NO. 90220-8

SUPREME COURT
OF THE STATE OF WASHINGTON

NO. 69332-8-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

ELIZABETH AND JASON BROOKS,

Petitioners,

v.

BPM SENIOR LIVING COMPANY,

Respondent.

APPEAL FROM THE SUPERIOR COURT
FOR KING COUNTY

PETITION FOR REVIEW PETITIONERS' RESPONSE (Reply)

King County Superior Court Case No. 10-2-41987-0 SEA

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I. Contested Findings of Fact.

In its Answer the respondent states that the appellants are not contesting any Findings of Fact made by the trial court. That is incorrect and misrepresents the appellants' Petition for Review.[1] Respondent attempts to persuade this court to reject this Petition by attempting to portray it as based upon falsehoods. However, the record supports Ms. Brooks. No doubt the respondents are emboldened by the fact that both the trial court and the appellate court ignored significant testimony.

II. Family Leave Under Washington Law

In order to address an evolving workforce, the legislature drafted a series of statutes which became effective in 2006 aimed at family leave and declared that such leave, including maternity leave, is in the public interest:

> The legislature finds that the demands of the workplace and of families need to be balanced to promote family stability and economic security. Workplace leave policies are desirable to accommodate changes in the workforce such as rising numbers of dual-career couples, working single parents, and an aging population. In addition, given the

[1] Throughout its' Answer, respondent repeatedly refers to appellants' "misrepresentation of the record" without actually articulating a single example of appellants doing so. Respondent repeats this statement as if that will make it true, while failing to compare the record to statements in appellants' Petition. Respondent also fails to cite a single misrepresentation with supporting facts or documentation. This Petition is based upon the fact that both the trial court and the appellate court ignored critical testimony and thus misapplied questions of law and mixed questions of law and fact. In addition the Opinion necessitates an interpretation of RCW 49 78.300(1) which takes into account Legislative intent.

> mobility of American society, many people no longer have available community or family support networks and therefore need additional flexibility in the workplace. The legislature declares it to be in the public interest to provide reasonable leave for.... the birth ....of a child.

RCW 49.78.010.

As part of this Chapter, the legislature specifically made it a violation for an employer to oppose the exercise of family leave including maternity leave:

> RCW 49.78.300. Prohibited acts.
>
> (1) It is unlawful for any employer to:
> (a) Interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this chapter; or
> (b) Discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this chapter.

The appellate opinion fails to address the legislative intent of the statute and focuses on the meaning of the term "interference". In so doing Division I enunciated an extremely narrow interpretation of RCW 49.78.300. The Opinion relies on federal labor regulations to interpret the term "interference". (Op 25) This court should not allow federal labor regulations to coopt the intent of the legislature in drafting RCW 49.78.300. The Division I opinion concludes that "interference" is "refusing to authorize leave...discouraging an employee from using leave." (Op 25) Since Elizabeth Brooks used leave, the opinion reasons,

there was no interference. This circular argument provides no insight into what constitutes "interference".

Turning to Webster's, it defines the term "interference" as "to interpose in a way that hinders or impedes: come into collision or be in opposition." *Merriam-Webster.com*. Merriam-Webster, n.d. Web. 10 June 2014. http://www.merriam-webster.com/dictionary/interfere. Pressuring an employee to resign and telling the employee her job is in danger "hinders or impedes" using maternity leave.

Based on the facts of this case and the only appellate opinion that addresses RCW 49.78.300(1), an employer is free to threaten to replace the employee and pressure her to resign during maternity leave then tell the employee she is fired her first day back on the job. This ignores the chilling effect of these actions as they reverberate through the workplace. Other employees will decline to access their full right to maternity leave.

Washington has a history of progressive rights for its citizens and this Court has repeatedly demonstrated that it will interpret statutory language independent of federal interpretations.[2] Therefore, it is

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[2] The very recent case of *Kumar v. Gate Gourmet, Inc.*, 122 Fair Empl.Prac.Cas. (BNA) 1721, 325 P.3d 193 (May 2014) emphasized that this court has never relied upon federal interpretations to clarify Washington statutes and it will continue to exercise its intellectual independence: *Kumar* begins with a statement underscoring that concept: "Federal cases interpreting the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA), and Title VII of the Civil Rights Act of 1964 are not binding on the

appropriate for this Court to take review in this matter. This narrow analysis of what actually "interferes" with an employee's legal right to maternity has the potential to impact a significant number of citizens.

Having a baby is not an obscure event. The majority of families in this state will be faced with the issue of maternity leave. Therefore, this interpretation, wrongly based upon federal labor regulations, will have a far reaching affect. This Court has an opportunity to analyze this statute in the context of the legislative intent that should be applied to RCW 49.78 .300. When analyzed in the context of the intent of Chapter 49.78 the narrow interpretation in the Opinion is in derogation of that intent. The statute was drafted in the public interest and this Court should clarify the meaning of RCW 49.78.300 in the appropriate context and prevent further application of the Opinion's interpretation of the statutory language.

III. Division I and The Trial Court Failed to Analyze The Pressure the Employer Put On Elizabeth Brooks To Resign Within The Context of RCW 49.78.300.

The trial judge and the appellate court both acknowledge that the employer consistently pressured Elizabeth Brooks to resign throughout her maternity leave. However, neither analyzed that pressure in the context of the prohibition against discouraging employees from taking maternity

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Supreme Court of Washington in its interpretation of the Washington Law Against Discrimination (WLAD), and that court is free to adopt those theories and rationales which best further the purposes and mandates of the state statute.

leave. Access to such leave is significant, providing the parent and infant time to bond. This is a critical time of attachment for the newborn and it gives a mother who has given birth time to recover from the physical stresses of pregnancy and childbirth. Our legislature found such leave important enough to declare it a matter of public interest.

A. The Trial Court And Division I Both Ignored Substantial Evidence That Parfitt's Constant Pressure On Elizabeth Brooks During Her Maternity Leave to Resign Rose To the Level of Harassment.

The trial court conceded that "...while on maternity leave [Ms. Brooks] had a number of phone conversations with Parfitt from which she reasonably concluded that her job was in jeopardy." (CP 73, Op 17) The trial judge contradicted these facts by depicting Ms. Brooks' return to work as "cheerful" and voluntary. [Op 25, 26 Ex. 117][3] This constant pressure from Parfitt to resign impacted Elizabeth's time with her new baby. [RP (6/14/12) P 19-21; (6/14/12 P 36] Parfitt's continual intrusions into Elizabeth's maternity leave and threats to her job left Elizabeth distraught. [RP (6/13/12) P 124; RP (6/14/12) P 19-21] In phone calls with Elizabeth, Parfitt repeatedly told her that the company was looking to replace her. Witness Lynley Callaway testified that she was in Elizabeth's

[3] The email cited in the appellate opinion was written after Elizabeth Brooks returned to work part time in response to threats to her job. [Op 25-26] (CP 37; Op 17)

home office in 2009 and overheard a conversation she was having with Parfitt via speakerphone. [RP (6/14/12) P 124-125]). "By the end she was extremely emotional, crying, which I have never seen Elizabeth cry before." [RP (6/14/12) P107-108]

Elizabeth's mother-in-law testified about Parfitt's intrusive behavior which caused "turmoil" right after the baby's birth. [RP (6/13/12) P 84 -85] Maggi Broggel, saw Elizabeth Brooks "2-3 times a week" in the first months after the baby was born. [RP (6/13/12) P 156]. She described Elizabeth as "...consistently –and I have to say almost immediately after Grace's birth—consistently concerned with and preoccupied with keeping her job." [RP (6/13/12) P 158 -159] And, finally, there was the December 10, 2009 luncheon. The Opinion fails to address whether pressuring an employee to resign during her maternity leave constitutes interference.[4]

Failing to analyze such conduct in the context of the legislative intent of RCW 49.78.300 involves an issue of substantial public interest that should be determined by this Court. Both the trial court and Division I concede that Parfitt pressured Elizabeth Brooks during maternity leave

[4] In fact, the trial court concluded that Parfitt's actions were not hostile or abusive because his communications "have a respectful and often friendly and concerned tone." There is no legal basis to justify harassing behavior based upon the employer's pleasant tone in communications with the employee while ignoring the content as well as the context of those communications. Although the Opinion quotes the trial court it gives no citation for this statement. (Op 17)

and this is supported by "substantial evidence". (Op 17) However, based on the misguided interpretation of the term "interference" neither court analyzed the employer's harassment in terms of the applicable statute.

B. The Respondent Fired Elizabeth Her First Day Back On The Job. Both Division I And the Trial Court Failed To Analyze This Act In The Context of Hostility to Maternity Leave Pursuant to RCW 49.78.300 or In the Context of Retaliation.

As further evidence of its hostility to her maternity leave the respondent terminated Elizabeth Brooks on December 21, 2009, her first day back on the job. (CP 64) This is the ultimate act of hostility that an employer can wield against an employee. The trial judge characterized this act as informing Ms. Brooks "that December 21, 2009 would be her last day because Walt [Bowen, the owner] wants you off the payroll by the end of the year." [RP (6/14/12 P 117; CP 64] No distinction exists between telling an employee they are "off the payroll" and firing that employee. The appellant spent nine days believing she would no longer have a job at the end of the month and the employer spent that time anticipating that she would no longer be an employee after December 31, 2009. It is generally accepted that being fired is an adverse employment action. Essentially rehiring the appellant on December 31st does not alter the fact that the respondent fired Elizabeth Brooks.

Both the trial court and the appellate court failed to analyze Ms. Brooks' termination her first day back from maternity leave pursuant to RCW 49.78.300. Certainly such an act discourages employees from availing themselves of the right to family leave. Neither court analyzed these actions as retaliation for exercising the right to maternity leave. Instead, both the trial court and the appellate court analyzed this act by relying upon *Kirby v. City of Tacoma*, 124 Wash. App. 454, 968 P.3d 827 (2004) to conclude that telling the appellant she was fired was not an adverse employment action. *Kirby* is not dispositive on this issue.[5]

Launching a search for a worker to take an employee's place is a "hindrance" to maternity leave. That is a time which should be sacred allowing parent and child to bond. Pressuring an employee to resign impedes a parent's ability to give meaning to the term maternity leave when that parent is consumed with the fear of losing his or her job. The employer should not be allowed to harass the employee during her maternity leave or engage in acts that retaliate against her upon returning to the job. These acts impede an employee's right to such leave and

[5] *Kirby v. City of Tacoma* cites *Munday v. Waste Mgmt. of N. Am. Inc.*, 126 F.3d 239, 243 (4th Cir.1997). In fact, *Kirby* does not involve such a threat. No such incident occurred in that case, although the plaintiff was verbally reprimanded by a superior.

discourage other employees from exercising that right. As such they violate the purpose and the legislative intent of RCW 49.78.300.

IV. The Employer's Hostility Toward Maternity Leave Is Well Documented. The Respondent Is Incorrect Stating The Trial Court Made a Finding The Employer Expressed No Animus Toward Brooks' Maternity Leave. Respondent's Hostility and Subsequent Retaliation Are Sex Discrimination.

The Respondent states that the trial court "found that Bowen had no animus connected to Brooks's maternity leave". (Answer p. 18) That statement is inaccurate and respondent's accompanying citation demonstrates the inaccuracy. The record is riddled with Bowen's animus toward Elizabeth's pregnancy and maternity leave that began with the announcement that she was expecting. There was testimony at trial that Bowen wanted Elizabeth Brooks out of the company because he did not believe that she could devote the time he demanded she devote to the job now that she had a baby. [RP (6/19/12) P 55-59] From October to December he had Parfitt pressure Ms. Brooks to resign. In December he "wanted her off the payroll."

The trial court and the appellate court essentially ignored this evidence of hostility to Elizabeth's pregnancy and maternity leave.[6] As his emails reveal Bowen is a hands on owner. It is illogical that his

[6] Pursuant to *Hegwine v. Longview Fibre Co., Inc.*, 162 Wn. 2d 340, 172 P. 3d 688 (2007), hostility to pregnancy is sex discrimination.

campaign to squeeze Elizabeth out of the company would not permeate the workplace. That animus saturated the atmosphere and developed into a hostile work environment. In fact, Parfitt stated that the travel edict came from Bowen. It was unnecessary for Elizabeth Brooks to personally read Bowen's e-mails to experience the hostility that enveloped her workplace.

As previously noted, the trial court's finding that Parfitt's actions did not reflect any hostility because "his tone was not abusive" misstates any applicable standard enunciated in case law examining hostile work environment. The trial court wrongly concluded that BPM was not a hostile work environment. This hostility led to retaliation for taking leave.

V. Appellants Presented Uncontested Medical Testimony At Trial That Elizabeth Brooks Could Perform the Essential Functions of her Job. Therefore, Failing to Analyze This Case Pursuant to a Disability Discrimination Analysis Is Fatal To The Opinion And Brings It Into Conflict With Other Decisions.

In reviewing the Findings of Fact and Conclusions of Law as well as the Opinion, one would never know that Elizabeth Brooks' obstetrician testified about her disability in detail. This was an uncontested, unrefuted medical opinion.[7] At trial, Dr. Bonnie Gong testified that Elizabeth Brooks could perform her essential job functions. The Brooks challenge

[7] In addition to diminishing milk supply, Dr. Gong testified that Ms. Brooks was suffering from post-partum depression as a result of work stressors. [RP (6/13/2012) P 101,103]

the trial court's conclusion that Elizabeth Brooks could not perform her essential job functions. (CP 74) Both the trial court and the appellate court completely ignored this unrefuted medical opinion. The limitations imposed by Dr. Gong are critical to the analysis of a disability action. Dr. Gong's medical notes contain the following entry:

> Feeling very stressed, not sleeping, eating a lot. Job is traveling weekly. Unable to sleep. Stress eating. Still breastfeeding baby won't take bottle. Bosses are trying to make her job miserable and they tried to fire her on her maternity leave. Would like meds for depression/anxiety. Begin Zoloft 25-50mg. Note written for no travel until she is done breastfeeding. [Ex. 102]

Elizabeth feared her reduced milk production would eventually impact the only source of nourishment for her baby. Dr. Gong testified at trial, on a more probable than not basis, that the employer's insistence that Elizabeth travel three weeks out of every month was the source of her stress which in turn caused diminishing milk production. [RP (6/13/12) P 99, P 122] Dr. Gong testified emphatically at trial that she did not intend her note to be interpreted as precluding the appellant from all travel. She wrote it so "Elizabeth could try and work something out with her employer". [RP (6/13/12) P 105] Dr. Gong testified that it was detrimental to the infant and unreasonable to expect a mother to travel weekly with an infant. [RP (6/13/12) P 105–106; (6/18/12 P 36-37] Dr.

Gong testified that her note did not prohibit travel but the schedule needed to be reasonable and allow the appellant "some discretion". [RP 6/13/12) P 105-106; (6/18/12 P 36-37] [Ex. 61]

Therefore, Ms. Brooks was medically cleared to travel; it was the *frequency* of the travel that was at issue.[8] Since Ms. Brooks could travel she was able to perform the same job function that the trial court relied upon when it ruled that Ms. Brooks could not perform an essential job function. The conclusion reached by Division I is fails for the same reason. Nothing in the Opinion indicates that the appellate court took Dr. Gong's testimony into consideration.

Essential job functions can be accommodated in multiple ways. "...reasonable accommodation could include a reasonable adjustment in job duties, work schedules, scope of work, job setting or conditions of employment." *MacSuga v. County of Spokane,* 97 Wash.App. 435, 440, 983 P.2d 1167 (1999). The court cannot ignore that with reasonable accommodation the person asserting a disability could do their job. *Johnson v. Chevron U.S.A.*, 159 Wash. App. 18, 244, P 3d 438 (2010).

VI. Elizabeth Brooks Disclosed her Disability and Presented Unrefuted Medical Testimony At Trial Regarding That

[8] Q: In writing this note, doctor, was it your intention that she be precluded from any travel at all?
A. Really, no. If I had wanted her to not travel at all I would have said shall not or cannot. [RP (6/13/12) P 105]

Disability Which the Trial Court and the Appellate Opinion Ignored.

Unfortunately the Respondent's brief repeatedly states that Elizabeth and Jason Brooks are falsely depicting facts. This is untrue. No doubt the respondent is emboldened by the fact that both the trial court and the appellate court willfully ignored both the record made in the trial court and the citations to the record presented to the appellate court. The testimony that was ignored is significant to Ms. Brooks' claims. In fact, Ms. Brooks does not falsely depict the Findings as respondent asserts. The Findings falsely depict the trial record. Ms. Brooks appropriately challenged those Findings in her appeal and does so again in this Petition.

The trial court concluded that , "...traveling to at least some of BPM's properties and it its corporate headquarters in Portland was an essential function of Ms. Brooks' job. Therefore Ms. Brooks was unable to perform the essential functions of her job with or without reasonable accommodation." (CP 74-75) This directly contradicts unrefuted medical testimony.[9] It illuminates the Petitioner's position that the trial court misapplied the law to the facts. Elizabeth and Jason Brooks challenge the trial court's conclusion that she had a doctor's note "prohibiting her from travelling." (CP 74 L-21) This Conclusion directly contradicts specific

[9] The Opinion further contradicts the medical opinion of Elizabeth Brooks' physician, by ignoring the doctor's testimony and concluding: "The doctor stated that Brooks should not travel as long as she was nursing." (Op 4)

and detailed testimony from Elizabeth's physician which was not challenged or refuted.

The trial court also ignored testimony from Ms. Brooks that she had no problem traveling to properties that could be reached by car including the company's Portland headquarters; ignored testimony that Ms. Brooks had arranged for her mother-in-law to accompany her on these car trips to act as a nanny; [RP (6/13/12) P 125-128] ignored that several northern properties were reachable by car; ignored that when the respondent decided in mid-March that Ms. Brooks could no longer perform her job, she had plans to travel to Las Vegas for the company's annual meeting; [CP 68] ignored Elizabeth's testimony that she could fly to properties and take along her baby if the majority of her week was devoted to a single location; ignored that the employer owned three properties in Las Vegas which made staying in one location perfectly reasonable; [RP (6/20/12) P 85] and ignored that she was willing to pay her mother-in-law's airfare so she could accompany Elizabeth as a nanny. [RP (6/14/12) P 91- 92; RP (6/13/12) P 126-128] What Elizabeth Brooks could not do was change locations every day with a nursing infant.

VII. The Record Is Devoid of Any Job Offer When the Facts Before

This Court are Applied to *Goodman* and its Progeny. Thus This Opinion Conflicts With Other Opinions.[10]

According to Parfitt's own testimony he did not offer Elizabeth a different job during the December 10, 2009 luncheon. "We discussed the possibility of her going to our property in Redmond, Washington at Overlake Terrace." [RP (6/18/12) P. 173] Furthermore, at the time of this discussion, the employer had not doubled Ms. Brooks' travel and she had no reason to take a different job in the company. Elizabeth and Jason Brooks challenged Finding of Fact 28 at the appellate court and renew that challenge here.

The respondent's Answer asserts that the respondent made "repeat offers" of non-travel positions. The record simply does not support that assertion. In fact, the record shows the opposite, demonstrating that the employer repeatedly held fast to a rigid travel schedule it knew Elizabeth Brooks was precluded from following and at no time offered her any accommodation or alternate job even though it knew the situation was temporary. It was Elizabeth Brooks who offered potential solutions which the employer consistently rejected. [Exs 32, 50]

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[10] *Goodman v. The Boeing Co.*, 127 Wn.2d 401, 408, 899 P.2d 1265 (1995). This court adopted the doctrine that the employer is charged with an affirmative duty to engage in an exchange of information as part of an accommodation analysis.

In fact the day before he ordered Elizabeth's last check, Parfitt demonstrated his ignorance regarding Elizabeth's disability stating, "Your doctor is not allowing travel." [Ex. 52] This case highlights why the employer has a duty to engage in an interactive process with the employee. Respondent fails to cite a single case with similar facts where a court ruled there had been a legitimate attempt to find an employee an alternate job.

The respondent attempts to shift the focus regarding when the appellant put the respondent on notice of her disability. The correct focus is what the respondent did after receiving such notice. Respondent asserts "Brooks's failure to accommodate claim necessarily concerns only a six day period..." and tries to suggest some relevance to Elizabeth waiting until March 10th to provide her doctor's note to the employer. The timeline was controlled by the reaction of the employer. It was the employer who chose to be completely silent until March 16th and ordered her final check the very next day. [Ex 53] As late as the afternoon of March 16th, Elizabeth was pleading with Parfitt for her job. [Ex. 50] The parties' separation occurred at the impetus of the employer. No legal authority exists to support any contention that a longer period of time has to elapse.

The respondent had been trying to force Elizabeth Brooks out of the company since she took maternity leave the previous September. The doctor's note presented an opportunity to do just that. The respondent cites no legal support for its inference that Ms. Brooks failed to fulfill her obligation in this scenario.

VIII. The Respondent Is Incorrect In Stating that Appellants Are Not Challenging The Trial Court's Findings.

The appellants also challenge Finding of Fact 43 that Elizabeth Brooks at any time acquiesced to the schedule which doubled her travel. In fact, the month of February in 2010 was dominated by e-mails between Elizabeth and Parfitt with her protesting the travel schedule and offering alternatives until she could wean her baby which she intended to do by late May or June. [Exs 32, 36, 37] The email from Bowen that the trial court references in its Finding is by no means dispositive on this issue and once again the trial court ignored exhibits and testimony to the contrary.

Elizabeth and Jason Brooks challenge Finding of Fact No. 38 which states, "On February 9, 2010, Ms. Brooks for the first time made a request for accommodation." This Finding is inaccurate. Ms. Brooks had been requesting an accommodation since December 2009 when she was returning to work full time. [Ex. 15]

Elizabeth and Jason Brooks challenge Finding of Fact No. 45 (CP 67) stating that Kim Homer was going to take over the majority of travel to the southern properties. At no time did the respondent alter the schedule it had created for Elizabeth Brooks. [Ex. 73]

The respondent mischaracterizes Ms. Brooks' need to limit her travel as being "for her convenience." (Answer p 6) This underscores what Elizabeth and Jason Brooks have always maintained—the employer refused to comprehend the significance of her situation. Ms. Brooks stated it very simply in an email to Parfitt on February 9, 2010 protesting the proposed travel schedule, "I am still her [the baby's] food source." [Ex. 37] Elizabeth Brooks could not travel four days a week three weeks out of the month *because she needed to feed her baby.* Respondent demonstrates its failure to grasp the situation by referring to this necessity as "rhetoric."

IX. The Hole in the Law that Hegwine Did Not Fill: Breaking The Silence Surrounding Retaliatory and Discriminatory Actions By Employers Against New Mothers.

Currently a lone case in this state discusses pregnancy in the workplace. *Hegwine v. Longview Fibre Co., Inc.,* 162 Wn. 2d 340, 172 P. 3d 688 (2007). As the preamble to Chapter 49.78 states, the workplace has changed and today it is full of dual working parents and single mothers. However, *Hegwine* addressed discriminatory hiring practices

and pregnancy. The issues involving what happens after the pregnancy ends and a working mother with an infant returns to the workforce have not been addressed by this Court. A proliferation of statutes and municipal codes address the right of a nursing mother to pump milk in privacy at her workplace. That is the extent of the evolution of our laws.

This case presents the Court an opportunity to address discriminatory and retaliatory practices toward new mothers and formulate legal guidelines for nondiscriminatory treatment as they return to the workplace after maternity leave.[11] Many families cannot afford to go without that second paycheck—and for others it is the only paycheck. Pursuant to RAP 13.3(b)(4) this case addresses an issue of substantial public interest—the needs of new mothers who are struggling with unique issues post-childbirth and parents striving to return to jobs they found rewarding (and essential) prior to taking family leave. Washington law is silent on these issues. That silence should end. These matters of substantial public interest should be determined by this Court.

No woman should be made to choose between feeding her baby and her job. That is the decision this employer forced upon Elizabeth Brooks

[11] In ruling that the employer did not discriminate in this case, the trial court reasoned: "In any event, the court concludes that BPM did not threaten Ms. Brooks with termination because she took maternity leave. Instead, the threat was based on Mr. Bowen's assumption that as a new mother, Ms. Brooks would not be able to perform the functions of her job." (CP 77)

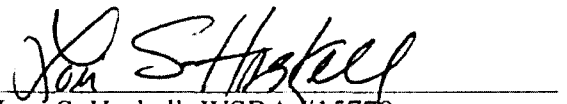
and it is an untenable decision. This court can accept review and craft a decision that reflects a society which values stable families.

CONCLUSION

The statute precluding interference with maternity leave was drafted in 2006 and since then no opportunity to interpret it has arisen. Now the one appellate decision addressing the statute misguidedly relies on federal labor regulations and fails to reference the legislative intent of RCW 49.78.300. If the Court declines to review this opinion, the interpretation of the statute will negatively impact families throughout our state and subvert the intent of our Family Leave Act. This is an issue of substantial public interest appropriately reviewed under RAP 13.4(b)(4).

Furthermore, this opinion is in direct conflict with a well established line of cases interpreting accommodation law and the duty of the employer. In arriving at their decisions both lower courts ignored unrefuted medical testimony regarding the ability of Elizabeth Brooks to perform essential job functions. Pursuant to RAP 13.4(b)(1) and (2) this Court should accept review of this case.

Respectfully submitted this 23rd day of June, 2014.



Lori S. Haskell WSBA #15779
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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of June, 2014, I caused a true and correct copy of Petitioner's Petition for Review Petitioners' Response be served in the manner indicated below:

The Supreme Court State of Washington 415 12th Ave SW Olympia, WA 98501	[ ] U.S. Mail [ ] Hand Delivery [X] emailed [ ] ABC Legal Services
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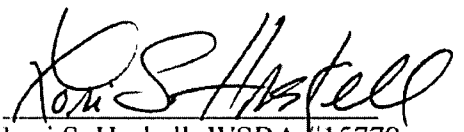
I declare under penalty of perjury that the foregoing is true and correct. EXECUTED on this 23rd day of June, 2014 at Seattle, Washington.



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Attached is the following:

Elizabeth and Jason Brooks v. BPM Senior Living Company

Supreme Court Case No. 90220-8

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