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DIVISION II

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STATE OF WASHINGTON

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COURT OF APPEALS
THE STATE OF WASHINGTON
DIVISION II

TANYA AND TOMMY RIDER, APPELLANTS

v.

KING COUNTY, RESPONDENT

OPENING BRIEF OF APPELLANT

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ORIGINAL

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I. Introduction.

Appellant Tanya Rider went missing on Thursday September 20, 2007 after she left her job at Fred Meyer in Bellevue Washington. Everyone later learned that Mrs. Rider had been in a automobile accident off of State Highway 169 between Renton and Maple Valley Washington. Mrs. Rider's vehicle had plummeted into a drainage area located adjacent to State Highway 169. Mrs. Rider spent 6 days trapped in her vehicle waiting for someone to find and rescue her. Miraculously, she survived the ordeal, but due to the delay in her rescue, Mrs. Rider sustained severe and permanent injuries.

A complaint was filed in September of 2010 by Appellants' asserting that Respondent had assumed a duty to look for and/or find Mrs. Rider under the special relationship or rescue exceptions to the public duty doctrine and thereafter had breached that duty causing Mrs. Rider to incur permanent injuries .

In early March of 2012, Respondent moved to dismiss Appellants' complaint on the basis that no duty had been assumed by

Respondent's representative's actions. On March 30, 2012 the Trial Court granted Respondent's Motion to Dismiss the action. This appeal ensued.

II. ASSIGNMENTS OF ERROR

1. The Trial Court erred in dismissing Appellants' claims on March 30, 2012 on Respondent's Motion for Summary Judgment of Dismissal.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether or not a special relationship was created between Appellants' and Respondent due to Respondent's Representative's assuring Appellant Tom Rider that Respondent's Representatives would actively look for and/or find Appellant Tanya Rider.

2. Whether or not Respondent's representatives gratuitously assumed the responsibility to look for and/or find Appellant Tanya Rider.

IV. STATEMENT OF THE CASE

A. The Accident. On Thursday September 20, 2007 Tanya Rider went missing after she left her job at Fred Meyer in Bellevue Washington. Everyone later learned that Mrs. Rider had been in an

automobile accident off of State Highway 169 between Renton and Maple Valley Washington at or near milepost #19. Mrs. Rider's car left the roadway and was in an adjacent drainage area.

B. The Investigation. Appellant Tommy Rider learned that his wife was missing on Saturday September 22nd 2007 when he was called by a Fred Meyer employee [Tanya Rider's Employer] and was told that Tanya had not shown up for her scheduled shift. CP 297. After Mr. Rider received the call from Fred Meyer, he called 911 and reported that Tanya was missing. CP 297.

Thereafter, Mr. Rider made a number of calls to several 911 operators over the succeeding twenty four hour period between the morning of Saturday September 22nd 2007 and the morning of Sunday September 23, 2007. CP 178-238. A review of these transcripts/calls indicates that Mr. Rider first reported that his wife Tanya was missing at 7:44 am on Saturday September 22, 2007. CP 179. Between his first call and the seventh call which occurred at 11:11 am on Sunday September 23, 2007,(See CP 222) Mr. Rider was asked by 911 operators to do a number of things (check area jails and hospitals; contact relatives, check accounts; check to see if

the car had a locator on it etc.) and report back to King County before an operator would take in his report that Tanya Rider was missing and KCSD representatives would start looking for Tanya Rider.CP 297.

In addition to gathering the information requested by the 911 operators, Mr. Rider checked Appellants' joint bank accounts and account information to see if there had been any activity. CP 298. He travelled repeatedly the route he believed Mrs. Rider took to and from her work.CP 298. Mr. Rider also went to see if Mrs. Rider was at the their property in Shelton Washington, a parcel they had purchased to build a home on.CP 298.

Finally, on Sunday morning September 23, 2007, a King County 911 representative accepted Mr. Rider's report and listed Appellant Tanya Rider as a missing person. CP 210. The 911 operator told Mr. Rider that he [the operator] was taking the report and would list Tanya on the missing person's national site.CP 210. The operator also said that he would send an officer out to take a report directly from Mr. Rider. CP 224-225. Following the foregoing conversation, Mr. Rider felt a great deal of relief because

someone was finally listening and he finally had someone who was willing to take the lead in locating his wife. CP 298.

Later on Sunday September 23, 2007, an officer came to the Rider's house to take a report from Mr. Rider. CP 298. Mr. Rider gave the officer as much information as he could on his wife and let the officer search his house. CP 298. Mr. Rider asked the officer if there was any way to locate his wife by her cell phone. CP 298-299. The officer said there was, but that would be a call for a detective. CP 299. The officer said a detective would contact him the following day—Monday. September 24th 2007. CP 299.

On the morning of Monday September 24, 2007 Mr. Rider spoke with Janet Rhodes, Defendant King County Sheriff's Departments ("KCSA") lead investigator for missing persons. CP 299. Mr. Rider and Ms. Rhodes went over much the same information as Mr. Rider had provided to the officer the day before and to the 911 operator. CP 299. Mr. Rider told Ms. Rhodes that the only credit card that Mrs. Rider had with her was her Nordstrom Visa and that was the only account for which he did not have access. CP 299. Ms. Rhodes told Mr. Rider at that time that if something

had gone wrong with Mrs. Rider, the King County Sheriff's Department would locate her. CP 299.

Over the next four days Mr. Rider spoke with Ms. Rhodes daily to check on how the search was going. CP 299. At the same time, Mr. Rider returned to work and stopped checking their bank accounts. CP 299. Mr. Rider believed that Respondent's investigator had his wife's search well in hand and that she/KCSD would locate his wife.

On Tuesday September 25, 2007, Mr. Rider again spoke with Ms. Rhodes. CP 299. Ms. Rhodes said that there had been activity on one of the accounts, and Mr. Rider was initially relieved because he thought his wife was alive .CP 299. However, he quickly noted that Ms. Rhodes had said "accounts" and called her back a short time later and asked Ms. Rhodes which account she discovered activity on only to learn that it was the USAA account, the account he[Mr. Rider] told her previously that he had access. CP 300.

The following day[Wednesday September 26, 2007], Ms. Rhodes followed-up with Mr. Rider about the accounts and potential transactions as though she was still apparently confused about the

accounts. CP 300. Ms. Rhodes indicated to Mr. Rider that she had received an email from USAA indicating that he [Mr. Rider] was not on that account – Mr. Rider advised her that was not accurate. Mr. Rider later spoke with a man named “Paul” at USAA and “Paul” confirmed that that USAA did not send any such email and would not provide that information over the telephone without a release. CP 300.

On Thursday, September 27, 2007, Appellant Tom Rider was requested by Respondent’s representative to come to the King County Sheriff’s facility in Kent to have a polygraph taken. In short, Respondent’s representatives wanted to “clear him” as a suspect in his own wife’s disappearance. CP 300-301. Shortly before the test started, Appellant Tom Rider was advised that Respondent’s representatives had found his wife in a ravine adjacent to the roadway, but that she was still alive. CP 301.

Appellant Tom Rider later learned that Mrs. Rider had been found through information Respondent had obtained earlier in the day from Verizon, Appellants’ cell phone provider. CP 301-302. He was shocked to learn that Respondent’s representatives had not

requested the pertinent cell records until earlier that morning (ie. September 27th) and located Appellant Tanya Rider less than 90 minutes after receiving the records. CP 301.

There was no factual dispute before the Trial Court in the underlying motion, Respondent did not request the cell records until the morning of the 27th of September and located Mrs. Rider literally less than two hours later. CP 239-240. In fact, Mr. Rider was not even asked to sign a release for these records until that time. CP 241-242. Respondent representative Rhodes claimed there had been confusion in the information provided, which is why she purportedly did not request the cell phone records earlier.(CP 124) However, the evidence before the Trial court on summary judgment clearly indicated that no “new” information or confusion existed or should have existed. Appellant Tom Rider provided all of the critical information to 911 operators from the outset (CP 205; CP 216) 5 days earlier; the credit card information was listed on the initial intake report (CP 244); and provided by Mr. Rider directly to the County’s lead investigator 3 days earlier. CP 299.

Notably, Respondent's detectives contacted Verizon cellular via Fax on Thursday, September 27, 2007 at 10:30 a.m. based upon a representation that exigent circumstances existed – there was no warrant issued or that was required to be issued to obtain the records in question. CP 240. In response, Verizon provided a number of pieces of information including that Mrs. Rider's last incoming phone call was on September 24, 2007 at 2248 hours and the call used the south side of the tower located at 15734 203 Ave SE and could have come from a 3-5 mile radius. CP 292. At 12:45 that same day, a complete version of the Verizon phone records was faxed to the KCSD major crimes unit. The records showed that Tanya's cell phone had been using a tower located at 15734 203 Ave. SE from the 20th until it powered off on the 24th. CP 292. Appellant Tanya Rider was located approximately 90 minutes later with the cell information at approximately 2:14 PM, trapped inside her vehicle. CP 147

C. Summary Judgment. In March of 2012, Respondent filed its motion for summary judgment of dismissal. On March 30th 2012 the Trial Court granted Respondent's Motion and dismissed

Appellants' claims with Prejudice. On April 25th Appellants filed their Notice of Appeal.

IV. ARGUMENT

A. Standard of Review. The Trial Court dismissed Appellants' claims in the context of a motion for summary judgment. This Court reviews the dismissal of a parties' claim on a summary judgment motion de novo. Sheikh v. Choe, 156 Wash.2d 441, 447, 128 P.3d 574 (2006). Respondent is not entitled to the dismissal of Appellants' claims unless there is no genuine issue of material fact and it is entitled to dismissal as a matter of law. CR 56; Wilson v. Steinbach, 98 Wn.2d 434, 656 P.2d 1030(1982). A material fact is a fact upon which the outcome of litigation depends. Hill v. Cox, 110 Wn.App. 394, 402, 41 P.3d 495 (2002). In the context of a summary judgment motion, the non-moving party is entitled to have all facts, and the reasonable inferences to be drawn therefrom, viewed in a light most favorable to the them. Wilson, at p.437.

B. Appellants were owed a duty of reasonable care in Respondent's efforts to locate Appellant Tanya Rider under the

Special Relationship or Rescue exceptions to the Public Duty

Doctrine. Respondent's motion before the Trial Court asserted that Respondent owed Appellants' no duty to look for Appellant Tanya Rider. Consequently, Respondent's argued any claimed breach was not relevant because no duty existed in the first place. CP 15. Appellants' claims were advanced under two of the four exceptions to the public duty doctrine: (1) a special relationship had been formed; and (2) the rescue doctrine.

1. A duty was owed by Respondent to Appellant under the special relationship exception to the public duty doctrine. The public duty doctrine is used as a framework for Court's to determine when a governmental entity owes either a statutory or common law duty to a plaintiff who has filed suit alleging negligence. Cummins v. Lewis County, 156 Wn.2d 844,853, 133 P.3d 459 (2006).

Generally speaking to be actionable, "the duty must be one owed to the injured plaintiff, and not owed to the public in general."

Cummins, at p.852 – citing Taylor v. Stevens County, 111 Wn. 2d 159, 759 P.2d 447 (1998). There are four exceptions to the public duty doctrine which recognizes a governmental entities exposure to a

third party – and if an exception applies then the government will be held as a matter of law to owe a duty of reasonable care to the individual plaintiff or to a limited class of plaintiffs. Cummins, at p. 853.

The four exceptions to the public duty doctrine are (1) legislative intent, (2) failure to enforce, (3) rescue doctrine, and (4) a special relationship. Babcock v. Mason County Fire District, 144 Wn.2d 774, 786, 30 P.3d 1261 (2001). A government duty based upon a special relationship requires (1) contact or privity between the government and the plaintiff that sets the plaintiff apart from the general public; (2) express assurances given by the government representative to the plaintiff; and (3) justifiable reliance on the part of the plaintiff. Babcock, at p. 786. Respondent did not contest for the purposes of the underlying motion the contact/privity requirement. CP 27. Rather, Respondent argued that neither the second or third element of the special relationship exception were present.

(a) Defendant King County Representatives made express assurances to Appellant Tom Rider. As Respondent had to

concede for the purpose of its motion, Respondent's lead investigator, Janet Rhode's, told Mr. Rider that "if something had gone wrong, they [Respondent] would locate Tanya Rider and find out what happened". CP 29. Despite this statement, Respondent argued that no assurance had been given that (1) Respondent would locate Mrs. Rider or (2) that Respondent would even look for Mrs. Rider.

Notably, Appellants' are entitled to have this statement, and all reasonable inferences drawn from this statement, viewed in a light most favorable to them. Wilson v. Steinbach, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). Clearly, by virtue of Respondent's representative's actions they assumed a special relationship by agreeing Respondent would search for Mrs. Rider and "would find her if something had gone wrong". After forming this relationship, Respondent's representatives were required to act within the applicable standard of care. Cummins v. Lewis County, 156 Wn.2d 844, 853, 133 P.3d 459 (2006)

Respondent relied upon Cummins v. Lewis County, 156 Wn.2d 844, 133 P.3d 459 (2006) and Babcock v. Mason County,

144 Wn.2d 774, 30 P.3d 1261(2001) as support for its position that no assurances were given. However, both Cummins and Babcock are clearly distinguishable from the case at bar. In Cummins the Court relied upon the following:

Mr. Cummins must have sought an express assurance of assistance, and the government must have unequivocally given that assurance Babcock, 144 Wn.2d at 789.Mrs. Cummins does not contend that the 911 operator unequivocally gave Mr. Cummins an express promise of medical assistance would be dispatched. (Cummins, at p. 855)

In this case, Respondent's representatives assured Mr. Rider that they would look for Mrs. Rider. In fact, Respondent's own investigator testified that this was exactly what she was doing. CP 286. Cummins did not require Respondent to advise Mr. Rider of exactly what steps will be taken – the assurance made was that they would look for and/or find Mrs. Rider – and that is the special relationship and duty that Respondent assumed.

In Babcock the Court found that “*a single statement by a single unidentified fire fighter does not constitute an express assurance which can bind the Fire District*”. Babcock, at p. 789. In Babcock, homeowners returned to their home to find an adjacent

house in flames with fireman working to put the fire out. The Babcock's wanted to move a trailer to safety but were advised not too and told that "the firefighters would take care of their property". When their property was destroyed they sued the County for negligence – and relied on the above statement. The Babcock Court found that the Babcock's had not sought any express assurances from the firefighters, and therefore no special relationship existed. Babcock at p. 791.

In the case at bar, Respondent's representative's actions must be analyzed in context. First, Appellant Tom Rider had spoken with 911 operators on 7 different occasions over a 27 hour period of time, each time gathering additional information as requested by Respondent's own representatives. Second, once the report was accepted by Respondent's 911 operator and (approved by his supervisor), one of Respondent's officers was dispatched to take a further report from Mr. Rider. Third, the following day Mr. Rider was contacted by Respondent's lead investigator and advised that she was the primary representative of King County responsible for searching and locating missing persons.

In this context, Ms. Rhodes repeatedly represented to Mr. Rider that she was actively looking for his wife implying if not stating that she would use all reasonable means to find Mrs. Rider and he believed her. Under Babcock and Cummins, at the point that Respondent assumed this duty, Respondent also assumed an obligation to use reasonable care in its investigation. Cummins v. Lewis County, 156 Wn.2d 844,853, 133 P.3d 459 (2006)

In the context of the forgoing, Appellants' expert opined that Respondent's representatives failed to act within the applicable standard of care and therefore were responsible for Mrs. Rider not being found until four days later. CP 303,311-312. The Respondent did not offer any support with respect to the alleged breach as documented by Appellants' expert.

(b) Mr. Rider relied upon King County to reasonably investigate and search for his wife, Tanya Rider. Respondent also contended below in its motion that Appellants' did not rely on Respondents' representative's and therefore no special relationship existed. CP 31-34. However, the undisputed evidence before the Trial Court clearly indicated that Mr. Rider did in fact rely upon Ms.

Rhodes and several other of Respondents' representatives to investigate and locate his wife. For example, after literally spending 27 straight hours running around looking for Mrs. Rider between Saturday September 22nd and the morning of Sunday September 23rd, checking area hospitals, jails and looking at account information, once Respondent accepted the responsibility of looking for Mrs. Rider and Appellant Tom Rider stopped and returned to work. CP 298-299.

Thereafter, Mr. Rider spoke to Defendant's investigator Rhodes daily – to check on how things were going. CP 299. The only reasonable inference that can be drawn from Mr. Rider's actions and conduct was that he was relying upon Respondent to investigate and locate his wife.

Moreover, whether a person's reliance on another was reasonable is generally a question of fact for the jury. Babcock v. Mason County Fire District., 144 Wn.2d 774,792, 30 P.3d 1261 (2001); see also Beal v. City of Seattle, 134 Wn.2d 769, 786, 954 P.2d 237 (1998). The undisputed evidence before the Trial Court was that Mr. Rider stopped spending every waking moment

searching for his wife and gathering information after Respondent's personnel took his report. Further, reliance was clearly demonstrated unequivocally by his subsequent daily contact with Respondent's investigator Rhodes to ascertain the present status of her investigation. It is not conceivable, based upon the applicable standard, that Mr. Rider was not relying upon Respondent's representative's actions.

Simply put, Respondent expressly assured Tom Rider that they would not only look for but would find his wife Tanya, which created the duty in question – there can be little doubt under the circumstances at issue.

2. Respondent owed Appellants' a duty to exercise reasonable care in locating Mrs. Rider under the Rescue Exception to the Public Duty Doctrine. A second recognized exception to the public duty doctrine is the rescue exception. Under the Rescue Exception, a cause of action for negligence lies against Respondent if (1) Respondent's representative(s) offered to come to the aid of Appellants; (2) Appellants' relied on the aid provided; and (3) Respondent's representatives failed to exercise reasonable care in

coming to Appellants' aid. Chambers-Castanes v. King County, 100 Wn.2d 275, 285 fn3; 669 P.2d 451 (1983); Johnson v. State, 164 Wn.App. 740, 265 P.3d 199 (2011).

In this case, if Respondent did not assume the special duty based upon its representatives express assurances and subsequent performance, then the duty was gratuitously assumed. The facts are undisputed that Respondents' representatives including but not limited to its investigator came to the aid of Tom Rider to locate his wife, Appellant Tanya Rider.

Respondents' investigator testified that she was actively investigating and searching for Mrs. Rider from September 24th 2007 until she was ultimately found on the 27th. As indicated above, there is little question that Mr. Rider was relying on Ms. Rhodes as reflected in the daily calls to her. Respondent asserts that the rescue exception to the public duty doctrine does not apply because the Respondent's representatives never "gratuitously" agreed to come to Appellants' aid in locating Mrs. Rider. CP 35. Respondent's position appears to be as follows:

- i. The KCSD is not required to search for missing persons.
- ii. The KCSD did not create a special relationship with Appellants' that led to it searching for Appellant Tanya Rider; and
- iii. Respondent never gratuitously agreed to search for Mrs. Rider.

If all of the above assertions were correct - the obvious question is – why were Respondent's investigators looking for Mrs. Rider then ? Simply put, Respondent cannot have it both ways, and clearly they at a minimum gratuitously agreed to search for Tanya Rider.

Respondent cited Babcock v. Mason County Fire District No. 6, 101 Wn.App. 677, 5 P.3d 750 (2000), affirmed at 144 Wn.2d 774, 30 P.3d 1261 (2001) in support of its position that the rescue doctrine does not apply in this action. However, the Babcock decision is clearly distinguishable from the case at bar. In Babcock, the Court did not apply the rescue exception because it found that the Defendant County Fire Department had a “duty to protect the property of all citizens” and therefore the aid offered in

that case was not gratuitous. Babcock, at p.686. In this case, Respondent has acknowledged that they have no independent duty to search for a person claimed to be missing.

Respondent also cited Johnson v. State of Washington, 164 Wn.App. 740 (2011). In Johnson, the Court was asked to determine if the State had gratuitously taken on a duty to come to the aid of a person whom had been reported missing and was being followed by a good Samaritan driver. In Johnson, the State argued that no offer to render aid had been made to the good Samaritan driver. Johnson at p. 751. Rather, the third party driver was told that the State Patrol had been called and thereafter stopped following the missing person. The Johnson Court found that this action was not a gratuitous offer to aid a particular person. Johnson, at p. 751.

Johnson is also clearly distinguishable from the case at bar. Tom Rider had 7 different phone conversations with 911 operators wherein he was asked to obtain information before the County would look for Mrs. Rider. Ultimately, Respondent's representatives advised Mr. Rider that they would look for and find his wife, and as indicated above, he clearly relied upon this representation.

Thereafter, Mr. Rider communicated daily with Respondent's investigator over a 4 day period.

There can also be no question that Appellants were segregated out from the general public. Respondent's representatives were contacting employers, banks and other parties to attempt to locate Mrs. Rider. No such actions were taken by anyone in the Johnson case, the only action taken in that case was for the 911 operator to transfer the call. Consequently, Respondent's representatives in this case most certainly assumed a duty to find Tanya Rider and as such were required to act reasonably in their search to locate Mrs. Rider and they didn't do so.

Notably, the gratuitous assumption of the duty under the rescue doctrine can be express or implied based upon the relationship at issue. Chambers-Castanes v. King County, 100 Wn.2d 275, 286; 669 P.2d 451 (1983); Brown v. MacPherson's, 86 Wn.2d 293, 545 P.2d 13 (1975). There can be little question that a special relationship existed or that the Respondent gratuitously assumed the duty to look for and/or locate Mrs. Rider. Either way,

significant issues of fact exists that require that Appellants claims proceed to trial.

C. Issues of Fact were before the Trial Court that cannot be resolved on Summary Judgment. Respondent argued in its motion that the matter before the trial Court was purely legal – and that whether a duty existed was purely a question of law.

Appellants' agree that the facts were not in dispute, but believe the facts mandate the existence of a duty as a matter of law. At a minimum, whether or not the Respondent's representative's actions constituted assurances should be a question of fact to be resolved by the trier of fact.

Respondent contended in its motion that no assurances had been made to Appellants' that they would find Mrs. Rider nor that they would even look for her. However, the undisputed evidence before the Trial Court was that Respondent's representatives had made express assurances on both fronts and in fact, Respondent's representative's own actions support the fact that Respondent had assumed a duty and a special relationship with Appellants.

1. Respondent's Contention that they never assured Mr. Rider that they would find Tanya Rider was not supported by the record. Respondent argued in its motion that Respondent's representatives never assured Mr. Rider that the County would find Mrs. Rider.(CP 28) Therefore, Respondent concluded that no express assurance had been made to Mr. Rider. However, the undisputed evidence before the Trial court was that Respondent's representative Rhode's did tell Mr. Rider that "if something happened to Mrs. Rider they would find her". CP 299. Under the applicable standard on summary judgment, Appellants' were entitled to have this statement and all reasonable inferences to be drawn therefrom viewed in a light most favorable to them. Wilson v. Steinbach, 98 Wn.2d 434,437, 656 P.2d 1030 (1982).

2. Respondent's Contention that the County never represented it would look for Mrs. Rider is also not supported by the record. Respondent also contended in its underlying motion that no assurances were provided to Mr. Rider that Respondent's detectives would even look for Mrs. Rider. CP 28. Notably, Respondent's representatives were calling Appellant Tom Rider

daily with updates on the investigation. It's disingenuous at best to suggest that Respondent never represented it was looking for Mrs. Rider.

Further, a short review of the 911 call records reflects that in several instances 911 operators advised Mr. Rider that they needed additional information before they could characterize Mrs. Rider as a missing person and start searching for her. CP 194,195,197 and 198. In each instance, Mr. Rider obtained the additional information and passed it along to the 911 operators. As indicated above, finally the report was taken and Mr. Rider was "assured" by both the words and actions of Respondent's representatives that they were actively looking for his wife.

The undisputed evidence before the Trial Court was clear through the Respondent's own admissions – Respondent's representatives were actively trying to find Mrs. Rider. Lead investigator Ms. Rhodes admitted in her testimony that she was actively investigating and searching for Mrs. Rider from September 24th until Mrs. Rider was ultimately found on September 27th 2007. (CP 270, 278, 286.)

3. Appellant Tom Rider clearly relied upon Respondent to investigate and locate his wife Appellant Tanya Rider.

Respondent also contended below that there was no reliance on Appellant Tom Rider's part. However, the undisputed and overwhelming evidence before the Court includes:

(a) In the twenty four hour period that followed Mr. Rider's discovery that his wife was missing he spoke with 911 operators no less than 7 times; made multiple trips to and from Tanya's work; drove to their property in Shelton; checked account activity and never stopped looking for his wife. CP 296-302.

(b) After Respondent agreed to search and locate his wife, Appellant Tom Rider returned to work. CP 299.

(c) Between Monday September 24, 2007 and the time Mrs. Rider was found on Thursday September 27th 2007 Appellant Tom Rider called Respondent's representatives daily for updates. CP 299; (See also CP 133-145)

D. The only evidence before the Trial Court was that Respondent's Representative's breached the duty owed.

Although the Respondent's motion focuses on whether a duty exists, Appellants' also offered testimony with respect to the breach of the duty. Appellants' Police Practices expert D.P. Van Blaricom has over fifty-five years of active employment law enforcement experience including twenty-nine years of continuous police service, during which he was the Chief of Police of Bellevue, Washington for the last eleven of those years. Mr. Van Blaricom opined that the actions of the Respondent representatives were in direct breach of the standard of care in not following-up with Mr. Rider on the account information and failing to obtain the cell phone records sooner. CP 303-319.

Further, the information that Respondent's representative Rhodes believed created the exigent circumstances on Wednesday September 27, 2007 [which in her mind justified the request for the Verizon cell records] was that Mrs. Rider had not used any of her credit cards or accounts. CP 282. Respondent's representative acknowledges this same fact in her incident report when she first looked at this file three days earlier. CP 270. The incident report clearly states:

..... The victim has only one credit card with her, a Nordstrom Visa, which is in her name only. The RP [Tom Rider], the victim's husband, has been unable to see if there has been any activity on it. All of victims other cards and checks are at the house, including her debit card. (CP 244)

Respondent's representative was aware as of Monday morning September 24th at 10:35 am that there had been no activity on Tanya Rider's Nordstrom's visa since Thursday September 20th 2007 at 10:00 am. CP 135. In short, Respondent's representative was aware at that time (or should have been aware) that the only card Appellant Tanya Rider had in her possession at the time of her disappearance had not been used or accessed since the date of her disappearance. Had Respondent's representative made the request at that time, Tanya Rider would have been located and rescued more than three days earlier.

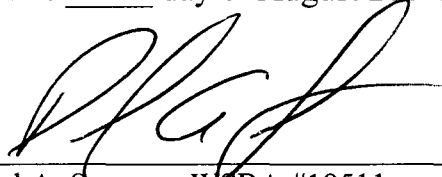
Notably, Respondent's representative also testified that she had routinely used cell phone records for missing persons prior to the Rider case. CP 272-273. Despite her prior experience, between Monday September 24th and Thursday September 27th 2007 Respondent's representative made one telephone call to Verizon

[Appellant Tanya Rider's cell phone carrier] and did not even wait to speak to a representative. CP 287.

IV. CONCLUSION

The Trial Court erred when it dismissed Appellants' claims. Appellants have viable claims under the Special Relationship exception to the public duty doctrine and under the Rescue exception. Accordingly, the Trial Court's decision should be reversed and Appellants' claims should be remanded for trial.

Respectfully submitted this 20th day of August 2012.



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DIVISION II

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STATE OF WASHINGTON

BY
DEPUTY

**COURT OF APPEALS
THE STATE OF WASHINGTON
DIVISION II**

TANYA and TOMMY RIDER,
wife and husband and the marital
community composed thereof,

Appellants.

vs.

KING COUNTY, in its capacity
as the KING COUNTY
SHERIFF'S DEPARTMENT,

Respondent.

NO. 43363-0-II

DECLARATION OF SERVICE
APPELLANTS' OPENING BRIEF

DECLARATION OF SERVICE

On this 20th day of August 2012, I caused to be e-filed with the
Washington State Court of Appeals, Division II and emailed and
forwarded via mail postage prepaid to opposing counsel a copy of
Appellants' Opening Brief to the following parties at the following
addresses:

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A handwritten signature in black ink, appearing to read "Cheryl Cook", written over a horizontal line.

Cheryl Cook, Legal Assistant
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