

NO. 36384-II<sup>(4)</sup>

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

---

JOSEPH CURTIN,

Appellant,

v.

KING COUNTY

Respondent.

---

APPEAL FROM THE SUPERIOR COURT FOR PIERCE COUNTY

THE HONORABLE JOHN R. HICKMAN

---

**BRIEF OF RESPONDENT**

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NORM MALENG

King County Prosecuting Attorney

DANIEL T. SATTERBERG

Interim King County Prosecuting Attorney

C. CRAIG PARKER, WSBA #7725

Senior Deputy Prosecuting Attorneys

Attorneys for Respondent

King County Prosecuting Attorney

900 King County Administration Building

500 Fourth Avenue

Seattle, Washington 98104

(206) 296-8823

ORIGINAL

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I. COUNTERSTATEMENT OF THE CASE

Plaintiff, Joseph Curtin, is suing King County for injuries sustained in a car/motorcycle accident. (CP 1-3). The liability theory he asserts against King County is negligent design of 138<sup>th</sup> Avenue S.E. (CP 2-3). Specifically, plaintiff alleges in his complaint that:

Defendant King County breached its duty to construct and/or maintain the roadway in question by constructing and allowing a hill in the roadway at issue, which hill obstructed the view of Mr. Curtin and the view of the other driver such that neither Mr. Curtin nor the other driver could see each other until it was too late for an accident to be avoided.

(CP 3).

According to the King County police accident investigation report, this accident occurred as follows:

"138<sup>th</sup> Ave. S.E. is a residential road. It has no street lights. It was dark at the time of the collision. The motorcycle driver, Curtin, was heading northbound on 138<sup>th</sup> Ave. S.E. . . Li, the car driver, was pulling

out of the south driveway addressed 13232. Li was turning onto 138<sup>th</sup> northbound. The two vehicles collided on 138<sup>th</sup> in the southbound lane near the two center lines. The motorcycle caught on fire post impact. As a result of the collision, Curtin received a broken hand, dislocated foot and cracked vertebrae. Li was not injured.

Both drivers stated that they did not see each other until just before impact. Curtin did swerve into the southbound lane to avoid the collision, but Li was not able to stop her vehicle. Curtin estimated his speed around 40 MPH. Li did not have a speed estimate for the motorcycle, only that it was fast."

(CP 82, 169).

The posted speed limit on 138<sup>th</sup> Avenue S.E. is 25 mph. A witness to the accident, Mr. Andy Wood, describes seeing the accident unfold as follows:

"On May 14, 2004 at approximately 1:00 a.m. in the morning I was on my way home from work in my company truck. I noticed this headlight behind me and I could tell that a vehicle was coming up on me pretty fast. It was a motorcycle and the next thing I knew it was right

behind me, tailgating and swerving back and forth as if its driver were impatient. I was doing 25-30 mph.

I turned onto 138<sup>th</sup> Avenue S.E. heading north which has a speed limit of 25 mph. I then heard the motorcycle rider "gun" the engine and he pulled up beside me to pass. I could tell he was really revving the motorcycle engine because it was a four stroke motorcycle yet was very loud. As he passed me, he was really gunning it and going through the gears at what seemed to me to be full throttle. He basically "blew by me" looking over into my window as he sped by. I then watched him pull away from me very rapidly.

The next thing I knew is that he went over a rise in the roadway. I then saw this explosion. I did not see any brake lights and when I pulled up to the scene of the explosion, I noted that the motorcycle had apparently collided with a car coming out of a driveway. The car was sideways in the road and the motorcycle was off of the road in a ditch. It was on fire. I could not go around the accident scene because of all of the debris in the roadway."

(CP 171, 172).

**A. The History of 138<sup>th</sup> Avenue S.E. and the Accident Driveway.**

At the time that this accident occurred, 138<sup>th</sup> Avenue S.E. was a King County Roadway. (CP 8-17). It is now owned and operated by the City of Renton. The official King County designation of the road was "local access roadway." (CP 197). As such, it offered drivers two lanes of travel, one northbound and one southbound, both posted with a speed limit of 25 mph. (CP 58, 79). The two lanes were separated with a double yellow no passing centerline. (CP 86). The road was constructed in about 1923, long before the promulgation of modern King County Road Standards. (CP 135, 197, 198).

Plaintiff utilizes these standards arguing that King County failed to offer him a "reasonably safe road for ordinary travel." (CP 40-42). Specifically, plaintiff argues through the opinion of his road design expert, Ed Stevens, that he was not offered

enough "stopping sight distance" within the roadway corridor to avoid colliding with Li's vehicle as it pulled out of the driveway joining 138<sup>th</sup> Avenue S.E. on the east side of the road. (CP 40-42, 57). Plaintiff blames this circumstance on the location of the driveway from which Li exited, relative to the vertical curvature of the road as Li looked south while exiting the driveway. (CP 40-42). Horizontally, the road is straight in the accident location. (CP 57-59, 79).

The driveway at issue was built by Li's fiancé, Richard Stuth, in 1992. (CP 174, 175, 177). He then owned the property. (CP 177, 181). Like Stevens, Stuth is a licensed civil engineer. (CP 177, 178). At the time he built his new driveway his property was already served by another driveway connected to 138<sup>th</sup> Avenue S.E. to the north. (CP 177, 178). Under the 1987 King County Road Standards in effect in 1992, Stuth was required to inquire from the King County Road Engineer as to

whether he would be permitted to build a second driveway to serve his property. (CP 133-137).

Section 3.01(c)(2) of the 1987 King County Road Standards states in relevant part that:

On frontage over 75' two or more driveways per lot may be permitted, subject to approval by the Engineer. [Emphasis added].

(CP 133, 134).

"Engineer" under Section 1.10 of the 1987 King County Road Standards means the statutorily designated King County Road Engineer. (See RCW 36.80). (CP 133, 134). Stuth did not make an inquiry of the King County Road Engineer concerning permission to add his second driveway. (CP 177, 178). He specifically admitted this in his deposition. (CP 177, 178). He just took it upon himself sometime in 1992 to build the second driveway utilizing his own equipment. (CP 177, 178). He described it as follows during his deposition:

Q: Mr. Stuth, we were talking earlier, you mentioned that you started using the property in 1991 as an office?

A: Yes.

Q: And moved in there after as a residence. At the time that you first moved onto the property it's my understanding that the north driveway was the only driveway?

A: That's correct, yes.

Q: Then you added the south driveway at some point in time?

A: Yes.

Q: When did you do that, approximately, do you know?

A: Well I don't know, I would say '92 but I did it fairly quickly after I moved on the property.

Q: Did you do it yourself or hire a contractor?

A: I did it.

Q: Did you get a Cat or a bulldozer?

A: I have tractors and stuff.

MR. CRAIG PARKER: You have to say yes or no for the court reporter.

A: Yes, I used a Cat, a tractor, etcetera.

Q: The Cat meaning--

A: I did it myself, yes.

Q: --a brand of tractor?

A: Yes.

Q: Did you get a permit to do the driveway?

A: No, I just put a driveway in.

Q: There is also a telephone pole by that -- well a telephone pole at the end of the driveway as it exits on 138<sup>th</sup> Southeast, is that correct?

A: Yes.

Q: Was that telephone pole there --

A: Yes, it was there -- it was there when I bought the property and it was there when I sold the property.

Q: And it was there when you constructed the driveway?

A: Correct.

Q: And you're a civil engineer?

A: Yes.

Q: So you will know this better than I, but if you're going to put a driveway in don't you need to get a permit?

A: Technically probably, it's a questionable area. It's done all the time without permits but I think the county would like you to get a permit for everything. People put in 12 inch culverts all the

time without a permit but technically speaking there probably is a place in the permit process where I could have gotten a permit.

(CP 177, 178).

Q: By addition you mean addition to the home?

A: Yes.

Q: Now you put the south driveway in sometime around 1992?

A: Yes, I put it in fairly quickly, I had the need for it immediately.

Q: And that is my question, when you put it in did you actually connect it to the north driveway so that you had some sort of circular driveway?

A: Yes.

Q: And was the driveway then paved or did it remain --

A: A gravel driveway.

Q: Was the north driveway also gravel?

A: Both were gravel driveways, yes.

Q: And in the course of your tenure at the residence since 1991, except for this accident, you weren't involved in any other accidents coming out of your south driveway?

A: No, never, nor was anyone else.

(CP 183).

There is no record that 138<sup>th</sup> Avenue S.E. was reconstructed after it was established in 1923 and/or before Mr. Stuth constructed his south driveway in 1992. (CP 198). Under King County Road Standards, absent roadway reconstruction or capital improvement project, the standards are not to be applied retroactively. (CP 94, 95, 134, 135). This is specifically called for in the standards themselves. (CP 94, 95, 134, 135). There have been no other accidents occurring on 138<sup>th</sup> Avenue S.E. at the driveway location where this accident occurred. (CP 183, 199).

**B. The Opinion of Plaintiff's Road Design Expert, Ed Stevens.**

Plaintiff offers the declaration of Ed Stevens to support his liability theory against King County's road. (CP 38-52). Therein, Mr. Stevens admits that "entering sight distance" as established in the King County Road Standards is not applicable in this case because under the standards, "entering sight

distance criteria will not apply on local access streets." (CP 40). 138<sup>th</sup> Avenue S.E. is a "local access street." (CP 197).

Because of this "glitch," Mr. Stevens chooses to utilize "stopping sight distance" as the key design element in judging the propriety of the location of the new Stuth driveway where it connects to King County's road. (CP 133-137). However, as the King County Road Engineer Paulette Norman testified, Stevens' use of that road design element is not proper because "stopping sight distance" is a design element used for the roadway corridor, not for the placement of a connecting driveway. (CP 133-137).

The concept of "stopping sight distance" is based upon speed and distance relative to when a driver driving within the roadway corridor can observe a 6 inch high object on the road itself, not something the size of a car exiting from a driveway. (CP 133-137). It is a tool used for determining the safe

design speed within the roadway corridor and does not apply to the propriety of connecting driveways to the road. (CP 133-137). As Ms. Norman says, drivers entering an arterial from driveways are required to yield to vehicles already within the roadway corridor. (CP 133-137).

C. **The Official Police Reconstruction Analysis of this Accident Performed by Detective Sybrand A. Hiemstra.**

Detective Sybrand A. Hiemstra investigated this accident for the King County Sheriff's Office. (CP 112-116). Detective Hiemstra is a trained accident reconstructionist serving with the Major Accident Response and Reconstruction Unit of the King County Sheriff's Office. (CP 112, 113, 118). He personally interviewed Joseph Curtin on May 17, 2004, three days after the accident. (CP 113). In that interview, Curtin admitted to Detective Hiemstra that:

"As soon as I came over the first hill, I seen this car pulling out, so I tried to go around it and she just kept on

going. . . pulling in front of me."  
[Emphasis added].

(CP 113).

Curtin admitted to Detective Hiemstra that he was exceeding the 25mph speed limit traveling at 40 mph. (CP 113). As he put it: "I was probably speeding a bit." (CP 113). He told the detective again that "I was coming up that hill" not "quite to the top when I seen her pulling out." (CP 113).  
[Emphasis added].

Officer Hiemstra's investigation revealed that the road offered Curtin and Li a clear view of each other for at least 144.5 feet within the roadway corridor. (CP 114). Unlike Mr. Stevens' use of the 6 inch high object in the road, Curtin and Li's sight line was measured by Detective Hiemstra as it actually existed, i.e. from the headlight of the motorcycle as it approached the Stuth driveway to the base of the windshield of Li's car as it was about to enter the road. (CP 114). Detective Hiemstra

concluded as a matter of undisputed fact that Li had the ability to see Curtin coming towards her because Curtin admitted that he could see Li pull out in front of him. (CP 115-116). This, in Detective Hiemstra's opinion, takes the road out of play as a causative element of this accident. (CP 115-116).

Moreover, with 144.5 feet, Curtin had the time and distance to safely stop his motorcycle and avoid the collision if he was driving within a speed range of 25 to 35 mph. (CP 114, 115). At 25 mph he could stop in 85 feet. (CP 114). At 30 mph he could stop in 109 feet. (CP 114). And at 35 mph he could stop in 135 feet. (CP 114, 115). These calculations are based upon a perception/reaction time of 1.5 seconds. (CP 114). If Curtin had less than 144.5 feet because of the position of his bike on the road relative to when Li pulled into the road, then Li simply made a bad mistake by not viewing Curtin coming towards her. (CP 116).

**D. King County Neighborhood Traffic Safety Coordinator, David L. Paul.**

In 2001, nine years after personally constructing his driveway, Stuth requested that King County Neighborhood Traffic Safety Coordinator, David L. Paul, come to his property to see what might be done about high school students speeding southbound on 138<sup>th</sup> Avenue S.E. (CP 139-141, 179). In the course of their meeting, Stuth casually mentioned that he was sometimes caught off guard by speeding northbound motorists when exiting his south driveway. (CP 140). Mr. Paul's conversational response to that problem was to advise Stuth to shut down his south driveway based upon Stuth's factual representation. (CP 140).

On June 20, 2001, Stuth sent a follow-up letter to Mr. Paul. It reads as follows:

Dear David:

Thank you very much for your prompt actions relative to our speeding/joy ride problems. Following your on-site visit on

6/15/01, a traffic counter has been installed at the north end of the first roller, officer Jim Juchmes has set up his radar on at least two occasions and another officer has done some patrolling and investigating. Your efforts and theirs are very much appreciated.

While the current efforts have and will continue to have a positive affect on the problem, the ultimate solution to the problem must be the removal of the rollers or "attractive nuisance." As a civil engineer, I know that this road will be corrected when this area is annexed into the City of Renton and developed into higher density parcels. However, I am keenly aware that until the road is altered it will remain a time bomb. In order to aid me in my efforts to define the problem, inform my neighbors and lobby for change, I would appreciate a copy of any traffic studies, accident reports or other information that is available.

Again, Dave, thank you for your quick and effective response.

Sincerely,

/s/ Richard E. Stuth, P.E."

(CP 143).

In response to his "time bomb" analysis, Mr.

Paul wrote to Stuth telling him in part that:

"I am also advising you that due to limited sight lines, you should abandon use of your south driveway where it intersects with 138<sup>th</sup> Avenue SE. You stated to me when we met on-site Friday, June 15, 2001, that you had measured the sightlines for your driveways and that the sightlines are not satisfactory for the south driveway."

(CP 145).

According to David Paul, he had every expectation that Stuth would heed his advice because: (1) Stuth was a licensed professional civil engineer and (2) it was Stuth who had raised the safety concerns that Mr. Paul was responding to. (CP 141). However, unbeknownst to Mr. Paul or anyone else from King County, Stuth kept on using his south driveway.

Plaintiff now blames King County for this accident. (CP 1-3). The trial court disagreed and granted King County's Motion for Summary

Judgment. (CP 148-150). Plaintiff appeals. (CP 151-154).

## II. ARGUMENT

### A. Richard Stuth Caused the Alleged "Inherently Dangerous" Condition, not King County.

The issue presented by this lawsuit is whether a municipality has a duty to reconstruct an existing road to modern road standards in order to correct an alleged sight distance design defect caused by a property owner who takes it upon himself to secretly construct a driveway intersecting with that public road. In support of his legal position, plaintiff argues (and King County agrees) that a municipality owes a duty to all persons, whether negligent or fault free, to build and maintain its roadways in a condition that is reasonably safe for ordinary travel. Keller v. City of Spokane, 146 Wn.2d 237, 44 P.2d 845 (2002). However, in this case that is not the fundamental issue.

Instead, the key legal issue is whether a municipality is obligated under the law to reconstruct or retrofit its roadways to modern standards absent a statute or

ordinance requiring such. The answer to that question was a resounding no by the Supreme Court in Ruff v. King County, 125 Wn.2d 697, 705, 867 P.2d 886 (1995). And in this case, the King County Road Standards upon which plaintiff relies to support his liability arguments specifically require that they not be applied retroactively. (CP 95).

The alleged "inherently dangerous" condition that plaintiff encountered was a car entering the road from Stuth's south driveway. That driveway did not exist when King County designed and constructed 138<sup>th</sup> Avenue S.E. Therefore, as a matter of undisputed fact, King County's design and construction of 138<sup>th</sup> Avenue S.E. offered drivers a reasonably safe road despite plaintiff's arguments to the contrary. Because Mr. Stuth secretly constructed his second driveway, plaintiff contends that King County should have reconstructed its road. However, King County had nothing to do with Stuth's un-permitted driveway construction.

Plaintiff responds to this admitted fact by blaming King County employee David L. Paul for allowing Stuth to

continue to use the driveway after Mr. Paul's visit to the property in 2001. That visit was requested by Richard Stuth for the purpose of responding to Stuth's totally unrelated complaints about speeding southbound high school students along 138<sup>th</sup> Avenue S.E. (CP 139-141, 179).

As Mr. Paul and Stuth were standing in Stuth's yard observing the southbound traffic, Stuth casually mentioned that he was occasionally caught off guard exiting from his south driveway by speeding northbound motorists. (CP 140). Mr. Paul advised Stuth to solve the problem by shutting the south driveway down. (CP 140). Stuth did not. Therefore, if there is a reason to complain about the vertical geometry of King County's road relative to the existence and use of Stuth's south driveway, that complaint fairly belongs to Richard Stuth who secretly constructed the south driveway and then chose not to shut it down.

**B. King County's Road was Reasonably Safe for Ordinary Travel.**

Plaintiff's liability theory against King County's road is based upon an alleged design defect offered through the opinion of his expert road design witness, Ed Stevens. (CP 38-43). Initially, Stevens concedes, as he must, that the road design concept of "entering sight distance" is not applicable in this case because of the classification of 138<sup>th</sup> Avenue S.E. as a "local access street" under King County's Road Standards. (CP 40). Then Stevens claims that under those same Road Standards, there was inadequate "stopping sight distance" within the traveled corridor of 138<sup>th</sup> Avenue S.E. for northbound motorists like Curtin. (CP 38-43).

In offering his opinion, Stevens bootstraps the concept of "stopping sight distance" to the concept of "entering sight distance." He links these two road design concepts by stating as follows: "[G]enerally at low major road speeds the speed requirements for SSD [stopping sight distance] nearly equal [sic] that of ESD [entering sight distance]. (CP 40). He then proceeds to criticize the design

of 138<sup>th</sup> Avenue S.E. relative to the Stuth driveway under a "stopping sight distance" analysis, instead of an "entering sight distance" analysis. (CP 40, 41). This is the process that Stevens utilizes to fault King County's road. (CP 40). However, as the King County Road Engineer Paulette Norman explains, Stevens' methodology is professionally flawed because "stopping sight distance" is not a design element applied to connecting driveways. (CP 133-137).

Indeed, "stopping sight distance" is a design element dedicated to the roadway corridor, not dedicated for use in the decision to allow the placement of driveways along an arterial. (CP 40, 41, 133-137). "Stopping sight distance" is calculated based upon a driver's ability to see a 6 inch (0.5 feet" as Mr. Stevens says) object on the road, not something the size of a vehicle entering into the road from a driveway. (CP 133-137). Moreover, drivers entering the road from a driveway must, as a matter of law, yield to drivers already in the roadway corridor regardless of whether those corridor drivers can see a 6 inch high object in the road or not. (CP 133-137).

That is why Ms. Norman, as the King County Road Engineer, would have weighed the decision to grant Stuth his second driveway based upon whether it would present "a hazard or whether it would impede the operation of traffic on the roadway." That is what is required under Section 3.01(F) of the King County Road Standards. (CP 133-137). That section states that:

Notwithstanding any other provisions,  
driveways will not be allowed where they  
are prohibited by separate County Council  
action or where they are determined by the  
Engineer to create a hazard or impede the  
operation of traffic on the roadway.  
[Emphasis added].

(CP 136).

By Stuth's own admission, the King County Road Engineer never got the chance to exercise the discretion vested in her by the above quoted law because Stuth never asked. (CP 177, 178). Had Ms. Norman been called upon to pass on the matter, she would have based her decision on traffic volumes, speed, and existing roadway alignment, in this case, the nature and extent of the vertical curve in the road relative to the height of vehicles entering onto 138<sup>th</sup>

Avenue S.E. from the proposed Stuth driveway. (CP 133-137).

Ms. Norman is unable to say what her decision would have been because the road has since changed and she was never asked to review the matter. (CP 133-137). She can say, however, that Stevens' boot strapped "analysis" based upon a 6 inch object in the road rather than a vehicle exiting the driveway would not have been utilized by her because it is a professionally incorrect use of a separate and distinct design concept dedicated to the roadway corridor, not to intersecting driveways. (CP 133-137). Accordingly, Stevens' opinions are not at all relevant to the fundamental cause of this accident: That is, the conduct of the roadway's users.

**C. Curtin's Ability to Stop and Li's Ability to See Him Coming Towards Her.**

Three days after this accident King County Police Detective Sybrand A. Hiemstra interviewed Curtin and asked him what had happened. (CP 113). On several occasions, Curtin admitted to the detective that he saw Li

pull out in front of him. (CP 113, 115, 116). If this is the case, as Curtin admitted, then Li had to be able to see Curtin coming towards her along 138<sup>th</sup> Avenue S.E. (CP 116). Therefore, and contrary to Mr. Stevens' opinions, the geometry of King County's road had nothing to do with how this accident actually unfolded. (CP 112-116).

That is because in this case there was 144.5 feet of unobstructed sight distance between Curtin's motorcycle as it approached the location of Li's car in the Stuth driveway. (CP 114, 115). At that distance, Li should have seen Curtin coming before pulling out and Curtin should have been able to safely stop his bike had he been driving at any speed ranging from the speed limit of 25 mph to 35 mph. (CP 114, 115). If Curtin was closer to Li's car than the 144.5 feet when Li pulled into the road, she simply made a worse visual mistake by not seeing Curtin coming towards her. Under the facts of this case and regardless of Ed Stevens' opinion, King County's road did not cause this accident, the drivers did.

**D. Plaintiff's speed.**

Curtin admitted to Detective Hiemstra that he was "speeding a bit" traveling 40 mph in a 25 mph zone. (CP 113). He indicated that he had driven on 138<sup>th</sup> Avenue S.E. "a million times." (CP 113, 114). Eyewitness Andy Wood testified that Curtin "blew by" him just prior to the accident as Wood was driving northbound on 138<sup>th</sup> Avenue S.E. at 25-30 mph. (CP 171, 172). In response, plaintiff argues that he was only going 29 to 34 mph because that is the speed range that Detective Hiemstra came up with in his accident report. That is a misleading argument at best.

The reason for this is explained by Detective Heimstra in his affidavit. There, he testifies that the 29 to 34 mph speed range was based upon a restricted physical analysis of this accident ranging only from the point of impact to the final resting point of Curtin and his motorcycle. (CP 115, 116). Detective Hiemstra was not able to factor in any pre-impact speed reducing factors such as braking, evasive maneuvers and the amount of speed energy absorbed by the impact itself. (CP 115, 116). This

is because when Detective Hiemstra arrived at the accident scene, there was no evidence left there to assist him with these types of calculations and Li had moved her car. (CP 115, 116). However, as Detective Hiemstra testified, the 29 to 34 mph analysis is the absolute minimum speed range for Curtin's bike and more likely than not, Curtin's speed was at least the 40 mph that he admitted to. (CP 113).

**E. Ruff v. King County and Owen v. Burlington Northern.**

Contrary to plaintiff's argument attempting to distinguish Ruff, that case clearly stands for the proposition that a county is not required "to update every road and roadway structure to present-day standards." Ruff v. King County, 125 Wn.2d 297, 705, 867 P.2d 886 (1995). Accordingly, there was no duty for King County to reconstruct the vertical alignment of 138<sup>th</sup> Avenue S.E. because Mr. Stuth took it upon himself to secretly build a second driveway and connect it to King County's road.

As to Owen, plaintiff quotes at great length from that case. However, Owen involved a collision between a

train and the Owen driven vehicle. Suffice it to say that Owen presented the court with a situation where the traveling public within the roadway corridor was required to yield their right-of-way to trains crossing the roadway. As such, the Supreme Court placed stringent requirements upon road authorities to make sure that the traveling public was very well advised as to oncoming trains. In this case, drivers like Ms. Li entering the road from a driveway are required by law to yield to those vehicles already within the roadway corridor. She should have, but did not and this accident resulted.

### III. CONCLUSION

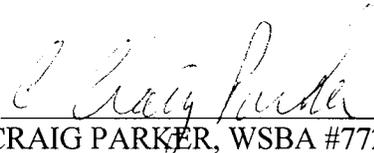
Under plaintiff's liability analysis, King County's road, 138<sup>th</sup> Avenue S.E., was reasonably safe before Richard Stuth took it upon himself to render the roadway "inherently dangerous" as Stevens says, by clandestine construction of his second driveway. Thereafter, when advised to shut the driveway down because of the safety concerns that Stuth himself had raised, Stuth declined to act responsibly. Therefore, it was Stuth who caused the sight

distance hazard, if any, that plaintiff complains about in this lawsuit. And if there is a remedy based upon alleged poor road geometry in the area of the second Stuth driveway, it is against Stuth who secretly but undeniably caused the problem.

Furthermore, Curtin admitted on several occasions that he saw Li pull out in front of him. That being the case, Li should have seen Curtin coming towards her and allowed him the right-of-way. The road offered them 144.5 feet of unobstructed sight of each other within the roadway corridor. That is sufficient distance for Curtin to have stopped while driving at speeds ranging from 25 to 35 mph. Li's failure to observe, together with Curtin's speed, caused this accident. Accordingly, King County's Motion for Summary Judgment was properly granted and the trial court's order dismissing plaintiff's lawsuit against King County should and must be affirmed.

DATED this 17<sup>th</sup> day of October, 2007.

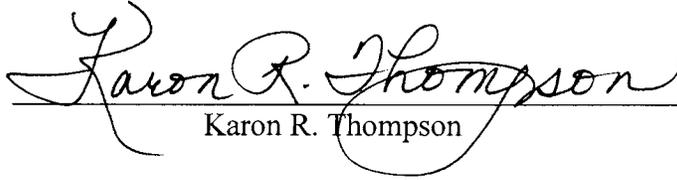
NORM MALENG King County Prosecuting  
Attorney  
DANIEL T. SATTERBERG  
Interim King County Prosecuting Attorney

By:   
C. CRAIG PARKER, WSBA #7725  
Senior Deputy Prosecuting Attorney  
Attorneys for Respondent King County

**CERTIFICATE OF SERVICE**

I hereby certify that on the 17<sup>th</sup> day of October, 2007, I sent, by ABC Messenger Service, with instructions to be delivered no later than 4:30 p.m. on the afternoon of October 18, 2007, a copy of **Respondent's Brief** to the following:

**Jeffrey T. Parker  
Attorney at Law  
Pacific Pointe Building  
2110 N. Pacific Street, Suite 100  
Seattle, WA. 98103**

  
Karon R. Thompson

FILED  
BY  
10/18/07  
K