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NO. 72736-2-I

IN THE COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

GREGORY TAYLOE MCCANDLESS, ET AL.

Appellant,

v.

STATE OF WASHINGTON, ET AL.

Respondent.

PETITION FOR REVIEW

Emerald Law Group, PLLC
JONATHAN R. NOLLEY, WSBA #35850
Attorneys for Appellant
600 University St., Suite 1928
Seattle, Washington 98101
(206) 826-5160

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I. IDENTITY OF PETITIONER

Gregory Tayloe-McCandless, Becky Gearhart, and the estate of Hunter McCandless ("McCandless," hereafter), the plaintiffs in this action and appellants in the Court of Appeals, hereby petition for review of the Court of Appeals decision affirming an order dismissing their lawsuit under CR 12(c).

II. CITATION OF COURT OF APPEALS DECISION

Staples seeks review of the Court of Appeals (Division One) decision, *Tayloe McCandless et al. v. State of Washington*, No. 72736-2-I, which was filed on August 17, 2015. No motion for reconsideration was filed.

III. ISSUES PRESENTED FOR REVIEW

1. When a family applies to the State of Washington for childcare benefits and assistance and notifies the State that due to their economic situation that the family is leaving their children in the sole care of a severely epileptic father who poses a threat to the welfare of his children, do the State and its employees have a duty to report this matter to the Department of Social and Health Services (DSHS) based upon neglect of the children?

2. Does Washington law prevent a finding of neglect when a family is leaving its children in the care of a severely epileptic father without any additional assistance or protection against the father's condition, a condition that results in the father having a seizure and, because he is alone with the children, falls onto his infant son and smothers the infant to death?

IV. STATEMENT OF THE CASE

A. Facts

Three-month old Hunter McCandless suffocated to death on May 26, 2010 when his father, Gregory Tayloe-McCandless, suffered a seizure and collapsed on top of Hunter. (CP 58). At the time of Hunter's death, Gregory was alone with Hunter at the family's home in Everett, Washington while Hunter's mother, Becky Gearhart, was at work. (CP 57-58).

Prior to the Hunter's death, Tayloe-McCandless sought treatment for epilepsy, and his doctor warned that he should not be left alone with his children for fear that he could suffer a seizure and cause harm to his young children. (CP 57). Because Gearhart's work schedule prevented her from being home with the children and because the family could not afford childcare, Gearhart and Tayloe-McCandless applied for childcare

assistance through the State of Washington through Working Connections Childcare assistance, a program administered by the Department of Early Learning (DEL). (CP 13, 57).

As part of their application, Gearhart and Tayloe-McCandless submitted a letter from Tayloe-McCandless's doctor indicating that Tayloe-McCandless should not be left alone to care for his children. (CP 13-14). The application was denied. (CP 57). According to the State of Washington, the application was denied because it was incomplete. (CP 51).

Tayloe-McCandless also separately applied for assistance through a program administered by the Department of Social and Health Services (DSHS) known as Community Options Program Entry System (COPES), which provides in-home care and assistance to adults. (CP 50). As part of his COPES application, Tayloe-McCandless included a letter from his doctor that indicated he should not be left alone to care for his young children due to his epilepsy. (CP 50). This application was also denied. (CP 51).

Despite receiving two applications for benefits that each included a doctor's letter stating that Tayloe-McCandless should not be left alone with his children due to his epilepsy, employees of the State of

Washington did nothing. (CP 58). No investigation was made into the circumstances at Tayloe-McCandless's home and nothing was done in response to information that clearly indicated that Tayloe-McCandless should not be left alone with his children due to his severe epilepsy. (CP 58). Because no action was taken by the State and its employees, Tayloe-McCandless remained alone caring for Hunter which directly resulted in the circumstances of Hunter's death on May 26, 2010. (CP 58-59).

B. Litigation History

The Estate of Hunter McCandless was created by petition to the King County Superior Court, and Sara Anderson, Hunter's aunt, was appointed personal representative of the estate. (CP 56).

Tayloe-McCandless and Gearhart filed an action in Snohomish County Superior Court for wrongful death against the State of Washington and alleged that the State's negligence caused Hunter's death. (CP 63-67). The complaint was later amended to add the Estate of Hunter McCandless as a plaintiff. (CP 55-60). Plaintiff's complaint alleges that the State of Washington was aware of Tayloe-McCandless's epilepsy and knew that the home environment created by his condition posed a risk to Hunter's wellbeing and threatened his welfare. (CP 57,

59). Despite this knowledge, the State did nothing. (CP 58). Facts were also pled regarding failure to extend benefits to McCandless and Gearhart as a basis for the State's negligence. (CP 59).

The State filed an answer to the amended complaint and later filed a motion to dismiss under CR 12(c). (CP 48-54; CP 24-47). The State's motion argued two basic points: (1) that no cause of action exists for negligent failure to extend benefits; and (2) no cause of action exists for failure to investigate "apart from a child abuse neglect investigation." (CP 25). In its motion and subsequent briefing, the State never raised issues regarding RCW 26.44.015(3) which it later relied upon before the Court of Appeals.[1]

McCandless filed a response regarding the standards for dismissal under CR 12(c) and the reporting and investigative duties owed by the State when state employees become aware that a child is neglected per RCW 26.44 *et seq.* (CP 12-13).

On October 23, 2014, Defendant's motion was heard by Judge Ellen J. Fair. (CP 3). No court reporter was present and no transcript of the hearing is available. After oral arguments, Judge Fair granted the

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[1] Two days before oral arguments before the Court of Appeals, the State submitted additional authority under RCW 26.44.015(3) upon which it intended to rely.

motion to dismiss and signed an order dismissing the complaint. (CP 1-2).

McCandless appealed the order of dismissal to the Court of Appeals, Division 1. The Court of Appeals denied McCandless's appeal and upheld the trial court's dismissal under CR 12(c). (Appendix 1) According to the Court of Appeals, the State owed no duty to McCandless because of language in RCW 26.44.015(3) which states that "[n]o parent or guardian may be **deemed** abusive or neglectful **solely** by reason of the parent's or child's blindness, deafness, developmental disability, or other handicap." (Decision, 7). (Emphasis added).

V. ARGUMENT

A. This petition involves issues of substantial public interest that the Supreme Court should address.

RAP 13.4(b)(4) provides that the Supreme Court may accept a petition for review "[i]f the petition involves an issue of substantial public interest that should be determined by the Supreme Court." For the reasons set forth below, McCandless submits that this petition involves issues of substantial public interest sufficient to warrant review.

1. Ensuring that the welfare and safety of children is of paramount importance and that mandatory reporting duties are properly upheld is of vast public interest and justifies review.

The duties regarding reporting and responding to indications of child abuse and neglect are governed by Chapter 26.44 of the RCW. The general purpose of RCW 26.44 *et seq* is set out by the legislature in RCW 26.44.010 as follows:

> The Washington state legislature finds and declares: The bond between a child and his or her parent, custodian, or guardian is of paramount importance, and any intervention into the life of a child is also an intervention into the life of the parent, custodian, or guardian; *however, instances of nonaccidental injury, neglect, death, sexual abuse and cruelty to children by their parents, custodians or guardians have occurred, and in the instance where a child is deprived of his or her right to conditions of minimal nurture, health, and safety, the state is justified in emergency intervention based upon verified information; and therefore the Washington state legislature hereby provides for the reporting of such cases to the appropriate public authorities. It is the intent of the legislature that, as a result of such reports, protective services shall be made available in an effort to prevent further abuses, and to safeguard the general welfare of such children. When the child's physical or mental health is jeopardized, or the safety of the child conflicts with the legal rights of a parent, custodian, or guardian, the health and safety interests of the child should prevail.* When determining whether a child and a parent, custodian, or guardian should be separated during or immediately following an investigation of alleged child abuse or neglect, ***the safety of the child shall be the department's paramount concern.***

(Emphasis added).

The Legislature clearly and unequivocally states that if there is a dispute between the rights of the child and the rights of the parent, "the safety of the child shall be the department's paramount concern."

However, the Court of Appeals focuses almost exclusively on one subsection of the statute, RCW 26.44.015(3), which states:

> No parent or guardian may be deemed abusive or neglectful **solely** by reason of the parent's or child's blindness, deafness, developmental disability, or other handicap.

(Emphasis added).

When interpreting a statute, the primary objective is to "'ascertain and give effect to the intent of the Legislature." *Koenig v. City of Des Moines*, 158 Wn.2d 173, 181, 142 P.3d 162 (2006). Legislative intent is determined "not by unduly emphasizing any one section of a statute but rather by examining the statute as a whole." *State v. Alvarez*, 74 Wn.App. 250, 257, 872 P.2d 1123 (1994). We must first consider the plain language of the statute. *Koenig*, 158 Wash.2d at 181.

The Court of Appeals in its interpretation of RCW 26.44.015(3) ignores that clear Legislative intent found in the Statute as a whole. RCW 26.44.015(3) uses the word "deemed" to mean the State cannot ultimately **conclude** that a parent is neglectful if the only evidence of neglect the State obtains is a parent's sickness. However, nowhere in that subsection does the Legislature say a parent's sickness cannot give rise to the **initial investigation** of whether a child is being neglected. If after

the investigation the only thing the State finds is a parent is sick, the subsection clearly indicates a finding of neglect cannot be maintained. However, nowhere in RCW 26.44.015(3) does the Legislature anything approaching what the Court of Appeals claims it does – namely that the State **cannot even investigate** a sick parent. In fact, if parental rights and child rights are in conflict, the Legislature has clearly mandated that the rights of the child *must* prevail.

The mechanisms through which the State is tasked with reporting, investigating and responding to allegations or suspicions of child neglect or abuse are indicated in RCW 26.44 *et seq*. RCW 26.44.030 establishes reporting duties for certain individuals and state employees. According to RCW 26.44.030(1)(a), all employees of the Department of Social and Health Services (DSHS) and the Department of Early Learning (DEL) are mandatory reporters who are required when with "reasonable cause to believe that a child has suffered abuse or neglect" to report the suspected abuse or neglect to DSHS or the proper law enforcement agency.

"Abuse or neglect" are defined in RCW 26.44.020(1) to include "the negligent treatment or maltreatment of a child by a person

responsible for or providing care to the child." "Negligence treatment" is further defined in RCW 26.44.020(16) as:

> an act or a failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction, that evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to a child's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100. When considering whether a clear and present danger exists, evidence of a parent's substance abuse as a contributing factor to negligent treatment or maltreatment shall be given great weight.

Mandatory reporters must comply with RCW 26.44.040. RCW 26.44.040 requires that an immediate oral report be made to law enforcement or to DSHS and include information regarding the names and addresses of the parents and children and the nature of the alleged neglect. Such reports must be made within forty-eight (48) hours from the time that a mandatory reporter develops reasonable cause to believe neglect has occurred. RCW 26.44.030(1)(g).

RCW 26.44.030 requires DSHS, local law enforcement and prosecutors to respond to reports of child neglect through an array of options. Such options include working with the family to direct the family toward social services and voluntary services, performing family assessments, investigating the matter by interviewing witnesses, and assessing the risks of harm to a child.

While RCW 26.44.030 controls reporting requirements, RCW 26.44.050 requires DSHS to investigate and provide the protective services section with a report. Thereafter, the matter can be referred to a prosecutor or, if sufficient cause exists, law enforcement is authorized to intervene and remove the child into custody without a court order. Both RCW 26.44.030 and 26.44.050 statutorily create duties that DSHS and other entities must follow to protect the welfare of children.

The Washington State Supreme Court in *C.J.C. v. Corp. of the Catholic Bishop*, 138 Wn.2d 699, 727, 985 P.2d 262 (1999), explained the purpose of the mandatory reporting statute:

> [T]he [l]egislature has made clear that the prevention of child abuse is of the highest priority, and all instances of child abuse must be reported to the proper authorities who should diligently and expeditiously take appropriate action.

(Quoting LAWS of 1985, ch. 259 (legislative findings appended to RCW 26.44.030)). Washington encourages the reporting of child abuse--even suspected child abuse. *Whaley v. State*, 90 Wn.App. 658, 668, 956 P.2d 1100 (1998).

RCW 26.44.030 implies a civil remedy against a mandatory reporter who fails to report suspected abuse. *Jane Doe v. Corp. of the*

President of the Church of Jesus Christ of Latter-Day Saints, 141 Wn.App. 407, 423, 167 P.3d 1193 (2007).

In this instance, Hunter McCandless died because State employees failed in their duty to report and investigate the circumstances at the McCandless home. Despite knowing that Greg Tayloe-McCandless posed a risk to his children due to his epilepsy *and* the family's decision to allow Greg to stay at home with the children without any further assistance, the State did nothing: it neither reported the circumstances to DSHS or law enforcement nor did it initiate an investigation.

The decision by the Court of Appeals has essentially created a situation in which the State is not allowed to even investigate the welfare of a child even when presented with evidence from a mandatory reporter such as a doctor, if the primary evidence cited is a parent's sickness. That is a misapplication of the clear language of the Statute. While the legislature clearly does not intend for children to be *removed* from homes *solely* because of a parent's medical condition, it is important that this Court look to the totality of the circumstances.

McCandless himself reached out for assistance and notified the State of his condition and reasons for seeking assistance. The

McCandless children were not subjected to neglect solely because of Greg's medical condition but because of the totality of the circumstances which involved decisions by the family to allow Greg to be alone with the children despite warnings from his doctor to the contrary. RCW 26.44.015(3) should not serve as a means for the State to avoid its duty to investigate whether a child is being neglected. The purpose of that subsection to the statute is to ensure that *after* an investigation the sole reason a child is removed from a home is due to an illness. The duty to investigation precedes the ultimate conclusion as to whether a parent is *deemed* unfit. However, that qualifier notwithstanding, entire purpose of RCW 26.44 *et seq* is to place the welfare of the child above any other considerations. It was clearly not the intent of the Legislature to claim that the intent of the statute is to ensure the welfare of the child supersedes even the rights of a parent but then to inject a subsection to the statute that contradicts the legislative intent in such a way as to make it impossible to even investigate a claim of child neglect if a parent is sick.

2. It is of substantial public interest that the Rules of Civil Procedure are upheld meaningfully and that cases are not improperly dismissed under CR 12

It is of paramount importance to note that the original motion from Respondents was a motion on its pleadings under CR 12. The Court of Appeals and Respondents essentially treated this matter as a CR 56 motion. After discovery – and at trial – Petitioners could and would have proven that has the State simply done a cursory investigation the investigators would have determined that Hunter McCandless was living in squalor. Greg McCandless's illness is what gave rise to the doctor's note warning of the infant McCandless's grave danger, but many factors would have led to the State's conclusion that Hunter was in grave danger if only a cursory investigation had been launched. Unfortunately, the Court of Appeals treated this as a CR 56 rather than a CR 12. The only issue with which the trial court and the Court of Appeals should have concerned itself was whether Petitioners had made upon which relief *could* be granted.

A motion brought under CR 12(c) is treated the same as a motion brought under CR 12(b)(6). *Suleiman v. Lasher*, 48 Wn. App. 373, 376, 739 P.2d 712 (1987). Review of a trial court's ruling upon a 12(c) motion is de novo. *Parrilla v. King County,* 138 Wn.App. 427, 431, 157 P.3d 879 (2007). Such motions should generally be denied absent the "the unusual case in which the plaintiff's allegations show on the face of

the complaint an insuperable bar to relief." *San Juan County v. No New Gas Tax*, 160 Wn.2d 141, 164, 157 P.3d 831 (2007). Under the generous standard of CR 12(b)(6), "[a]ny hypothetical situation conceivably raised by the complaint defeats a CR 12(b)(6) motion if it is legally sufficient to support the plaintiff's claim." *Parmelee v. O'Neel*, 145 Wn.App. 223, 232, 186 P.3d 1094 (2008), *rev'd in part*, 168 Wn.2d 515, 229 P.3d 723 (2010).

Notice pleadings requires that a complaint need contain only "(1) a short and plain statement of the claim showing that the pleader is entitled to relief and (2) a demand for judgment for the relief to which [a party] is entitled." CR 8(a). "Under notice pleading, plaintiffs use the discovery process to uncover the evidence necessary to pursue their claims." *Putman v. Wenatchee Valley Med. Ctr., PS*, 166 Wn.2d 974, 983, 216 P.3d 374 (2009).

Here, Petitioners should have been granted the right to conduct discovery and to produce evidence that Hunter McCandless was in grave danger. If the State had done an investigation, it would have learned that Hunter McCandless was in a massively neglectful situation far beyond the simply diagnosis of his father's illness. But prior to being given that chance, the Court dismissed the case.

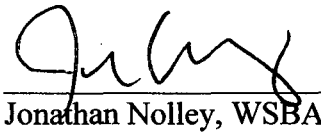
VI. CONCLUSION

This case involves issues of substantial public interest. RCW 26.44.015(3) is merely a component of the larger RCW 26.44, *et seq*. The ruling by the Court of Appeals threatens to shift the current standard where the right of the potentially abused child is paramount to one where the parent's rights is paramount over the abused child. A clearer articulation of how a subsection fits into the larger statute and whether a subsection can override written Legislative intent would serve a substantial public interest. Supreme Court review is warranted.

DATED this 16th day of September, 2015.

Respectfully submitted,

EMERALD LAW GROUP, PLLC



Jonathan Nolley, WSBA 35850
Michael Gustafson, WSBA 35666
Attorneys for Petitioner

PROOF OF SERVICE

I, Jonathan Nolley, hereby declare that I am and at all times herein mentioned, a citizen of the United States and a resident of the State of Washington, over the age of eighteen, not a party nor interested in the above-entitled action, and am competent to be a witness herein.

On this day, I filed with the State of Washington Court of Appeals the following document:

PETITION FOR REVIEW

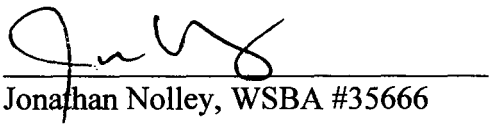
And served the same document via HAND DELIVERY to the party below:

Kent Liu
Assistant Attorney General
Office of the Attorney General
Torts Division
800 Fifth Avenue, Ste 2000
Seattle, WA 98104

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

DATED this 16th day of September 2015.

EMERALD LAW GROUP, PLLC



Jonathan Nolley, WSBA #35666

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

GREGORY TAYLOE-MCCANDLESS, individually, and BECKY GEARHART, individually, and SARA ANDERSON, Personal Representative for the Estate Of Hunter L. McCandless and on behalf of the Estate of Hunter L. McCandless, Appellants, v. STATE OF WASHINGTON, and its subsidiaries, THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES AND CHILD PROTECTIVE SERVICES, JOHN DOES, 1-10, JANE DOES, 1-10 and CORPORATIONS ABC, DEF & GHI, Respondents.	NO. 72736-2-I DIVISION ONE UNPUBLISHED OPINION FILED: August 17, 2015

LAU, J. — Gregory Tayloe-McCandless, Becky Gearhart,[1] and the estate of Hunter McCandless (collectively "McCandless") appeal the trial court's dismissal of their wrongful death negligence action against the State of Washington, the Department of

[1] Appellants' written submissions below and on appeal appear to misspell Gearhart's last name. In this opinion we use the spelling from the caption in the amended complaint.

Social and Health Services, and other respondents (collectively "DSHS") under Civil Rule 12(c). On appeal they claim that they properly pleaded causes of action against DSHS for negligent failure to make a report of child abuse and neglect and for negligent failure to conduct an investigation. They also contend the trial court improperly denied their motion to amend their complaint under CR 15. Because McCandless fails to show that DSHS owed them a duty to report or investigate alleged abuse or neglect of Hunter and because the trial court properly declined to rule on the oral motion to amend the complaint, we affirm.

FACTS

The first amended complaint for damages alleges the following: on May 26, 2010, three-month-old Hunter McCandless died while in the care of his father, Gregory Tayloe-McCandless.[2] The death occurred when Gregory suffered a seizure and collapsed on top of Hunter, suffocating him.

At the time of his death, Hunter was living with his parents and five-year-old sister at their apartment in Everett, Washington. Hunter's mother, Becky Gearhart, worked during the day while Gregory stayed at home to care for Hunter.

Gregory received medical care for epilepsy and suffered from seizures. His doctors cautioned that he should not be left alone with his children due to his risk of seizures.

Gregory and Gearhart applied to the State of Washington and DSHS for childcare assistance. To support their application, they submitted a doctor's letter

[2] We use first names for clarity.

stating, "this is to confirm Mr. Tayloe-McCandless has epilepsy and should not be left solely caring for his young children."

DSHS denied the application. [3]

In June 2013, McCandless, Gearhart, and the personal representative of Hunter's estate (McCandless) filed a lawsuit against DSHS alleging it was negligent in failing to extend childcare benefits. The complaint further alleged that DSHS:

> conducted no investigation into the home where Plaintiffs and their minor children resided and did not intervene to prevent Tayloe-McCandless from being alone at home with his child. Despite its knowledge that a child was in the sole custody of his father, an epileptic who posed an immediate danger to the child, Defendant did nothing.

Clerk's Papers (CP) at 58. In essence, McCandless alleges that DSHS owed them a duty to report, investigate, and remove Hunter from their home and its failure to do so proximately caused Hunter's death.

In September 2014, DSHS filed a motion for judgment on the pleadings under Civil Rule 12(c). DSHS argued that McCandless' claim for failure to extend childcare benefits is not a cognizable cause of action. DSHS also argued that even assuming the truth of each of McCandless' allegations, they failed to establish a cause of action under the Abuse of Children statute, chapter 26.44 RCW, because they alleged neither a harmful placement decision nor child abuse or neglect.

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[3] In its answer to McCandless' complaint, DSHS states this denial was based on the parents' failure to complete the application. At oral argument to this court, appellants' counsel acknowledged that the parents failed to complete their application timely and failed to reapply for benefits after their application was denied.

In October 2014, the trial court granted DSHS's motion and dismissed the complaint. The trial court also declined to rule at that time on McCandless' oral motion to amend the complaint.

McCandless appeals.[4]

ANALYSIS

Standard of Review

McCandless appeals from the trial court's dismissal of their claims for negligent failure to report abuse or neglect and negligent failure to investigate abuse or neglect under Civil Rule 12(c).

This court treats a CR 12(c) motion for judgment on the pleadings identically to a CR 12(b)(6) motion to dismiss for failure to state a claim. P.E. Systems, LLC v. CPI Corp., 176 Wn.2d 198, 203, 289 P.3d 638 (2012). "Like a CR 12(b)(6) motion, the purpose is to determine if a plaintiff can prove any set of facts that would justify relief." P.E. Systems, 176 Wn.2d at 203. Dismissal under a 12(b)(6) claim is appropriate where it appears beyond a reasonable doubt that no facts exist that would justify recovery, even when accepting as true the allegations contained in the plaintiff's complaint. P.E. Systems, 176 Wn.2d at 210-11. In performing this analysis, we "must take the facts alleged in the complaint, as well as hypothetical facts, in the light most favorable to the nonmoving party." M.H. v. Corp. of Catholic Archbishop of Seattle, 162

[4] McCandless does not assign error or present argument on their claim that DSHS failed to extend childcare benefits. A party abandons an issue on appeal by failing to brief the issue. Holder v. City of Vancouver, 136 Wn. App. 104, 107, 147 P.3d 641 (2006). We decline to address this issue.

Wn. App. 183, 189, 252 P.3d 914 (2011). We review dismissal under CR 12(c) de novo. P.E. Systems, 176 Wn.2d at 203.

The primary issues in this appeal relate to whether DSHS owed McCandless a duty sufficient to support a cause of action in negligence. A claim for negligence requires a plaintiff to establish "(1) the existence of a duty to the plaintiff, (2) a breach of that duty, (3) a resulting injury, and (4) the breach as the proximate cause of the injury." Lowman v. Wilbur, 178 Wn.2d 165, 169, 309 P.3d 387 (2013).

In a negligence action, courts first address the threshold question of whether the defendant owes a duty of care to the injured plaintiff. Estate of Kelly v. Falin, 127 Wn.2d 31, 36, 896 P.2d 1245 (1995). At common law, the State was immune from lawsuit. Linville v. State, 137 Wn. App. 201, 208, 151 P.3d 1073 (2007). Thus, only where the legislature has expressly waived sovereign immunity by statute can there be the possibility of an actionable duty owed by the State. Linville, 137 Wn. App. at 208. That duty may be found in the language of the statutes. Tyner v. Dep't of Social and Health Serv's, 141 Wn.2d 68, 78, 1 P.3d 1148 (2000).

Existence of a Duty

McCandless argues that the trial court erred by dismissing their lawsuit because they pleaded a valid negligence cause of action in Washington. But McCandless' arguments merely assume that given Gregory's seizure disorder, leaving him alone to care for Hunter constitutes child abuse or neglect. McCandless pleaded no facts, actual and imagined, that trigger a duty on the part of DSHS to report or to investigate acts of alleged child abuse or neglect under the unique circumstances presented here.

The Abuse of Children statute contains mandatory reporting, investigation, and other procedures related to child abuse. In enacting this statute, the legislature stated its intent to safeguard children from abuse or neglect:

> The Washington state legislature finds and declares: The bond between a child and his or her parent, custodian, or guardian is of paramount importance, and any intervention into the life of a child is also an intervention into the life of the parent, custodian, or guardian; however, instances of nonaccidental injury, neglect, death, sexual abuse and cruelty to children by their parents, custodians or guardians have occurred. . . .

RCW 26.44.010 (emphasis added).

Under RCW 26.44.030, all DSHS employees are mandatory reporters required to report abuse when there is "reasonable cause to believe that a child has suffered abuse or neglect." "Abuse or neglect" are statutorily defined as:

> [S]exual abuse, sexual exploitation, or injury of a child by any person under circumstances which cause harm to the child's health, welfare, or safety, excluding conduct permitted under RCW 9A.16.100; or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.

RCW 26.44.020(1).

"Negligent treatment" is defined as:

> [A]n act or failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction, that evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to a child's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

RCW 26.44.020(16).

Mandatory reporters must report suspected abuse within 48 hours of developing reasonable cause to believe abuse or neglect has occurred. RCW 26.44.030(1)(g). Similarly, DSHS is required by statute to investigate and provide protective services when it receives a report alleging possible abuse or neglect. RCW 26.44.050.

The core of McCandless' contention is that the "State did nothing after being presented with information and becoming aware that [Gregory] posed a threat to the welfare and wellbeing of his children." Br. of Appellant at 11. Citing to the statement of legislative intent in RCW 26.44.010, McCandless argues that the child abuse statutes are "broadly worded to protect children from non-accidental injury and death and to protect and safeguard such children's safety and health." Br. of Appellant at 9.

RCW 26.44.010, quoted above, expresses the legislature's concern over abuse involving "nonaccidental" injury, among others, where a child is deprived of minimal nurture, health, and safety. Here, no party disputes that the death of Hunter was a tragic accident.

The Legislature also clearly expressed its intent to insulate a parent from allegations of child abuse or neglect based solely on the existence of a parent's disability or handicap.

> No parent or guardian may be deemed abusive or neglectful solely by reason of the parent's or child's blindness, deafness, developmental disability, or other handicap.

RCW 26.44.015(3).

This unambiguous language leaves no doubt that Gregory's epilepsy seizure disorder falls squarely within this statute's narrow limitation.

McCandless relies on Beggs v. Dep't of Social and Health Serv's, 171 Wn.2d 69, 247 P.3d 421 (2011), Yonkers v. Dep't of Social and Health Servs., 85 Wn. App. 71, 930 P.2d 958 (1997), M.W. v. Dep't of Social and Health Serv's, 149 Wn.2d 589, 70 P.3d 954 (2003), Lewis v. Whatcom County, 136 Wn. App. 450, 149 P.3d 686 (2006). But those cases do not control because unlike here, they undisputedly involve direct

physical abuse or neglect of a child. McCandless cites to no controlling authority extending the statutory duty to report and investigate child abuse and neglect to the unique circumstances presented here.

Likewise, nothing in chapter 26.44 RCW's statutory scheme indicates the legislature intended to expand the duty alleged here premised on a parent's diagnosed medical condition. Indeed, the legislature required "reasonable cause to believe that a child has suffered abuse or neglect" before the State may intrude in "[t]he bond between a child and his or her parent . . . any intervention into the life of a child is also an intervention into the life of the parent . . . ." RCW 26.44.010.

McCandless further contends that the trial court "should also accept as true that the State and its employees had a duty to report under RCW 26.44.030 but failed to do." Br. of Appellant at 11. This argument is equally misplaced. As discussed above, no duty runs to the DSHS as a matter of law. A motion for judgment on the pleadings admits only the facts well pleaded, not mere legal conclusions, the pleader's interpretation of the statute involved, or his construction of the subject matter. City of Moses Lake v. Grant County, 39 Wn. App. 256, 262, 693 P.2d 140 (1984). Whether or not the duty element exists in the negligence context is a question of law that is reviewed de novo. Sheikh v. Choe, 156 Wn.2d 441, 448, 128 P.3d 574 (2006).

We conclude that under the unique circumstances here, McCandless pleaded no facts, real and imagined, sufficient to trigger a duty on the part of DSHS to investigate and report.

Motion to Amend Complaint

McCandless contends that the trial court erred when it "denied" his motion to amend his complaint. Br. of Appellant at 15. We disagree. The record plainly shows the trial court declined to rule on the motion at that time.

Under CR 15(a), a plaintiff must obtain permission from the court or written consent of the adverse party to amend a complaint if an answer has been filed. The rule also provides that leave to amend "shall be freely given when justice so requires." CR 15(a). The decision to grant leave to amend the pleadings is within the discretion of the trial court. Wilson v. Horsley, 137 Wn.2d 500, 505, 947 P.2d 316 (1999). The trial court's decision will not be disturbed except where there is a clear showing of an abuse of discretion. Wilson, 137 Wn.2d at 505.

The trial court's minute entry states: "Plaintiff's motion to amend the complaint: not ruled upon as it is not before the court today." CP at 3. McCandless submitted no written motion to amend and attached no proposed amended pleading. CR 15(a). No signed order denying the oral motion to amend is included in our record.

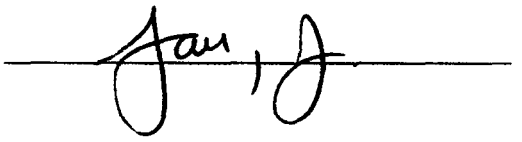
McCandless relies on Rodriguez v. Loudeye Corp., 144 Wn. App. 709, 189 P.3d 168 (2008). That case does not apply. There, the trial court denied plaintiffs' motion to amend the pleadings without an explicit explanation. We affirmed the denial because the apparent reason was futility of amendment.

Here, the trial court did not rule on the motion so there is no ruling for this court to review. See Mayekawa Mfg. Co. v. Sasaki, 76 Wn. App. 791, 796 n.6, 888 P.2d 183 (1995) (ruling must be final and definitive to preserve right to review). The trial court's explanation that McCandless' oral motion was not properly before it, left open the

opportunity for McCandless to note a subsequent motion to amend the complaint. McCandless made no motion to amend the complaint.

CONCLUSION

For the reasons discussed above, we affirm the CR 12(c) dismissal of McCandless' negligence lawsuit.



WE CONCUR: