

No. 63259-1-I

COURT OF APPEALS DIVISION I
OF THE STATE OF WASHINGTON

SHELDON REYNOLDS, an individual,
and BRICE BATES, an individual, Appellants
v.
JANIE HENDRIX, an individual, Respondent

APPELLANTS' REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
A. ASSIGNMENT OF ERROR.....	1
1. ASSIGNMENTS OF ERROR	1
2. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR	1
B. ARGUMENT.....	1
1. A DE NOVO STANDARD OF REVIEW APPLIES	1
2. BATES AND REYNOLDS HAVE PROPERLY PLED THE ELEMENTS OF MALICIOUS INTERFERENCE WITH A PARENT-CHILD RELATIONSHIP CLAIM.	5
3. MR. REYNOLDS PRESENTED SUFFICIENT EVIDENCE FOR A REASONABLE JURY TO RETURN A VERDICT FOR INTERFERENCE WITH A PARENT-CHILD RELATIONSHIP.	12
a. A biologic relationship constitutes an existing family relationship.....	12
b. There is sufficient evidence of adverse impact to submit the matter to the jury.	16
c. Hendrix interference with the familial relationship occurred when Bates was a minor and extended past his 18 th birthday	19
d. There is sufficient evidence of malicious and intentional conduct on the part of Hendrix to submit the matter to a jury.	21
e. A child may pursue a cause of action for malicious interference of a parent-child relationship.	23
C. CONCLUSION	25

TABLE OF AUTHORITIES

Cases

Armstrong v. Manzo, 380 U.S. 545, 550, 14 L. Ed. 2d 62, 85 S. Ct. 1187 (1965).....15

Dicomes v. State, 113 Wn.2d 612, 630, 782 P.2d 1002 (1989)6

Johnson v. Luhman, 330 Ill. App. 598, 71 N.E.2d 810 (1947)24

Kirby v. City of Tacoma, 124 Wn. App. 454, 470-471 (Wash. Ct. App. 2004).....10

Lewis v. Bell, 45 Wn. App. 192, 724 P.2d 425 (1986).....11, 12

Lightner v. Balow, 59 Wn.2d 856, 858, 370 P.2d 982 (1962)5

Pacific Northwest Shooting Association v. Sequim, 158 Wn. 2d 342, 144 P.3d 276 (2006)
.....10

Peterson v. J. B. Hunt Transp., Inc., 2006 Wash. App. LEXIS 1426, 6-8 (Wash. Ct. App.
July 5, 2006)5

Quilloin v. Walcott, 434 U.S. 246, 255-56, 54 L. Ed. 2d 511, 98 S. Ct. 549 (1978).....15

Saluteen-Maschersky v. Countrywide Financing Corp., 105 Wn. App. 846, 857, 22 P.3d
804 (2001)4

Santosky v. Kramer, 455 U.S. at 749, 753-54.....15

Shooting Park Ass'n v. City of Sequim, 158 Wn.2d 342, 353, 358-359 (Wash. 2006).....10

Spurrell v. Block, 40 Wn. App. 854, 867 (Wash. Ct. App. 1985).....16, 19

Strode v. Gleason, 510 P.2d 250, 9 Wn. App. 13, 20 (Wash. Ct. App. 1973) ..1, 16, 19, 24

Trask v. Butler, 123 Wn.2d 835, 872 P.2d 1080 (1994)11

Troxel v. Granville, 530 U.S. 57 (U.S. 2000)15

Waller v. State, 64 Wn. App. 318, 824 P.2d 1225 (1992).....3, 19

Wayman v. Wallace, 94 Wn.2d 99, 615 P.2d 452 (1980)21, 25

Rules

C.R. Rule 810, 11

C.R. Rule 8(a)..... 1, 2, 3, 11

C.R. Rule 12(b).....3

C.R. Rule 153

C.R. Rule 54(b).....4

C.R. Rule 564

Other Authorities

Washington Consumer Protection Act, RCW 19.86.....11

A. Assignments of Error

1. Assignments of Error

a. The trial court erred: a) in determining that a grant of summary judgment against plaintiff Brice Bates (“Bates”) as to his claim of “Outrage” resulted in a dismissal of “all claims alleged against the defendant [Hendrix]” (order of January 9, 2009);” and b) in failing to revise its summary judgment order to reflect that other claims which may arise under C.R. Rule 8(a) survived summary judgment (order of January 26, 2009).

b. The trial Court erred in failing to instruct the jury on the elements of a claim for malicious interference with a parent – child relationship. *Strode v. Gleason*, 510 P.2d 250, 9 Wn. App. 13, 20 (Wash. Ct. App. 1973)

2. Issues Pertaining to Assignments of Error

B. Argument

1. A De Novo Standard of Review Applies

Hendrix begins her argument with the assertion that an abuse of discretion standard applies to the trial court’s determination of whether Plaintiff-Appellants properly plead claims for interference with the parent-child relationship. This argument: 1) disregards the error assigned; 2) is internally contradictory; and 3) disregards the procedural posture of the case.

Hendrix acknowledges that in relation to the second assigned error, “[T]he trial court was required to decide, as a matter of law, whether the allegations set forth in Mr. Reynolds' complaint were sufficient under CR 8 to plead a cause of action for malicious alienation of affections of a

minor child ...”, and thus the application of a de novo standard of review is proper. Hendrix was correct in this analysis.

In relation to the first assigned error, after acknowledging that a summary judgment is reviewed de novo, Hendrix attempts to rewrite the assigned error and procedural posture in order to apply the more restrictive standard of review associated with a denial of a motion to amend. *See* Respondent’s Answer Brief, p.17. Reynolds and Bates’ assigned error was very specific:

c. The trial court erred: a) in determining that a grant of summary judgment against plaintiff Brice Bates (“Bates”) as to his claim of “Outrage” resulted in a dismissal of “all claims alleged against the defendant [Hendrix]” (order of January 9, 2009);” and b) in failing to revise its summary judgment order to reflect that other claims which may arise under C.R. Rule 8(a) survived summary judgment (order of January 26, 2009).

This assigned error does not allege that the trial court erred in ailing to allow Bates to amend his complaint to add a claim for interference with the parent-child relationship. Indeed, as pointed out by Hendrix, Appellant’s have not appealed the trial court’s order denying a motion to amend. Rather, the Appellants allege that a claim for interference with the parent-child relationship had already been pled, that it had not been properly addressed on summary judgment, and that the trial court’s order was subject to revision.

Hendrix’ Answer Brief mischaracterizes Appellants’ motion to revise its summary judgment order as a motion to reconsider.

(Respondent’s Answer Brief, pp. 11) The Motion for Summary Judgment, and associated Order, addressed only the Tort of Outrage. Appellants did not ask the court to reconsider this ruling. Rather, Appellants asked the trial court to revise its order to reflect that other claims were raised pursuant to C.R. Rule 8, and that those claims had not been addressed by the Court’s order. Nowhere in Respondent’s Answer Brief does Hendrix directly address C.R. Rule 54(b) or the trial court’s obligation in ruling on a motion to revise an order.

The basic legal inquiry the trial court was required to make was the same for both assigned errors: “whether the allegations set forth in Mr. Reynolds' [or Mr. Bates'] complaint were sufficient under CR 8 to plead a cause of action for malicious alienation of affections of a minor child”¹ The question of whether such a cause of action was sufficiently pled is a matter addressed by C.R. Rule 8, and C.R. Rule 12(b) (both subject to a de novo standard of review) not C.R. Rule 15 (subject to an abuse of discretion standard of review). As the basic inquiry to both of the assigned errors is that of whether the complaint sufficiently pled a claim

¹ Respondent’s Answer Brief, p. 16. Hendrix throughout her brief refers to the cause of action as “alienation of affections of a minor child.” This language comes from the 1973 decision of *Strode v. Gleason*, 9 Wn. App. 13, 510 P.2d 250 (1973). The more recent delineation of this cause of action refers to it as “interference with a parent child relationship.” *Waller v. State*, 64 Wn. App. 318, 824 P.2d 1225 (1992) Hendrix uses the outdated language of *Strode* as an attempt to limit the relief available under this cause of action.

other than outrage, Hendrix' argument that two different standards of review apply is internally inconsistent.

Additionally, the trial court in this matter based its decision solely on C.R. Rule 56. In neither the context of Hendrix' Rule 56 motion nor in the context of Bates' C.R. Rule 54(b) motion, did the court address the factual and legal issues associated with an amendment of the complaint. Specifically, the court did not address issues such as whether there was undue delay, whether that delay was harmful to Hendrix, or whether a continuance could cure any harm to Hendrix.² There is no record on which an appellate court could review the trial court's decision as a decision on a motion to amend. The trial court reviewed the matter in the context of C.R. Rule 56 and 54(b) motions and a de novo standard of review applies.

In this regard, Hendrix' reliance on *Saluteen-Maschersky v. Countrywide Financing Corp.*, 105 Wn. App. 846, 857, 22 P.3d 804 (2001) is misplaced. In *Saluteen-Maschersky* the court's order arose in the context of a motion to strike claims and was addressed under that basis: "the trial court's decision to strike the claims was not an abuse of discretion." *Saluteen-Maschersky* 105 Wn. App. At 857 (Wash. Ct. App. 2001) The court's order in *Saluteen-Maschersky* was not premised on C.R. 56 or C.R. 54(b) and as such that case is largely inapplicable. *c.f.*

² It should be noted that the trial took place on the first trial date set. Neither party requested or was granted a continuance at any time.

Peterson v. J. B. Hunt Transp., Inc., 2006 Wash. App. LEXIS 1426, 6-8 (Wash. Ct. App. July 5, 2006)(where a motion to strike claim for failure to adequately provide notice of claim is treated as a motion for partial summary judgment by the trial court, the appeal court will review it in that context.)

2. Bates and Reynolds have properly pled the elements of malicious interference with a parent-child relationship claim.

Hendrix recognizes that “additional complimentary legal theories may legitimately develop” as a case progresses. (Respondent’s Answer Brief, p.14) However, rather than address the complimentary nature of claims of Outrage, and claims for interference with a parent-child relationship, Hendrix’ Answer Brief states in conclusory fashion that Reynolds and Bates have not pled the elements of an interference with a parent-child relationship claim. Hendrix’ Answer Brief does not address the specific allegations raised in Plaintiffs’ complaints, nor does Hendrix’ Answer Brief reference, or make any effort to analyze *Lightner v. Balow*, 59 Wn.2d 856, 858, 370 P.2d 982 (1962) or *Amaker v. King County*, 479 F. Supp. 2d 1159, 1161 (W.D. Wash. 2007). Hendrix Answer Brief makes no attempt to refute the legally correct statement that that the substance of the complaint, rather than titles or headings, determined whether a claim was properly pled.

The elements of an Outrage claim are complimentary to a claim for intentional interference with a parent-child relationship claim, and both

arise from the Appellants complaints. To establish a tort of outrage claim, a plaintiff must show (1) extreme and outrageous conduct, (2) intentional or reckless infliction of emotional distress, and (3) severe emotional distress on the part of the plaintiff. *Dicomes v. State*, 113 Wn.2d 612, 630, 782 P.2d 1002 (1989) In this case, the outrage claim, as pled and as submitted to the jury was based on the damage caused by the interference in the parent-child relationship which occurred when Hendrix intentionally misled Reynolds as to the results of the 2002 DNA test.

To establish an intentional interference with parent-child relationship claim, a plaintiff must show: 1) an existing family relationship; 2) a malicious interference with the relationship by a third person; 3) an intention on the part of the third person that such interference results in a loss of affection or family association; 4) a causal connection between the third [party's] conduct and the loss of affection; and 5) that such conduct resulted in damages. The factual basis supporting the outrage claim is more than sufficient to give rise to an intentional interference with parent-child relationship claim. Both causes of action alleged that Hendrix intentionally interfered with the parent-child relationship by lying about the 2002 DNA test and Bates' and Reynolds' relationship was adversely affect to the damage of both. This is precisely the type of "complimentary legal theories" that Hendrix recognizes may exist in a claim.

Much of the problem in this case arises from the initial title of the complaint as a Complaint for Outrage. There is no requirement that Plaintiffs even title their claims. *Amaker v. King County*, 479 F. Supp. 2d 1159, 1161 (W.D. Wash. 2007) (“The pleadings need not identify any particular legal theory under which recovery is sought.”) The complaint simply must give sufficient notice to the defendant of the nature of the claim being brought. *Lightner v. Balow*, 59 Wn.2d 856, 858, 370 P.2d 982 (1962) Whether the claim is titled as a claim for “outrage”, a claim for interference with a family relationship, or a claim for interference with the right to an accurate determination of paternity, or otherwise, is largely irrelevant. *Id.* (“If a complaint states facts entitling the plaintiff to some relief, it is immaterial by what name the action is called.”). Under this very clear precedent, a court must evaluate the pleadings to determine if there are any facts under which a party may prevail, even if a potential claim is not titled or otherwise specifically delineated.

This is particularly true when a party identifies for the trial court claims which have been pled, but which were not specifically titled or called claims for relief. “[I]nitial pleadings which may be unclear may be clarified during the course of summary judgment proceedings.” *Adams v. King County*, 164 Wn.2d 640, 657-658 (Wash. 2008) Bates’ Response to the Motion for Summary Judgment specifically informed the trial court that there were claims other than “Outrage” raised by the pleadings which

must be evaluated by the court and that the manner in which the claims were titled was irrelevant. *See* (CP 25, pp. 61-75) Counsel raised this issue again in oral argument. (RP January 9, 2009, pp. 60-63) While it may or may not have been appropriate for the trial court to dismiss the claim of “Outrage” it was error for the trial court to dismiss all claims raised by the pleadings without first making an attempt to determine if: 1) other claims were reasonably raised by the pleadings; and 2) whether there were genuine issues of fact relating to those claims.

Hendrix repeatedly alleges that there was no allegation of parent-child relationship in Plaintiffs’ complaints. This is patently incorrect. Bates filed his original complaint in the above-captioned matter on or about August 8, 2007³. (CP 1, pp. 10-14) Both Bates and Reynolds’ complaints are premised on a father-son relationship. The complaints specifically allege that Bates is the son of Sheldon Reynolds. (CP 1, pp.10-14) The complaint could not be any clearer in this regard.

The complaints allege that Bates undertook genetic testing with Reynolds to determine if there was a father and son relationship. (CP 1, pp. 10-14) He alleged that when the results of the genetic testing were received, Reynolds was unable to read the tests. (CP 1, pp.10-14) Bates alleged that a third party, the Defendant Janie Hendrix, agreed to read the test results for Reynolds and untruthfully reported the tests were negative,

³ The cites herein are in reference to the Bates’ complaint. The Reynolds complaint contains identical mirror allegations.

when they were in fact positive. (CP 1, pp. 10-14) Bates alleged this false report of a negative test result was made by the Defendant “to protect her own financial interests in the Jimi Hendrix estate and to avoid any possible financial entitlement Bates might have were he Sheldon’s son. (CP 1, pp. 10-14) Bates alleged the false report was “extreme and outrageous conduct which resulted in intentional or, at best, reckless infliction of emotional distress.” (CP 1, pp. 10-14) Bates alleged this conduct caused him “damage to the parent-child relationship, severe mental suffering and emotional distress.” (CP 1, pp. 10-14) Hendrix claims that there was no allegation that affection was lost is clearly disproven by the complaint.

The complaint in this case gave sufficient notice to Hendrix of the nature of the claims brought against her. The complaint sufficiently apprised Defendant that she would have to defend against a claim of intentional interference with the father-son relationship of the Plaintiffs. *Amaker v. King County*, 479 F. Supp. 2d 1159, 1161 (W.D. Wash. 2007) (The pleadings need not identify any particular legal theory under which recovery is sought.) There was no “guess work” required to understand what was being alleged, and what facts needed to be developed to meet it. The clear point of Plaintiffs’ complaints was that Hendrix lied about the testing, thus interfering with their father-son relationship. Hendrix was clearly put on notice regarding the allegations against which she needed to defend herself. The Court’s January 9, 2009 order was manifestly in error

in failing to consider and to address the other claims which, pursuant to C.R. 8(a) were sufficiently pled to give rise to a jury verdict.

Because of the individualized nature of the C.R. Rule 8 analysis, the case law cited by Hendrix, while largely legally applicable, is not factually applicable. In *Pacific Northwest Shooting Association v. Sequim*, 158 Wn. 2d 342, 144 P.3d 276 (2006) both the majority and the dissent recognized that Washington is a notice pleading state and merely requires a simple, concise statement of the claim and the relief sought, and that under these "liberal rules of procedure," a complaint is sufficient so long as it provides notice "of the general nature of the claim asserted." *Shooting Park Ass'n v. City of Sequim*, 158 Wn.2d 342, 353, 358-359 (Wash. 2006) The majority and dissent, while they relied on the same law, came to differing conclusions based on the allegations contained in the complaint. The majority found the plaintiff had failed to plead the requisite "relationship" while the dissent believed the "relationship" requirement was properly pled. The point of *Shooting Park Ass'n* is clear: the court must look at the actual pleadings filed to determine whether under C.R. Rule 8 a claim has been properly pled. Each case will be individual in nature, and reasonable jurists may even disagree when looking at the same complaint.

Kirby v. City of Tacoma, 124 Wn. App. 454, 470-471 (Wash. Ct. App. 2004) presents a nearly identical circumstance. *Kirby* recognized

that a matter is properly pled under C.R. Rule 8(a) when a short and plain statement of the claim is sufficient to "apprise the defendant of the nature of the plaintiff's claims and the legal grounds upon which the claims rest." *Kirby v. City of Tacoma*, 124 Wn. App. 454, 470-471 (Wash. Ct. App. 2004) The *Kirby* court went on to conduct an individualized assessment as to whether the matter as pled was sufficient under C.R. Rule 8(a). Again the lesson to be drawn is that the court must look at the actual pleadings filed to determine whether under C.R. Rule 8 a claim has been properly pled.

Trask v. Butler, 123 Wn.2d 835, 872 P.2d 1080 (1994) was limited to addressing the very specific statutory pleading requirements of the Washington Consumer Protection Act, RCW 19.86. Unlike a non-statutory common law claim, "a litigant must plead more than general facts in a complaint to properly allege a CPA cause of action." *Trask v. Butler*, 123 Wn.2d 835, 846 (Wash. 1994) The more rigorous pleading standards of a CPA case do not apply in the present case. All that is required under C.R. Rule 8 is that Defendant have sufficient notice of the claim.

Lewis v. Bell, 45 Wn. App. 192, 724 P.2d 425 (1986), which *Hendrix* indicates has "strikingly similar facts" address a completely different legal issue. This case does not even address the pleading requirements of C.R. Rule 8, nor does it address the requirement that a

trial court look beyond titles and headings in a complaint to look at the body of the complaint. In *Lewis* the plaintiff raised new causes of action for the first time **on appeal**. Unlike the present case, additional possible causes of action were not raised in the trial court and were not made in any pleading or affidavit submitted in support of summary judgment. The holding of *Lewis* is that such issues “cannot be raised for the first time on appeal. *Lewis v. Bell*, 45 Wn. App. 192, 197 (Wash. Ct. App. 1986)

Additionally, none of these cases address or refute the proposition that there is no requirement that Plaintiffs title their claims or that the substance of a complaint, rather than its title governs what has been pled under C.R. Rule 8. *See Amaker v. King County*, 479 F. Supp. 2d 1159, 1161 (W.D. Wash. 2007)

3. Mr. Reynolds presented sufficient evidence for a reasonable jury to return a verdict for interference with a parent-child relationship.

Reynolds came forward with sufficient evidence at trial to support an intentional interference claim. In an attempt to avoid an adverse conclusion, Hendrix seeks to narrow the definition of parent to exclude a biologic parent, and seeks to minimize or ignore the harm caused by a deprivation of that relationship.

a. A biologic relationship constitutes an existing family relationship

The existence of a father-son relationship between Bates and Reynolds was confirmed by genetic testing. (CP 25, pp. 61-75, p. 97 of

Ex. 2) It is beyond question that a parent-child relationship exists between Bates and Reynolds. In an attempt to avoid this irrefutable fact, Hendrix attempts to cloud the issue with comparative fault, and to claim that a parent-child relationship precludes a biological relationship. Neither position is supported by case law.

Hendrix first argues that Reynolds “alone is to blame” for the lack of relationship prior to 2006 and therefore a cause of action for intentional interference with a parent-child relationship should not be given to the jury. Respondent’s Answer Brief pp. 26-27. While such evidence may be appropriate to a consideration of whether the jury should be instructed on comparative fault, it has little relevance to whether the plaintiff came forward with sufficient evidence to give the jury an instruction on an intentional interference claim. It should also be noted that a comparative fault instruction was not given in this case, and the issue of comparative fault is not before the court.

Additionally, in arguing that comparative fault concerns preclude instructing the jury on an intentional interference claim, Hendrix is assuming her interpretation of the evidence (it was all Reynolds’ fault) is the only interpretation open to the court. There was evidence by which a reasonable jury could conclude it was perfectly understandable that Mr. Reynolds did not believe Mr. Bates was his son. (RP February 2, 2009, pp. 16) This belief was based on factors including: 1) the physical

appearance of the child (RP February 2, 2009, pp.16); 2) the fact that Regina Bates had a number of contemporaneous sexual partners (RP February 2, 2009, pp.18); and 3) other acts of fraud and dishonesty by Regina Bates. (RP February 3, 2009, pp. 84-86) The trial court is not required to simply agree to Hendrix' interpretation of conflicting evidence.

Likewise, such comparative fault considerations would not apply between the time of the initial 2002 test, about which there is evidence of fabrication by Ms. Hendrix, and the 2006 test. Ms. Hendrix may not claim that a case for damages she caused between 2002 and 2006 is precluded simply because she was successful in interfering with the father-son relationship from 2002 to 2006. Hendrix may not avail herself of the benefit of her own wrongdoing.

There is no case law indicating that a biological relationship forms an insufficient basis to pursue an interference with a parent-child relationship. Such a position makes no sense logically. If Hendrix' position was correct, a third party could steal a baby, preventing the baby from ever having a relationship with its parent, and insulate him or herself from liability by arguing that there is no claim because there must be more than a biological relationship to pursue a claim. Such a result would be absurd. It is equally absurd for Hendrix to argue that because she was successful in preventing any relationship other than a biological one between 2002 and 2006 she is insulated from suit.

While the case law relating to family relationships extends beyond the biological fact of parentage, biology is the starting point and often a requirement of legal analysis. This is recognized in the manner in which the United States Supreme Court has treated the rights to of parents. The United States Supreme Court has recognized the right of parents to be an active and integral part of their children's lives as "perhaps the oldest of the fundamental liberty interests recognized by [the Supreme] Court." *Troxel v. Granville*, 530 U.S. 57 (U.S. 2000)

The Supreme Court recognizes that a father's relationship with his children is such a right. Justice Marshall, speaking for a unanimous Supreme Court, stated "a [once] married father who is separated or divorced from the mother and is no longer living with his child" could not constitutionally be treated differently from a currently married father living with his child. *Quilloin v. Walcott*, 434 U.S. 246, 255-56, 54 L. Ed. 2d 511, 98 S. Ct. 549 (1978) In *Armstrong v. Manzo*, 380 U.S. 545, 550, 14 L. Ed. 2d 62, 85 S. Ct. 1187 (1965), the Court took for granted that the interest of a divorced father in the preservation of his visitation rights is a "liberty interest" sufficient to trigger the application of procedural due process doctrine. And in *Santosky v. Kramer*, 455 U.S. at 749, 753-54, the Court expressly held that the interest of a parent, who has temporarily lost custody of his child, in avoiding elimination of his "rights ever to visit, communicate with, or regain custody of the child" is important enough to

entitle him to the procedural protections mandated by the Due Process Clause. A finding that a biological relationship was not sufficient to pursue an intentional interference claim would be contrary to the role afforded biological parents constitutionally.

The case law relating to an intentional interference claim does not require a court to make a subjective assessment of whether someone is “enough of a parent” to bring a claim. In *Strode v. Gleason*, 9 Wn. App. 13, 20 (Wash. Ct. App. 1973) the court held that “a parent has a cause of action for compensatory damages against a third party who maliciously alienates the affections of a minor child.” *Strode* did not qualify this holding to exclude a parent who, for at least two years of his child’s life, was withheld from him by the wrongful conduct of a third party. Cases subsequent to *Strode* do not add a subjective parenting component. In *Spurrell v. Block*, 40 Wn. App. 854, 867 (Wash. Ct. App. 1985) the court indicated “[w]e think that the court’s reasoning in *Strode* is persuasive and relevant to contemporary conditions and relationships.” See also *Waller v. State*, 64 Wn. App. 318, 338 (Wash. Ct. App. 1992)(not imposing any subjective component to the family relationship.)

b. There is sufficient evidence of adverse impact to submit the matter to the jury.

In identifying whether there was sufficient adverse impact on the parent-child relationship to submit the matter to the jury, it must be remembered that the claim of Outrage, which has an even more stringent

damages requirement was submitted to the jury. If there was sufficient evidence of injury to the familial relationship to submit an outrage claim to the jury, there is certainly sufficient evidence of injury to submit an intentional interference claim to the jury.

Additionally, Hendrix again is arguing that the court view this matter as if her interpretation of conflicting evidence was the only possible interpretation. However, as with the parent-child relationship, there was conflicting evidence of injury. Where there is conflicting evidence, a party is entitled to an instruction on their theory of the case.

In arguing that there was no adverse impact on the parent-child relationship, Hendrix is asking the court to ignore the impact of being denied a father-son relationship for four years while the Hendrix subterfuge went undiscovered. What was lost during these four years is irreplaceable. Judge Downing, the trial judge, recognized the importance of this loss in submitting the Outrage claim to the jury:

Here, I think what's being talked about and what you will certainly argue to the jury is something, if I may say with all due respect to the Supreme Court and the US Constitution, and that's the natural law, the laws of nature, the laws of nature as God, if you will, that define the parent-child and family relationship. That is really what is alleged to be the loss that was suffered in this case...."

(RP4 54:6-22)

Because of the summary judgment order, the degree of Bates' damages was not a subject for evidence at trial. Even though it was not

subject to evidence at trial, his injury was evident from the testimony. Bates' belief that the genetic testing was negative led him to have doubts as to his mother's honesty, and caused "turbulence" in their relationship. (RP February 3, 2009, pp.22) Bates indicated that he did not have the support of his father during important and traumatic events in his life including the death of his uncle (RP February 3, 2009, pp. 37); his graduation from high school (RP February 3, 2009, pp. 38); and his selection to the Southern University Marching Band (RP February 3, 2009, pp.39).

Reynolds' mother passed away three years after the original paternity test. (RP February 3, 2009, pp. 107) Reynolds often talks about how his mother never got to meet Bates, and becomes "somewhat hysterical" when he discusses the matter. (RP February 3, 2009, pp.36) He feels "pain" because they cannot go back and change things. (RP February 3, 2009, pp.37) Reynolds indicates that Hendrix "had denied me the right to know my own child." (RP February 3, 2009, pp. 120) Reynolds stated:

The most important gift your wife can give you is the truth and you don't get it and now you realize that not only have you lost time with your child, how he will never share with his grandmother, who I know would have benefited in her quality of life if not length of life. That's where I was. Based on that, I was – it's hard to put into one word. But I felt destroyed. I felt like I was dying., like I had no where to go and the only light was that I now knew I actually had a son and hearing his voice every morning is what kept me going.

(RP February 3, 2009, pp.120-121)

Hendrix' citation to *Spurrell v. Block*, 40 Wn. App. 854, 867-868 (Wash. Ct. App. 1985) is not persuasive in that the deprivation of familial relationship in that case lasted a mere 30 hours (not four years) and in that case, "there [was] ... no allegation of malice, alienation, or lost affection..." Here, those allegations are not only present, they were sufficient to pursue an outrage claim.

c. Hendrix interference with the familial relationship occurred when Bates was a minor and extended past his 18th birthday

It is now clear why Hendrix throughout her brief refers to the cause of action with the outmoded moniker of "alienation of affections of a minor child." This language, originating in the 1973 decision of *Strode v. Gleason*, 9 Wn. App. 13, 510 P.2d 250 (1973) is necessary to build a straw man in order to argue that Bates may not pursue a claim because he was over 18 when he learned of Hendrix outrageous conduct. The more recent delineation of this cause of action refers to it as "interference with a parent-child relationship." *Waller v. State*, 64 Wn. App. 318, 824 P.2d 1225 (1992) Nothing within the case law prohibits a person from pursuing an interference with parent-child relationship claim when the intentional conduct which interfered with the relationship took place while the plaintiff was minor, and extended past his 18th birthday.

Brice Bates was born in early 1986. (RP February 3, 2009, pp.141-142) In May of 2002, when Bates was 16, Reynolds indicated to Bates that they needed to know the truth of their relationship, so they undertook genetic testing. (RP February 3, 2009, pp.15; 63-64) They took an oral swab test, sealed the sample in an envelope and sent it to the testing laboratory. (RP February 3, 2009, pp.17; 102-103)

In July of 2006, Bates again contacted Reynolds. (RP February 3, 2009, pp.26-27) Reynolds and Bates discussed the original negative test results. (RP February 3, 2009, pp.28) They determined they would take a second genetic test. (RP February 3, 2009, pp.27-29) The test confirmed their father-son relationship. (RP February 3, 2009, pp.30) The initial interference with the parent-child relationship occurred when Bates was a minor. Hendrix continued the lie until it was discovered four years later. The entirety of the interference with the familial relationship lasted four years. For at least two of those years, Bates was a minor. Even under Hendrix' reading of the case law, he is entitled to pursue claims for at least that period of time.

There is however, nothing in the case law which addresses or prohibits the recovery of damages which, as here, are inflicted in childhood and extend into adulthood. Clearly, Bates was damaged as a minor child. That damage, the deprivation of the knowledge of his relationship with Reynolds and the fall out thereof, extends beyond his age

of majority. There is no case law precluding him from recovering his full measure of damages.⁴

d. There is sufficient evidence of malicious and intentional conduct on the part of Hendrix to submit the matter to a jury.

The trial court found sufficient evidence of wrongful conduct to submit the tort of outrage to the jury. The same wrongful conduct is the basis of the malicious interference with parent-child relationship claim. To the extent it was sufficient for the purposes of the outrage claim, there is sufficient evidence of wrongdoing to submit the interference claim to the jury.

Hendrix was the President and CEO of Experience Hendrix, LLC, and was responsible for overseeing the Jimi Hendrix estate as well as “anything that has to do with protecting his rights.” (RP February 2, 2009, pp. 13) Hendrix had been involved with six prior cases involving allegations of paternity. (RP February 2, 2009, pp. 23) A number of the claims involved paternity tests. (RP February 3, 2009, pp.98-99) Upon the death of Ms. Hendrix’ father, intra-family litigation took place regarding the estate. Reynolds indicates that during the litigation Hendrix

⁴ *Wayman v. Wallace*, 94 Wn.2d 99, 615 P.2d 452 (1980) is limited to abolishing the alienation of affections of a spouse cause of action. It is based on an evaluation of the changing role of marriage in our culture. It is limited to spouses and does not address claims of other familial association such as parent – child claims. It does not address whether a minor’s damages from an intentional interference claim can extend into adulthood.

became, “sort of paranoid” about “everything going on.” (RP February 3, 2009, pp.95; 98)

Hendrix indicated that she paid Reynolds’ bills, including those relating to “his excessive charging and shopping....” (RP February 2, 2009, pp. 37) When Reynolds first discussed with Hendrix having genetic testing done regarding Bates she “felt that it was a bad time to do it ... because she said if it comes back positive she was worried about whether [Bates’] mom Regina would come after her because of who she represented....” (RP February 3, 2009, pp. 100) She “felt like because she represented the Hendrix estate that she would be a target before me for either back child support or some kind of bogus claim.” (RP February 3, 2009, pp. 101)

Reynolds relied on Hendrix’ knowledge of and experience with DNA testing. (RP February 3, 2009, pp.101) In May of 2002, Reynolds indicated to Bates that they needed to know the truth of their relationship, so they undertook genetic testing. (RP February 3, 2009, pp.15; 63-64) They took an oral swab test, sealed the sample in an envelope and sent it to the testing laboratory. (RP February 3, 2009, pp.17; 102-103)

When the results came back, they were picked up by Hendrix. (RP February 3, 2009, pp.104) The results were received and were opened in Hendrix’ office. (RP February 3, 2009, pp.35; 104) Reynolds could not read or understand them. (RP February 3, 2009, pp.35; 70; 104-105) He

gave them to Hendrix to read. (RP February 3, 2009, pp.35; 105) She indicated that she was not sure what they said, but believed the test was negative. (RP February 3, 2009, pp.105) She kept the results and indicated to him she would make further inquiry as to what the results meant. (RP February 3, 2009, pp.105) Within a few hours Hendrix called Reynolds and told him “he’s not your son; the test is negative.” (RP February 3, 2009, pp.105-06) At this point, Reynolds indicated that he trusted Hendrix with his life. (RP February 3, 2009, pp. 106)

In September of 2006, Hendrix informed Reynolds she wanted a divorce. (RP February 3, 2009, pp. 116). Reynolds asked Hendrix to forward to him the original genetic testing results when she sent the divorce papers. (RP February 3, 2009, pp. 117) The last time Reynolds had seen the papers they were in Hendrix’ hands in her office. (RP February 3, 2009, pp. 117) Hendrix indicated that she said she would look for the papers. When she sent the divorce papers, she did not send the testing papers. (RP February 3, 2009, pp.118) Reynolds informed Bates that Hendrix, his former wife, had lied to him about the results of the tests original genetic testing. (RP February 3, 2009, pp.33-4; 72)

As with the tort of Outrage, these facts are sufficient for a jury to infer wrongful conduct on the part of Hendrix

e. A child may pursue a cause of action for malicious interference of a parent-child relationship.

Hendrix is incorrect that a claim for malicious interference with a parent-child relationship may only be brought by a parent. *Strode v. Gleason*, 9 Wn. App. 13, 18 (Wash. Ct. App. 1973) specifically addressed the fact that all members of family had a right to protect the familial relationship, even a child:

The issue was stated as follows at page 176: Is the family relationship and the rights of the different members therein, arising there from, sufficient to support a cause of action in each, the father, mother, or children, against one who breaks it up and destroys rights of the said individual members?

...

The court concluded that a child had an action against one who had injured the child's right to support and maintenance "as well as damages for the destruction of other rights which arise out of the family relationship and which have been destroyed or defeated by a wrongdoing third party."

The conclusion that **all members of a family have a right to protect the family relationship and that a minor child may bring suit against a third person who wrongfully induced a parent to desert the child has also been reached in *Russick v. Hicks, supra*; *Johnson v. Luhman*, 330 Ill. App. 598, 71 N.E.2d 810 (1947); and *Miller v. Monsen, supra*.**

We see no basis for granting a child a cause of action for loss of the love and affection of a parent without recognizing that a parent has a like cause of action for damages against a third person who spitefully alienates the affections of a minor child or maliciously interferes with the family relationship resulting in a loss of the child's affections.

Strode v. Gleason, 9 Wn. App. 13, 18 (Wash. Ct. App. 1973)[emphasis added]

Wayman v. Wallace, 94 Wn.2d 99, 615 P.2d 452 (1980) does not require a different result. *Wayman* is limited to abolishing the alienation of affections of a spouse cause of action. It is based on an evaluation of the changing role of marriage in our culture. It is limited to spouses and does not address claims of other familial association such as parent – child claims.

C. Conclusion

Plaintiff / Appellants Bates and Reynolds request a new trial, and that during said trial, the jury be properly instructed regarding a claim for malicious interference with a parent-child relationship pursuant to *Strode v. Gleason*, 510 P.2d 250, 9 Wn. App. 13, 20 (Wash. Ct. App. 1973).

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Respectfully submitted,

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