

NO. 40637-3-II

COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

DEL JOHNSON, individually and as the Personal Representative of the
Estate of BEVERLY JOHNSON,

Appellant,

v.

STATE OF WASHINGTON, GRAYS HARBOR COUNTY,
WASHINGTON; GRAYS HARBOR COMMUNICATIONS CENTER
A/K/A GRAYS HARBOR
E911 COMMUNICATIONS CENTER,

Respondents.

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DIVISION II
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BRIEF OF RESPONDENTS GRAYS HARBOR COUNTY & GRAYS
HARBOR E911 COMMUNICATIONS CENTER

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. STATEMENT OF THE CASE 2

A. Tyler Trimble Phone call 2

B. “Shots Fired” Incident 2

**C. Randall Neathery’s Encounter with Mrs. Johnson and
Trimble’s Second Phone call 3**

III. ARGUMENT 4

A. The Public Duty Doctrine Bars Plaintiff’s Claim 4

**B. The Conduct of Grays Harbor 911 Was Not a
Proximate cause of Mrs. Johnson’s Death 4**

IV. CONCLUSION 6

TABLE OF AUTHORITIES

Washington Cases	Page
<i>Childs v. Allen</i> , 125 Wn. App. 50, 105 P.3d 411 (2005)	4
<i>La Plante v. State</i> , 85 Wn.2d 154, 531 P.2d 299 (1975)	5
<i>Lynn v. Labor Ready Inc.</i> , 136 Wn. App. 295, 151 P.3d 201 (2006)	5
<i>Siegler v. Kuhlman</i> , 81 Wn.2d 448, 502 P.2d 1181 (1972)	4

I. INTRODUCTION.

Respondents Grays Harbor County and Grays Harbor E9-1-1 Communications Center (referenced hereinafter collectively as “Grays Harbor 911”) join in the Brief of Respondent State of Washington.

Appellant asserts on page 10 of his Brief, “Plaintiff’s wife died because of defendants’ failure to execute the simple, operational task of telling Tyler Trimble what they well knew while they had him on the phone – that Mrs. Johnson was missing and endangered.” While from a proximate cause perspective, that argument might be made regarding respondent Washington State Patrol (WSP), it has no application to 911. Grays Harbor 911 only learned of Mrs. Johnson’s missing and endangered status after the WSP dispatcher had ended her phone call with Mr. Trimble. By that time Mr. Trimble was traveling westbound on SR 12 and Mrs. Johnson was traveling in some unknown direction within the Elma area. Furthermore, when Grays Harbor 911 did learn of Mrs. Johnson’s status, it was fully engaged with an incident where gunshots had been fired, perhaps at a Sheriff’s Deputy. As soon as that incident was resolved a few minutes later, Grays Harbor 911 immediately broadcast the relevant information about Mrs. Johnson to the law enforcement agencies in the region.

II. STATEMENT OF THE CASE.

Grays Harbor 911 specifically incorporates by reference respondent State of Washington's Statement of the Case.

A. Tyler Trimble Phone call.

The key events described in the State's Brief on pages 4-5 occurred at the following times:

- 8:41 Trimble called Grays Harbor 911 (CP 35, 50, 52, 54)
- 8:42 Grays Harbor 911 transferred the call to WSP (CP 35-36, 56)
- 8:44 WSP received NCIC missing/endangered person information on Mrs. Johnson (CP 83-84, 74)
- 8:46 After ending the phone call with Trimble, WSP phoned Grays Harbor 911 and relayed NCIC information (CP 36, 61)

The Vicinity Map (CP 51) shows where Mr. Trimble was following Mrs. Johnson going westbound on SR 12 between Oakville and Elma, the intersection of SR 12 with SR 8 where Mrs. Johnson got off SR 12 in the area of Elma, and the multitude of potential routes she could have traveled thereafter.

B. "Shots Fired" Incident.

At 8:39 p.m., approximately two minutes before Mr. Trimble called Grays Harbor 911 to report a potential DUI, Grays Harbor County Deputy

Sheriff Paul Fritts radioed 911 that shots had been fired from a vehicle, perhaps at him. (CP 35, 53-54) While WSP dispatch was still on the phone with Mr. Trimble, Grays Harbor 911 limited all radio traffic on the East Primary channel (GHC Sheriff and Montesano, Elma, McCleary, Chehalis Tribal, Ocean Shores and Westport Police Departments) except as necessary to handle the “shots fired” incident. (CP 36-37, 59) At 8:48 Deputy Fritts radioed that he was in pursuit of the suspect vehicle at more than 90 mph. (CP 37, 62) At 8:53 Elma Police Officer Josh Wheeler reported the shots fired suspects were being taken out of their car. (CP 37, 63) At 8:55 Grays Harbor 911 cleared units for normal radio traffic and immediately broadcast the NCIC data on Mrs. Johnson. (CP 37, 64)

C. Randall Neathery’s Encounter with Mrs. Johnson and Trimble’s Second Phone call.

Mr. Neathery saw Mrs. Johnson driving her car in his yard at about 10 p.m. (CP 69-70) That site is noted on the vicinity map as “Neathery.” (CP 51) (*See* Wynoochee Valley Road just below the large “Harbor.”) Mrs. Johnson was found on a side road just off of Forest Road 22, an extension of Wynoochee Road, directly north of the Neathery residence. (CP 50-51) That location is identified at the top of the Vicinity Map near the Wynoochee Lake Dam as “Johnson.” (CP 51)

Mr. Trimble called Grays Harbor 911 after Mr. Neathery's encounter with Mrs. Johnson. Although through a misunderstanding he was not told that Mrs. Johnson was indeed the erratic driver he had followed on SR 12 (CP 38, 65-66), that fact is completely immaterial to the circumstances of Mrs. Johnson's death.

III. ARGUMENT.

A. The Public Duty Doctrine Bars Plaintiff's Claim.

These respondents adopt the State of Washington's argument with respect to the Public Duty Doctrine.

B. The Conduct of Grays Harbor 911 Was Not a Proximate Cause of Mrs. Johnson's Death.

Assuming that the Court was able to find a duty of care owed to Mrs. Johnson, no reasonable mind could conclude that Grays Harbor 911 proximately caused her death.

Proximate cause is an essential element of a negligence claim. A "proximate cause" of an injury is defined as a cause which, in a direct sequence, unbroken by any new, independent cause, produces the injury complained of and without which the injury would not have occurred. *Childs v. Allen*, 125 Wn. App. 50, 57, 105 P.3d 411 (2005); *See Siegler v. Kuhlman*, 81 Wn.2d 448, 502 P.2d 1181 (1972) (plaintiff's decedent may have been

speeding at the time of accident, but speeding was not a proximate cause of death by fire from overturned gasoline tanker, and, accordingly, was not a basis for contributory negligence).

While the issue of proximate cause is generally for the trier of fact, it may be decided as a matter of law when reasonable minds could reach only one conclusion. *La Plante v. State*, 85 Wn.2d 154, 159, 531 P.2d 299 (1975); *See Lynn v. Labor Ready Inc.*, 136 Wn. App. 295, 308-312, 151 P.3d 201 (2006) (dismissal proper where plaintiff produced only speculative evidence that the employer's alleged negligence led to death of plaintiff's decedent).

Plaintiff asserts that the defendants should have relayed to Mr. Trimble the fact that the vehicle he was following was associated with a missing/endangered person.

However, Grays Harbor 911 had only two telephone contacts with Mr. Trimble. During the first contact, 911 took the information provided by Mr. Trimble, learned that Mr. Trimble was traveling on a State Highway, and properly and immediately transferred him to WSP. During this initial contact, Grays Harbor 911 had no knowledge that the vehicle Mr. Trimble was following was associated with a missing/endangered person report and, accordingly, could not have relayed this information to Mr. Trimble.

As soon as Grays Harbor 911 learned of Mrs. Johnson's missing and endangered status, and immediately after the radio hold was lifted, 911 radioed the information to patrol units in the vicinity. By that time, Mr. Trimble had entirely lost contact with Mrs. Johnson's vehicle. Thus, any further communication with Mr. Trimble would not have changed the outcome of this case.

When Mr. Trimble made the second call to Grays Harbor 911 from his home more than 90 minutes later, multiple patrol units had failed to locate Mrs. Johnson and she was already well up the Wynoochee Valley Road on her way to Forest Road 22 and to the location of her death.

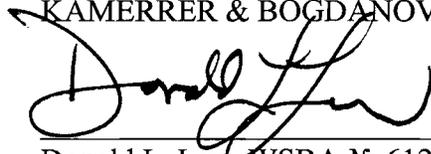
Plaintiff is unable to establish that any act by Grays Harbor 911 was a proximate cause. Plaintiff's claim against Grays Harbor 911 fails as a matter of law on this basis, as well as the Public Duty Doctrine.

IV. CONCLUSION.

The Court should affirm the summary judgment dismissal of Grays Harbor 911.

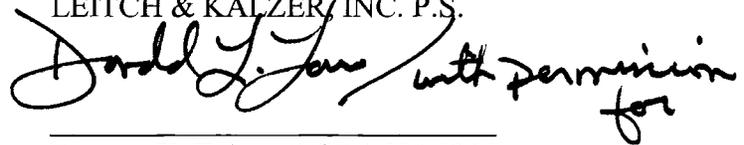
RESPECTFULLY SUBMITTED this 8th day of December, 2010.

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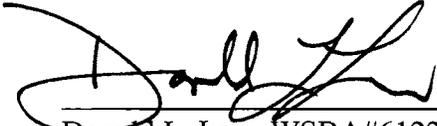


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I certify under penalty of perjury, under the laws of the State of Washington, that the foregoing is true and correct.

DATED this 8th day of December, 2010 at Tumwater, Washington.

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