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APPEAL No. 69763-3-1

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

BERTHA GRIFFITH,

Appellant,

v.

EDMONDS SCHOOL DISTRICT,

Respondent.

RESPONDENT'S BRIEF

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COURT OF APPEALS DIV.
I
STATE OF WASHINGTON

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I. INTRODUCTION

This claim involves a plaintiff, Bertha Griffith, who brought a claim against Edmonds School District arising from an alleged accident that according to every other witness, did not happen. Ms. Griffith was a passenger on a DART bus that was stopped on the side of the road, and claims that an Edmonds School District school bus drove by and hit the DART bus, causing her to experience significant injury. Yet, Ms. Griffith's story is unsupported by any evidence outside of her own testimony and her story about how the accident happened has changed significantly over the course of time.

Rather, the driver of the DART bus testified he was unaware of a collision and photos taken after the incident occurred show no evidence of contact between the two busses. No police report was completed and Ms. Griffith did not fill out an incident report as a result of the alleged accident. Likewise, the District's driver testified that no collision occurred.

Ms. Griffith did not supply any evidence disputing these facts outside of her own self-serving testimony, and her complaint was therefore properly dismissed by the trial court.

II. ASSIGNMENTS OF ERROR

1) This Court must decide the propriety of the trial court's summary judgment dismissal of Ms. Griffith's claim for damages where the evidence indicates that no accident occurred and Ms. Griffith, whose account of the alleged accident has changed multiple times, presents only her own testimony in support of her complaint, thus failing to provide evidence that a breach of duty occurred.

III. STATEMENT OF THE CASE

On the day of the incident giving rise to this lawsuit, Ms. Griffith was a passenger on a DART bus parked on the side of the road to allow Ms. Griffith to disembark. An Edmonds school bus then passed the DART bus Ms. Griffith was on. Ms. Griffith alleges the school bus collided with the DART bus, describing the incident as follows during her deposition:

Well, I was -- I had stood up to grab my bag, get off the bus. The driver had stood up and was facing the bus. And the next thing I knew, I just was being slammed into the windows and I could just see this yellow going right in front of my face. And I just hit -- tried to catch my balance, kept hitting into -- with my right side into the windows. And I don't know exactly how many times that happened.

And it was like nobody on the bus knew at first what had happened. And then the driver got off the bus.

And I know somebody stopped the bus driver. She was sort of headed into our driveway instead of straight. And then she backed up and was going to leave, and somebody stopped her from leaving. And that's about all of that that I remember.

CP 82-83. Yet, Ms. Griffith's testimony is contradicted by not only the DART bus driver, David Hurley, and the District's bus driver, Lynette Wilson, but also Ms. Griffith's own previous representations about how the alleged incident occurred. Further, photographs taken after the alleged incident occurred do not show evidence of any contact between the two busses, and although Mr. Hurley's supervisor and a police officer arrived at the scene, no incident report was completed by Mr. Hurley, Ms. Griffith, or the police. CP 92-104, 106. In short, Ms. Griffith's allegations are not corroborated and the evidence outside of Ms. Griffith's testimony supports the conclusion that this was a non-event.

Mr. Hurley, who was on the bus at the time the incident occurred, testified that he did not see any contact between the DART bus and the school bus at the time of the alleged incident, nor did he see any evidence of contact between the two busses after he walked around the DART bus after the alleged incident. CP 109-110. Mr. Hurley testified as follows:

Darryl was the supervisor that -- that came from -- from DART. And he did a quick investigation looking around the bus and saw no evidences that the bus came in -- the school bus came in contact with the -- the -- the DART bus. So we -- we talked about -- about that movement of the bus.

On further discussion with Darryl about the incident, he said that since he didn't find any evidences of any contact, he believed that it was the air movement from the school bus that had moved the -- moved the bus. It wasn't a severe rock. It was just a -- a motion like, you know, you lean to the -- lean to the right or whatever, you know. It was just a slight movement.

CP 111-112. When shown photos of the two busses taken that day, Mr. Hurley confirmed that the mirrors in the photographs showed no indication of contact, and that they reflected the condition of the bus mirrors on the day the incident occurred. CP 113-114.

Ms. Griffith later testified she did not actually see the District bus hit the DART bus:

Q. [Gillespie]: Did you actually see the school bus hit the DART bus?

A. [Griffith]: Well, it was as close to my face as it possibly could get.

Q. What was as close to your face as it could possibly get?

A. The school bus.

Q. Tell me why you say that.

- A. Because that's all I could see in front of my face. It wasn't like it was on its -- in its lane where you just see it. It was right up to the windows in the DART bus.
- Q. All right. So I guess my question, then, was: Did you actually see the school bus hit the DART bus?
- A. Well, I guess I can't say that I saw it hit it because it would be sort of -- I don't know how you could be getting knocked around and see it hit the DART bus.

CP 84-85.

Yet, as described below, Ms. Griffith's representations to her medical providers do not support her allegation that she was getting "knocked around," just as there is no evidence the District's bus contacted the DART bus. Furthermore, Ms. Griffith was unable to identify any damage to the DART bus when presented with photographs taken on the day the incident occurred:

- Q. [Gillespie]: Did you observe any damage that is not pictured in these photographs?
- A. [Griffith]: Only the scratch that was on the side of the DART bus, but I never observed or went and looked at the school bus.
- Q. So you're saying there was a scratch on the side of the DART bus?
- A. Right.
- Q. Okay. Where was that scratch?
- A. It was behind the mirrors.

- Q. Where on the DART bus was it?
- A. On the side.
- Q. Okay. On the driver's side?
- A. Yes.
- Q. Okay. How far back on the driver's side?
- A. I don't know. It was back behind the mirror. I never went and looked at the school bus.
- Q. Okay. Can you show me on any of these photographs where you thought there was a scratch?
- A. No, I can't see anything clearly. I don't know where they took the pictures at.
- Q. Well, can you show me from the photos -- is the area where you thought the scratch -- is it shown on any of those photos?
- A. No, I don't see it, but I wasn't involved with any of the taking pictures or looking closely at the bus, either one of them.

CP 86-87. The photographs, taken on the day of this alleged incident, show there was no damage to either bus. See CP 40-43.

Ms. Griffith testified that the DART bus driver showed her damage resulting from the incident. CP 88. Yet, as described above, Mr. Hurley, the driver of the DART bus, testified he did not see the District bus hit the DART bus, and neither he nor his supervisor saw any evidence the two busses made contact. CP

111-113. Additionally, this contradicts Ms. Griffith's testimony above that she never looked at the bus. CP 86-87.

Mr. Hurley further testified that to the extent the bus moved at all when the District's bus passed by, the motion was "just a slight movement." CP 111-112.

Q. [Johnsen]: Would you have been thrown off your balance had you not been holding the rail above?

A. [Hurley]: No, because I said the -- the motion wasn't severe enough to -- to cause -- to me to be thrown off balance.

CP 115.

Q. [Gillespie]: And I'm sorry to belabor this rocking thing, but can you tell me the sensation that you felt while you were on the DART bus? Was it one rock? Was it continuous rocking?

A. [Hurley]: Just one rock.

CP 116.

Finally, Mr. Hurley testified that Ms. Griffith did not appear injured or even upset as a result of the incident:

I had asked Bertha when she fell into the -- into the seat -- because it wasn't a severe -- like she was thrown into the seat, she just kind of leaned forward into the seat -- I asked her if she was okay, because that's, you know -- that's what we do. I want to make sure our passengers are safe and there's nothing -- nothing wrong with them at that particular time. I asked her if she was okay, and she said that she was fine. There was no problem. I believe that she sat down.

CP 111.

Q. [Gillespie]: Do you recall whether Ms. Griffith was upset as a result of this incident?

A. [Hurley]: What I recall is that it -- it seemed so superficial that she didn't seem dazed by it at all.

CP 117. In fact, Ms. Griffith did not seek medical treatment until February 27, 2008, five days after the incident, and she had been attending physical therapy for her back and neck on a consistent basis immediately prior. CP 123-126, 128-158. In fact, Ms. Griffith's deposition testimony about what happened when the alleged incident occurred contradicts several reports she made to her medical providers about the alleged incident. Although Ms. Griffith testified during her deposition that she was "slammed" into the windows on the driver's side of the bus after standing from her seat on the passenger side of the bus, Ms. Griffith represented during a March 5, 2008, appointment that she simply "fell backwards into her seat." CP 90, 160-163. She added that she "did not remember hitting anything, but was jolted from the impact." Id. In a separate medical report, dated October 14, 2008, Ms. Griffith claimed she was writing and "then something happened." CP 164-168. Ms. Griffith reported she did not know if another car struck the bus, or if it was another "braking episode." Id. None of

Ms. Griffith's reports to her providers reflect Ms. Griffith's later deposition testimony that she was "slammed" into the windows on the opposite side of the bus from where she was sitting.

Notably, Mr. Hurley's testimony reflects Ms. Griffith's March 5, 2008, report to her medical provider that she merely fell back into her seat when the DART bus rocked:

Q. Okay. Do you recall, did she fall to the floor or did she fall into the seat where --

A. No. The -- the air movement wasn't severe enough where she -- where she fell to the floor. She only fell to the seat.

CP 118. Mr. Hurley further testified that it is impossible that Ms. Griffith hit the window as a result of this alleged incident:

Q. [Johnsen]: Okay. Is it possible that she hit the windows?

A. Not possible.

Q. How do you know?

A. Because she wasn't even close to the window when I saw her.

CP 119.

In fact, Ms. Griffith has been exposed as having made false representations related to her medical treatment on at least one

other occasion. On January 16, 2006, Ms. Griffith was discharged from care by Mary Ann Bockman, PA-C at Providence Physician Group Internal Medicine, secondary to suspected falsification of her Loan Discharge Application. CP 170. According to the record, Ms. Bockman filled out the form and gave it to Ms. Griffith to mail to the Loan Program. Id. Ms. Bockman was later contacted for clarification regarding the dates of disability because the date on the form had been changed from 2002 to 2000. Id. Although Ms. Griffith denied forging the documents, she was discharged due to trust issues. Id.

In support of her claim, Ms. Griffith focuses on a report filled out by Ms. Wilson, driver of the District's bus, shortly after the incident. CP 172-173. That report does indicate "mirror on DART bus" under a section titled "object struck." Id. Yet, as indicated on the second page of the report and testified to by Ms. Wilson, this was not intended to indicate that there was actually contact between the two vehicles. Rather, it was based on the fact that Mr. Hurley reported to her that the school bus made Mr. Hurley's DART bus rock when it drove by, and Ms. Wilson was assuming the movement must have been caused by contact between the two vehicles' mirrors.

Q. [Johnsen]: For "object struck," it says "mirror on DART bus"; is that still correct?

MS. GILLESPIE: I'm going to object to the form. Go ahead.

THE WITNESS [Wilson]: There has always been discrepancy. There was discrepancies at the time. That's what we seem to have come up with, so I would probably -- a simple answer, yes.

Q. Yes, it is still correct?

A. (Witness nods head.)

Q. Will you answer audibly. I saw you nod your head, but --

...

A. I'm not sure how to answer because there were no markings on vehicles, so that terminology that I wrote was an assumption, so I guess I am going to say yes.

CP 176.

In fact, the language in the report indicates Ms. Wilson was making such an assumption when she filled it out. When asked to describe the incident, Ms. Wilson wrote, "As I passed, I must have 'tapped' his mirror with mine." CP 44-45. Ms. Wilson further wrote that she "had 5 students on which I dropped because I did not realize I tapped his mirrors." Id. During her deposition, however, when asked a straightforward question, Ms. Wilson's testimony was clear:

Q. [Gillespie]: At any point when you drove by the DART bus, did you feel that you made contact with the DART bus?

A. [Wilson]: No, I did not.

CP 177.

The only reason Ms. Wilson stopped at all was because Mr. Hurley approached her bus in an inquisitive manner. Mr. Hurley describes the interaction as follows:

I said to her, "I -- I think we have an incident here." I says, "Your bus rocked my -- my bus." And I said, "I'm not -- I'm not sure why." I -- I said to her that there -- that I heard a click. And I says, "I'm not sure," I says, "but maybe, possibly, that some contact had been made with the mirror." That was pretty much the conversation that I -- that I had with her, I think.

CP 120. As indicated above, however, an inspection of the busses after the incident revealed no contact between the mirrors or anywhere else on the busses. CP 111-113. It was for this reason that Ms. Wilson was permitted by her supervisor, Keith Moreland, to complete her route rather than undergo drug testing, which is the ordinary requirement where there has actually been an incident.

CP 39. Ms. Wilson's belief that no contact occurred is further exemplified by the following testimony:

Q. [Johnsen]: Did you check on the passengers of Mr. Hurley's bus?

A. [Wilson]: I did not.

Q. Why didn't you?

A. I still felt there was no contact. He and I both still felt there was no contact of vehicles.

CP 178.

Q. [Johnsen]: After the collision, did you mark the pavement in any way?

A. [Wilson]: No. There was not a collision.

CP 179.

In addition to the lack of evidence of a collision, there is ample evidence Ms. Griffith was prone to falling absent any influence by a negligent act because of her physical state, including weak knees, ankles, and feet. For example, predating the alleged incident on June 6, 2007, Ms. Griffith slipped and fell at a Cost Cutters, reportedly damaging her knees. CP 182-186. She testified that the fall at Cost Cutters injured her feet and "tore up her ankles," such that she needed to have ankle surgery. CP 89. She has refused to have the ankle surgery because she is diabetic, and thus did not want to start "messing with [her] feet." Id. Ms. Griffith also represented that she needed foot surgery as well because of the Cost Cutters incident, but had not had the same. CP 188-190.

During a medical visit on August 28, 2007, approximately six months before the alleged incident, Ms. Griffith reported that her knees had been causing her significant discomfort since her fall at Cost Cutters, that she had been injured at Tulalip Casino, and that she had a history of foot problems and back pain. Id.

From October 18, 2005, through April 25, 2006, Ms. Griffith underwent physical therapy relating to leg and back pain, and reported her legs giving way, buckling, and loss of balance. CP 192-215. Prior to that, from May 18, 2004, through November 3, 2004, Ms. Griffith underwent physical therapy for gait abnormality, as well as back pain and leg pain. CP 217-218, 220-222. Ms. Griffith also received physical therapy for lumbar pain and knee osteoarthritis from April 25, 2006, to July 31, 2006, and June 20, 2007, through July 18, 2007, respectively. CP 224-231, 233-237. Ms. Griffith continued to attend physical therapy on a fairly consistent basis for cervical spine strain/sprain starting October 30, 2007, through the date of this alleged incident, relating to another alleged DART bus incident that occurred on October 15, 2007. CP 128-158. In addition to the October 15, 2007, DART bus incident and the fall at Cost Cutters, Ms. Griffith also sprained her left foot

after falling at an apartment complex after slipping on ice in January 2007. CP 239-240.

Ms. Griffith's stability problems that pre-existed this incident are highlighted even more after the incident giving rise to this lawsuit. For example, on November 18, 2009, Ms. Griffith's physical therapist, Kristy Coppa, LMP, reported that Ms. Griffith had recently experienced multiple falling incidents, but had not mentioned issues relating to her feet and weak ankles until the month before. CP 242. Ms. Coppa noted she was not providing treatment for the feet and ankles, but that the feet and weak ankles, combined with wet weather conditions, had resulted in "multiple falls." Id. In short, Ms. Griffith had significant stability issues at the time the alleged incident occurred and was prone to falling, even in the absence of any negligent act or influence.

Ms. Griffith's deposition testimony also reveals her tendency to mold the mechanics of her injury to fit her alleged ailments. Ms. Griffith specifically testified as follows:

Q: [Gillespie]: And I thought -- my recollection of your testimony was that you were -- that you were facing the windows on the right side of the bus, on the passenger side of the bus, immediately before this incident occurred.

A. [Griffith]: No. It would have been -- oh, I don't know. Let's see. If -- you've got -- I'm

sitting on the bus and stood up and then turned around to get my bag off the seat and started to turn around and got slammed into the windows on the left.

Q. [Gillespie]: Okay. What side of your body hit the windows?

A. [Griffith]: My right side. That's the side that hurt afterwards.

CP 90.

In light of this evidence, the trial court properly granted summary judgment, dismissing Ms. Griffith's complaint.

IV. ARGUMENT

A. STANDARD OF REVIEW

Review of summary judgment motions is de novo. Contrary to Appellant's claim that this Court must "ignore the testimony favorable to the moving party when conflicting testimony exists," the standard on summary judgment motions is that "all reasonable inferences," rather than mere assertions, be viewed in the light most favorable to the non-moving party. Marshall v. AC & S Inc., 56 Wn. App. 181, 184, 782 P.2d 1107, 1009 (1989). In other words, this Court must determine what the reasonable inferences from the evidence are, not merely accept the evidence at face value. In order to defeat a summary judgment, "the nonmoving party may not rely on speculation, argumentative assertions that

unresolved factual issues remain, or having its affidavits accepted at face value.” Heath v. Uraga, 106 Wn. App. 506, 513, 24 P.3d 413 (2001), citing Seven Gables Corp. v. MGM/UA Entm’t Co., 106 Wn.2d 1, 13, 721 P.2d 1 (1986). Appellant's self-serving statements and opinions are insufficient to defeat a summary judgment motion. See Grimwood v. Univ. of Puget Sound, Inc., 110 Wn.2d 355, 359-61, 753 P.2d 517 (1988).

In this case, reviewing the reasonable inferences from the facts available, reasonable minds could not reach a conclusion that Ms. Griffith suffered personal injury as a result of a breach of duty by the District.

B. LEGAL ANALYSIS

1. Appellant Has Not Shown that the District Breached a Duty to Appellant

Ms. Griffith’s negligence claim was properly dismissed because she has failed to establish the District breached a duty to her. In a negligence action, a plaintiff must establish all of the elements of negligence, including “(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.” Crowe v. Gaston, 134 Wn.2d 509, 514-15, 951 P.2d 1118 (1998) (citing Reynolds v.

Hicks, 134 Wn.2d 491, 495, 951 P.2d 761 (1998)). Ms. Griffith did not present evidence to satisfy these elements.

a. No Evidence that a Duty was Breached

There is no evidence the District breached a duty to Ms. Griffith because the facts and all reasonable inferences therefrom, outside of Ms. Griffith's own assertions, indicate there was no contact between the two busses. Absent evidence of such contact, Ms. Griffith's complaint was properly dismissed as there is no evidence the District failed to exercise ordinary care in the operation of its school bus.

Negligence is the failure to exercise ordinary care, or the doing of some act that a reasonably careful person would not do under the same or similar circumstances. WPI 10.01. Generally, the standard of care to be applied in a negligence action is the care that a reasonably careful person would take under the circumstances, rather than the care a particular defendant should have exercised in a given circumstance. See Baughn v. Malone, 33 Wn. App. 592, 656 P.2d 1118 (1983). Ms. Wilson's actions in this matter were certainly those of a reasonably careful person, and reflect the actions a reasonably careful person would take under similar circumstances.

Both Ms. Wilson and Mr. Hurley testified that they did not observe any evidence of contact between the two busses. Mr. Hurley did experience that the school bus passing by caused his DART bus to rock once, in a very minor fashion. That the DART bus moved when a large school bus drove by is not on its own evidence of negligence.

When Mr. Hurley and his supervisor inspected the busses, they did not see any evidence that the two busses had contacted each other. Likewise, Ms. Wilson did not see evidence of contact between the two busses. Mr. Hurley's supervisor apparently concluded that the air being pushed by the school bus as it passed the DART bus must have caused the gentle rock of the bus.

Photographs taken at the time of the alleged accident also show an absence of evidence of contact between the two busses. Ms. Griffith's assertion that the two busses made contact, on its own, is insufficient evidence to prove the District's school bus was operated in a negligent fashion. In fact, Ms. Griffith admitted during her testimony that she did not actually see the District's school bus and the DART bus collide.

Ms. Griffith also proven to be an unreliable reporter whose representations seem to change to suit her personal needs. On one

occasion, she reported she “fell backwards into her seat” because of the impact. On another occasion, she reported she was writing and then “something happened,” and did not know if another car struck the bus, or if it was another “braking episode.” Yet, during her deposition, Ms. Griffith testified to yet a third version of the events, claiming she “slammed” into the windows on the driver’s side of the bus, after she had been sitting on the passenger side, and as she slammed into the window, she saw “yellow going right in front of my face.” Ms. Griffith further testified that she kept hitting her right side into the windows. This is in stark contrast to reports to her medical providers and to the deposition testimony of Mr. Hurley, who testified that the movement of the bus was minor, and that Ms. Griffith was essentially kneeling in her seat immediately after the alleged incident occurred. Ms. Griffith’s ever changing account of this incident in addition to Ms. Griffith’s January 2006 discharge for altering a loan application document bring Ms. Griffith’s reporting into serious question.

Regarding the fact that Ms. Griffith appears to have fallen in some fashion as the District’s bus passed by, it does not appear that it would take a negligent act to cause Ms. Griffith to lose her balance. Ms. Griffith reported to her medical providers on many

occasions that her stability was lacking, and that it has been a chronic problem for her because of her weak knees, ankles, and feet, as well as chronic back pain. Ms. Griffith underwent repeated sessions of physical therapy for her gait abnormality, as well as her back, neck, knees and legs, well before this alleged incident occurred and in fact up to the time this incident occurred. A previous fall and foot surgery injured her feet and “tore up her ankles,” such that she needed to have ankle surgery, neither of which she had undergone before this incident occurred. She testified that she refused to have the ankle surgery because she is diabetic, and did not want to start “messing with [her] feet.”

Ms. Griffith’s physical therapist, Kristy Coppa, LMP, also reported that Ms. Griffith had experienced multiple falling incidents after this alleged incident, but had not mentioned issues relating to her feet and weak ankles to Ms. Coppa until the month before. CP 242. Ms. Coppa noted she was not providing treatment for the feet and ankles, but that Ms. Griffith’s feet and weak ankles, combined with wet weather conditions, had resulted in “multiple falls.” Id. In short, Ms. Griffith experienced imbalance and weakness issues that made her susceptible to falling absent any intervention at all, much less negligent intervention.

Considering Mr. Hurley's testimony, Ms. Wilson's testimony, the photographs, and Ms. Griffith's history of instability, there is no evidence the District breached a duty to Ms. Griffith and her Complaint should be dismissed.

In arriving at the conclusion that a collision must have occurred, Ms. Griffith relies on the report submitted by Ms. Wilson after the alleged incident occurred. Yet, Ms. Wilson clearly testified that she did not witness any contact made with the bus. When asked about the report, she indicated that "there has always been discrepancy. There was [sic] discrepancies at the time." CP 27. Ms. Griffith relies on selective pieces of Ms. Wilson's testimony, rather than Ms. Wilson's testimony in context as a whole.

Although Ms. Griffith attempts to construe Ms. Wilson's testimony as an "oral admission" that an accident occurred, Ms. Wilson's testimony is nothing of the sort. Rather, the questions posed, which were objected to at the time of Ms. Wilson's deposition, were propounded by reading a section on the report and then asking whether the written statement was "still correct." The question necessarily assumes that the report reflected Ms. Wilson's opinion that an incident occurred, rather than an attempt to explain how her bus may have somehow made the DART bus

move. Ms. Wilson responded truthfully that the report still reflected what she wrote at the time. However, it ignores the context of Ms. Wilson's testimony and Ms. Wilson's intentions in drafting the report, which is to say that it ignores the fact that Ms. Wilson did not observe the bus collide with the DART bus. When she drafted the report, she was attempting to explain Mr. Hurley's report to her that his bus had "made a motion," despite the fact that neither individual observed any contact between the two busses.

Ms. Griffith also relies on Ms. Wilson's "admission" that the law requires her "not to crash into other vehicles," that she drove down the center of the street, and that she was correcting three students on the bus. CP 28-30. Yet, none of these facts are an admission that a collision actually occurred between the two vehicles or that such activities resulted in contact with the DART bus. All the testimony from the one objective party in this matter, Mr. Hurley, indicates that no collision ever occurred between the two busses. That supervisors came to the scene of the alleged incident is of little consequence, as this is done as a matter of course. What is not done as a matter of course is permitting a bus driver to complete his or her route where there has actually been an incident. Yet, Ms. Wilson was permitted to finish her route that day,

and was never requested to undergo a urinalysis, another typical step when an incident occurs. Finally, although police did arrive at the scene, no incident report was drafted, further lending to the clear conclusion that no incident occurred between the District's school bus and the DART bus.

In light of the evidence in this matter, Ms. Griffith's Complaint should be dismissed in its entirety because the evidence is inadequate to show that the District breached a duty to Ms. Griffith.

2. Appellant's Motion to Strike Respondent's Medical Record Exhibits Should be Denied

Appellant's motion to strike Respondent's exhibits should be denied as it is based not on relevancy, but instead on hearsay and authentication. It is well established, however, that "statements made for the purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment" are not excluded by the hearsay rule. ER 803(1)(4). As such, exclusion of Appellant's medical records is not appropriate based on Appellant's allegation that the records are hearsay.

Further, Appellant's authentication objection is made without any basis or explanation, and is unfounded. The medical records attached in support of Appellant's motion were obtained directly from Appellant's medical providers and a certification for each exhibit objected to was provided in Respondent's Reply. CP 20, 22, 24. Appellant makes no assertion that the records are somehow inaccurate or otherwise unreliable. To the extent Appellant continues to object to the authenticity of the medical records attached, Respondent requests an opportunity to obtain further authentication, and also requests, pursuant to ER 904, that Appellant pay the expenses and reasonable attorney fees incurred as a result of Appellant's demand for further authentication, as the objection is made without any reasonable basis.

V. CONCLUSION

Appellant's complaint was properly dismissed, as there is no evidence that a collision occurred, and thus no evidence that Respondent breached any duty to Appellant. Appellant's complaint is supported by nothing more than Appellant's own allegations, and these, without any additional supporting evidence, are insufficient to support a cause of action in the face of ample evidence that no collision occurred. As such, Respondent respectfully requests that

the Court uphold the decision of the trial court granting its motion for summary judgment.

Respectfully Submitted on June 4, 2013.

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on this day, the undersigned caused to be served in the matter indicated below of:

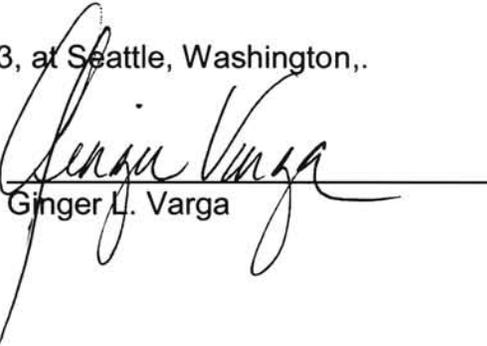
1. Respondent's Brief.

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