FILED
SUPREME COURT
STATE OF WASHINGTON
3/18/2024 2:39 PM
BY ERIN L. LENNON
CLERK

No. 102795-8

SUPREME COURT
OF THE STATE OF WASHINGTON

IAN ATKERSON, individually and as Personal Representative to the Estate of RUSTIN ATKERSON,

Plaintiff - Petitioner,

v.

STATE OF WASHINGTON DEPARTMENT OF CHILDREN, YOUTH, and FAMILIES, John and Jane Doe 1-10,

Defendant - Respondent.

RESPONSE TO PETITION FOR REVIEW OF RESPONDENT STATE OF WASHINGTON, DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES

ROBERT W. FERGUSON
Attorney General

JOSHUA SCHAER
Assistant Attorney General
WSBA #31491
800 Fifth Ave., Suite 2000
Seattle, WA 98104
(206) 389-2042
OID #91019

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I. INTRODUCTION

The Department of Children, Youth, and Families (DCYF) received a referral concerning a fracture to two-year-old Rustin Atkerson's arm that neither of his parents could explain.[1] A DCYF social worker actively conducted an emergent placement investigation into this injury by consulting her supervisor, interviewing family members and medical professionals to determine the cause of the injury and assess whether Rustin was safe.

Because the investigation revealed no indication that Rustin was at an imminent risk of harm, the social worker did not institute court proceedings to remove him from his parents' joint custody. Two weeks after the initial referral, Rustin suffered head trauma that ultimately proved fatal while he was at the home of his mother's undisclosed new boyfriend.

[1] This brief refers to Rustin by his first name to distinguish him from his father.

The Court of Appeals properly adhered to principles of statutory interpretation in determining that the liability standard applicable to DCYF's conduct during its emergent placement investigation is gross negligence based on the plain text of RCW 4.24.595(1). This statute recognizes that emergent placement investigations do not always result in removing a child from parental care for the purpose of conducting a shelter care hearing.

Moreover, the Court of Appeals properly determined that the trial court erred in striking expert testimony from a retired judge to refute Atkerson's assertion that a reasonable judge would have removed Rustin from his parents' care during DCYF's emergent placement investigation.

Because the Court of Appeals' unanimous published decision does not conflict with precedent, and does not present a significant question of constitutional law or an issue of significant public interest, none of the grounds set forth in RAP 13.4(b) necessitate Supreme Court review.

II. COUNTERSTATEMENT OF THE ISSUES

1. Whether the Court of Appeals properly held that a gross negligence standard applies to the conduct of an emergent placement investigation under the plain language of RCW 4.24.595(1) where no shelter hearing occurred because the child was not removed from parental custody?

2. Whether the Court of Appeals properly held that expert testimony from a retired judge regarding the likely outcome of a hypothetical shelter care hearing is admissible to refute the opinion of an opposing witness on the same matter?

III. COUNTERSTATEMENT OF THE CASE

Rustin's parents, Ian Atkerson and Elaine Hurd, had ended their relationship and were litigating a parenting plan as to Rustin during the events of this case. *See*, *e.g.*, CP 341.

Hurd sought a protection order against Atkerson and identified her address as being in Entiat, WA, with no suggestion that she lived elsewhere or with anyone else. CP 286-92. On June 6, 2017, the Chelan County Superior Court granted Hurd's

requested protection order. CP 303-05.

Two days later, DCYF received a report from a physician assistant who treated Rustin for a broken arm. CP 569-80. This medical professional was concerned because neither parent knew how the injury occurred and had delayed seeking treatment, but the physician assistant noted the injury's cause was likely an accidental fall. CP 559-60, 569-80.

The following day, on June 9, 2017, DCYF assigned social worker Veronica Mabee to investigate, and she forwarded the physician assistant's report to law enforcement. CP 559-60. Mabee interviewed Hurd and became suspicious of Hurd's behavior; however, Mabee did not possess evidence that Hurd was abusing or neglecting Rustin. CP 561, 620-21. After the meeting, Mabee faxed a request to the local hospital seeking Rustin's records. CP 561, 605.

On June 12, 2017, Mabee received a new referral made by one of Atkerson's family members about bruises on Rustin's shoulder; Mabee provided the same to law enforcement and

called the referrer. CP 562, 623-33. Mabee and a police officer went to Atkerson's residence to interview him while Rustin was there. CP 562. Atkerson stated the bruises were not present before transferring Rustin's custody to Hurd. CP 562.

That same day, six days into Mabee's investigation, the Chelan County Superior Court entered the final, agreed parenting plan of Atkerson and Hurd, giving both joint custody over Rustin. CP 317-25, 341. The parenting plan found that neither parent had problems with abandonment, neglect, child abuse, domestic violence, assault, sex offenses, or other problems that could harm Rustin's best interests. CP 318. The court placed no limitations on either parent with regard to decision-making or custody. CP 318.

Atkerson then called Mabee stating he did not want to transfer Rustin's custody to Hurd. CP 563. However, as no information indicated that Rustin was at risk of imminent danger, Mabee had no grounds to remove Rustin from his parents' care. CP 478, 563. Nor could she recommend that Atkerson violate the

just-entered parenting plan. CP 563.

After consulting with her supervisor, Mabee decided to interview Hurd again. CP 563. This interview took place on June 15, 2017. CP 563, 635-37. Hurd reported she stayed in Wenatchee with friends who have kids, and said she was dating around. CP 563, 635-37. Hurd did not disclose having a new boyfriend. CP 563.

On June 16, 2017, Mabee again consulted with her supervisor, mentioning another referral she received late the preceding day. CP 563, 637. That referral came from orthopedist Dr. Brownlee, who reviewed Rustin's medical reports. CP 639-40. He believed Rustin's injury "would have taken some significant force, much more than just falling down." CP 639-40. Dr. Brownlee stated that Atkerson and Hurd blamed each other for the arm injury, but "someone must have known what happened because of the type of injury that Rustin suffered." CP 639-40.

After the weekend, on June 19, 2017, Mabee received

voicemails from Atkerson regarding a new bruise on Rustin that Atkerson asked police to document. CP 564. Mabee also obtained a copy of the police report wherein Atkerson stated that Rustin's broken arm occurred by accident. CP 564, 851-60.

On June 22, 2017, Mabee contacted primary care provider Dr. Brooke Jardin, who had examined Rustin's bruise three days earlier. CP 565, 657-59. Dr. Jardin articulated no abuse or neglect concerns. CP 565, 659. That evening, Mabee's supervisor informed her that Rustin was in the emergency room with head trauma. CP 565. Mabee learned Hurd was at a "friend's house" in East Wenatchee when Rustin was allegedly injured in a fall sometime the prior day. CP 566, 662-63.

In an interview at the Douglas County Sheriff's Office, Hurd disclosed to both Mabee and a detective that she would stay at the house of her boyfriend Stephen Rowe. CP 566, 662. This was the first time Mabee learned about Rowe. CP 566, 662. Mabee checked Rowe's background and found a prior history of abuse involving his own children. CP 566, 663.

Because Hurd and Rowe's statements about Rustin's injury were not credible, Mabee recommended Atkerson take emergency custody of Rustin and obtain a court order granting him authority over health care decisions. CP 566, 668. Between June 22 and 30, 2017, Mabee conducted meetings with prosecutors, police detectives, medical professionals, Atkerson's attorney, and Rustin's family members, in addition to visiting Rowe's house. CP 566.

On June 28, 2017, Mabee reached Dr. Brownlee to discuss his review of Rustin's medical records. CP 566, 679-80. He was concerned about Hurd's lack of supervision and that no one saw what happened to Rustin's arm, but he expressed no other concerns about the parents. CP 566, 679-80.

As Rustin's condition worsened at the hospital, it became obvious to Mabee that Hurd failed to protect Rustin from harm while at Rowe's house. CP 567. Mabee learned that Hurd temporarily left Rustin with Rowe on June 21, 2017, the day of Rustin's head injury. CP 567. Hurd delayed reporting the head

trauma, waiting to call 911 until the next day. CP 567.

On August 3, 2017, Rustin passed away. CP 567. DCYF ultimately determined that allegations of child abuse or neglect were founded as to Hurd and Rowe. CP 543-56. Hurd eventually pled guilty to a reduced charge of Criminal Mistreatment in the Second Degree. CP 363-69. Rowe was not charged in connection with Rustin's death. CP 240.

Atkerson filed suit alleging that DCYF had conducted a negligent investigation. After the trial court denied DCYF's summary judgment motion, the Court of Appeals reversed on two issues, holding that: 1) RCW 4.24.595(1) requires a gross negligence liability standard when assessing DCYF's conduct, and 2) a retired superior court judge can serve as DCYF's expert to testify whether a reasonable judge would have removed Rustin from his parents during the investigation. *Atkerson v. State*, -- Wn. App. 2d --, 542 P.3d 593 (2024). Atkerson now seeks review by this Court of the Court of Appeals' decision.

IV. ARGUMENT WHY REVIEW SHOULD BE DENIED

A. The Court of Appeals Correctly Applied a Gross Negligence Standard to DCYF's Emergent Placement Investigation

The Court of Appeals' interpretation of RCW 4.24.595(1) does not conflict with Supreme Court precedent, and it does not raise an issue of substantial public interest. RAP 13.4(b)(1), (4); *cf.* Pet. for Review at 20.[2] Rather, the Court of Appeals adopted a plain reading of RCW 4.24.595(1) that gives effect to "the text, the context of the statute, related statutory provisions, and the statutory scheme as a whole." *State v. Valdiglesias LaValle*, 2 Wn.3d 310, 318, 535 P.3d 856 (2023) (citation omitted); *see also Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002) (statutory meaning is a legal issue reviewed *de novo*).

The primary objective of statutory interpretation is to "ascertain and carry out the legislature's intent."

[2] Atkerson does not argue that there is a significant constitutional issue in this case. *See* RAP 13.4(b)(3).

Desmet v. State by & through Dep't of Soc. & Health Servs., 200 Wn.2d 145, 153, 514 P.3d 1217 (2022), *reconsideration denied* (Sept. 27, 2022) (citation omitted). If a statute is unambiguous after a review of its plain meaning, "the court's inquiry is at an end." *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010); *see also State v. Watson*, 146 Wn.2d 947, 955, 51 P.3d 66 (2002) ("An unambiguous statute is not subject to judicial construction.").

"A statute is ambiguous if it is susceptible to two or more reasonable interpretations, but a statute is not ambiguous merely because different interpretations are conceivable." *Cerrillo v. Esparza*, 158 Wn.2d 194, 201, 142 P.3d 155, 158 (2006) (citations and internal quotations omitted). Only if a statute is ambiguous should the court "look to the legislative history of the statute and the circumstances surrounding its enactment to determine legislative intent." *Lake*, 169 Wn.2d at 527.

The statute in question, RCW 4.24.595, reads in relevant part:

> Governmental entities, and their officers, agents, employees, and volunteers, are not liable in tort for any of their acts or omissions in emergent placement investigations of child abuse or neglect under chapter 26.44 RCW including, but not limited to, any determination to leave a child with a parent, custodian, or guardian, or to return a child to a parent, custodian, or guardian, unless the act or omission constitutes gross negligence. Emergent placement investigations are those conducted prior to a shelter care hearing under RCW 13.34.065.

RCW 4.24.595(1). The Court of Appeals' analysis of this statute first confirms that Atkerson's negligent investigation claim is strictly based on DCYF's limited statutory duty to investigate reported allegations of child abuse or neglect found in RCW 26.44. *Atkerson*, 542 P.3d at 601; *see also M.W. v. Dep't of Soc. & Health Servs.*, 149 Wn.2d 589, 594, 70 P.3d 954 (2003); *Tyner v. State Dep't of Soc. & Health Servs., Child Protective Servs.*, 141 Wn.2d 68, 1 P.3d 1148 (2000); RCW 26.44.050 ("[T]he department must investigate . . . and *where necessary* . . . refer such report to the court." (Emphasis added.)).

According to the statutory framework in RCW 26.44, an investigation into reports of "alleged abuse or neglect that are

accepted for investigation by the department" must conclude no later than 90 days from its inception but can end sooner through court action. RCW 26.44.030(13)(a).[3]

DCYF's investigatory duty and the purposes of that duty were expressed in *Tyner*, 141 Wn.2d at 80 ("RCW 26.44.050 has two purposes: to protect children and preserve the integrity of the family."). A plaintiff such as Atkerson must prove that, during an investigation, DCYF "gathered incomplete or biased information that results in a harmful placement decision such as removing a child from a non-abusive home, placing a child in an abusive home or letting a child remain in an abusive home." *Atkerson*, 542 P.3d at 602; *see also Petcu v. State,* 121 Wn. App.

[3] Atkerson's reliance on a dictionary definition of "emergent," Pet. for Review at 14, does not supersede the Legislature's clear mandate in RCW 26.44.030(13)(a) allowing social workers up to 90 days to complete an investigation unless immediate court action is deemed necessary. *Atkerson*, 542 P.3d at 602-03. Here, because no information indicated that Rustin was at risk of imminent danger, Mabee had no lawful basis to seek removal of Rustin from his parents' care contrary to a just-entered parenting plan. CP 478, 563.

36, 59, 86 P.3d 1234 (2004) ("[O]ur Supreme Court has rejected the proposition that an actionable breach of duty occurs every time the state conducts an investigation that falls below a reasonable standard of care by, for example, failing to follow proper investigative procedures.").

After the decision in *Tyner* and similar cases, the Legislature enacted RCW 4.24.595 to address potential liability resulting from emergent placement investigations arising under RCW 26.44. *See*, *e.g.*, *Desmet*, 200 Wn.2d at 157 n.12. The Court of Appeals in this case reconfirmed that, as discussed in *Tyner*, RCW 4.24.595 "must be strictly construed to limit its application to those situations clearly within its scope." *Atkerson*, 542 P.3d at 603. In evaluating the statute's scope, it is apparent the Legislature chose to require a gross negligence standard to establish liability resulting from DCYF's placement determination, and further defined emergent placement investigations as taking place "prior to a shelter care hearing." RCW 4.24.595(1).

Shelter care hearings occur "when a child is taken into custody" after removal from a parent or guardian. RCW 13.34.065(1). At the hearing, a court will "determine whether the child can be immediately and safely returned home." RCW 13.34.065(1)(a). Generally, absent court order, a shelter care hearing must held within 72 hours from when a child is taken into custody. *Id*.

As the Court of Appeals correctly recognized in this case, nothing in RCW 4.24.595(1) conditions application of the gross negligence standard to *only* investigations resulting in a post-removal shelter care hearing because the plain text specifically includes "any determination to leave a child with a parent*"* as one possible result of an emergent placement investigation. *Atkerson*, 542 P.3d at 601. Atkerson's reading of RCW 4.24.595(1), erroneously adopted by the trial court, would render this statutory language superfluous and nonsensical since an investigation that leaves a child with their parent is inconsistent with custodial action resulting in shelter care. *See*

State v. Johnson, 179 Wn.2d 534, 546-47, 315 P.3d 1090 (2014), *as amended* (Mar. 13, 2014) (Courts should not "interpret statutes in a way that would render any statutory language superfluous or nonsensical." (Citation omitted.)); RCW 26.44.050 (investigation does not always compel court action); *cf.* Pet. for Review at 13 (arguing the statute only applies "when a child is removed").

Because RCW 4.24.595(1) is unambiguous, there is no need to consider secondary sources such as legislative history to give effect to the statute's clear purpose, *i.e.*, holding DCYF's conduct to a gross negligence standard in claims arising from *any* emergent placement investigation, including where a child remains in the care of a parent or guardian.[4]

[4] Even a reading of legislative history lends no support to Atkerson's position. The Final Bill Report leading to the enactment of RCW 4.24.595 does not state that emergent placement investigations must *only* occur when a child is taken into custody as Atkerson contends. *See* Pet. for Review at 13. Rather, the report explicitly notes that "*in some cases* of alleged abuse or neglect, a child *may be* immediately removed from a

Additionally, statutory provisions should be read together "to the end that a harmonious, total statutory scheme evolves which maintains the integrity of the respective statutes." *In re Estate of Kerr*, 134 Wn.2d 328, 336, 949 P.2d 810 (1998). Here, the Court of Appeals adhered to this principle by interpreting RCW 4.24.595(1) to comport with the plain meaning of subsection (2) in the same statute. The gross negligence standard in subsection (1) governs the initial stage of an investigation after a report of abuse of neglect is accepted pursuant to RCW 26.44.030(13)(a), while the immunity found in subsection (2) relates to actions taken after an investigation's result, such as shelter care, going forward. *See Desmet*, 200 Wn.2d at 156; *Atkerson*, 542 P.3d at 602; *see also H.B.H. v. State*, 192 Wn.2d 154, 178, 429 P.3d 484 (2018) (ordinary negligence standard applies once a special relationship is created through foster placement).

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parent or guardian and taken into protective custody." *Id*. at App. 32 (emphasis added).

The *Desmet* Court did not analyze RCW 4.24.595(1), so nothing in the Court of Appeals' reasoning conflicts with this controlling authority. *Desmet*, 200 Wn.2d at 153 ("The *sole question before us* is whether *RCW 4.24.595(2)* grants the Department immunity for its *postplacement conduct*." (Emphasis added.)). To the extent that *Desmet* is precedential when analyzing RCW 4.24.595 generally, the Court of Appeals' decision in this case is consistent with this Court's statutory interpretation in *Desmet* insofar as: 1) both subsections of RCW 4.24.595 are unambiguous; 2) RCW 4.24.595 was enacted to limit DCYF's liability, but the limitation is not absolute; and 3) RCW 4.24.595 does not nullify precedent such as *Tyner*. *Desmet*, 200 Wn.2d at 154, 160, 165.

The Court of Appeals accurately interpreted RCW 4.24.595(1) to cover all emergent placement investigations that take place prior to a shelter care hearing, whether such a hearing ever happens or not, including investigations that result in a child remaining with their parent and preserving family

integrity as the statute expressly provides. *Atkerson*, 542 P.3d at 602-03. Therefore, the Court of Appeals' decision does not conflict with any Supreme Court precedent and does not present an issue of substantial public interest. *Cf.* Pet. for Review at 9 (citing RAP 13.4(b)(1), (4)).

B. The Court of Appeals Correctly Applied ER 403 to the Expert Testimony of a Retired Judge Who Rebuts the Opinion of Atkerson's Witness

1. Retired judges frequently serve as experts

Atkerson asserts that the social worker's decision to not seek a shelter care order was the proximate cause of Rustin's later injury. *See*, *e.g.*, *W.M. by Olson v. State*, 19 Wn. App. 2d 608, 622, 498 P.3d 48 (2021), *review denied*, 1 Wn.3d 1012 (2022) (proximate cause is an essential element of negligent investigation). To support this contention, Atkerson proffered testimony from a former social worker who last worked for the State in 1985. CP 441, 907-08, 911. This witness opines, without adequate foundation, that a judge would have "taken action to

protect Rustin" and determined "Rustin could not remain in Ms. Hurd's care." CP 900-01.

In response, DCYF identified former judge Kitty-Ann Van Doorninck as an expert. CP 34. Van Doorninck possesses experience presiding over dependency proceedings, and she completed 24 years of judicial service before retiring in 2022. CP 745-46. Van Doorninck maintains that no reasonable judge would have taken drastic action to remove Rustin from his parents at a shelter care hearing if presented with facts known at the time. *See*, *e.g.*, CP 750-51.

Van Doorninck's testimony comports with other decisions approving the admissibility of retired judges' opinions on the likelihood of certain rulings as substantive evidence.

For example, in *Petersen v. State*, 100 Wn.2d 421, 442, 671 P.2d 230 (1983), this Court upheld testimony from a retired judge serving as the plaintiff's expert. Before leaving the bench, Judge Hardyn Soule sentenced a probationer involved in the incident subject to that lawsuit. *Id*. at 442-43. Atkerson misreads

Petersen, contending Judge Soule was not asked how he would have ruled. Pet. for Review at 24. To the contrary, "Plaintiff's counsel posed a hypothetical question assuming a number of facts previously presented as evidence and asked whether, assuming those facts, *Judge Soule would have ordered* a probation revocation hearing." *Petersen,* 100 Wn.2d at 442 (emphasis added). The testimony was not limited to procedures as Atkerson argues. *See* Pet. for Review at 23.

Likewise, Atkerson misstates the holding in *Schulte v. Mullan*, 195 Wn. App. 1004, 2016 WL 3919695 (Jul. 18, 2016) (unpublished).[5] Pet. for Review at 24. The Court of Appeals approved testimony from a retired judge about what substantive conditions the trial court likely would have ordered to ensure a probationer's compliance. *Schulte*, 2016 WL 3919695, at *4. The *Schulte* court did not mention procedures. *Id*.

[5] Pursuant to GR 14.1, this decision has no precedential value, is not binding on any court, and is cited only for such persuasive value as the Court deems appropriate.

Atkerson neglects to cite *Estate of Bordon v. Department of Corrections*, where the Court of Appeals discussed what testimony might lead to establishing a negligence claim against the State, observing:

> In previous cases, the nature of that evidence has varied. *It has included expert testimony about how judges rule in particular proceedings*, factual evidence that the very nature of the negligence led to an offender's release, *testimony of the sentencing judge*, or expert testimony that the State's negligence directly caused the injury. *Causation evidence could also include statistical evidence about what judges do in similar cases*.

122 Wn. App. 227, 244 (2004), *review denied*, 154 Wn.2d 1003, 114 P.3d 1198 (2005) (emphasis added).

Van Doorninck's expert opinion concerning how a reasonable judge would have ruled at a hypothetical shelter care hearing fits squarely within the range of evidence discussed in *Bordon*. CP 747-51. Consequently, the admission of this testimony is consistent with precedent.

2. The Court of Appeals correctly held Judge Van Doorninck's testimony is admissible under ER 403

Although Van Doorninck's substantive testimony is critical to addressing proximate cause in this case, the trial court excluded it under ER 403 based on a belief it was overly prejudicial to have a former judge "explaining what a reasonable judge would do." CP 1006.

The Court of Appeals reversed, holding that Van Doorninck's expert opinion: 1) "is not likely to arouse an emotional response from jurors;" 2) "concerns a central issue in the case;" and 3) is admissible because ER 403 "must be administered in an evenhanded manner" and the trial court considered testimony from Atkerson's witness on the same issues. *Atkerson*, 542 P.3d at 605 (citing *Carson v. Fine*, 123 Wn.2d 206, 225, 867 P.2d 610 (1994)). In contrast to Atkerson's position that simply being a retired judge should disqualify Van Doorninck from offering her expert opinion, this Court in *Carson* stated it is "unthinkable" that a trial court would disallow

evidence on a central issue "based solely on the witness' profession." 123 Wn.2d at 224.

While the strength of Van Doorninck's opinion may hinder Atkerson's ability to establish DCYF's investigation was the proximate cause of harm to Rustin, that reality is not a permissible reason to exclude it as unfairly prejudicial. *See*, *e.g.*, *State v. Gould*, 58 Wn. App. 175, 183, 791 P.2d 569 (1990) (holding that unfair prejudice "requires more than testimony which is simply adverse to the opposing party"). The Court of Appeals properly applied the ER 403 balancing test to determine Van Doorninck's testimony is admissible.

Atkerson further implies there is a lingering question of admissibility under ER 702 or ER 704. Pet. for Review at 26 n.18; *cf. Reese v. Stroh,* 128 Wn.2d 300, 305-06, 907 P.2d 282 (1995) (discussing ER 702); *Johnston-Forbes v. Matsunaga*, 181 Wn.2d 346, 352-53, 333 P.3d 388 (2014) ("ER 704 allows an expert to testify on an ultimate issue the trier of fact must resolve."). Atkerson's reliance on *Stenger v. State*, 104 Wn. App.

393, 16 P.3d 655 (2001) is misplaced. Pet. for Review at 26 n.18. In *Stenger*, an attorney sought to offer a purely legal conclusion on a State agency's fulfillment of its obligations "under state and federal law" in violation of ER 704. *Id*. at 408-09. Here, Van Doorninck's knowledge gained in dependency hearings establishes her expert qualifications under ER 702. Van Doorninck further satisfies ER 704 as she does not present conclusions on a legal issue, *i.e.*, whether DCYF's investigation was faulty or biased and therefore led to a harmful placement decision; she strictly articulates facts about what would have likely occurred at Atkerson's hypothetical shelter care hearing. CP 747-51.

In sum, the trial court utilized ER 403 to do exactly what *Carson* states should *not* be done—simultaneously barring testimony from DCYF's witness while allowing Atkerson to elicit testimony from his own witness on the same issue. *See Carson*, 123 Wn.2d at 225-26. The Court of Appeals' decision

rectifies this error, and it does not conflict with any Supreme Court or other appellate precedent. RAP 13.4(b)(1), (2).

V. CONCLUSION

The Court of Appeals correctly interpreted RCW 4.24.595(1) based on a plain text reading of the liability standard in emergent placement investigations like the one that occurred in this case. Additionally, the Court of Appeals correctly applied ER 403 to admit Judge Van Doorninck's expert opinion in light of precedent confirming that retired judges can testify about the likelihood of certain rulings. Thus, this Court should decline Atkerson's invitation to readdress these issues.

This document contains 4,237 words, excluding the parts of the document exempted from the word count by RAP 18.17.

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RESPECTFULLY SUBMITTED this 18th day of March, 2024.

ROBERT W. FERGUSON
Attorney General

/s/ Joshua Schaer
JOSHUA SCHAER, WSBA #31491
Assistant Attorney General
800 Fifth Ave., Suite 2000
Seattle, WA 98104
206-389-2042
OID #91019

CERTIFICATE OF SERVICE

I certify that on the date below I caused to be electronically filed the Response to Petition for Review of Respondent State of Washington, Department of Children, Youth, and Families with the Clerk of the Court using the electronic filing system which caused it to be served on the following electronic filing system participant as follows:

Bryan G. Smith
Natalie B. McNeill
Tamaki Law Offices
2820 Northup Way, Suite 235
Bellevue, WA 98004

bsmith@tamakilaw.com
natalie@tamakilaw.com
mgarcia@tamakilaw.com
mhale@tamakilaw.com

Philip A. Talmadge
Talmadge/Fitzpatrick
2775 Harbor Avenue SW
Seattle WA 98126

phil@tal-fitzlaw.com
christine@tal-fitzlaw.com
brad@tal-fitzlaw.com
matt@tal-fitzlaw.com

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

EXECUTED this 18th day of March 2024 at Olympia, Washington.

s/ Beverly Cox
BEVERLY COX
Paralegal

ATTORNEY GENERAL'S OFFICE, TORTS DIVISION

March 18, 2024 - 2:39 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	102,795-8
Appellate Court Case Title:	Ian Atkerson v. State of Washington Dept. of Children, Youth and Families, et al.
Superior Court Case Number:	20-2-00357-8

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- phil@tal-fitzlaw.com

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Olympia, WA, 98504-0126
Phone: (360) 586-6300

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