NO. 35313-0-II

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON
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Magdalina Quitorio Vergeson, Appellant,

v.

Kitsap County and City of Bremerton, Respondents

BRIEF OF RESPONDENT CITY OF BREMERTON

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I. INTRODUCTION

Ms. Vergeson appeals the Pierce County Superior Court's dismissal of all her claims against defendants Kitsap County and City of Bremerton. She seeks reversal of only one cause of action – her negligence claim. However, Ms. Vergeson makes no affirmative argument that the City was negligent. Instead, she argues 1) that the County is negligent, 2) that the County alleges that the City is negligent, and 3) that this Court should reverse the City's dismissal only if the County persuades this Court that the City was negligent. Such an argument is insufficient to preserve her claim against the City on appeal.[1] Moreover, the County did not allege that the City was negligent.

In any event, even if this Court considers Ms. Vergeson's negligence claim against the City, there is no evidence that the City acted negligently. In addition, under the public duty doctrine, the City owed no duty to Ms. Vergeson. For all these reasons, this Court should affirm the trial court's dismissal of Ms. Vergeson's claims against the City.

[1] The City has filed a Motion on the Merits to Affirm Trial Court's Dismissal of Claims Against the City. The City requests that the Court consider this brief in support of the City's motion.

II. COUNTERSTATEMENT OF THE ISSUES

1. When an appellant fails to affirmatively argue for reversal of a cause of action dismissed by the trial court, should the Court affirm the trial court's dismissal of that cause of action?

2. Under the public duty doctrine, does a municipality have a duty to a plaintiff when the alleged duty is a duty owed to the general public, not to the plaintiff, and none of the exceptions to the public duty doctrine apply?

3. Is the City liable for Ms. Vergeson's arrest when the City accurately input Ms. Vergeson's name into the warrant databases and the City was never notified that the warrant had been quashed?

III. STATEMENT OF THE CASE

A. Procedure Below

Ms. Vergeson filed a lawsuit against Kitsap County and the City of Bremerton alleging negligence, violation of civil rights under 42 U.S.C. §1983, and a petition for writ of mandamus. CP 1-7. The County and the City brought separate summary judgment motions seeking dismissal of all claims against them. CP 37, 57. The trial court granted the City and County's motions, dismissing all three causes of action against them. CP

196-199. Ms. Vergeson appeals only the trial court's dismissal of the negligence claim. Brief of Appellant at 16.

B. Statement of Facts

In 1985, two warrants were issued for the arrest of Ms. Vergeson. CP 76 at ¶ 3. One warrant was issued under Kitsap County Superior Court Cause No. 85-1-0610-9 pursuant to charges filed from an investigation by the Kitsap County Sheriff's Office (KCSO), and another under Kitsap County Superior Court Cause No. 85-1-00325-8 pursuant to charges filed from an investigation by the Bremerton Police Department (BPD). *Id.* The warrants were entered into two databases that collect warrant information available to law enforcement, the Washington Crime Information Center (WACIC) database and the National Crime Information Center (NCIC) database. CP 76-77 at ¶ 3.

The warrants were still active and valid on August 16, 2003 when Ms. Vergeson entered the United States at Seatac Airport and U.S. Customs arrested her on the strength of the warrant issued under Cause No. 85-1-00610-9 (the KCSO warrant). CP 77 at ¶ 4. Kitsap County Support Services Specialist, Pamela Morris, was notified at the time of the arrest, and she removed the warrant under Cause No. 85-1-0610-9 from the WACIC and NCIC databases. CP 54, 74. Bremerton was not notified of Ms.

Vergeson's arrest presumably because the arrest was made under Cause No. 85-1-00610-9, not under Cause No. 85-1-00325-8. CP 77 at ¶ 4.

On September 10, 2003, Kitsap County Superior Court quashed the warrant under Cause No. 85-1-00325-8. CP 75, 113. BPD was not notified that the warrant had been quashed. CP 77 at ¶ 5; CP 134 at ll. 20-22; CP 136 at ll. 15-23. The order quashing the warrant indicates that the Kitsap County Superior Court Clerk notified "Pam M" on September 10, 2003 at 2:38 pm. CP 75. Ms. Morris testified that the Clerk did, in fact, notify Ms. Morris on September 10, 2003 that the warrant under Cause No. 85-1-00325-8 for Magdalina Cuddie had been quashed. CP 54 at §6. Ms. Morris also testified that she did not contact BPD to inform it that the warrant had been quashed. CP 134 at ll. 20-22; CP 136 at ll. 15-23.

In September 2003, BPD maintained hard copies of the warrants issued in 1985 that pertained to BPD investigations, such as the warrant from Cause No. 85-1-00325-8. CP 77 at ¶ 6. The procedure for removing quashed warrants from WACIC and NCIC was that the Kitsap County Superior Court Clerk would notify the law enforcement agency holding the warrant that the warrant had been quashed, and the law enforcement agency who maintained the hard copy of the warrant would remove the electronic version of the warrant from WACIC and NCIC databases and return the hardcopy of the warrant to the Clerk. *Id.* In this case, Ms. Morris testified

that she was unable to locate the warrant using several of Ms. Vergeson's names, but not Lina Q. Vergeson, the name BPD entered into the databases. CP 54. BPD was never informed that the warrant had been quashed, so the warrant was never removed from the WACIC and NCIC databases. CP 77 at ¶ 8.

On February 14, 2004, Ms. Vergeson was pulled over for a traffic offense by Washington State Patrol (WSP) in Clark County. *Id.* at ¶ 7. When WSP ran her license with WACIC and NCIC, the databases indicated that BPD had a warrant for her arrest. *Id.* When WSP called BPD to verify the warrant, BPD had no reason to believe that the warrant had been quashed, so it verified the warrant under Cause No. 85-1-00325-8. *Id.* Ms. Vergeson was arrested and released on bail. *Id.*

On February 17, 2004, Kitsap County Superior Court entered an order quashing the warrant. CP 118. On that same day, the warrant was removed from WACIC and NCIC databases. CP 186.

IV. SUMMARY OF ARGUMENT

The only claim Ms. Vergeson has appealed is her claim for negligence. For several reasons, this Court should affirm the trial court's dismissal of Ms. Vergeson's negligence claim against the City:

- Ms. Vergeson has not argued on appeal that the City was negligent;

- Kitsap County did not allege in pleadings or in any way argue to the trial court that the City was negligent;

- Under the public duty doctrine, the City did not have a duty to Ms. Vergeson;

- The City was never notified that the warrant had been quashed, so it was not negligent in failing to remove the warrant from state and national law enforcement databases.

Ms. Vergeson has not attempted to argue the City's negligence because such an argument would be futile. This Court should affirm the trial court's dismissal of Ms. Vergeson's claims against the City.

V. ARGUMENT

A. Summary Judgment Standard

An appellate court reviews a trial court's decision on summary judgment de novo and engages in the same inquiry as the trial court. *Troxell v. Rainier Public School Dist. No. 307*, 154 Wn.2d 345, 350, 111 P.3d 1173 (2005); *Shaffer v. McFadden*, 125 Wn.App. 364, 373, 104 P.3d 742 (2005), *review denied*, 155 Wn.2d 1010 (2005). Summary judgment motions are governed by CR 56. While the initial burden is on the moving party to show that there are no genuine issues of material fact, the burden

then shifts to the nonmoving party to show specific facts, not merely speculative assertions:

> The trial court should grant summary judgment if it determines, after viewing the entire record and drawing all reasonable inferences in favor of the nonmoving party, that there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. The initial burden of demonstrating the absence of material facts rests with the moving party; the burden then shifts to the nonmoving party to come forward with a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. ***The nonmoving party's rebuttal must involve specific facts, not speculative or conclusory statements.***

Deschamps v. Mason County Sheriff's Office, 123 Wn.App. 551, 557-558, 96 P.3d 413 (2004) (internal citations and quotations omitted) (emphasis added).

Ms. Vergeson has not articulated specific facts of the City's negligence, so the trial court's dismissal should be affirmed.

B. Ms. Vergeson has failed to argue that the City is negligent, so the trial court's dismissal of her negligence claim against the City should be affirmed.

Ms. Vergeson's only mention of the City's liability is stated on page 36 of her brief:

> G. City Liability Issues
>
> While most of our argument has been focused on the County's responsibility, as discovery revealed the County's failure to even notify Bremerton of the warrant,

> the County has alleged that the City was responsible, by failing to enter the warrant cause number in any searchable databases. CP 39, CP 54-55.

CONCLUSION

> We ask that the court reverse the summary judgment as to the respondent County, and remand for further proceedings on Appellant's negligence claim. As to the City of Bremerton, if the court finds that the County's argument of Bremerton's fault has merit, and that Bremerton shares fault with the County, we ask that the court reverse the summary judgment as to the City of Bremerton, and remand for further proceedings on Appellant's negligence claim. If the court finds no merit in the County's argument of Bremerton's fault, we ask that the court uphold the Summary Judgment as to Bremerton, with a specific finding on remand of the claim against the County that the City has no fault under R.C.W. 4.22.070.

Brief of Appellant at 36-37.

First, the County did not allege in its answer or amended answer that the City was negligent. CP 8-13; CP 23-29. Second, CP 39 and CP 54-55 do not support of Ms. Vergeson's contention that the County alleges that the City was at fault.

CP 39 is page 3 of the County's Motion for Summary Judgment. Nowhere on that page, or anywhere else in the County's brief, does the County allege that the City was negligent. *See* CP 37-51. The County argues as follows on page 3 of its Motion for Summary Judgment:

> ...KCSO took all reasonable steps toward locating and removing that warrant from the relevant databases but could not locate an active warrant under that cause number

> due to the manner in which the warrant had been entered and maintained by another agency.

CP 39 at ll. 7-9.

The County does not allege that the City was negligent, or that the City acted in any way below the standard of care, or that the City was at fault for the warrant not being removed. The County merely argues that it was not negligent because it took reasonable steps to remove the warrant.

CP 54-55 are pages 3 and 4 of the Affidavit of Pamela Morris in Support of Kitsap County's Second Motion for Summary Judgment. Again, nowhere on these pages, or anywhere else in her affidavit, does she allege that the City was negligent or at fault. *See* CP52-55. Ms. Morris states in her affidavit that she searched for all of Ms. Vergeson's names that KCSO possessed, but not Lina Q. Vergeson, the name BPD entered into the databases. CP 54-55 at § 4. The purpose of her statement is to show that she did everything reasonably necessary to find all of the warrants issued for the arrest of Ms. Vergeson, not that the City was negligent in entering the warrant information into the databases.

Clearly, if Ms. Vergeson relies on the County's allegations that the City was at fault, then her appeal against the City must fail because the County has never alleged that the City was negligent. Even if the County were to assert on appeal that the City was negligent, the County's

argument should be rejected because a party may not introduce an argument on appeal that it did not argue at the trial court. *Sneed v. Barna*, 80 Wn.App. 843, 847, 912 P.2d 1035 (1996).

In any event, Ms. Vergeson may not rely on an argument of a defendant in support of her own negligence claim against another defendant. If she does not litigate the issue herself, she has waived her right to appeal the issue. An appellant waives her right to appeal an issue when she fails to argue the issue, brief the issue, or support the issue by citation to the record or authority. *Keever & Associates, Inc. v. Randall*, 129 Wn.App. 733, 741, 119 P.3d 926 (2005). Here, Ms. Vergeson fails to argue that the City is negligent; she fails to cite to any facts in the record that supports the negligence claim against the City; she fails to cite to any legal authority to support a negligence claim against the City. Therefore, she has waived her right to seek review of the issue of the trial court's dismissal of her claims against the City.

C. Under the Public Duty Doctrine the City had no duty to Ms. Vergeson to properly enter her warrant information into WACIC and NCIC.

The only cause of action under review is Ms. Vergeson's negligence claim, specifically that the "failure to notify the databases that the warrants had been quashed was the result of negligence of one or both of the defendants." CP 20 at ¶ 2.8.

> It is axiomatic that to maintain a negligence action a duty of care running from the defendant to the plaintiff must be shown. When a plaintiff alleges a government agency's liability, the court employs the "public duty doctrine" to determine whether the duty is owed to a nebulous public or whether that duty is owed to a particular individual.

Laymon v. Washington State Dept. of Natural Resources, 99 Wn.App. 518, 529, 994 P.2d 232 (2000), citing *Honcoop v. State,* 111 Wash.2d 182, 188, 759 P.2d 1188 (1988) (internal quotations omitted).

The only conduct that Ms. Vergeson has identified for which the City may be liable is "failing to enter the warrant cause number in any searchable database."[2] Brief of Appellant at 36. In fact, the City did enter Ms. Vergeson's name and the BPD case number in WACIC and NCIC. CP 53; CP 76-77. Even if the City failed to properly enter the warrant information into WACIC and NCIC, the duty to enter such information is to the public at large, not to Ms. Vergeson individually. The purpose for entering such information into WACIC and NCIC was to secure the arrest of Ms. Vergeson on the BPD warrant; it was not meant in any way to benefit or protect Ms. Vergeson, but it was meant to notify law enforcement officers that she should be arrested.

The City's lack of a duty to Ms. Vergeson is borne out when applying the exceptions to the public duty doctrine. One exception is the

[2] Again, Ms. Vergeson does not make this argument on her own behalf, but it is her erroneous interpretation of the County's position regarding the City's liability.

"legislative intent" exception, "when the terms of a legislative enactment evidence an intent to identify and protect a particular and circumscribed class of persons." *Bailey v. Town of Forks*, 108 Wn.2d 262, 268, 737 P.2d 1257 (1987). The second exception is the "failure to enforce" exception, where "(1) governmental agents responsible for enforcing statutory requirements (2) possess actual knowledge of a statutory violation, fail to take corrective action despite a statutory duty to do so, and (3) the plaintiff is within the class the statute intended to protect". *Honcoop* at 190. The third exception is the "rescue doctrine", which is applied "when governmental agents fail to exercise reasonable care after assuming a duty to warn or come to the aid of a particular plaintiff". *Bailey* at 268. The fourth exception is where the government agency has created a "special relationship" with the plaintiff, wherein the plaintiff must show "(1) there is direct contact or privity between the public official and the injured plaintiff which sets the latter apart from the general public, and (2) there are express assurances given by a public official, which (3) give rise to justifiable reliance on the part of the plaintiff". *Honcoop* at 192.

Ms. Vergeson does not and cannot identify any exception to the public duty doctrine that would create a duty on the part of the City. Ms. Vergeson's argument focuses exclusively on the "duty to quash Mrs. Vergeson's warrant." Brief of Appellant at 26. The City was not

negligent in failing to remove the warrant from WACIC and NCIC because the City had no knowledge that the warrant was quashed.

1. The legislative intent exception is not applicable because there are no statutes that identify or protect the class of persons in Ms. Vergeson's circumstance.

Ms. Vergeson identifies RCW 10.31.010 as providing legislative intent to protect persons in Ms. Vergeson's circumstance. With respect to the City, the class at issue is people charged with a crime who have warrants for their arrest and whose names are being put into WACIC and NCIC. Ms. Vergeson admits that RCW Chapter 10.31 does not address quashing warrants or entering information into WACIC or NCIC. Therefore, it does not express an intent to protect Ms. Vergeson's class.

Ms. Vergeson also identifies constitutional provisions. However, these provision do not specifically identify "a particular and circumscribed class of persons." *Bailey* at 268. Moreover, they are not legislation. Finally, if the City had somehow violated Ms. Vergeson's constitutional rights, then she should have pursued her claim under 42 U.S.C. §1983. She knew she could not make a prima facie civil rights claim, so she abandoned her claim at the trial court and does not seek review of that claim on appeal.

Ms. Vergeson is unable to identify any statute that meets the legislative intent exception, so this exception does not apply.

2. The failure to enforce exception is not applicable because there are no statutory requirements for inputting information in WACIC and NCIC databases.

Ms. Vergeson's argument concentrates on the County's failure to enforce the Kitsap County Superior Court's order to quash Ms. Vergeson's warrant. However, for this exception to apply, the government agency must have been required ***by statute*** to enforce a duty. Moreover, Ms. Vergeson does not identify a statutory requirement to properly input information into WACIC and NCIC, which would place a duty on the City. The failure to enforce exception is also inapplicable.

3. The rescue doctrine exception does not apply because the City was not coming to the aid of Ms. Vergeson.

Ms. Vergeson does not argue that this exception should apply to the City, and it should not. The City in no way undertook to come to the aid of Ms. Vergeson. This exception does not apply.

4. The special relationship exception does not apply because the City had no direct contact with Ms. Vergeson and made no express assurances to her.

Ms. Vergeson does not identify any direct contact that the City had with Ms. Vergeson or any express assurance that the City made to her. This exception is not applicable.

5. Ms. Vergeson's claims are not analogous to an automobile accident or slip and fall accident.

Ms. Vergeson argues that since lawsuits for automobile accidents and slip and fall accidents may be maintained against the government, the public duty doctrine should not apply to the County and City in this case. Brief of Appellant at 28-29. Ms. Vergeson concludes, without legal support, that "it is inappropriate to overlay the public duty doctrine analysis to simple issues of negligence." *Id.* at 29. However, the whole point of the public duty doctrine is to analyze the specific situation and determine whether, in that situation, the government owes a duty to the plaintiff. *Laymon* at 529. Here, the only possible allegation against the City is that the City improperly entered information concerning Ms. Vergeson's warrant into WACIC and NCIC. Placing this information into WACIC and NCIC was precisely for the public at large, i.e. so law enforcement officers who come in contact with Ms. Vergeson will arrest her and bring her before the court to face criminal charges filed against

her. This is a quintessential duty to the public. The City did not intend to benefit or protect Ms. Vergeson, it meant to protect the public from Ms. Vergeson. How can Ms. Vergeson now claim that the City owed her a duty?

If anything, Ms. Vergeson's claim is an "administrative negligence" claim – that the City improperly entered information into WACIC and NCIC databases. In *Laymon v. Washington State Dept. of Natural Resources*, *supra*, the plaintiffs alleged that "administrative negligence" on the part of the State Department of Natural Resources (DNR) led to the failure of their real estate development project. In July 1993, the plaintiffs applied for a permit to develop forest land into tract housing. In August 1993, a neighboring landowner complained to the State that there was a bald eagle's nest on the plaintiffs' property. In September 1993, DNR approved the plaintiffs' application for the development project. In December 1993, the plaintiffs began logging for the project. In January 2004, a DNR forester learned of the complaint of a bald eagle's nest, examined the nest, and concluded that it was possible that a bald eagle used the nest. Based on that conclusion, DNR issued a stop work order, and shortly thereafter, the plaintiffs' financial backers pulled out of the project. In June 1994, DNR determined that in fact, a bald eagle's nest was not on the property. *Laymon* at 521-22.

The plaintiffs brought suit against DNR, and DNR moved for summary judgment based, among other things, on the public duty doctrine. The plaintiffs retained an expert who opined that "a person knowledgeable and experienced in the identification of bald eagle nests who observed the nest on the [plaintiffs'] property would not have concluded that it was a bald eagle's nest"; essentially, the DNR forester was negligent in concluding that the nest was a bald eagle's nest. *Id.* at 523.

The *Laymon* Court held that the public duty doctrine applied, so DNR had no duty to the plaintiffs with respect to any negligent conduct regarding the identification of the bald eagle's nest and the stop work order even though there was evidence that the DNR forester negligently identified the nest. *Id.* at 529-30. The plaintiffs argued that the "special relationship" exception to the public duty doctrine applied because the plaintiff had personal contact with DNR employees who had approved their development permit. *Id.* However, the plaintiffs could not identify any express assurances that would create a special relationship, so the Court rejected the plaintiffs' "administrative negligence" claim. *Id.*

In our case, Ms. Vergeson's allegations are, at best, an "administrative negligence" claim against the City for improperly entering information into WACIC and NCIC. As in *Laymon*, and as set out above,

Ms. Vergeson cannot point to any express assurances by the City that would create a special relationship. Entering information into the WACIC and NCIC databases is an administrative function of government that law enforcement agencies engage in routinely, without any personal contact with the people who have warrants. As such, neither the special relationship exception, nor any other exception, to the public duty doctrine applies, and the City had no duty to Ms. Vergeson. Since the City had no duty to Ms. Vergeson, the trial court's dismissal of her negligence claim should be affirmed.

6. Ms. Vergeson's arguments for dispensing with the public duty have been rejected by the Supreme Court and this Court.

While Ms. Vergeson does not expressly request that this Court reject the public duty doctrine, she suggests that the public duty doctrine has been "significantly questioned". Brief of Appellant at 29. However, this Court recently held that the public duty doctrine remains good law in Washington. *Timson v. Pierce County Fire Dist. No. 15*, -- Wn.App. --, -- P.3d --, WL 3718331 at ¶20 (Dec. 19, 2006), citing *Donahoe v. State*, -- Wn.2d --,142 P.3d 654 (2006). The Washington Supreme Court likewise rejected a recent request to dispense with the public duty doctrine. *Osborne v. Mason County*, 157 Wn.2d 18, 27, 134 P.3d 197 (2006). This Court is bound by the Supreme Court's precedent upholding the public

duty doctrine. *Halleran v. Nu West, Inc.*, 123 Wn.App. 701, 717, 98 P.3d 52 (2004), citing *State v. Hairston*, 133 Wn.2d 534, 539, 946 P.2d 397 (1997).

D. Even if the City owed Ms. Vergeson a duty, the City did not breach its duty.

Since the trial court found that the public duty doctrine barred Ms. Vergeson's negligence claim, it did not reach the issue of whether the City breached a duty to Ms. Vergeson. "An appellate court can sustain a trial court judgment on any theory established by the pleadings and proof, even if the trial court did not consider it." *Weiss v. Glemp*, 127 Wn.2d 726, 730, 903 P.2d 455 (1995), citing *Hanson v. Snohomish,* 121 Wn.2d 552, 557 n. 10, 852 P.2d 295 (1993). In order to maintain a cause of action for negligence, a plaintiff must show a duty, breach, causation, and injury. *Hartley v. State,* 103 Wash.2d 768, 777, 698 P.2d 77 (1985). Assuming the City did owe Ms. Vergeson a duty, the City did not breach its duty, so her negligence claim must fail.

In 1985 KCSO and BPD sought warrants for Ms. Vergeson's arrest. CP 76 at ¶ 3. The warrant issued pursuant to the KCSO investigation was under Kitsap County Superior Court Cause No. 85-1-0610-9. *Id.* The warrant issued pursuant to the BPD investigation was under Kitsap County Superior Court Cause No. 85-1-00325-8. *Id.*

In September 2003 when the warrant at issue in this case was quashed, the procedure for removing warrants that had been quashed was as follows: (1) the Court would enter an order quashing the warrant, (2) the order would be filed with clerk, who would notify the agency holding the warrant, and (3) the agency holding the warrant would remove the warrant from the WACIC and NCIC databases and return the warrant to the clerk's office. CP 77 at ¶ 6. The Bremerton Police Department did not receive any notification from either the Kitsap County Clerk's office, KCSO, or anyone else that the warrant at issue in this case had been quashed. *Id.* at ¶ 8. Bremerton had no way of knowing that the warrant had been quashed, so it did not breach any duty it may have owed to plaintiff to remove the warrant from law enforcement databases.

Ms. Vergeson also argues that the doctrine of res ipsa loquitur applies. Res ipsa loquitur is an evidentiary tool used to prove a breach of a duty. *Robison v. Cascade Hardwoods, Inc.*, 117 Wn.App. 552, 563, 72 P.3d 244 (2003). Since the City did not owe Ms. Vergeson a duty, res ipsa loquitur does not apply. Moreover, one of the requirements of res ipsa loquitur is that the instrumentality be in the exclusive control of the defendant. *Id.* at 565. Here, the NCIC and WACIC databases are not in the exclusive control of the City. All law enforcement agencies have access to the databases and may enter information into the databases.

Therefore, Ms. Vergeson may not rely on the doctrine of res ipsa loquitur to abrogate her responsibility to provide evidence that the City acted negligently.

VI. CONCLUSION

For the reasons set forth above, this Court should affirm the trial court's dismissal of Ms. Vergeson's claims against the City.

Respectfully Submitted,

ROGER A. LUBOVICH
BREMERTON CITY ATTORNEY

By: _____
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No. 35313-0-II

COURT OF APPEALS
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OF THE STATE OF WASHINGTON

MAGDALINA QUITORIO VERGESON, Appellant, vs. KITSAP COUNTY and CITY OF BREMERTON, Respondents.	)	DECLARATION OF SERVICE

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STATE OF WASHINGTON
BY DEPUTY

I am the lawyer for the Respondent City of Bremerton. On the 8th day of January, 2007, and in the manner indicated below, I caused a copy of the Brief of Respondent City of Bremerton and this Declaration of Service, to be served on the following individuals:

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[ ] By Personal Service
[ ] By Facsimile
[X] By Email

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

Executed at Bremerton, Washington this 8th day of January, 2007.

Mark E. Koontz