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NO. 89441-8

SUPREME COURT
OF THE STATE OF WASHINGTON

ROBERT LISLE HALE, Personal Representative of the ESTATE OF
LISLE HALE, deceased; CLARA HALE, surviving spouse of LISLE
HALE; ROBERT L. HALE; DONALD HALE; and TRICIA HALE,

Appellants,

v.

BRIDGE BUILDERS, LTD.; MINDI R. BLANCHARD and John Doe
Blanchard; BRENDA CARPENTER and John Doe Carpenter; JANET
WATRAL and John Doe Watral,

Respondents.

RESPONDENT'S ANSWER TO
APPELLANT'S PETITION FOR REVIEW

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 ORIGINAL

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A. STATEMENT OF THE CASE

This case involves claims for declaratory and other relief arising out of the services respondents Bridge Builders, Ltd. and its employees Mindi Blanchard and Brenda Carpenter provided to Lisle and Clara Hale over the course of nine days in June 2008¹. Bridge Builders began assisting Lisle and Clara Hale with their stated wish to move back home to their residence from the assisted living facility where they had recently moved, and ceased providing services once the couple changed their minds and decided not to move back home.

Review is sought by appellants Clara Hale, the estate of Lisle Hale, and Clara and Lisle Hale's three adult children, Robert Hale, Donald Hale, and Tricia Hale. The Hales seek review of the decision of the Court of Appeals upholding the trial court's April 6, 2012 order granting summary judgment in favor of respondents. The trial court held, and the appellate court affirmed, that the Hales lack standing to proceed with their claims for declaratory relief and did not set forth specific facts sufficient to establish the elements necessary to proceed with their remaining claims.

Bridge Builders provided services to Lisle and Clara Hale over the course of nine days, from Thursday, June 5, 2008, through Friday, June

¹ For ease of reference, respondents Bridge Builders, Ltd., Mindi Blanchard, and Brenda Carpenter will be referred to collectively as "Bridge Builders" and appellants will be referred to collectively as "the Hales."

13, 2008. Bridge Builders is a Sequim, Washington business owned by Mindi Blanchard that provides care management and certified professional guardian services in the Sequim and Port Angeles Community. (CP 239.) Brenda Carpenter is an employee of Bridge Builders. *Id.*

Lisle and Clara Hale were a married couple with a home in Sequim who had recently been moved to an assisted living facility, Sherwood Assisted Living. At the time, Lisle Hale was 86-years-old and Clara Hale was 90-years-old. (CP 503 ¶¶ 22-24.) The Hales' three adult children, Robert, Donald and Tricia, believed their parents should reside in the nursing facility due to their health care needs and moved Lisle Hale there in April 2008, and Clara Hale on June 3, 2008. (CP 503 ¶¶ 23-25.) The Hale children did not tell their parents they were moving to the facility ahead of time and anticipated that they would be upset about the move. (CP 123 ¶ 10; CP 124-25 ¶¶ 31,34.) On the day of her move, Clara Hale was told she was going to Sherwood to visit Lisle for lunch. (CP 124-25 ¶¶ 28-34.) The couple was very unhappy about being "put" in assisted living, strongly desired to move back to their home, and expressed that desire to staff at Sherwood. (CP 123 ¶ 9; CP 125 ¶ 40; CP 240 ¶ 3.)

On June 5, 2008, Lisle and Clara Hale met with an attorney, Michael Hastings, to discuss their desire to return home and how it could be accomplished. (CP 125 ¶ 46; CP 240 ¶ 3.) Mr. Hastings recommended

Bridge Builders and Mindi Blanchard to assist the Hales in facilitating the move. (CP 240 ¶ 3.) After being contacted by Mr. Hastings, Ms. Blanchard met with Lisle and Clara Hale later that day at Sherwood. *Id.* They told her they had been tricked into moving to Sherwood, were concerned that their children were accessing their money, and wanted to move back into their home. (CP 240 ¶ 3; CP 243.) Ms. Blanchard met with them for an hour and discussed at length their care needs and plans to move them home. *Id.* She agreed to serve as their attorney-in-fact to help plan and coordinate Lisle and Clara Hale's move back home and the care they would require once there. *Id.*

Ms. Blanchard began making arrangements for their move and subsequent care. On June 9, she met with them again at Sherwood to discuss their planned June 12 move home. (CP 240-241 ¶ 5.) Because Lisle and Clara Hale did not have keys to their home, Ms. Blanchard contacted first Trisha Hale and then Robert Hale to request a key to the house. (CP 241 ¶ 5; CP 243.) Later, she visited Washington Mutual Bank in Sequim to find out about the couple's bank accounts. (CP 241 ¶ 5; CP 244.) Lisle Hale had expressed concern about his children accessing the couple's money and wanted to change their accounts. (CP 240 ¶ 4.) At the bank, Ms. Blanchard learned the accounts had been set up as joint ownership accounts with the Hales' children and made an appointment for

the Hales at the bank the next day. (CP 241 ¶ 5; CP 244.) On June 10, she brought them to the bank for their appointment and the Hales changed their accounts. (CP 241 ¶ 6; CP 244.) Later that day, Ms. Blanchard met with them back at Sherwood for an hour to discuss the upcoming move and helped them pay a few outstanding bills. *Id.*

Lisle Hale had also repeated concerns about his children's access to the couple's living space at the house, and Ms. Blanchard agreed to arrange for a locksmith to come to Hales' home. *Id.* After her meeting with Lisle and Clara Hale, Ms. Blanchard met with a locksmith at their home to have locks installed on the doors accessing their upstairs living quarters. (CP 241 ¶ 6; CP 245.) She notified Michael Hastings, the Sheriff's Department, and the Adult Protective Services' case worker assigned to the Hales' pre-existing case about what was happening with the locks. (CP 241 ¶ 6.)

Lisle Hale gave Ms. Blanchard the names and telephone numbers of private caregivers the Hales had used in the past. (CP 241 ¶ 5, CP 243.) She contacted one of the private caregivers, Kathie Stepp, as well as two in-home care agencies, Rainshadow Home Services, Inc. and KWA Home Care, to coordinate in-home care for the Hales. (CP 243-245.) On June 11, Ms. Blanchard met with the Hales to discuss the next day's move along with Kathie Stepp and the caregivers from KWA who would be

providing the Hales' care. (CP 245.)

On the morning of June 12, the day of the scheduled move, Brenda Carpenter went to visit the Hales as Sherwood. (CP 242.) The Hale's son, Donald Hale, was in their room with them and informed Ms. Carpenter that Lisle and Clara Hale would not be moving back home. *Id.* Ms. Carpenter called Ms. Blanchard with the information and then cancelled the arrangements that had been made for the Hales' move and care. *Id.* At 8:30 p.m., Lisle Hale called Ms. Blanchard and requested the keys to his home and she agreed to deliver them to Sherwood first thing the next morning. *Id.* She delivered the keys at 6:30 a.m. on June 13, 2008, and Bridge Builders provided no further services to the Hales.

The Hales commenced this litigation on April 27, 2009, and filed an amended complaint on May 15, 2009. The Hales sought declaratory judgments that Bridge Builders was an "in-home services agency" subject to licensing pursuant to RCW 70.127.020 and prohibited from serving as attorney-in-fact for either Lisle or Clara Hale pursuant to RCW 70.127.150, as well as damages for violations of the Vulnerable Adult Act, RCW 74.34, and the Washington Consumer Protection Act, RCW 19.86, and damages for malpractice, malicious interference with family relationship, negligent infliction of emotional distress, and intentional infliction of emotional distress.

Prior to commencing this litigation, the Hales also filed a complaint with the Department of Health. (CP 295.) Following an investigation and review of the case, the case was closed “without disciplinary action because no violation was determined.” (CP 295.)

B. SUMMARY OF ARGUMENT

The Hales’ petition does not meet the criteria for granting review. A petition for review will be accepted by the Supreme Court *only if* it meets at least one of the four considerations governing acceptance of review pursuant to RAP 13.4. *See* RAP 13.4(b) (emphasis added). The Hales only assert that one of them is applicable here. They assert, without providing any supporting explanation or argument, that this case presents issues of substantial public interest that should be determined by the Supreme Court. (Appls.’ Pet. 6.) This case does not present an issue of substantial public interest and the Court should decline review.

This case does not present an issue of substantial public interest because: (1) the questions presented are private in nature and fact-specific to the particular circumstances of this case and the relationship between these private parties, (2) an authoritative determination by the Court will not provide future guidance to public officers and is not desirable because the issues involve well-settled law and, with respect to the claims for declaratory relief, the Department of Health, not the Court, is the agency

vested with the authority and discretion to administer RCW 70.127 and determine which entities are subject to licensing, and (3) the issues before the Court are particular to the private dispute between these parties and are not likely to recur.

C. ARGUMENT

“In deciding whether an issue of substantial public interest is involved, the court looks at three criteria: (1) the public or private nature of the question presented, (2) the desirability of an authoritative determination that will provide future guidance to public officers, and (3) the likelihood that the question will recur.” *In re Silva*, 166 Wn.2d 133, 137, 206 P.3d 1240 (2009). Factual issues that relate only to a particular case do not involve matters of substantial public interest. *Snohomish County v. State*, 69 Wn. App. 655, 661, 850 P.2d 546 (1993).

The issues the Hales assign error to and ask the Supreme Court to review are not issues of substantial public interest. The trial court held, and the appellate court affirmed, that the Hales lacked standing to pursue their claims for declaratory relief and were unable to establish necessary elements of their remaining claims. The holdings in this case are fact-specific and limited to the particular circumstances of this case and the private dispute between the parties.

1. The issues presented in this case are private in nature and not of substantial public interest.

While the public has an interest, certainly, in the protection of elderly adults and the licensing of in-home services agencies by the Department of Health, it has little or no interest in the private, brief business relationship between Lisle and Clara Hale and Bridge Builders, which did not involve the provision of in-home services.

The Hales present the following issues for the Court's review: 1) whether the Hales have standing to claim their rights were violated by Bridge Builders, 2) whether there is a disputed question of material fact if Bridge Builders was required to be licensed as an in-home services agency, 3) whether Bridge Builder held powers of attorney on behalf of the Hales in violation of RCW 70.127.150, 4) whether the trial court abused its discretion in denying the Hales discovery regarding Bridge Builders' services to third-parties, and 5) whether the trial court erred in dismissing the Hales claim for professional malpractice. (Appls.' Pet. 2.) As discussed below, each of these issues is private in nature, involving the application of law to the specific, undisputed facts of this case.

a. The Hales' lack of standing to pursue their claims for declaratory relief is not an issue of substantial public interest.

The appellate court affirmed the trial court's holding that the Hales lack standing to pursue their claims for declaratory relief because they do

not fall within the zone of interest the statute protects—the receipt of in-home care by elderly adults. As the Court of Appeals correctly reasoned, “receiving home care services is essential to fall within the zone of interests protected by chapter 70.127 RCW” and “a lack of evidence that Bridge Builders provided home care services to the Hales is determinative.” *Hale v. Bridge Builders, Ltd.*, 176 Wn. App. 1007 (2013).

The holding was based on a fact-specific inquiry—application of the law to the specific, undisputed facts of this case. As the appellate court affirmed, there is no evidence in the record that creates an issue of material fact “on whether Bridge Builders provided home care services to the Hales.” *Id.* The Hales acknowledge in their petition that Lisle and Clara Hale resided in an assisted living facility and received care from its staff during the entire nine-day period they received services from Bridge Builders. (Appls.’ Pet. 12.) “What the evidence shows is that Bridge Builders made arrangements for Lisle and Clara to move back to their house. As the arrangements for the move were being made, Lisle and Clara terminated Bridge Builders’ services and did not move back home.” 176 Wn. App. 1007.

The services Bridge Builders provided to the Hales fall within the case management exception to the licensing requirement. *See* RCW 70.127.040(14). Even if the statute’s zone of interest extended, as the

Hales argue, to those who merely seek rather than receive in-home care, the Hales still lack standing. Lisle and Clara Hale sought and received case management services from Bridge Builders, which coordinated and made arrangements for the Hales to hire third-party caregivers, Kathie Stepp and KWA Home Care, once the Hales had moved back home. The Hales changed their minds and terminated bridge Builders' services before moving home or engaging the services of any in-home care providers.

The Hales assignment of error to the court's holding that they lack standing does not present a legal issue of substantial interest to the public. It is not a question of law the resolution of which would help guide or resolve future cases. The issue is fact-specific involving application of the uncontested law to the unique circumstances of this case. The dispute is private in nature and does not implicate substantial public interest.

b. The question of whether Bridge Builders is required to be licensed is not an issue of substantial public interest.

The Hales next assignment of error involves application of well-settled law to the undisputed facts of this case and does not present an issue of substantial public interest. They contend there is a disputed question of material fact whether Bridge Builders was required to be licensed. Because the Hales lack standing, as discussed above, they do not

reach the substantive issue of whether Bridge Builders is required to be licensed pursuant to RCW 70.127.

The Hales lack standing to pursue their claims for declaratory relief because they did not receive in-home care from Bridge Builders. Their ongoing to efforts to broaden their claims to encompass services provider by Bridge Builders to third-parties do nothing to bring the Hales within the zone of interest of the statute. The doctrine of standing prohibits a party from asserting another's legal right. Because the Hales did not receive in-home care from Bridge Builder's, they lack standing to reach the issue of whether Bridge Builders was required to be licensed based on services it provided to other, third-parties.

As with the issue of standing, the dispute over this issue is private in nature and the particular facts of this case are determinative of the outcome. The court's holding rests on application of settled law to the undisputed facts of this case and the matter does not present an issue of substantial public interest.

c. The validity of the powers of attorney is not an issue of substantial public interest.

Likewise, the validity of the powers of attorney held on behalf of the Hales involves a fact-specific inquiry that is private, rather than public in nature. A licensee is prohibited from holding a power of attorney "on

behalf of any individual who is receiving care from the licensee.” RCW 70.127.150. Lisle and Clara hale did not receive in-home care from Bridge Builders. Accordingly, Bridge Builders was not prohibited from holding a power of attorney on behalf of the Hales.

d. The parties’ discovery dispute does not present an issue of substantial public interest.

The parties’ discovery dispute and the issue of whether the trial court abused its discretion in its ruling on that dispute does not involve matters of substantial public interest. The Hales assign error to the appellate court’s holding that the trial court did not abuse its discretion in denying the Hales’ motion to compel discovery and granting Bridge Builders’ motion for protective order. The Hales sought discovery of records concerning Bridge Builders’ services to clients other than the Hales. As the Court of Appeals noted, the Hales’ claims “turn on whether they themselves received home care services from Bridge Builders” and they “cannot establish standing or the elements of their claims based on services Bridge Builders provided to other clients.” 176 Wn. App. 1007.

The traditional limiting doctrine of standing exists to prohibit a party from asserting another’s legal right. *Grant County Fire Protection Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 803, 83 P.3d 419 (2004). Contrary to the Hales’ assertion, they should not have the

opportunity to prove whether or not Bridge Builders provided in-home care to third-parties since Bridge Builders did not provide in-home care to the Hales.

This issue, too, involves the application of well-settled law to the particular facts of this case. The court's ruling on the parties' discovery dispute relates only to this particular case, is fact-specific, and does not involve substantial public interest.

e. Whether the Hales' malpractice claim was properly dismissed is not an issue of substantial public interest.

The court's dismissal of the Hales' malpractice claim due to their failure to establish elements essential to the claim is not a matter of substantial public interest. The issue of whether the Hales' demonstrated injury turns on the particular facts of this case; it is not a question that is public in nature.

The appellate court affirmed the trial court's dismissal of the Hales' malpractice claim because the Hales failed to show how the alleged breaches proximately caused injury. Their unsupported assertions of injury were insufficient to survive summary judgment. They failed to set forth specific facts demonstrating any injury from the alleged breach in either their pleadings in the trial court or in their appellate briefing. In

their petition for review, the Hales again fail to cite to any specific facts in the record demonstrating injury. (Appls.' Pet. 18-19.)

Once again, this inquiry is fact specific to the private dispute between these parties. The court's ruling relates only to the particular facts of this case, or in this instance failure to set forth specific facts, and is not an issue of substantial public interest.

2. An authoritative determination by the Court will not provide future guidance to public officers.

This is also not a case where an authoritative determination by the Court would provide future guidance to public officers and be desirable. The holdings of the trial court and the appellate court are based on the application of well-settled law to the particular facts of this case. Given the fact-specific nature of the parties' disputes, the court's holdings are based on the specific circumstances of this case and the particular relationships and interactions between these parties. A decision by the Supreme Court would therefore provide little guidance in future cases, which would likewise turn on their specific facts and circumstances.

Further, with respect to the Hales' claims for declaratory relief, the Department of Health, and not the courts, is the agency vested with the authority and discretion to administer RCW 70.127 and determine which entities are subject to licensing. Decisions of the department in its

administrative capacity provide guidance to public officials and in-home care providers regarding the requirements of licensing. The Hales brought this matter before the Department, and it investigated and found no violation. (CP 295.) A decision by this Court “would look very much like an advisory opinion” and provide little guidance where “enforcement of the alleged violations remains in the discretion of the agency, and no party is bound to act in accord with such judgment.” *See Brown v. Vail*, 169 Wn.2d 318, 334, 237 P.3d 263 (2010).

Given the agency’s authority and discretion on licensing under RCW 70.127, the trial court held that the Hales’ claims for declaratory relief do not present a justiciable controversy because a decision by the court would not be final and conclusive. (CP 26.) The Hales did not assign error to the trial court’s ruling on justiciability or brief the issue. They provide no argument or authority challenging that ruling now or stating why it should be reviewed, and for that reason alone, this Court should decline review of those issues.

3. The issues in this case are not likely to recur.

Lastly, as this case involves a private dispute, the likelihood that these particular questions will recur is remote. While other cases involving application and interpretation of RCW 70.127 may arise, they are likely to be as fact specific and tailored to the circumstances of their

case and the relationships among the parties as the instant case. The precise issues before the Court in this case are not likely to recur, are specific to the private dispute between these parties, and do not implicate substantial public interest.

D. CONCLUSION

The Hales have not provided sufficient grounds for this Court to grant review. They assert without providing any supporting argument that this case presents issues of substantial public interest; it does not. It involves very limited and fact specific issues respecting the services provided by Bridge Builders to Lisle and Clara Hale over the course of nine days, which were properly resolved before the trial court and the Court of Appeals. This case does not involve issues of substantial public interest and for the foregoing reasons, the Hales' petition for review should be denied.

RESPECTFULLY SUBMITTED this 20 day of November, 2013.

McDermott Newman, PLLC

By: 

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Of Attorneys for Respondents Bridge
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CERTIFICATE OF SERVICE

I certify that I mailed, or caused to be mailed, a copy of the foregoing RESPONDENT'S ANSWER TO APPELLANT'S PETITION FOR REVIEW postage prepaid, via U.S. mail on the 20th day of November, 2013, to the following counsel of record at the following addresses:

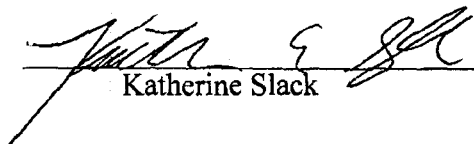
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Attachments: Respondents Bridge Builders' Answer to Petition for Review.pdf

Hello,

Hello,

Please find attached Respondents Bridge Builders' Answer to Petition for Review in the Hale v. Brige Builders case, cause number 09-2-00447-4, Supreme court cause number 89441-8. This document is being filed by Holly Williams whose contact information is as follows:

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