

No. 35790-9-II

COURT OF APPEALS, DIVISION TWO  
OF THE STATE OF WASHINGTON

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BRIAN HALQUIST and  
AMY HALQUIST, husband and wife,

Appellants,

v.

ROBERT C. FREEBY and EILEEN MOSHER,  
individually and the marital community comprised thereof, and  
ROBERT C. FREEBY, ATTORNEY AT LAW, PS,  
a Washington corporation,

Respondents.

FILED  
COURT OF APPEALS  
DIVISION II  
07 JUN -5 AM 11:27  
STATE OF WASHINGTON  
BY                      DEPUTY

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BRIEF OF APPELLANTS

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Marie Docter, WSBA #30557  
Law Offices of Briggs & Briggs  
10222 Gravelly Lake Drive SW  
Tacoma, Washington 98499  
(253) 588-6696

Anne Watson, WSBA #30541  
Law Office of Anne Watson, PLLC  
3025 Limited Lane NW  
Olympia, Washington 98502  
(360) 943-7614

Attorneys for Appellants  
Brian Halquist and Amy Halquist

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Attorney Robert Freeby was professionally negligent when he represented Brian and Amy Halquist in their claims for damages resulting from the implantation of a defective prosthesis during Brian's hip replacement surgery. The Halquists appeal from the Pierce County Superior Court's summary dismissal of their legal malpractice action against Freeby.

**A. ASSIGNMENTS OF ERROR**

1. The trial court erred by granting Defendant Robert Freeby's motion for summary judgment.
2. The trial court erred by denying Plaintiff Brian Halquist's motion for reconsideration.

**Issue Pertaining to Assignments of Error**

Did the trial court err in ruling as a matter of law that Halquist's claim for attorney malpractice should be dismissed where Freeby's negligent acts proximately caused damages to his former client and where cause in fact must be determined by a jury? (Assignments of Error Nos. 1-2).

**B. STATEMENT OF THE CASE<sup>1</sup>**

Sulzer<sup>2</sup> is the designer, manufacturer, and distributor of orthopedic implants for hips, knees, shoulders, and elbows. CP 107. Sulzer is a major manufacturer of a system used to replace the articulating ball-and-socket structure of the hip joint. CP 70, 150. The system includes two components – the Sulzer Inter-Op Shell, a device which is inserted into the cup-shaped socket of the hipbone (acetabulum), and a ball-like device, which is anchored to the thighbone (femur) and positioned within the shell. *Id.*

Proper attachment of the replacement components to the bone is essential. CP 150. Orthopedic implants are often cemented or screwed into position. *Id.* The Inter-Op Shell is “force fit” – that is, the shell is snapped into place and natural bone is allowed to grow in so that the shell is held securely. CP 69.

Brian Halquist, a 43-year old entertainment and sports promoter, underwent a total left hip replacement due to osteoarthritis in November 2000. CP 65, 78. Halquist received a Sulzer Inter-Op Shell. CP 65, 67.

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<sup>1</sup> The Verbatim Report of Proceedings consists of two volumes: the transcript of the November 17, 2006 hearing on defendants’ motion for summary judgment (RP I) and the transcript of the December 15, 2006 hearing on plaintiffs’ motion to reconsider (RP II).

<sup>2</sup> “Sulzer” denotes Sulzer Orthopedics Inc., Sulzer Medica Ltd., and Sulzer Ltd., collectively. CP 106.

Just a few days after Halquist's surgery, Sulzer announced the recall of certain manufacturing lots of its Inter-Op Shell.<sup>3</sup> CP 107. The recalled shells had a machine oil residue that prevented them from bonding with the hipbone. CP 69. Patients were experiencing adverse symptoms, such as severe groin pain and inability to bear weight on their legs. CP 107. Of the 40,000 recalled units, about 26,000 had already been implanted in patients – including Brian Halquist. CP 150.

For several months after his surgery, Halquist experienced persistent pain in his hip. CP 74. He reported feeling even worse than he had before the procedure. CP 207. Halquist suffered ongoing groin pain. CP 73. He was unable to walk without a cane. *Id.*

After the recall, lawsuits were filed against Sulzer in courts around the United States. CP 151. Halquist saw a television advertisement for attorneys handling claims against Sulzer. CP 227. He telephoned the law firm that sponsored the ad, and the attorney he spoke with forwarded information to him. *Id.*

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<sup>3</sup> Sulzer has been criticized for failing to take action sooner. CP 69. According to its own press release, the company suspected problems in October 1999. *Id.* And yet Sulzer waited more than a year to announce its recall on December 8, 2000. *Id.* Halquist believed the Sulzer representative who was present during his surgery, his surgeon, and the hospital may have known about the defect and the pending recall at the time of his surgery. CP 80, 227.

Halquist gave that information to his long-time friend, Robert Freeby. CP 81, 226-27. Freeby, who is a criminal defense lawyer, agreed to handle a lawsuit against Sulzer for Halquist. CP 38, 209. The two men executed a contingent fee agreement, dated May 1, 2001, which provides that Halquist employed Freeby “to exclusively represent, prosecute and commence any and all claims against any person(s) and/or entities” with regard to the Sulzer replacement hip. CP 88.

Halquist underwent a second revision – to replace the defective replacement – on May 10, 2001.<sup>4</sup> CP 73. The surgeon found a large amount of fibrous scar tissue in and around Halquist’s hip joint, but there was no bony ingrowth at all on the shell. CP 74. The loose shell was replaced with a Sulzer nine-hole cup, including three screws to provide additional stability. CP 75.

In June 2001, the Judicial Panel on Multi-District Litigation consolidated and transferred all pending federal litigation relating to the Inter-Op Shell to United States District Court for the Northern District of Ohio, which certified a class of Inter-Op Shell recipients.

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<sup>4</sup> A hip replacement is considered major surgery. CP 70. A second revision surgery takes twice as long and carries more risk than an initial implant. *Id.* There is more scar tissue, and the body does not heal as readily. *Id.* According to Halquist’s physician, Dr. Steven Teeny, infection, bleeding, stiffness, further problems with an implant, fracture of the femur or acetabulum, blood loss, blood clots, heart problems, and lung problems are among the risks of the second procedure. CP 73.

CP 108. A settlement agreement was executed with Sulzer on March 13, 2002. CP 105.

Under the settlement agreement, Halquist would receive \$160,000 and his wife would receive \$1,600 from the affected product revision surgery fund. CP 111. The settlement trust would pay \$46,000 toward Halquist's attorney fees. CP 112-13.

In return, class members had to release all claims for:

- personal injury and/or bodily injury, damage, death, fear of disease or injury, mental or physical pain or suffering, emotional or mental harm, or loss of enjoyment of life;
- loss of wages, income, earnings, and earning capacity, medical expenses, doctor, hospital, nursing, and drug bills;
- loss of support, services, consortium, companionship, society or affection, or damage to familial relations, by spouses, parents, children, other relatives or significant others;
- medical screening and monitoring;
- compensatory damages, punitive, exemplary, statutory and other multiple damages or penalties of any kind; and
- pre-judgment or post-judgment interest

against Sulzer and surgeons who implanted the Inter-Op shell. CP 119-21.

**Any class member who did not exercise his or her opt-out right would automatically be bound by the settlement agreement.** CP 162. The opt-out deadline was May 15, 2002. CP 165.

Halquist believed Freeby was preparing a lawsuit against Sulzer and other parties – not that Halquist would be consigned to a class action. CP 227. Freeby contends he was retained to represent Halquist solely for the class-action recovery. CP 17.

Consistent with Halquist's understanding, Freeby pursued the matter by hiring a forensics expert, ordering medical records, and obtaining narrative reports from Halquist's treating physician. CP 93, 95-96, 227. Halquist incurred the costs of these actions. CP 95-96.

Freeby did not explain to Halquist what certification of the class meant for claims against Sulzer. CP 227. Halquist was unaware he was a class member – until the opt-out deadline had already passed. CP 81.

Further, Freeby did not even protect Halquist's benefits as a class member. CP 210. Only when Halquist retained another law firm was he able to prepare and submit the mandatory paperwork by the claims deadline. *Id.*

Halquist filed a complaint against Freeby in Pierce County Superior Court on April 29, 2005, claiming Freeby should be held financially accountable for damages resulting from his negligent handling of Halquist's action against Sulzer. CP 1, 6.

Halquist sought judgment for: (1) his pain, inconvenience, emotional and mental distress, disability, and other general damages; (2) his medical bills, wage loss, loss of earning capacity, and other special damages; and (3) the loss of consortium, society, and services suffered by his wife and two children. CP 6.

Freeby filed a jury demand. CP 13. He later moved for summary judgment, arguing that as a matter of law there was no proximate cause between Freeby's acts and Halquist's damages. CP 14, 31-32.

After recusal by the Pierce County Superior Court bench, the case was assigned to Visiting Judge Gary R. Tabor of Thurston County Superior Court. CP 241.

The trial court granted Freeby's motion for summary judgment and denied Halquist's motion for reconsideration. CP 279, 318.

Halquist's appeal to this Court followed.<sup>5</sup> CP 320.

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<sup>5</sup> A copy of the Notice of Appeal is included in the Appendix.

### **C. SUMMARY OF ARGUMENT**

Halquist's claims against Sulzer and others were compromised or lost because Freeby missed the deadline to opt out of the class action. And Freeby even put Halquist's limited recovery as a class member at risk by failing to comply with the required claims process. Although Halquist secured some benefits on the advice of new counsel, the amount he received does not adequately compensate him or his family for their injuries.

There is ample evidence to raise at least an issue of material fact regarding proximate cause. But for Freeby's negligence, Halquist would have fared better.

The trial court committed reversible error in ruling on the causation element as a matter of law. As in most legal malpractice actions, cause in fact in this case is for the jury to decide.

### **D. ARGUMENT**

#### **Standard of Review**

Appellate courts reviewing summary judgments engage in the same inquiry as the trial court, applying the de novo standard. *Shepard Ambulance, Inc. v. Helsell, Fetterman, Martin, Todd & Hokanson*, 95 Wn. App. 231, 236, 974 P.2d 1275 (1999).

Summary judgment is appropriate only if the pleadings, affidavits, depositions, and admissions on file demonstrate the

absence of any genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. CR 56(c).

The moving party bears the burden of demonstrating there is no genuine dispute as to any material fact. *Young v. Key Pharms., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). For purposes of summary judgment, a “material fact” is one upon which the outcome of the litigation depends. *Clements v. Travelers Indem. Co.*, 121 Wn.2d 243, 249, 850 P.2d 1298 (1993).

“Only when reasonable minds could reach but one conclusion on the evidence should the court grant summary judgment.” *VersusLaw, Inc. v. Stoel Rives, LLP*, 127 Wn. App. 309, 319, 111 P.3d 866 (2005).

“When material issues of fact exist, they may not be resolved by the trial court and summary judgment is inappropriate.” *Halvorsen v. Ferguson*, 46 Wn. App. 708, 712, 735 P.2d 675 (1987).

In conducting its inquiry, the court must view all facts and reasonable inferences in the light most favorable to the nonmoving party. *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982).

All facts and inferences in the present case are to be viewed in the light most favorable to Brian Halquist.

## Legal Malpractice

To establish a tort claim for legal malpractice, the plaintiff must prove four elements: (1) the existence of an attorney-client relationship<sup>6</sup> giving rise to a duty of care on the part of the lawyer;<sup>7</sup> (2) an act or omission breaching that duty; (3) damage to the client;<sup>8</sup> and (4) proximate causation between the lawyer's breach of duty and the damage incurred. *Nielson v. Eisenhower & Carlson*, 100 Wn. App. 584, 589, 999 P.2d 42 (2000) (citing *Hizey v. Carpenter*, 119 Wn.2d 251, 260-61, 830 P.2d 646 (1992)).

Freeby's motion for summary judgment places at issue only the element of causation. CP 31, 232; RP I at 8. Thus, for purposes of summary judgment, it can be assumed that Freeby breached the standard of care to Halquist by failing to prosecute a product liability case on his client's behalf and by failing to register

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<sup>6</sup> The essence of an attorney-client relationship is whether the attorney's advice or assistance is sought and received on legal matters. *Bohn v. Cody*, 119 Wn.2d 357, 363, 832 P.2d 71 (1992). The attorney-client relationship ends when the client engages new counsel. *Lockhart v. Greive*, 66 Wn. App. 735, 741, 834 P.2d 64 (1992). The existence of an attorney-client relationship between Freeby and Halquist is undisputed.

<sup>7</sup> An attorney in Washington has a duty to exercise "that degree of care, skill, diligence and knowledge commonly possessed and exercised by a reasonable, careful and prudent lawyer" in the state. *Cook, Flanagan & Berst v. Clausing*, 73 Wn.2d 393, 395, 438 P.2d 865 (1968).

<sup>8</sup> "Damages" refers to monetary compensation to an injured party. *Lavigne v. Chase, Haskell, Hayes & Kalamon, P.S.*, 112 Wn. App. 677, 683, 50 P.3d 306 (2002). Recoverable damages in a legal malpractice case are measured by the amount of loss actually sustained as a proximate result of the attorney's conduct. *Matson v. Weidenkopf*, 101 Wn. App. 472, 484, 3 P.3d 805 (2000).

Halquist for class benefits. The inquiry becomes whether Freeby's negligence proximately caused damages to Halquist.

A client in a legal malpractice action sustains his burden of proving causation if he proves that he would have prevailed or achieved a better result if his attorney had performed competently. *Martin v. Nw. Wash. Legal Servs.*, 43 Wn. App. 405, 409, 717 P.2d 779 (1986).

"In the legal malpractice context, proximate cause boils down to whether the client would have fared better but for the attorney's negligence." *Lavigne v. Chase, Haskell, Hayes & Kalamon, P.S.*, 112 Wn. App. 677, 683, 50 P.3d 306 (2002).

**1. Freeby obtained no recovery whatever for his client.**

By missing the opt-out deadline, Freeby foreclosed any possibility for Halquist to sue Sulzer and others directly for his injuries.<sup>9</sup> Freeby asserts he repeatedly told Halquist that he would not represent him in a lawsuit against Sulzer. CP 39-40. This assertion is belied by Freeby's draft demand letter to Sulzer, which is dated June 14, 2002 – a month beyond the opt-out deadline. CP 98. Freeby caused Halquist to incur more than \$1,000 in costs for

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<sup>9</sup> "If you do not exercise your Opt-Out Right, you will automatically be bound by the Settlement Agreement. You will not be able to pursue any Settled Claims against Sulzer and/or any other Released Parties." CP 162.

materials that were entirely unnecessary in the class action process. CP 95-96.

Freeby asserts it was always his understanding that Halquist “was remaining within the class action.” CP 42. But it was mandatory to complete and submit lengthy, detailed claim forms in order to register for compensation under the class-action settlement.<sup>10</sup> CP 116-17. It appears Freeby was unaware of this process; there is no evidence that he acquired the forms or complied with any claims requirements.

Freeby did not abide by his client’s wish to bring a lawsuit against Sulzer.<sup>11</sup> And if Halquist had continued to rely on Freeby’s legal advice, his only remaining remedy – benefits as a class member – would have been forfeit as well.

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<sup>10</sup> Final notice of the settlement of the class-action lawsuit, including an explanation of how to apply for benefits, was sent to class members in March 2002. CP 105-22, 165.

<sup>11</sup> Freeby presents a declaration by Attorney John A. Barlow, who opines that “a reasonably prudent and careful lawyer in the State of Washington representing Sulzer claimants would and should have advised the clients not to opt out of the class action.” CP 36. After advising a client, however, an attorney is bound to abide by the client’s decision. RPC 1.2(a). As a criminal defense lawyer, Freeby is likely familiar with clients who decide not to follow his advice. If Halquist took a position with which Freeby fundamentally disagreed, Freeby could have withdrawn. RPC 1.16(b)(4). Freeby states that he advised Halquist to consult lawyers who had experience with cases concerning product liability, class action, or significant medical issues. CP 40. Ultimately, however, Freeby did not abide by Halquist’s decision to opt out, did not associate experienced counsel in the case, did not handle the class-action claim, and did not terminate his representation.

**2. Halquist had to retain new counsel in order to secure any compensation for his injuries.**

Halquist's causes of action against Sulzer and others were compromised when Freeby missed the opt-out deadline. Then Freeby jeopardized any remaining opportunity for recovery in the class action by failing to undertake the required registration process.

Freeby admits that it was only after his representation was terminated that "Mr. Halquist pursued and successfully collected upon his class action claim." CP 42.

Halquist incurred costs for the lawsuit barred by Freeby's failure to opt out of the class action. Only after retaining new counsel was he able to secure even the limited damages available to class members.

Although the goal of a class action is to benefit its class members, such an action is essentially a one-size-fits-all remedy with limited resources. Arguably, Halquist would have received a substantially higher award for damages if he had been able to litigate his claims – instead of being restricted to recovery as a class member.<sup>12</sup>

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<sup>12</sup> Freeby's counsel argued that if any Sulzer claimants had done better by opting out, "then we surely would have heard about it by now." RP I at 10. Actually, awards to opt-out claimants have remained confidential under the terms of their settlement agreements. RP I at 13.

Halquist was not an aging retiree when he underwent hip replacement surgery. He was an active man in his 40's with responsibilities for the welfare of his wife and children. Brian's surgeries made it necessary for Amy Halquist to exhaust her sick leave and vacation time in order to care for him. CP 224. Because of her family's needs, Amy was unable to provide support to her dying mother. *Id.*

Halquist owned and operated a successful, growing business. CP 225-26, 228. He suffered prolonged, excruciating pain after the defective prosthesis was implanted. He endured complications and a lengthy recuperation after the subsequent revision. And he lost future contracts because he was incapacitated. CP 226. He worries that any problems with the second replacement hip could leave him unable to walk. CP 81.

In addition, there is evidence that Sulzer, and perhaps his physicians and others, already knew of problems with the implant at the time Halquist's surgery was performed.

The trial court noted that professional malpractice cases often require the opinions of experts.<sup>13</sup> RP 1 at 21. In this case,

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<sup>13</sup> Freeby presents a declaration by Attorney Richard Levandowski, who opines that the settlement Halquist achieved in the class action "was well within the value range of the cases of this type in Pierce, King and Kitsap Counties." CP 60. Levandowski states he is a personal injury lawyer who has handled about 20 knee and hip prosthetic failure cases over the past 25 years. CP 58. There is no indication he represented any clients in the Sulzer litigation. He

however, expert testimony is unnecessary to understand that Halquist incurred costs and recovered nothing as a result of Freeby's negligent representation. The limited amount Halquist scrambled to obtain as a class member does not adequately compensate him or his family for their injuries.

But for Freeby's negligence, Halquist would have fared better.

**3. Determination of proximate cause in this case is a question of fact for the jury.**

"Washington law recognizes two elements to proximate cause: cause in fact and legal causation." *Daugert v. Pappas*, 104 Wn.2d 254, 257, 704 P.2d 600 (1985).<sup>14</sup>

"Cause in fact refers to the immediate connection between an act and an injury." *Brust v. Newton*, 70 Wn. App. 286, 292, 852 P.2d 1092 (1993). "Legal causation rests on considerations of policy determining how far a party's responsibility should extend." *VersusLaw*, 127 Wn. App. at 328. This case concerns only cause in fact.

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offers no evidence that the cases on which he bases his opinion are at all similar to Halquist's circumstances. Expert testimony is to "assist the trier of fact to understand the evidence or to determine a fact in issue." ER 702. Levandowski's testimony is immaterial.

<sup>14</sup> "The principles and proof of causation in a legal malpractice action do not differ from an ordinary negligence case." *Sherry v. Diercks*, 29 Wn. App. 433, 437, 628 P.2d 1336 (1981).

Freeby argued below that the determination of causation “can often be made as a matter of law,” basing his proposition on *Daugert v. Pappas*. CP 24.

The *Daugert* court, however, ruled on the narrow issue of whether an attorney’s negligence in failing to timely file an appeal was a proximate cause of damages to his client:

Because the questions of whether an appellate court would have granted review and, if so, whether its ruling would have been favorable to the appellant necessarily involved analysis of the relevant law and the Rules of Appellate Procedure, the proximate cause issue in that case required special expertise and was therefore a question of law for the court.

*Brust v. Newton*, 70 Wn. App. at 291-92.

The present case requires no such analysis. As in most legal malpractice actions, cause in fact here is for the jury to decide:

The trial court hearing the malpractice claim merely retries, or tries for the first time, the client’s cause of action which the client asserts was lost or compromised by the attorney’s negligence, and the trier of fact decides whether the client would have fared better but for such mishandling.

*Daugert*, 104 Wn.2d at 257.

The trial court erred by deciding the causation element of this case as a matter of law. The accepted practice is “to have a ‘trial within a trial’ to retry, or try for the first time, the merits of the case in which the alleged malpractice occurred to determine what a

reasonable judge or finder of fact would have done absent the alleged malpractice."<sup>15</sup> *Paradise Orchards Gen. P'ship v. Fearing*, 122 Wn. App. 507, 515, 94 P.3d 372 (2004).

**E. CONCLUSION**

The Court should reverse the trial court's grant of summary judgment and should remand this matter for trial on the merits.

DATED this 5th day of June, 2007.

Respectfully submitted,



Marie Docter, WSBA #30557  
Law Offices of Briggs & Briggs  
10222 Gravelly Lake Drive SW  
Tacoma, Washington 98499  
(253) 588-6696



Anne Watson, WSBA #30541  
Law Office of Anne Watson, PLLC  
3025 Limited Lane NW  
Olympia, Washington 98502  
(360) 943-7614

Attorneys for Appellants  
Brian Halquist and Amy Halquist

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<sup>15</sup> Freeby argues that a very small number of Sulzer claimants opted out of the class action. CP 27; RP I at 5-6. This fact is irrelevant. Halquist's damage award is not compared to the amounts recovered by others but to the amount he himself would have been able to recover if his claims had been litigated.

# Appendix

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A.M. JAN 08 2007 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, COUNTY CLERK  
BY \_\_\_\_\_ DEPUTY

SUPERIOR COURT OF WASHINGTON  
FOR PIERCE COUNTY

BRIAN HALQUIST and  
AMY HALQUIST, husband and wife,

Plaintiffs,

v.

ROBERT C. FREEBY and  
EILEEN MOSHER, individually and  
the marital community comprised  
thereof, and ROBERT C. FREEBY,  
ATTORNEY AT LAW, PS,  
a Washington corporation,

Defendants.

NO. 05-2-07403-1

NOTICE OF APPEAL TO  
COURT OF APPEALS

Plaintiffs Brian Halquist and Amy Halquist seek review by the Court of Appeals, Division Two, of the Order Denying Motion for Reconsideration entered December 15, 2006 and of the underlying Order Granting Defendants' Motion for Summary Judgment entered November 17, 2006.

A copy of the orders is attached to this notice.

Dated: January 8, 2007

  
\_\_\_\_\_  
Anne Watson, WSBA #30541  
Attorney for Plaintiffs/Appellants

LAW OFFICE OF  
ANNE WATSON, PLLC

3025 Limited Lane NW  
Olympia, Washington 98502  
360-943-7614

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Attorneys for  
Plaintiffs/Appellants:

Marie Docter  
Law Offices of Briggs & Briggs  
10222 Gravelly Lake Drive SW  
Tacoma, Washington 98499

Anne Watson  
Law Office of Anne Watson, PLLC  
3025 Limited Lane NW  
Olympia, Washington 98502

Attorney for  
Defendants:

Edward S. Winskill  
Davies Pearson, P.C.  
920 Fawcett Avenue  
Tacoma, Washington 98401

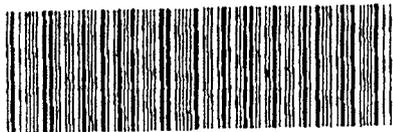
CERTIFICATE OF SERVICE

I certify that on January 8, 2007, I sent a true and correct copy of the  
foregoing Notice of Appeal by legal messenger to:

Edward S. Winskill  
Davies Pearson, P.C.  
920 Fawcett Avenue  
Tacoma, Washington 98401

Dated: January 8, 2007

Anne Watson  
Anne Watson, WSBA #30541



05-2-07403-1 28542873 ORGSJ 11-21-06

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PIERCE COUNTY, WASH.

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BETTY J. GOULD, CLERK

BY \_\_\_\_\_ IN COUNTY CLERK'S OFFICE  
DEPUTY

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PIERCE COUNTY, WASHINGTON  
BY KEVIN STOCK, County Clerk  
DEPUTY

1  CALEDIE (if filing within 5 court days of hearing)  
2  Hearing is set:  
3 Date: November 17, 2006  
4 Time: 9:00 a.m.  
5 Judge/Calendar: Judge Tabor

6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

7 IN AND FOR THE COUNTY OF PIERCE

8 BRIAN HALQUIST and AMY  
9 HALQUIST, husband and wife,

10 Plaintiffs,

NO. 05-2-07403-1

11 vs.

**ORDER GRANTING  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

12 ROBERT C. FREEBY and EILEEN  
13 MOSHER, individually and the marital  
14 community comprised thereof, and  
15 ROBERT C. FREEBY, ATTORNEY AT  
LAW, PS, a Washington corporation,

16 Defendants.

17  
18 THIS MATTER having come regularly before the court on the motion of  
19 defendants, by and through their attorneys, Davies Pearson, P.C., by Edward S. Winskill,  
20 and the plaintiffs appearing by and through their attorneys Law Offices of Briggs &  
21 Briggs, by Marie A. Docter, and after full consideration of the parties' arguments which  
22 were heard on November 17, 2006, and having reviewed the records and files herein,  
23 including:

24  
25 1. Defendants' Motion for Summary Judgment;

26 **ORDER GRANTING DEFENDANTS' MOTION  
FOR SUMMARY JUDGMENT**

Page 1 of 3

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ORIGINAL

DAVIES PEARSON, P.C.  
ATTORNEYS AT LAW  
920 FAWCETT -- P.O. BOX 1657  
TACOMA, WASHINGTON 98401  
TELEPHONE (253) 620-1500  
TOLL-FREE (800) 439-1112  
FAX (253) 572-3052

1           2.       Memorandum of Authorities in Support of Defendants' Motion for  
2 Summary Judgment;

3           3.       Declaration of Robert C. Freeby in Support of Defendants' Motion for  
4 Summary Judgment;

5           4.       Declaration of John A. Barlow in Support of Defendants' Motion for  
6 Summary Judgment;

7           5.       Declaration of Richard Levandowski in Support of Defendants' Motion  
8 for Summary Judgment

9           6.       Plaintiffs' Response to Defendants' Motion for Summary Judgment and  
10 Motion to Strike Declarations;

11          7.       Declaration of Brian Halquist in Support of Response to Defendants'  
12 Motion for Summary Judgment;

13          8.       Declaration of Amy Halquist in Support of Response to Defendants'  
14 Motion for Summary Judgment;

15          9.       Declaration of Marie Docter in Support of Response to Defendants'  
16 Motion for Summary Judgment; and

17          10.      Defendants' Reply to Plaintiffs' Summary Judgment Response;

18          11.      Declaration of Marie Docter in Supplement to Plaintiffs' Response to  
19 Defendants' Motion for Summary Judgment;

20          12.      Declaration of Amy Halquist in Support of Plaintiffs' Response to  
21 Defendants' Motion for Summary Judgment;

22 and it appearing that there are no genuine issues of material fact, it is hereby

23           ORDERED, ADJUDGED AND DECREED that Defendants' Motion for  
24 Summary Judgment is Granted, *and plaintiffs' complaint is hereby*

25 *DISMISSED with prejudice.*

26 **ORDER GRANTING DEFENDANTS' MOTION  
FOR SUMMARY JUDGMENT**

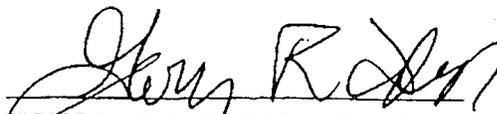
Page 2 of 3

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**DAVIES PEARSON, P.C.**  
ATTORNEYS AT LAW  
920 FAWCETT -- P.O. BOX 1657  
TACOMA, WASHINGTON 98401  
TELEPHONE (253) 620-1500  
TOLL-FREE (800) 439-1112  
FAX (253) 572-3052

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DATED this 17<sup>th</sup> day of November, 2006.

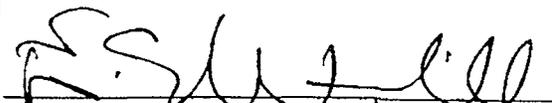
  
HONORABLE GARY R. TABOR

FILED  
IN COUNTY CLERK'S OFFICE

A.M. NOV 21 2006 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY \_\_\_\_\_ DEPUTY

Presented by:  
DAVIES PEARSON, P.C.

  
EDWARD S. WINSKILL, WSBA #5400  
Attorneys for Defendants

Approved as to form:  
LAW OFFICES OF BRIGGS & BRIGGS

BY \_\_\_\_\_  
MARIE A. DOCTER, WSBA #30557  
Attorneys for Plaintiffs

**ORDER GRANTING DEFENDANTS' MOTION  
FOR SUMMARY JUDGMENT**

Page 3 of 3

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**DAVIES PEARSON, P.C.**  
ATTORNEYS AT LAW  
920 FAWCETT -- P.O. BOX 1657  
TACOMA, WASHINGTON 98401  
TELEPHONE (253) 620-1500  
TOLL-FREE (800) 439-1112  
FAX (253) 572-3052



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15 court days of hearing)

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Date: December 15, 2006  
Time: 9:00 a.m.  
Judge/Calendar: Judge Tabor

FILED  
SUPERIOR COURT  
THURSTON COUNTY WA

'06 DEC 15 A10:47

BETTY J. GOLDBLUM

BY \_\_\_\_\_ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

BRIAN HALQUIST and AMY  
HALQUIST, husband and wife,

Plaintiffs,

vs.

ROBERT C. FREEBY and EILEEN  
MOSHER, individually and the martial  
community comprised thereof, and  
ROBERT C. FREEBY, ATTORNEY AT  
LAW, PS, a Washington corporation,

Defendants.

NO. 05-2-07403-1

**ORDER DENYING MOTION  
FOR RECONSIDERATION**

FILED  
IN COUNTY CLERK'S OFFICE

A.M. DEC 15 2006 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY \_\_\_\_\_ DEPUTY

THIS MATTER having come before the Court on Plaintiffs' Motion for Reconsideration of Order Granting Defendants' Motion for Summary Judgment, entered on November 17, 2006, and the court having considered the files and records herein, including said motion, defendants' response thereto, the plaintiffs' reply in support, and having heard the arguments of counsel, now therefore, it is hereby

**ORDER DENYING MOTION FOR  
RECONSIDERATION**

Page 1 of 2

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**ORIGINAL**

**DAVIES PEARSON, P.C.**  
ATTORNEYS AT LAW  
920 FAWCETT -- P.O. BOX 1657  
TACOMA, WASHINGTON 98401  
TELEPHONE (253) 620-1500  
TOLL-FREE (800) 439-1112  
FAX (253) 572-3052

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ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion for Reconsideration of Order Granting Defendants' Motion for Summary Judgment shall be and the same is hereby DENIED.

DATED this 15<sup>th</sup> day of December, 2006.

  
HONORABLE GARY R. TABOR

Presented by:  
DAVIES PEARSON, P.C.

  
EDWARD S. WINSKILL, WSBA #5406  
Attorneys for Defendants

Approved as to form:  
LAW OFFICES OF BRIGGS & BRIGGS

BY \_\_\_\_\_  
MARIE A. DOCTER, WSBA #30557  
Attorneys for Plaintiffs

**ORDER DENYING MOTION FOR RECONSIDERATION**

Page 2 of 2  
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**DAVIES PEARSON, P.C.**  
ATTORNEYS AT LAW  
920 FAWCETT -- P.O. BOX 1657  
TACOMA, WASHINGTON 98401  
TELEPHONE (253) 620-1500  
TOLL-FREE (800) 439-1112  
FAX (253) 572-3052

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COURT OF APPEALS  
DIVISION II

07 JUN -5 AM 11:27

STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

## CERTIFICATE OF SERVICE

I certify that on June 5, 2007, I sent a true and correct copy of the Brief of Appellants by first class mail, postage prepaid, to:

Edward S. Winskill  
Davies Pearson, P.C.  
920 Fawcett Avenue  
Tacoma, Washington 98401

Dated: June 5, 2007

Anne Watson  
Anne Watson, WSBA #30541