No. 39615-1

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

BRENDA ADAMS, et al,
Appellant, Plaintiff

v.

CONFLUENCE HEALTH,
Respondent, Defendant

APPELLANT'S PETITION FOR DISCRETIONARY REVIEW

LACY KANE & KUBE, P.S.

PAUL S. KUBE, WSBA #24336
Attorney for Appellant/Plaintiff
300 Eastmont Avenue
East Wenatchee, WA 98802
(509) 884-9541

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Washington Cases

Statutes

Washington State Constitution:

Court Rules

I. IDENTITY OF PETITIONERS

The Petitioners are all former employees of Respondent Confluence Health. All brought wrongful discharge claims after having their employment terminated by the Respondent due to their failure to accept injection with one of several experimental vaccines following the issuance of the Governor's vaccine mandate and their assertion of legal exemptions to that mandate.

II. CITATION TO COURT OF APPEALS' DECISION

Division III of the Washington State Court of Appeals filed an unpublished decision in Case No. 39615-1-III on March 7, 2024. Petitioners filed a timely Motion for Reconsideration of that decision, which was denied by an Order Denying motion for Reconsideration filed April 11, 2024.

III. ISSUE PRESENTED FOR REVIEW

The issues presented for review are (1) whether the trial court erred in deciding under CR12(b)(6) that Petitioners failed to state a clear mandate of public policy to support their wrongful discharge claim and (2) whether the trial court and the Court of

Appeals both erred in failing to address the claim of failure to accommodate medical disability.

IV. STATEMENT OF THE CASE

The Petitioners asserted a clear public policy in favor of adult persons having the fundamental right to control their own decisions relating to bodily autonomy and the rendering of their own health care. CP at 252. Petitioners derive this policy from (1) Art. I, Section 7 of the Washington State Constitution (2) *McNabb v. Department of Corrections*, 163 Wn.2d 393, 180 P.3d 1257 (2008) and (3) RCW 70.122.06. Petitions also relied on the specific language of Governor Inslee's August 20, 2021 Proclamation 21-14-1 which exempted employees having a legitimate legal basis for exemption from its terms, specifically its requirement that unvaccinated employees be prohibited from working in a clinical setting. CP 115-116 ("Exemptions from Vaccine Requirement…Workers for …Health Care Providers are not required to get vaccinated…under this Order…if the requirement to do so conflicts with their sincerely held religious

beliefs…In implementing the requirements of this Order…operators of Health Care Settings…[m]ust, to the extent permitted by law, require an individual who receives an accommodation to take COVID-19 safety measures that are consistent with the recommendations of the State Department of Health…) Petitioners further relied on Confluence's specific acknowledgment that many other operators of Health Care settings were not excluding individuals with valid exemptions from working in clinical settings. CP 125-128 ("Yes, there is a variability of exemption and accommodation processes by hospitals and clinics in our region. Some are approving essentially all exemption requests and making accommodations.")

V. ARGUMENT

Governor Jay Inslee's Proclamation 12-14.1 ("Proclamation") specifically provides exceptions to those in Appellants' position "…if they are unable to do so [receive COVID-19 vaccinations] because of a disability or if the

requirements to do so conflicts with their sincerely held religious beliefs, practice, or observance." (CP 111-123)*Proclamation*, paragraph 2.a. Governor Inslee's proclamation did not eliminate personal choice where such was based on bona fide religious grounds.

Two things can be true at once.

One, that it is a clear mandate of public policy that citizens of Washington can exercise their legal right and privilege to make their own health care decisions, including whether to receive the COVID-19 vaccination. RCW 70.122.010 states: "[t]he legislature finds that adult persons have the fundamental right to control the decisions relating to the rendering of their own health care …" Likewise, Washington State Constitution states: "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law." Art. I, section 7. Numerous Washington Courts have recognized that personal autonomy is public policy. The Supreme Court, in *Pacheco v. United States*, 200 Wn.2d 171, 515

P.3d 510 (2022) recently affirmed this principle in regard to decision about pregnancies. The Court also recognized the policy in *American Legion Post #149 v. Washington State Department of Health,* 164 Wn.2d 520, 192 P.3d 306 (2008).

And two Governor Inslee's proclamation specifically allowed people such as the Appellants to retain the above statutory and Constitutional protections of public policy to make their own health care decisions by seeking religious or disability exemptions so that they could remain employed consistent with the Proclamation.

The Court of Appeals jumped to the conclusion that the attempt by Petitioners to assert their claim to personal autonomy advocated the breaking of the law. It is incorrect that Appellants were trying to commit criminal acts in seeking religious and disability accommodations. The Appellants were requesting accommodations from Respondent pursuant to the religious and disability exemptions clearly stated in the Proclamation. Respondent violated a clear mandate of public

policy in terminating the Appellants who sought those exemptions.

In other words, resisting the vaccine mandate based on religious or disability grounds and exercising the Appellants personal choice was specifically exempted from the Proclamation. The Appellants were choosing a course not deemed illegal by the Proclamation and were wrongfully terminated as a result.

A. Failure to Accommodate Disability.

Appellants contend the Court has overlooked or misapprehended the law and facts in reaching the conclusion that Appellants were claiming failure to accommodate based on perceived disabilities. Appellants did not appeal the trial court dismissal with prejudice of the disparate impact for perceived disability claims. None of the Appellants arguments for the failure to accommodate cause of action in any way relied on any perceived disability.

Instead, Appellants appealed the trial court's dismissal with prejudice the "failure to accommodate disabilities for those dismissed employees claiming accommodation based on medical exemptions in violation of RCW 49.60.180." *Appellants' Statement of Arrangements dated April 24, 2023*, p. 1-2.

The trial court dismissed without prejudice pursuant to CR 12(b)(6) Appellants' cause of action for failure to accommodate religious beliefs, leaving open the ability for those particular Appellants to refile their Complaint more specifically pleading relevant facts related to each specific Appellants unique factual basis for the cause of action. Judge Huber's letter decision dated March 1, 2023, p. 5. (CP418-323)("*Trial Court's Letter*").

As noted in Appellants' brief dated June 8, 2023, on page 30, the Trial Court's Letter decision failed to address in any way the failure to accommodate cause of action for those employees claiming medical exemptions. Even so, that cause of action was dismissed with prejudice by the Trial Court's Order. That was

the basis for appealing that dismissal with prejudice since it appears to have been done so inadvertently and without any analysis what-so-ever in the Trial Court's Letter.

This Appellate Court relied on a summary judgment case to support the dismissal with prejudice of Appellant's case pursuant to the CR 12(b)(6) motion. That case is *StentinelC3, Inc. v. Hunt,* 181 Wn.2d 127, 140-41, 331 P.3d 40 (2014). Respondent has detailed information in each of the specific Appellants' personnel records and files regarding each and every Appellant who notified Confluence of the applicable disability to begin the interactive process prior to the termination. In other words, had the case not been dismissed via a CR 12(b)(6) Motion, the parties would have exchanged discovery which would have included all of the notices of specific disabilities and related communications which should already be in the possession of the Respondent. After discovery, then the case would be ripe for a decision on summary judgement, not before. At the CR12(b)(6) stage, the Appellants

which had provided specific notice of their disability to Respondent would provide a "sworn declaration that this actually happened in their case." *March 7, 2024 Court of Appeals Division Three Decision,* p. 11.

But, as a result of this Appellate Court's current decision, unlike those Appellants who are still allowed to amend their Complaints to provide more specific facts related to their particular situation in their failure to accommodate religious claims, those Appellants who could prove actual disabilities which legally qualified for reasonable accommodation, are left with no remedy because their cases have been dismissed with prejudice as it currently stands.

"Courts should dismiss a claim under CR 12(b)(6) only if it appears beyond a reasonable doubt that no facts exist that would justify recovery." *Cutier v. Phillips Petroleum Co.*, 124 Wn.2d 749, 755, 881 P.2d 216 (1994); cited by the Court. (CP418-323)(*Trial Court's Letter*, p. 4). A plaintiff's allegations are presumed to be true and courts may also consider

hypothetical facts, even though they are not part of the formal record. *Id.*

Because these facts are not specifically in the record at this stage, consider the following hypothetical scenario. One of the Appellants has a unique and diagnosed disability and obtains a medical doctor's note opining that the Appellant should not get vaccinated for COVID-19 based on that specific disability. That Appellant provided that doctor's note to Respondent prior to termination. Respondent terminated Appellant anyway. If that Appellant were to file a Complaint now against Respondent specifying those particulars, Respondent would claim that matter has already been dismissed with prejudice. Rather than dismissing Appellants' case at the CR 12(b)(6) stage with prejudice, if the Court is still persuaded that the case should be dismissed, the Court should dismiss the cases *without prejudice* instead to provide those Appellants who have notified Respondent of their specific disability pre-termination may correct any alleged defect in their notice pleadings, proceed

through discovery and then, if they still cannot provide a "sworn declaration that this actually happened in their case," then we would agree that the case may be ripe for dismissal with prejudice.

As alluded to above, the Respondent is in no way prejudiced because the Respondent already has in its possession the written records regarding each Appellant who has notified the Respondent of the alleged disability pretermination.

But the Appellants would be prejudiced by such dismissal with prejudice because even though the Appellants provided notice to Respondent of the alleged disability pre-termination, the Respondent would short circuit Respondent's legal affirmative duty to enter the interactive process with that Appellant to seek a potential reasonable accommodation for that disability.

//

//

//

VI. CONCLUSION

For the reasons discussed above, the Court should grant discretionary review in this matter.

I certify the number of words contained in this document is 1,663.

s/Paul S. Kube
WSBA #24336
Lacy Kane & Kube, P.S.
300 Eastmont Avenue
East Wenatchee, WA 98802
Telephone: 509-884-9541
Fax: 509-884-4805
Email: paul@lacykane.com

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of May 2024, I caused to be served via e-service a true and correct copy of ***Appellant's Petition for Discretionary Review*** to:

Jeffrey A. James
Sebris Busto James
15375 SE 30th Pl. Ste 310
Bellevue, WA 98007
jjames@sbj.law

s/Paul S. Kube
WSBA #24336
Lacy Kane & Kube, P.S.
300 Eastmont Avenue
East Wenatchee, WA 98802
Telephone: 509-884-9541
Fax: 509-884-4805
Email: paul@lacykane.com

LACY KANE & KUBE, P.S.

May 02, 2024 - 11:45 AM

Transmittal Information

Filed with Court:	Court of Appeals Division III
Appellate Court Case Number:	39615-1
Appellate Court Case Title:	Brenda Adams, et al v. Confluence Health
Superior Court Case Number:	22-2-00104-3

The following documents have been uploaded:

- 396151_Petition_for_Review_20240502114121D3405117_0999.pdf
  This File Contains:
  Petition for Review
  The Original File Name was Petition for Discretionary Review Confluence.pdf

A copy of the uploaded files will be sent to:

- jjames@sbj.law
- steve@lacykane.com

Comments:

Sender Name: Lisa Russell - Email: lisa@lacykane.com
Filing on Behalf of: Paul S Kube - Email: paul@lacykane.com (Alternate Email: lisa@lacykane.com)

Address:
300 Eastmont Ave.
East Wenatchee, WA, 98802
Phone: (509) 884-9541

Note: The Filing Id is 20240502114121D3405117

FILED
MARCH 7, 2024
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

BRENDA ADAMS, ANNETTE AGUIGUI, EDWARD AGUIGUI, MARISOL AGUIRRE, TIMOTHY ALRASHEDY, SYDNEY AUMELL, HOLLY BARRUTIA, SONJA BENRUD, CRISTIE BINGHAM, TYLER BISHOP, JULIE BRONS, TEODOR BUTUI, SHAWNA CADDY, JESSIE CASTANEDA, JOHN CHAMBERLAIN, ALISON CHRISTENSEN, MELISSA COLE, CASSANDRA COZART, JOY DAWE, BREANNE FISCHER, DARCI GLASS, JENNIE GROCE, ZOFIA GUZIKOWSKA, BRENDA HAMMOND, CHEYENNE HARPER, NICOLE HARPER, JULIE HART, HEATHER HENDRICKS, MARNIE HERRICK, JEAN HORAN, RITA HRUBY, MELISSA HUSTON, MARIA JAY, NICOLE KELLY,	)	No. 39615-1-III UNPUBLISHED OPINION

STACY KLINGER,)
REBECCA LANCASTER,)
NATALIE LEWIS,)
MICHELE LOVE-WELLS,)
TRINA MATKINS,)
TAYLOR MAHER,)
JENESSA MARLOW,)
CHRISTINA MARIE,)
ANGELA MARTIN,)
JUDITH McBRIDE,)
MELISSA McDOWELL,)
JENNY McINNIS,)
KATIE MICHAEL,)
DAVID MILLER,)
GAIL MILLER,)
JENNIFER MOLENAAR,)
LYNDA MONCRIEF,)
DEBRA MOON,)
CARLY MORRISON,)
MOLLY MOTOOKA,)
LAURA MOUNTER,)
REBECCA MULLIN,)
SHELLIE NIEBUHR,)
KYLA OHS,)
ALTURA PASIC,)
GENELLE PEPPEL,)
GLENN PERRY,)
AMANDA PETERSEN,)
CYNTHIA PHILLIPS,)
AUBREE POTTORFF,)
JESSICA POTTORFF,)
JEANETTE POWER-COOPER,)
CARI RIGGEN,)
TRAVIS SACKWAR,)
PATRICIA SCHAUER,)
CAROLINA SHJANDEMAAR,)
JULIE SIMMONS,)

SUE SINCLAIR,	)
PAIGE SIRES,	)
STACY STEINBURG,	)
BRIAN STEVENS,	)
JULIANN STEVENS,	)
EDMOND THOMAS,	)
DEBORAH TINCHER,	)
BRYCE TUSSEY,	)
CHRISTOPHER TUSSEY,	)
MAY TUSSEY,	)
MARY VARGAS,	)
MELINDA VARGAS,	)
JEREMIAH VOSS,	)
SARAH VOTH,	)
AMY WALL,	)
LISA WAREHAM,	)
MICHELLE WELTON,	)
JONATHAN WHITE,	)
KARINNE WHITEHALL,	)
GENEVIEVE WILSON,	)
KAREN WILSON,	)
individually, and on behalf of all other	)
persons similarly situated,	)
	)
Appellants,	)
	)
v.	)
	)
CONFLUENCE HEALTH, a Non-Profit	)
Washington State Health Care Institution,	)
CENTRAL WASHINGTON HEALTH	)
SERVICES ASSOCIATION, and	)
WENATCHEE VALLEY HOSPITAL	)
AND CLINICS,	)
	)
Respondents.	)

LAWRENCE-BERREY, A.C.J. — Several health care workers, formerly employed by Confluence Health or its predecessor, appeal the trial court's summary dismissal of their claims for wrongful discharge in violation of public policy and failure to accommodate a disability. The health care workers' claims arise after being terminated for not complying with Governor Jay Inslee's Proclamation 21-14.1. The proclamation, subject to disability and religious exemptions, made it a crime for the former employees to work in a health care setting unless they were fully vaccinated against COVID-19. We affirm the trial court's summary dismissal order.

FACTS

On August 20, 2021, Washington Governor Jay Inslee issued Proclamation 21-14.1. Among other directives, the proclamation prohibited health care workers from working in a clinical setting after October 18, 2021, unless they were fully vaccinated against COVID-19. The prohibition was subject to religious and disability exemptions. By its terms, a health care organization that violated the proclamation was subject to criminal penalties.

In the weeks that followed, Confluence Health moved to implement the Governor's proclamation by notifying medical staff that any nonexempt health care worker not vaccinated by October 18, 2021, would be placed on administrative leave. Confluence further informed its staff that even exempt workers likely would be

prohibited from working in clinical settings, given the increased risk of viral transmission associated with unvaccinated status. As a result, the accommodation Confluence offered to exempt workers was 12-weeks' administrative leave, with paid leave limited to each employee's accrued paid time off. After the 12 weeks, the exempt employee would be eligible for COBRA,[1] meaning the worker's status would be terminated.

Between October 2021 and January 2022, Confluence dismissed numerous nonexempt health care workers who had failed to comply with the proclamation as well as some exempt workers whose administrative leave had expired. In April 2022, these former employees sued Confluence for wrongful discharge in violation of public policy and for discriminatory treatment under the Washington Law Against Discrimination (WLAD), chapter 49.60 RCW.

With respect to the wrongful discharge claim, the former employees asserted a "clear public policy" in favor of "adult persons hav[ing] the fundamental right to control their own decisions relating to bodily autonomy and the rendering of their own health care." Clerk's Papers (CP) at 252. The former employees derived this policy from (1) article I, section 7 of the Washington State Constitution, (2) *McNabb v. Department of Corrections*, 163 Wn.2d 393, 180 P.3d 1257 (2008), and (3) RCW 70.122.010.

[1] Consolidated Omnibus Budget Reconciliation Act of 1985, PL 99-272.

With respect to their WLAD claim, the former employees asserted both disparate treatment and failure to accommodate. Underpinning both claims was their assertion that they were disabled by virtue of Confluence perceiving their unvaccinated status to be a disability.

Confluence moved to dismiss on the pleadings pursuant to CR 12(b)(6). In response, the former employees submitted a declaration from Dr. Peter McCullough, MD, a physician with a background in public health. It was Dr. McCullough's opinion that COVID-19 vaccinations were neither safe nor effective, and that natural immunity as a result of COVID exposure was more durable than vaccine immunity.

The trial court issued a comprehensive letter opinion, supporting its decision to dismiss all claims with prejudice. Ultimately however, the trial court dismissed all claims with prejudice, except the failure to accommodate religious practices claim, which it dismissed without prejudice.

ANALYSIS

WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY

The former employees argue the trial court erred by dismissing their wrongful discharge in violation of public policy claim. We disagree, and conclude that they failed to state a clear mandate of public policy to support their claim.

Standard of review[2]

This court reviews summary judgment orders de novo, "applying the same inquiry as the trial court, and viewing the facts and reasonable inferences in the light most favorable to the nonmoving party." *Ramey v. Knorr*, 130 Wn. App. 672, 685, 124 P.3d 314 (2005). Where summary judgment implicates questions of law, we similarly review those questions de novo. *Christensen v. Grant County Hosp. Dist. No. 1*, 152 Wn.2d 299, 305, 96 P.3d 957 (2004). Summary judgment is appropriate where "there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *Kosovan v. Omni Ins. Co.*, 19 Wn. App. 2d 668, 679, 496 P.3d 347 (2021).

Thompson *or Perritt test*

Employers may not discharge employees for reasons that contravene public policy. *Thompson v. St. Regis Paper Co.*, 102 Wn.2d 219, 232, 685 P.2d 1081 (1984). Commonly, these claims have arisen when employers discharge employees for (1) refusing to commit illegal acts, (2) performing public duties or obligations, (3) exercising legal rights or privileges, or (4) acting as whistleblowers. *Dicomes v. State*, 113 Wn.2d 612, 618, 782 P.2d 1002 (1989). When a claim fits one of these categories, the plaintiff must show as a threshold matter that their discharge "may have

[2] The former employees do not argue that the trial court erred by converting Confluence's CR 12(b)(6) motion to a CR 56 motion.

been motivated by reasons that contravene a clear mandate of public policy." *Thompson*, 102 Wn.2d at 232. Upon such a showing, "the burden shifts to the employer to prove that the dismissal was for reasons other than those alleged by the employee." *Id.* at 232-33.

Here, the former employees argue that their public policy claim fits in *Dicomes'* third category, i.e., exercising legal rights or privileges. We disagree. Proclamation 21-14.1 expressly criminalized the continued presence of unvaccinated health care workers in clinical settings. Thus, violating the proclamation was not exercising a legal right or privilege.

When a wrongful discharge in violation of public policy claim does not fit neatly into one of *Dicomes'* categories, the plaintiff instead must satisfy the more intensive Perritt test. *Martin v. Gonzaga Univ.*, 191 Wn.2d 712, 723, 425 P.3d 837 (2018) (citing HENRY H. PERRITT JR., *Workplace Torts: Rights and Liabilities* (1991)). Under Professor Perritt's test, the plaintiff must show (1) the existence of a clear public policy (the clarity element), (2) that discouraging plaintiff's conduct would jeopardize the public policy (the jeopardy element), and (3) that plaintiff's conduct in furtherance of the public policy motivated their dismissal (the causation element). *Gardner v. Loomis Armored, Inc.*, 128 Wn.2d 931, 941, 913 P.2d 377 (1996). Even if the plaintiff shows these elements, their claim will fail if the employer can show an overriding justification for the dismissal. *Id.*

Perritt's clarity element analysis

The existence of a public policy is a question of law. *Dicomes*, 113 Wn.2d at 617. A public policy satisfies the Perritt clarity standard when it is "clear and truly public." *Jane Roe v. TeleTech Customer Care Mgmt. (Colo.) LLC*, 171 Wn.2d 736, 757, 257 P.3d 586 (2011). A court may discern public policy from "'the letter or purpose of . . . constitutional, statutory, or regulatory provision[s] or scheme[s]. Prior judicial decisions may also establish . . . public policy.'" *Thompson*, 102 Wn.2d at 232 (quoting *Parnar v. Am. Hotels, Inc.*, 65 Haw. 370, 380, 652 P.2d 625 (1982)).

Here, Governor Inslee issued Proclamation 21-14.1 in response to a worldwide pandemic. "It is well recognized that the COVID-19 pandemic [was] both a public disorder and a disaster affecting life and health." *In re Recall of Inslee*, 199 Wn.2d 416, 424, 508 P.3d 635 (2022). There, in a unanimous opinion, our Supreme Court implied that various proclamations issued by Governor Inslee in response to the COVID-19 pandemic were valid exercises of the Governor's proclamation power. *See id. at* 434. So, rather than argue that Proclamation 21-14.1 was invalid, the former employees focus on Confluence's decision to terminate them. In essence, the former employees argue that Confluence violated clear public policy by terminating them rather than allowing them to engage in activity made criminal by the proclamation. The argument is nonsensical, and we reject it on its face.

FAILURE TO ACCOMMODATE

The former employees argue the trial court improperly dismissed their failure to accommodate claim. Because the former employees fail to allege a qualifying disability, we disagree.

An employee claiming failure to accommodate under WLAD must show (1) they suffered from a disability, (2) they were qualified for the job, (3) their employer received notice of the disability, and (4) their employer failed to accommodate that disability. *Mackey v. Home Depot USA, Inc.*, 12 Wn. App. 2d 557, 586, 459 P.3d 371 (2020).

WLAD recognizes as a qualifying disability any "sensory, mental, or physical impairment" that is "medically cognizable or diagnosable" or "[e]xists as a record or history." RCW 49.60.040(7)(a)(i), (ii). Because a disability qualifies for accommodation only once it is "known or shown through an interactive process to exist in fact," perceived disabilities do not meet the standard. RCW 49.60.040(7)(d).

The former employees argue they were disabled such as to warrant accommodations because Confluence *perceived* their unvaccinated status to be an impairment limiting their job performance. Because perceived disabilities do not qualify for accommodation under WLAD, this argument is unpersuasive. RCW 49.60.040(7)(d).

In addition, a disability warrants accommodation only if it is a "sensory, mental, or physical impairment" that is "medically cognizable or diagnosable" or "[e]xists as a

record or history." RCW 49.60.040(7)(a)(i), (ii). RCW 49.60.040(7)(c)[3] offers several illustrative examples of qualifying "impairment[s]." A common feature of the examples is they are sensory, mental, or physical conditions that can impair one's ability to perform job functions. Construing "impairment" as so limited, vaccination status is not an impairment because being unvaccinated neither impairs one's sensory, mental, or physical capacities nor impedes one's job performance. To the extent the trial court summarily dismissed the failure to accommodate claims of those former employees who had *not* pleaded they were exempt from the proclamation, we affirm the trial court.

The record before us indicates that Confluence had a policy of placing unvaccinated employees claiming exempt status on administrative leave, and eventually terminating them. Yet no former employee provided a sworn declaration asserting that this actually happened in their case. The failure of any former employee to submit facts sufficient to support their claim is fatal. *SentinelC3, Inc. v. Hunt*, 181 Wn.2d 127, 140-41, 331 P.3d 40 (2014) (To defeat summary judgment, a party must present more than

[3] RCW 49.60.040(7)(c) provides in relevant part:

> For purposes of [the definition of "disability"], "impairment" includes, but is not limited to:
>
> (i) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more [listed] body systems . . .; or
>
> (ii) Any mental, developmental, traumatic, or psychological disorder, including but not limited to cognitive limitation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

ultimate facts and conclusory statements, and the evidence presented must be admissible.). For this reason, to the extent the trial court summarily dismissed the failure to accommodate claims of former employees who *had* pleaded they were exempt from the proclamation, we also affirm the trial court.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Lawrence-Berrey, A.C.J.
Lawrence-Berrey, A.C.J.

WE CONCUR:

Staab, J.
Staab, J.

Cooney, J.
Cooney, J.

Tristen L. Worthen
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

The Court of Appeals of the State of Washington Division III

500 N Cedar ST
Spokane, WA 99201-1905

Fax (509) 456-4288
http://www.courts.wa.gov/courts

March 7, 2024

E-mail
Paul S Kube
Lacy Kane & Kube, P.S.
300 Eastmont Ave
East Wenatchee, WA 98802-4854
paul@lacykane.com

E-mail
Jeffrey Allen James
Sebris Busto James
15375 SE 30th Pl Ste 310
Bellevue, WA 98007-6500
jjames@sbj.law

E-mail
Steven Craig Lacy
Attorney at Law
300 Eastmont Ave
East Wenatchee, WA 98802-4854
steve@lacykane.com

CASE # 396151
Brenda Adams, et al v. Confluence Health
DOUGLAS COUNTY SUPERIOR COURT No. 2220010409

Counsel:

Enclosed please find a copy of the opinion filed by the court today. A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file the motion electronically through the court's e-filing portal or, if in paper format, only the original motion need be filed. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion. The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

Tristen Worthen
Clerk/Administrator

TW/pb
Enc.

c: **E-mail** Hon. Brian Huber