 Wn.2d 342, 348-49, 506 P.3d 630 (2022). The interpretation of a will is also a question of law and reviewed de novo. In re Estate of Little, 9 Wn. App. 2d 262, 275, 444 P.3d 23 (2019). "The paramount duty of the court is to

give effect to the testator's intent when the will was executed." Id. The court must determine the intent from the language of the will as a whole. Id.

Prenuptial agreements are contracts subject to the principles of contract law. DewBerry v. George, 115 Wn. App. 351, 364, 62 P.3d 525 (2003). As with wills, the purpose of contract interpretation is to determine the parties' intent. Roats v. Blakely Is. Maint. Comm'n, Inc., 169 Wn. App. 263, 274, 279 P.3d 943 (2012). A question of fact arises when a contract has two or more reasonable interpretations. GMAC v. Everett Chevrolet, Inc., 179 Wn. App. 126, 135, 317 P.3d 1074 (2014). Interpretation of a contract provision is a question of law when the interpretation does not rely on the use of extrinsic evidence or only one reasonable inference can be drawn from the extrinsic evidence. Go2Net, Inc. v. C I Host, Inc., 115 Wn. App. 73, 85, 60 P.3d 1245 (2003).

Here, neither party argues that the language in the PMA or the Will was ambiguous. Garret's expert testified that theirs was "the only interpretation that squares with Washington state law with regard to the rules relating to contract interpretation." Likewise, Williams's expert stated that "the testator's intent is clear and unambiguous and that the house was community property and should go to Alice Forrister Schireman." Thus, although the parties dispute the correct interpretation, they agree that the Will and the PMA are unambiguous.

We also agree that we can discern Loren's unambiguous intent from the Will and PMA. Interpretation of the contracts at issue does not require extrinsic evidence and determination of facts by a jury. Rather, the underlying issue in the

malpractice claim—the characterization of the property and its disposition under the Will and PMA—is a question of law properly reserved for the trial court.

Nevertheless, at the malpractice trial, the parties presented expert testimony as to their differing interpretations of the Will and the PMA. Then, the court submitted the question of the proper interpretation of the Will and PMA to the jury by providing the instruction, "if you find the defendant was negligent you must also decide what a reasonable judge would have done but for the Defendant's negligence." This instruction was error. Instead, the malpractice court should have considered the character of the property and the resulting determination of proximate cause as questions of law.

We now remedy the error. To interpret the contract, we give its words their ordinary, usual, and popular meaning unless the entirety of the agreement demonstrates a contrary intent. Hearst Commc'n, Inc. v. Seattle Times Co., 154 Wn.2d 493, 504, 115 P.3d 262 (2005). "An interpretation of a contract that gives effect to all provisions is favored over an interpretation that renders a provision ineffective." Snohomish Cnty. Pub. Transp. Benefit Area Corp. v. FirstGroup Am., Inc., 173 Wn.2d 829, 840, 271 P.3d 850 (2012).

The section of the PMA in which the disputed "this asset" sentence appears is entitled "Construction of Residence." The sentence is within a paragraph that begins by discussing the cost of "the overall project" and states the parties' desire for the lot acquisition and "construction of a residence thereon" to be a joint venture. The PMA then specifically states: "In the event of the

parties' marriage, this asset thereafter will be considered to be a community asset." "[T]his asset" therefore refers to the Arlington house.

Garret's interpretation, that "this asset" refers to the non-interest-bearing loan, is not reasonable, because at the time the parties signed the PMA, no such loan existed and potentially would never exist. "We impute an intention corresponding to the reasonable meaning of the words used." Hearst, 154 Wn.2d at 503.

Moreover, we must view the contract as a whole, interpreting the language in the context of other provisions of the contract. King County v. Vinci Const. Grands Projets, 191 Wn. App. 142, 177, 364 P.3d 784 (2015). The "this asset" sentence must be interpreted in light of the sentence that immediately follows. That sentence states, "To the extent that one party has contributed (or does contribute) disproportionately to the purchase and construction of *the residence*, the party who has made a greater contribution shall be entitled to a constructive lien against the *community interest in such asset* of the other party to the extent of the outstanding non-interest-bearing loan." (Emphasis added.) This sentence clearly contemplates that once married, the spouses would have a "community interest" in the residence. Had Loren not intended for the residence to become community property, this sentence would have been unnecessary. See In re Marriage of Marshall, 86 Wn. App. 878, 882-83, 940 P.2d 283 (1997) (quoting Farrow v. Ostrom, 16 Wn.2d 547, 555-56, 133 P.2d 974 (1943) (holding that equity will impress a lien on community property "in favor of one who is clearly

shown to have contributed separate funds to its acquisition or to the enhancement of its value thereafter.")).

Further, at the time the PMA was signed, Loren and Alice were not married, although the PMA stated that the parties "plan[ned] to marry in the near future." Therefore, at that point, each party's half interest in the joint venture was designated as separate property. Similarly, given that the parties were not yet married, the survivorship provisions were necessary to protect the parties' interests as they were at the time they entered into the PMA, i.e., before the marriage or in the event the marriage did not occur. Interpreting "this asset" to refer to the "joint venture," is reasonable in the context of the other provisions and the contract as a whole.

The only reasonable interpretation of the unambiguous language of the PMA is that the Arlington house is the asset that "thereafter will be considered to be a community asset." Therefore, we conclude as a matter of law that the Arlington house was community property.

Because the Arlington house was community property as a matter of law, Garret cannot demonstrate that the outcome of the TEDRA petition would have been different had Williams more thoroughly briefed and argued the case to the TEDRA court. Garret therefore fails to prove the proximate cause element necessary for legal malpractice. We reverse the judgment and remand for dismissal of Garret's malpractice claim.

Chung, J.

WE CONCUR:

Coburn, J. Andrus, C.J.

Appendix 2

FILED
5/8/2023
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

GARRET SCHIREMAN, in his individual capacity, and as executor for THE ESTATE OF LOREN E. SCHIREMAN, Respondent, v. CHRISTOPHER WILLIAMS, Appellant.	No. 81546-6-I DIVISION ONE ORDER DENYING MOTION FOR RECONSIDERATION

Respondent Garret Schireman filed a motion for reconsideration of the opinion filed on March 27, 2023 in the above case. A majority of the panel has determined that the motion should be denied. Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

FOR THE COURT:

Chung, J.

Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies under the laws of the state of Washington that on the date written below, I filed the foregoing document with the Clerk of the Court using the Washington State Appellate Courts' Portal, which will send notification of such filing to the following:

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Dated this 7th day of June, 2023.

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June 07, 2023 - 4:23 PM

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