

FILED
Court of Appeals
Division III
State of Washington
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SUPREME COURT
STATE OF WASHINGTON
2/14/2024
BY ERIN L. LENNON
CLERK

COURT OF APPEALS, DIVISION III,
OF THE STATE OF WASHINGTON

102795-8

IAN ATKERSON,
individually and as Personal
Representative of the Estate of
Rustin Atkerson,

Petitioner,

v.

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

Respondents.

No. 39483-2-III

MOTION TO
INCLUDE
EXTRARECORD
MATERIALS
IN APPENDIX

1. Identity of Moving Party

The moving party is petitioner Ian Atkerson, individually and as personal representative of his late 2-year-old son Rustin's estate ("Estate").

2. Statement of Relief Sought

Permission to include the transcripts of the 2012 legislative hearings on the legislation codified as RCW 4.24.595

Motion to Include Extrarecord
Materials in Appendix - 1

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as an appendix to the petition for review, pursuant to RAP 10.3(a)(8).

3. Facts Relevant to Motion

This case involves the proper interpretation of RCW 4.24.595(1). In its published opinion, Division III misinterpreted RCW 4.24.595(1), applying a gross negligence standard to the Estate's implied right of action under case law interpreting RCW 26.44.050. The legislative history of RCW 4.24.595 generally and testimony on the bill are relevant to this Court's review decision. That history is revealing as to the legislative intent regarding RCW 4.24.595(1), as well as DCYF's own intent reflected in testimony on the bill.

4. Grounds for Relief and Argument

RAP 10.3(a)(8) requires this Court's approval of an appendix containing extrarecord materials. RAP 13.4(e) requires that the Estate comply with RAP 10.3(e) as to its petition for review. The transcripts of the legislative committee proceedings

in 2012 are derived from TVW's online record from 2012 (the e-address is identified on the transcripts).

This Court should allow the Estate to include these materials in the appendix to its petition for review. RAP 10.3(a)(8).

This document contains 221 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 14th day of February, 2024.

/s/ Philip A. Talmadge
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DECLARATION OF SERVICE

On said day below I electronically delivered a true and accurate copy of the ***Motion to Include Extrarecord Materials in Appendix*** in Court of Appeals, Division III Cause No. 39483-2-III to the following:

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Original delivered by appellate portal to:
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Clerk's Office

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

DATED: February 14, 2024 at Seattle, Washington.

/s/ Matt J. Albers
Matt J. Albers, Paralegal
Talmadge/Fitzpatrick

TALMADGE/FITZPATRICK

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Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 39483-2
Appellate Court Case Title: Ian Atkerson, et al v. Washington Dept. of Children, Youth and Families
Superior Court Case Number: 20-2-00357-8

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- 394832_Motion_20240214124805D3104352_9178.pdf
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Comments:

Petition for Review; Motion to Include Extrarecord Materials in Appendix (PFR filing fee will be paid directly to Supreme Court)

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