No. 1027559

SUPREME COURT OF THE STATE OF WASHINGTON

JOSEPH LOIGA,

Appellant,

v.

KING COUNTY, et al.,

Respondents

KING COUNTY RESPONDENTS' ANSWER TO PETITION FOR REVIEW

LEESA MANION (she/her)
King County Prosecuting Attorney

Grace A. Wiener, WSBA #40743
Karissa L. Taylor, WSBA #31563
Senior Deputy Prosecuting Attorneys
Attorneys for King County Respondents
King County Prosecuting Attorney's Office
701 Fifth Avenue, Suite 600
Seattle, WA 98104
(206) 477-1120 | Fax (206)-296-0191

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

I. IDENTITY OF RESPONDENTS 1

II. COURT OF APPEALS DECISION 1

III. SUMMARY AND COUNTERSTATEMENT OF THE ISSUE 1

IV. STATEMENT OF THE CASE 3

A. Loiga Falls From His Seat While Riding on a King County Metro Bus. 3

B. Loiga Sues Alleging Negligent Operation and the Trial Court Dismisses his Lawsuit. . 7

C. The Court of Appeals Affirms the Dismissal of Loiga's Claims in an Unpublished Decision. 11

V. ARGUMENT 14

A. Summary Judgment was Appropriate as there was no Genuine Issue of Material Fact and Respondents were entitled to Judgment as a Matter of Law. 14

B. Loiga Fails to Show that the Court of Appeals' Decision Raises Issues of Substantial Public Interest. 17

VI. CONCLUSION 20

TABLE OF AUTHORITIES

Washington Cases

In re Est. of Black,
153 Wn.2d 152, 160-61, 102, P.3d 796 (2004) 2

Joseph A. Loiga v. King County, et al.,
No. 85109-8-I, 2023 WL 8187191 (Wash. App. Div. I 11/27/2023) 1, 12, 20

Keller v. City of Spokane,
146 Wn.2d 237, 242, 44 P.3d 845 (2002) 17

Kim v. Lakeside Adult Fam. Home,
185 Wn.2d 532, 547, 374 P.3d 121 (2016) 15, 16

Munich v. Skagit Emergency Commc'n Ctr.,
175 Wn.2d 871, 877, 288 P.3d 328 (2012) 15

Price v. Kitsap Transit,
125 Wn.2d 456, 465, 886 P.2d 556 (1994) 17

Scott v. Blanchet High School,
50 Wn.App. 37, 41 (1987), review denied, 110 Wn.2d 1016 (1988) 16

Smith v. Fourre,
71 Wn. App. 304, 309, 858 P.2d 276 (1993)..... 13

Walker v. King County Metro,
126 Wn. App. 904, 908, 109 P.3d 836 (2005)..... passim

Supreme Court

Scott v. Harris,
550 U.S. 372, 380, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007) 9, 15

Statutes and Regulations

Kent Ordinance 9.36.020 13

RCW 46.61.145(1) 13

RCW 5.40.050 12

Rules

CR 56(c)..... 14

RAP 10.3(a)(5) 19

RAP 13.4(b)..... 17

RAP 13.4(b)(4)..... 3, 17

RAP 18.17 20

I. IDENTITY OF RESPONDENTS

King County and Roxanne Donaldson are the respondents in this case.

II. COURT OF APPEALS DECISION

In this unpublished opinion, *Joseph A. Loiga v. King County, et al.*, No. 85109-8-I, 2023 WL 8187191 (Wash. App. Div. I 11/27/2023), the Court of Appeals ruled that, in a negligent operation suit against King County and its bus driver, Loiga failed to provide evidence raising a question of material fact on the issue of breach of the common carrier duty. In reaching this result, the Court of Appeals affirmed the trial court's dismissal of Loiga's claims on summary judgment.

III. SUMMARY AND COUNTERSTATEMENT OF THE ISSUE

A common carrier is not liable for injuries received from "ordinary jolts and jerks necessarily incident to the mode of transportation," unless there is evidence from which operator

negligence can reasonably be inferred. *Walker v. King County Metro*, 126 Wn. App. 904, 908, 109 P.3d 836 (2005). In a summary judgment motion, if a moving party meets their initial burden of showing the absence of an issue of material fact, the nonmoving party must set forth specific facts to show a genuine issue for trial. *In re Est. of Black*, 153 Wn.2d 152, 160-61, 102, P.3d 796 (2004).

In this case, Joseph Loiga fell out of his seat on a King County Metro bus and hit his head on a metal partition behind the driver's seat. Loiga sued King County and the bus driver for negligent operation. King County maintained that there was no evidence to show that it had breached its common carrier duty. The trial court granted summary judgment and dismissed the claims. The Court of Appeals agreed and upheld the trial court's dismissal of Loiga's claims because he failed to provide any evidence raising a question of material fact on the issue of breach of the common carrier duty.

The Court of Appeals' decision rests on settled law

stating that a common carrier's duty of care is not one of strict liability, and that a common carrier is not liable for injuries received from "ordinary jolts and jerks" on a bus unless there is evidence from which operator negligence can reasonably be inferred. *Walker,* 126 Wn. App. at 908. Here, both the trial court and Court of Appeals have concluded that Loiga cannot demonstrate breach of the duty of care owed by the Respondents. The record does not support Loiga's claim that his fall occurred as a result of anything more than the normal "jolts and jerks" experienced while riding a bus.

This Court should, therefore, deny review because the Court of Appeals' unpublished decision does not raise an issue of substantial public importance under RAP 13.4(b)(4).

IV. STATEMENT OF THE CASE

A. Loiga Falls From His Seat While Riding on a King County Metro Bus.

On June 23, 2018, Petitioner Joseph Loiga (hereinafter "Loiga") was a passenger on King County Metro coach #7156

being driven by Roxanne Donaldson (hereinafter "Donaldson" or "operator"). CP 64. Roxanne Donaldson has been driving for Metro since 1988. CP 63. Loiga was seated in ADA bench seating on the side of bus behind the operator talking to a fellow passenger across the aisle. CP 77. The bus, then on route #166, was traveling northbound on 104th Avenue approaching the intersection at 240th Street in Kent, Washington. CP 64. A car in front of the bus was turning right and stopped to allow a pedestrian to cross the street. CP 65-66. The operator applied the brakes to stop for that car. *Id*.

When this stop occurred, Loiga was positioned on the edge of his seat, leaning forward (having just high-fived another passenger) and not holding onto anything. CP 87-89, Camera 3, 19:57:00-19:58:45. He fell off his seat, was propelled towards the front of the bus, and hit the top of his head on the metal partition behind the bus operator's seat. *Id*., Camera 3, 19:58:38-43.

Initially, Loiga was upset with the operator and appeared

to be in pain (holding the top of his head), but said he was okay. *Id*., Camera 3, 19:58:45-19:59:45; CP 66. Shortly thereafter, he complained of neck pain and asked the operator to call for an ambulance. *Id*., Camera 3, 20:00:05-20:00:20; CP 66. The Metro video shows that Loiga was not watching the road ahead and had no idea what the bus operator was responding to when she applied the brakes. *Id*. It also shows that he was talking to the woman across from him as well as a few women at the front of the bus. *Id*.

When Puget Sound Regional Fire Authority arrived, Loiga told them that he had sustained an injury to his neck three years prior. CP 68-69. When Tri-Med Ambulance drove Loiga from the scene to Valley Medical Center, he told the ambulance personnel that he was not ready for the stop and that it was not the bus driver's fault, but the driver in front of the bus. CP 73.

Not a single other passenger fell or slid off their seat or was injured in any way as a result of the bus operator braking for the car in front of it. CP 87-89, Camera 3, 19:58:00-45; CP

66. The video demonstrates that the other passengers on the bus, all of whom were seated appropriately on the bus and/or holding on to some part of the bus, may have moved somewhat from the manner in which the Metro operator stopped for the car in front of it. *Id.* However, none of the passengers visible in the video were jostled outside of the normal manner of what one might expect when riding public transit. *Id*.

In Donaldson's deposition, she stated that as she approached the intersection, the car in front of her slowed to make a right-hand turn, and then slammed on its brakes for a pedestrian crossing the street. CP 65. Donaldson stated that she reacted instantly and braked. The braking was not a "hard brake," but rather somewhere between a "soft and medium" brake. CP 65-66; See also CP 87-89, Camera 1, 19:58:30-19:58:45.

Andrew Goudreau, Metro Transportation Safety Administrator, reviewed the incident and deemed it "non-preventable," stating "this investigation has determined

operator Donaldson was exercising every reasonable defensive driving precaution to prevent this episode of a passenger fall." CP 90-94.

During Loiga's deposition, he could not recall the important facts of what happened. He remembered getting on the bus and talking to the lady across the center aisle, but the most he was able to say about what happened was that:

> And then, you know, the bus just come (sic) to a standstill without warning, without nothing, just standstill. And that's – I find myself, I hit – I flew, I hit my head, and I fell down. Then, you know, I wake up. And that's it.

CP 78.

B. Loiga Sues Alleging Negligent Operation and the Trial Court Dismisses his Lawsuit.

Loiga sued King County and bus operator Donaldson alleging that she was negligent in the operation of the Metro bus. In its summary judgment motion, King County argued that there was no evidence of any breach of duty owed by King County (acting through its employee, Ms. Donaldson) to Mr.

Loiga. CP 36-59. The County maintained that what was clear from the video, the best evidence in the case, was that Loiga was sitting on the edge of his seat, leaning into the center aisle, not holding on to anything, and not paying attention to what was happening in front of the bus. CP 42-51. It further argued that, when the vehicle in front of the bus signaled to turn right, the bus operator successfully braked in the ordinary way to avoid a collision, and that there was no evidence that Loiga's fall off his seat was caused by any negligence on the part of the operator. *Id.*

King County also argued that, to the extent that Loiga experienced a "jolt" or "jerk" from the stop, the video demonstrates that it was an ordinary jolt or jerk normal to the mode of transportation and that a common carrier, such as King County, is not liable for injuries that occur to passengers as a result of the ordinary movement of the bus. *Id.*; *Walker,* 126 Wn. App. at 908. Finally, King County also argued that Loiga had not even met the negligence standard to show that "sudden

braking" occurred in this case, further underscoring the lack of merit in his negligence claim. CP 51-56.

Loiga responded to King County's summary judgment motion by arguing that King County had admitted liability through its response to a Request for Admission and through the operator's deposition responses, as well as that the operator was following the car in front of it too closely. CP 4-15. Loiga's response also inaccurately argued that only a jury or trier of fact could determine if the King County Metro operator's conduct was reasonable or whether it rose to the level of negligence. CP 10. However, King County asserted in its reply that the Court should find that the operator's conduct reasonable because the events depicted in the video demonstrated decisively that it was and Loiga had not produced evidence sufficient to show breach of duty. CP 97-105; *Scott v. Harris*, 550 U.S. 372, 380, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007); *Walker,* 126 Wn. App. at 908.

On February 24, 2023, the King County Superior Court, Honorable Elizabeth Berns, heard argument on King County's motion. VRP 2/24/23 at 3-17. Notably, in oral argument, when describing the events that led to Loiga's fall off his bus seat, Loiga's counsel stated:

> Nobody else fell, but clearly she meant – she may admit that the passenger on the other side, which Mr. Loiga was talking to, also was *jolted* by the *jerk* that was caused by the sudden stop of the bus.

VRP 2/24/23 at 12 (emphasis added).

When making its ruling, the Court noted that, in a summary judgment motion, after the moving party has met its initial burden of demonstrating the absence of an issue of material fact, it is up to the non-moving party to show specific facts, not allegations and not speculation that there is a genuine issue for trial. VRP 2/24/23 at 15. The Court then ruled that Loiga had failed to do so and granted King County Defendants' motion for summary judgment. CP 1-3; VRP 2/24/23 at 15-16.

C. The Court of Appeals Affirms the Dismissal of Loiga's Claims in an Unpublished Decision.

The Court of Appeals affirmed the trial court's grant of summary judgment. Loiga failed to raise a question of material fact as to any driving violation that would amount to a breach of the common carrier's standard of care and the record did not support his claim that his fall occurred from anything more than the normal "jolts and jerks" experienced while riding a bus. *See* Loiga, 2023 WL 8187191 *5, 9. The Court agreed with King County defendants that, "[w]hen the bus stopped, the other people on the bus show[ed] little movement and no reactions of surprise or concern." *Id* at 5. It also noted that the video showed that Loiga, who was sitting on the edge of his seat facing the aisle and speaking with the person across from him, was not holding on to any fixed support in the bus and was the only person who fell. *Id.*

The Court of Appeals rejected Loiga's claims that King County had admitted liability in its written response to his

request for admission or during the bus operator's deposition. *Id.* at 6-7. In response to the request for admission in question, King County had specifically objected to the request for a legal conclusion on liability and to an unclear term used in the request. *Id.* at 6. Additionally, the bus operator made clear in her deposition that her actions in this incident did not involve a "hard brake" and the Court did not find that her deposition testimony contained any admission of liability. *Id*. at 6-7.

The Court of Appeals also rejected Loiga's argument that a breach of duty occurred based on violations of two driving laws.[1] The Court found that, even considering the evidence in the light most favorable to Loiga, no reasonable juror could conclude that the bus operator drove in a "lax or slack manner", and therefore Loiga could not rely on a purported violation of

[1] Under RCW 5.40.050, a breach of duty imposed by statute, ordinance, or administrative rule shall not be considered negligence per se, but may be considered by the trier of fact as evidence of negligence. See *Smith v. Fourre*, 71 Wn. App. 304, 309, 858 P.2d 276 (1993).

Kent Ordinance 9.36.020[2] as evidence of negligence. *Id*. at 7-8. The Court also held that Loiga's conclusory statement regarding how the driver violated RCW 46.61.145(1)[3] did not support that the bus operator was following too closely to the car in front of it and was insufficient to defeat summary judgment. *Id*. at 8-9. Therefore, the Court of Appeals ruled that the trial court properly dismissed Loiga's claim on summary judgment because King County was entitled to judgment as a matter of law. *Id*. at 9.

Loiga subsequently filed a motion for reconsideration, which the Court of Appeals denied on December 29, 2023. *See*

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[2] Kent Ordinance 9.36.020 provides:
A. It is unlawful for any person to operate a motor vehicle in an inattentive manner upon any highway within the city or way open to the public within the city that is maintained primarily for public use and is adjacent to any highway.
B. For the purpose of this section, inattentive means the operation of a vehicle in a lax or slack manner.

[3] RCW 46.61.145(1) states that, "[t]he driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway."

Loiga's Appendix to Petition for Review, p.10.

V. ARGUMENT

A. Summary Judgment was Appropriate as there was no Genuine Issue of Material Fact and Respondents were entitled to Judgment as a Matter of Law.

Appellate courts review an order for summary judgment de novo, performing the same inquiry as the trial court. *Kim v. Lakeside Adult Fam. Home,* 185 Wn.2d 532, 547, 374 P.3d 121 (2016). Summary judgment is proper when the record demonstrates there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. CR 56(c); *Munich v. Skagit Emergency Commc'n Ctr.*, 175 Wn.2d 871, 877, 288 P.3d 328 (2012). The Court considers the evidence and reasonable inferences in the light most favorable to the nonmoving party. *Kim*, 185 Wn.2d at 547. A summary judgment motion should be granted if, from all the evidence, reasonable persons could reach but one conclusion. *Scott v. Blanchet High School*, 50 Wn.App. 37, 41 (1987), review denied,

110 Wn.2d 1016 (1988). In viewing the evidence in the light most favorable to the non-moving party, courts nonetheless accept facts that are established by decisive video evidence. *Scott*, 550 U.S. at 380-381.

In a negligence case, a plaintiff must prove the existence of a duty, breach of the duty, injury, and causation. *Keller v. City of Spokane*, 146 Wn.2d 237, 242, 44 P.3d 845 (2002). A plaintiff cannot prevail on a negligence claim without showing that the defendant breached the standard of care. *Id.* at 243. As a common carrier of passengers, bus systems, like the one operated by King County, owe the highest degree of care towards its passengers commensurate with the practical operation of its services at the time and place in question. *Price v. Kitsap Transit*, 125 Wn.2d 456, 465, 886 P.2d 556 (1994). However, the standard of care owed by a common carrier is not one of strict liability. *Walker,* 126 Wn. App. at 908. As previously noted, a common carrier is not liable for injuries that occur to passengers as a result of the ordinary movement of the bus. *Id.* at 909-10. A

plaintiff must produce evidence sufficient to show that a defendant breached the required standard of care and, if a plaintiff cannot do so, summary judgment should be entered. *Id.* at 908.

King County was entitled to a judgment as a matter of law because Loiga could not, and cannot, demonstrate breach of the duty owed by a common carrier. The record does not support Loiga's claim that his fall occurred as a result of anything more than the normal "jolts and jerks" experienced while riding a bus. King County defendants never admitted liability, and Loiga failed to raise a question of material fact as to any driving violation that would amount to a breach of the common carrier's standard of care.

Ultimately, Loiga has raised no genuine fact issue aside from his conclusory and inaccurate assertions regarding this case. No evidence has changed from the time that the trial court and subsequently the appellate court both properly ruled that there is no evidence that King County breached its

common carrier duty.

B. Loiga Fails to Show that the Court of Appeals' Decision Raises Issues of Substantial Public Interest.

Loiga has failed to provide any valid reason that this Court should review his case as required by rule RAP 13.4(b) and (c)(7). He states that this Court should accept review because the decision raises issues of substantial public interest (RAP 13.4(b)(4)).[4] Loiga argues:

> "Because of the increase in use and development of public transportation throughout the State of Washington, this issue involves substantial public interest to insure (sic) that the common carrier doctrine is fairly applied and followed by courts throughout the State of Washington."

Loiga's Petition for Review (hereafter "Petition"), p. 5-6.

Loiga argues that this Court should accept review because of the Court's interest in ensuring that the common

[4] Under RAP 13.4(b)(4), a petition for review will be accepted by the Supreme Court if the petition involves an issue of substantial public interest that should be determined by the Supreme Court. While there are other reasons for which the Court will consider review under RAP 13.4(b), petitioner makes no argument that they apply here.

carrier doctrine is appropriately applied. However, Washington courts have already done this through decades of established case law. In compliance with this authority, the Court of Appeals explicitly noted that it was considering the higher standard of care required by common carriers when evaluating the evidence to determine that there was no breach of duty. *See* Loiga, 2023 WL 8187191 *4. The Court of Appeals also stated that it was considering the evidence in the light most favorable to Loiga. *Id.* at 3, 8.

"[T]he increase in use and development of public transportation throughout" Washington is not a factor, in and of itself, that should cause the Supreme Court of Washington to review this case. Petition, p. 5-6. One hesitates to imagine the docket of the Supreme Court if every incident involving vehicles in the State ended up before it. Indeed, in this case, no vehicle collision even occurred because of the careful and attentive driving of the Metro bus operator involved in this case.

While Loiga provides only scant citations to the record as required under RAP 10.3(a)(5) and also asks this Court to consider law in other jurisdictions[5] as precedent, what is actually most surprising about Loiga's petition to this Court is his complete unwillingness to acknowledge or address King County defendants' arguments, or the Courts' rulings mirroring those arguments, about what the evidence plainly shows: that King County did not breach any duty owed to Loiga and that there is no validity to his negligence claim. Despite the many opportunities that Loiga has had to address the video evidence or the *Walker* case in any significant way, he has never done so.

While King County can appreciate that Loiga does not agree with the ruling of the trial court and appellate court, they were indeed proper, and this Court should deny further review of Loiga's case.

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[5] *See* Petition, p. 7-9

VI. CONCLUSION

For the foregoing reasons, Respondents ask this Court to deny Joseph Loiga's Petition for Review.

This document contains 3,364 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 7th day of March, 2024.

LEESA MANION (she/her)
King County Prosecuting Attorney

By: */s/ Grace A. Wiener*
GRACE A. WIENER, WSBA #40743
KARISSA L. TAYLOR, WSBA #31563
Senior Deputy Prosecuting Attorneys
King County Prosecuting Attorney's Office
701 Fifth Avenue, Suite 600
Seattle, WA 98104
(206) 477-1120 | Fax (206) 296-0191
Attorneys for King County Respondents
Office WSBA #91002

CERTIFICATE OF FILING & SERVICE

I, Helen Fung, declare as follows:

That I am over the age of 18 years, not a party to this action, and competent to be a witness herein; that on March 7, 2024, I caused the foregoing *King County Respondents' Answer to Petition for Review* to be e-filed and e-served electronically through Washington State Appellate Court's portal as follows:

Harold H. Franklin Jr., WSBA #20486
Attorney for Appellant
459 Seneca Avenue NW
Renton, WA 98057
Haroldfranklin1@comcast.net

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 7th day of March, 2024.

HELEN FUNG
Civil Litigation – Paralegal I
King County Prosecuting Attorney's Office

KING COUNTY PROSECUTING ATTORNEYS OFFICE CIVIL DIVISION

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