Case No. 91270-0

THE SUPREME COURT
OF THE STATE OF WASHINGTON

CLAIRE C. WOODWARD,
a single individual,

Appellant,

v.

AVA A. TAYLOR and "JOHN DOE" TAYLOR, wife and husband, and THOMAS A. KIRKNESS and "JANE DOE" KIRKNESS, husband and wife,

Respondents.

RESPONDENTS ANSWER TO PETITION FOR REVIEW
(From Court of Appeals, Division One, No. 70949-6-I)

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I. IDENTITY OF RESPONDENT

The respondents in this case are Ava Taylor and Thomas A. Kirkness. They were defendants at the trial court level.

II. CITATION TO COURT OF APPEALS DECISION

The decision for which petitioner seeks review is *Claire C. Woodward, Appellant v. Ava A. Taylor, Respondent*, Case # 70949-6-I, filed on October 6, 2014, hereinafter referred to as the "Decision". Petitioner submitted a copy of the Decision at Appendix 1.

III. ISSUES PRESENTED FOR REVIEW

The issues to be determined in this appeal are as follows:

1. Where a Washington action is substantively based on the law of the State of Idaho, does the Idaho statute of limitations apply, pursuant to RCW 4.18.020?

2. In a personal injury action arising out of a motor vehicle accident, in which the acts which caused the accident occurred in Idaho, and in which the accident and injuries occurred in Idaho, does the substantive law of the State of Idaho govern the action?

3. In light of RCW 4.18.020 and *Rice v. Dow Chemical Company,* 124 Wn.2d 205, 875 P.2d 1213 (1994), is a traditional

conflict of laws analysis the incorrect way to determine which state's statute of limitations should apply?

IV. STATEMENT OF CASE

Petitioner Woodward was a resident of King County, Washington. CP 1, Plaintiff's Complaint, Lines 19 and 20. Taylor and Kirkness were residents of King County, Washington. CP 1, Plaintiff's Complaint, Lines 21-25. CP 2, Plaintiff's Complaint, Lines 1-6.

Woodward and Taylor were returning from a trip to Las Vegas, Nevada. CP 2, Plaintiff's Complaint, Lines 15-16. Woodward was a passenger in a vehicle being driven by Taylor. The vehicle was traveling westbound on Interstate 84 in Ada County, Idaho. CP 2, Plaintiff's Complaint, Lines 12-15.

Woodward alleged that Taylor was negligent in driving too fast. CP 4, Plaintiff's Complaint, Lines 9-11. In particular, Woodward alleged that:

> "... the driver, Defendant Ava Taylor set the cruise control at 82 m.p.h. The posted speed limit was 75 m.p.h."
>
> CP 3, Plaintiff's Complaint, Lines 14-15.

At approximately 2:30 a.m. on March 27, 2011, as Taylor was driving, the subject vehicle went off the road and eventually

came to rest. CP 3, Plaintiff's Complaint, Lines 7-22. Woodward alleged that a State Trooper responded to the scene and investigated. CP 3, Plaintiff's Complaint, Lines 23-25.

Woodward alleges that she was injured in the accident. CP 3, Plaintiff's Complaint, Lines 16-22. She alleges that her injuries were proximately caused by the negligence of Taylor. CP 4, Plaintiff's Complaint, Lines 7-22.

The Complaint was signed by Plaintiff's attorney on May 7, 2013. CP 6, Plaintiff's Complaint. The Complaint was filed in the King County Superior Court on May 8, 2013. CP 1, Plaintiff's Complaint. Thus, this action was commenced more than two years, and less than three years, after the date of the accident.

The statute of limitations for a personal injury action under Idaho law is two years. In this regard, Idaho Code § 5-214 states:

> "The periods prescribed for the commencement of actions other than for the recovery of real property are as follows. ...
> Section 5-219
> Within two (2) years:
> ...
> 4. An action to recover damages for professional malpractice, or for an injury to the person ..."

Washington's statute of limitation for a personal injury action is three years. RCW 4.16.080.

In their Answer to Plaintiff's Complaint, Taylor and Kirkness alleged, as an affirmative defense, that Plaintiff failed to commence the action within the time required by statutes of the state of Idaho. CP 10, Answer, lines 15-16.

Taylor and Kirkness filed a Motion for Summary Judgment asking the trial court to dismiss the claims of Woodward on the grounds that the action was not commenced within two years, as required by the Idaho statute of limitations. CP 19, CP 29, lines 6-18.

The trial court considered the motion as a motion for judgment on the pleadings. CP 109, lines 17-20. The trial court granted the motion to dismiss Taylor and denied the motion to dismiss Kirkness. CP 116. Woodward thereafter filed an appeal and the Court of Appeals affirmed the dismissal.

V. ARGUMENT

A. Criteria For Acceptance Of Review

RAP 13.4(b) provides that a petition for review will only be accepted by the Supreme Court: (1) if the decision of the Court of Appeals is in conflict with a decision of the Washington Supreme Court; (2) if the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; (3) if a significant

question of law under the Constitution of the State of Washington or of the United States is involved; or (4) if the petition involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b).

Petitioner has asserted an alleged conflict between the Decision and Washington Supreme Court cases, as well as an alleged conflict between the Decision and another decision of the Court of Appeals. However, these alleged conflicts are illusory and review should be denied.

The Decision is consistent with *Rice v. Dow Chemical,* 124 Wn.2d 205, 210, 875 P.2d 1213 (1994), the controlling Washington Supreme Court case. The Decision is consistent with a previous Division III case, *Ellis v. Barto*, 82 Wn. App. 454, 918 P.2d 540 (1996).

Petitioner's position is based upon a fundamentally incorrect assumption: that a traditional conflict of laws analysis is required to resolve a conflict between two statutes of limitation. This assumption is clearly incorrect, as shown by RCW 4.18.020, *Rice v. Dow Chemical,* and *Ellis v. Barto.*

The foregoing statute and cases make it clear that where there is a conflict between Washington's statute of limitations and

that of another state, a traditional conflict of laws analysis and methodology is not to be utilized by Washington courts. Rather, the proper analysis is provided by RCW 4.18.020, Washington's Uniform Conflict of Law – Limitation Act.

Despite this clear authority, Petitioner asserted her incorrect assumption at the summary judgment, and then, reasserted it at the Court of Appeals. Petitioner has reasserted the same incorrect assumption here.

Petitioner's request for review should be DENIED.

B. The Decision Does Not Conflict With Washington Supreme Court Precedent Or Other Appellate Decisions

Petitioner argues that the Decision conflicts with Washington Supreme Court cases establishing conflict of law methodology. Petitioner does not explicitly state which Washington Supreme Court cases are in conflict. Petitioner appears to argue that *Burnside v. Simpson Paper Company,* 123 Wn.2d 93, 864 P.2 937 (1994), is a conflicting case. However, the Decision is not in conflict with *Burnside.*

Burnside was an employment discrimination case (at page 9 of the Petition, *Burnside* was incorrectly described as a "car accident case"). The Court was faced with the question of whether

Washington or California employment law should apply. The *Burnside* case did not involve personal injuries arising out of a motor vehicle accident. The *Burnside* case did not involve a question as to which state's statute of limitations should apply. *Burnside* was not controlled by RCW 4.18.020. Thus, a traditional conflict of laws analysis was appropriate for determining the issues in *Burnside.*

The foregoing traditional conflict of laws analysis is not appropriate in the case at bar, which involves a motor vehicle accident, involves a statute of limitations conflict, and which is controlled by RCW 4.18.020.

1. RCW 4.18.020 Governs Conflicts of Limitation Periods.

RCW 4.18.020 provides the method for resolving a conflict concerning limitation periods, superseding traditional conflict of laws analysis. The proper analysis, which was undertaken by the trial court and the Court of Appeals in this case, is set forth in RCW 4.18.020 and the case law interpreting the same. Petitioner's argument, utilizing a traditional conflict of laws analysis, ignores RCW 4.18.020 and the expressed intent of the Washington state legislature.

2. The Court of Appeals Correctly Applied RCW 4.18.020

Under RCW 4.18.020, courts must first determine which state's substantive law forms the basis of the plaintiff's claims. *Rice v. Dow Chemical,* 124 Wn.2d 205, 210, 875 P.2d 1213 (1994). Washington follows the Restatement (Second) of Conflict of Laws § 145 (1971) in determining the substantive law to apply in tort cases. See *Rice,* 124 Wn.2d at 213. The language of that Restatement is as follows:

> (1) The rights and liabilities of the parties with respect to an issue in tort are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the occurrence and the parties under the principles stated in §6.
>
> (2) Contacts to be taken into account in applying the principles of §6 to determine the law applicable to an issue include:
>
> (a) the place where the injury occurred,
> (b) the place where the conduct causing the injury occurred,
> (c) the domicile, residence, nationality, place of incorporation and place of business of the parties, and
> (d) the place where the relationship, if any, between the parties is centered.

Restatement (Second) of Conflict of Laws §145

In applying the most significant relationship test in personal injury actions, the substantive law of the state where the injury occurs applies, unless with respect to the particular issue, some

other state has a more significant relationship to the occurrence and the parties. *Ellis v. Barto*, 82 Wn. App. 454, 458, 918 P.2d 540 (1996).

In *Ellis*, a Washington resident was driving in Idaho when he collided with Barto, another Washington resident, driving a truck owned by Bohn – a third Washington resident. Both vehicles were registered in Washington. Both drivers were licensed in Washington. Ellis commenced an action against Barto and Bohn for personal injuries in the Spokane County Superior Court, alleging negligence. Barto and Bohn moved for dismissal, contending that Idaho's statute of limitations barred the action. The trial court granted the motion.

The *Ellis* Court pointed out that every state has adopted rules of the road which govern the responsibilities and liabilities of those driving within its boundaries. The Court concluded that when an accident occurs, the purpose of that state's rules of the road and the policies behind them were best achieved by applying local law. *Ellis*, 82 Wn. App. at 459. The Court held that pursuant to RCW 4.18.020(1)(a) and the most significant relationship rule, the limitation period of the state of Idaho applied because the substance of the claim was governed by Idaho law. *Ellis*, 82 Wn.

App. at 459.

In the case at bar, the Court of Appeals noted that the facts here are closely parallel to the facts in *Ellis* (which was decided after the passage of RCW 4.18.020). Based upon RCW 4.18.020, *Ellis*, and the Restatement of Conflict of Laws, the Court of Appeals correctly concluded that, here, Idaho substantive law forms the basis of Petitioner's claims. Therefore, Idaho's limitation period applied under RCW 4.18.020. The Decision is in harmony with Division III's opinion in *Ellis*.

Petitioner acknowledges that the "most significant relationship" test applies in this case. Petitioner also acknowledges the four Restatement criteria. Petitioner even acknowledges that the criteria are not to be weighted equally. However, Petitioner incorrectly concludes that "Washington has by far the most significant relationship with the parties and issues." Petitioner's argument fails to address the Restatement analysis performed in *Ellis* and in the case here.

3. Idaho Has the Most Significant Relationship

At page 8 of the Petition for Review, Petitioner appears to argue that the Court of Appeals in the instant case never analyzed

whether there was an actual conflict of laws. The argument is without merit for several reasons.

First, it is clear that there was an actual conflict between Washington law and Idaho law regarding the applicable statute of limitations.

Second, the task of finding an actual conflict of laws is the initial step in a traditional conflict of laws analysis. Here, the Court of Appeals was not required to perform a traditional conflict of laws analysis, and correctly refused to do so.

Third, actual conflicts in the substantive law between the two states illustrate why Idaho substantive law applies to this case.

Plaintiff alleged in her Complaint that the speed limit posted on the Idaho highway was 75 m.p.h. CP 3, Plaintiff's Complaint, Line 15. This is consistent with Idaho Code § 49-654. The speed limit for the State of Washington is set forth in RCW 46.61.400 at 60 m.p.h. (subject to changes in the maximum speed limit as determined by the Secretary of State).

Clearly, the substantive law of Washington and Idaho are different. This difference goes to the heart of Plaintiff's case. Woodward alleged that Taylor was driving "too fast for the conditions". CP 4, Plaintiff's Complaint, Lines 9-11.

If this case went to trial, there may be evidence that Taylor was actually driving at 71 mph. That speed would be in violation of Washington's speed limit. That same speed would be within Idaho's speed limit. Under Petitioner's argument, the substantive law of Washington would be applied. This would lead to an absurd result, creating confusion for drivers and subsequent danger on the roadways of neighboring states.

Petitioner contends that "the Court of Appeals did not identify or discuss at all a single instance of Idaho's substantive negligence law..." See Petition at page 9. However, Petitioner ignores the fact that the Decision discussed violation of the rules of the road and the liability issues arising from a violation of those rules. In this regard, the Decision cited the following passage from *Ellis*:

> Based on the relevant factors, we find that Washington did not have a more significant relationship to the accident at issue than Idaho. Every state has adopted rules of the road which govern the responsibilities and liabilities of those driving within its boundaries and most drivers expect to be bound by those rules. When an accident occurs, the purpose of these rules and the policies behind them are best achieved by applying local law. Although a forum state has an interest in protecting its residents generally, as well as establishing requirements for licensing, registering, and insuring motor vehicles and drivers domiciled within the state, such interest does not extend so far as to require application of the forum state's rules of the road to an accident not occurring

> within its boundaries. **Idaho has the most significant relationship to the driving conduct at issue and the rights and liabilities of the parties with respect to their violation or adherence to the rules of the road.**

Ellis, 82 Wn. App. at 458-459 (emphasis added).

Relying on that rationale, the Court of Appeals held, in the Decision, that Idaho's interest in applying its rules of the road outweighs the Washington contacts. The Court of Appeals noted the Washington Supreme Court's holding that Washington's interest in seeing its residents compensated for injuries is not overriding where other contacts with Washington are minimal, citing *Rice*, 124 Wn.2d at 216.

Consistent with the analysis in *Rice* and *Ellis,* Idaho has a substantial and important interest in providing "rules of the road" for all persons utilizing the roads in Idaho, whether those persons are Idaho residents or residents of other states. The fact that a person utilizing an Idaho road is from another state does not extinguish Idaho's interest in providing for the safety of all persons who travel upon the roads of Idaho. Applying Idaho substantive law achieves a uniform result for injuries caused by accidents in the State of Idaho. It provides predictability for both plaintiffs and defendants who are involved in accidents on the roads of Idaho.

The Decision correctly held that Idaho had the most significant relationship and that its law governs. Pursuant to RCW 4.18.020, Idaho's statute of limitations applies here.

4. No Conflict with *Mentry* Case

Petitioner argues that the Decision conflicts with the prior Division I holding in *Mentry v. Smith*, 18 Wn. App. 668, 571 P.2d 589 (1977). However, the Decision is not in conflict with *Mentry.*

The *Mentry* case is easily distinguishable. First, *Mentry* was decided before Washington adopted RCW 4.18.020. Second, and more fundamentally, *Mentry* did not involve a conflict regarding limitation periods. The *Ellis* Court, and the Court of Appeals in the case at bar, considered *Mentry* and found the *Mentry* case unpersuasive. *Mentry* is facially inapplicable, and, therefore, does not conflict with the Decision.

VI. CONCLUSION

The Court of Appeals in this case correctly applied RCW 4.18.020, avoiding the mistake of utilizing a traditional conflict of laws analysis. The Decision is in harmony with the Washington Supreme Court case of *Rice*. It is in harmony with the *Ellis* decision from Division III. Plaintiff has cited no authority or precedent from this Court or from the Court of Appeals which conflicts with the

Decision. Petitioner has failed to meet the criteria of RAP 13.4 (b).

Petitioner's request for review should be DENIED.

DATED THIS 17TH day of February, 2015.

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Certificate of Service

Pursuant to RAP 5.4(b) I, Tami L. Foster, the undersigned, certifies and declares under penalty of perjury under the laws of the State of Washington that the following statements are true and correct.

1. I am over the age of eighteen (18) years and not a party to the aforementioned action.

2. I certify that on February 18, 2015, I caused to be served with this Certificate of Service, Respondent's Answer to Petition for Review to the Washington State Supreme Court at supreme@courts.wa.gov.

3. I certify that on February 18, 2015, I caused to be served with this Certificate of Service, Respondent's Answer to Petition for Review to be served on the following parties and counsel of record listed below:

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

DATED at Seattle, Washington, this 18th day of February, 2015.

Tami L. Foster, Legal Assistant

OFFICE RECEPTIONIST, CLERK

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Good Morning,

Attached please find a copy of Respondents Answer to Petition for Review. Please advise if you have any issues regarding the attached PDF.

Sincerely,

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