

NO. 41915-7-II

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

M. GWYN MYLES, individually and as Personal Representative of the
Estate of WILLIAM LLOYD MYLES, deceased,

Appellant,

v.

STATE OF WASHINGTON, a governmental entity; JOHN DOE,
Employee(s) and JANE DOE, Employee(s), employees of the STATE OF
WASHINGTON; CLARK COUNTY, a municipality; JOHN DOE,
Employee(s) and JANE DOE, Employee(s), employees of CLARK
COUNTY; CARLOS VILLANUEVA-VILLA and JANE DOE
VILLANUEVA-VILLA, husband and wife, and the marital community
composed thereof; and R.H. BRUSSEAU and JANE DOE BRUSSEAU,
husband and wife, and the marital community composed thereof,

Respondents.

SUPPLEMENTAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

I. INTRODUCTION1

II. RESPONSE TO ASSIGNMENT OF ERROR.....1

 A. THE TRIAL COURT DID NOT ERR IN GRANTING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT BECAUSE THE LEGISLATURE’S PASSAGE OF HB 1553 IN 2009 DID NOT RETROACTIVELY AMEND RCW 4.96.....1

III. ARGUMENT.....1

 A. HB 1553 SHOULD BE GIVEN PROSPECTIVE APPLICATION BECAUSE THE LEGISLATURE DID NOT EXPRESS A CLEAR INTENT FOR IT’S RETROACTIVE APPLICATION.....1

IV. CONCLUSION.....5

TABLE OF AUTHORITIES

Cases

<i>Franklin County Sheriff's Office v. Parmalee</i> , 162 Wn. App. 289, 253 P.3d 1131 (2011).....	3, 4, 5
<i>Howell v. Spokane & Inland Empire Blood Bank</i> , 114 Wn.2d 42, 47, 787 P.2d 815 (1990)	1
<i>In re F.D. Processing, Inc.</i> , 119 Wn.2d 452, 832 P.2d 1303 (1992).....	4
of HB 1553	4
<i>Sprint Intern., Communications Corp. v. The Department of Revenue</i> , 154 Wn. App. 926, 938-939, 226 P. 3d. 253 (2010)	2

Statutes

RCW 4.96	1
RCW 4.96.020	2, 4

Other Authorities

HB 1553.....	1, 2, 3, 4, 5
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I. INTRODUCTION

Respondents submit the following Supplemental Brief to their previously filed Respondent's Brief pursuant to the Court's order granting supplemental briefing.

II. RESPONSE TO ASSIGNMENT OF ERROR

- A. The trial court did not err in granting Defendant's Motion for Summary Judgment because the Legislature's passage of HB 1553 in 2009 did not retroactively amend RCW 4.96.

III. ARGUMENT

- A. HB 1553 Should Be Given Prospective Application Because The Legislature Did Not Express A Clear Intent For It's Retroactive Application.

It is beyond peradventure that new legislation, including amendments to existing statutory law are "given prospective application unless clear intent exists to apply the law retroactively." *Howell v. Spokane & Inland Empire Blood Bank*, 114 Wn.2d 42, 47, 787 P.2d 815 (1990). This is a firmly rooted principle of law that has shown no signs of enervation or erosion:

We presume that a statutory amendment is prospective. This strong presumption is "deeply rooted in our jurisprudence." A party can overcome this presumption in certain circumstances, such as when the amendment is clearly curative. But we generally disfavor retroactivity.

Sprint Intern., Communications Corp. v. The Department of Revenue, 154 Wn. App. 926, 938-939, 226 P. 3d. 253 (2010).

HB 1553 was not adopted by the legislature in a vacuum. The Bill Analysis demonstrates clearly that it was passed in response to thirty years of jurisprudence which uniformly held that the statute required strict compliance with its filing requirements.¹ This interpretative history eventually unsettled legislators who sought a less restrictive approach. The passage of HB 1553 ushered in an era of “substantial compliance” with filing requirements. It is against this backdrop of legislative action—and inaction—that the question of retroactivity is analyzed and applied.

First, it is notable what the Legislature did not do upon passage of the 2009 amendment to RCW 4.96.020. It did not expressly provide, as it could have done with the stroke of a pen, that the amendment was retroactive in nature—this despite knowing full well that courts were requiring strict compliance. Rather than writing in its retroactive nature, which the Legislature presumably knew how to do, the Legislature did exactly the opposite—it simply provided that the amendment would become

¹ See HB 1553 at page 1 attached to County’s Motion for Summary Judgment, CP 21.

effective on July 26, 2009.² This strongly favors Respondent's position that HB 1 553 is only applied prospectively.

Secondly, and equally compelling is the fact that the Legislature expressly provided that the use of a newly designated claim form would only apply to "claims for damages presented after July 26, 2009." *See Laws of 2009, ch. 433 § 1*. Taken together, these facts buttress Respondent's argument and undermine to the point of collapse Plaintiff's contention that HB 1 553 should be applied retroactively.

Plaintiff cites the case of *Franklin County Sheriff's Office v. Parmalee*, 162 *Wn. App.* 289, 253 P.3d 1131 (2011) in support of its position that HB 1553 should be applied retroactively. Upon closer examination, however, *Franklin County* does not support plaintiff's argument.

The Court of Appeals in *Franklin County* determined that a statute concerning the Public Records Act ("PRA") was enacted as a result of ongoing disputes surrounding inmate PRA requests. The court ruled the statute was procedural in nature and would be applied retroactively since its passage indicated that the legislature had acted "during a controversy regarding the meaning of the law" and its "timing reflects its intent to cure or

² *Id.*

clarify a statute.” *Id. at 1133*. An amendment is “curative” if it clarifies or technically corrects an ambiguous, older statute, without changing prior case law. *In re F.D. Processing, Inc.*, 119 Wn.2d 452, 832 P.2d 1303 (1992).

Plaintiff zeroes in on the court’s statement in *Franklin County* that statutory amendments may apply retroactively if the timing of such amendments “reflect its intent to cure or clarify a statute,” and seems to suggest those conditions are present here. Plaintiff is incorrect. First, HB 1553 is not a curative amendment and unlike the case in *Franklin County*, it was not a “controversy” regarding the meaning of RCW 4.96.020 that led the Legislature to enact HB 1553. Rather, it was dissatisfaction with judicial interpretation of the law. The meaning of the statute was clear. It had been in effect for over thirty years and there was ample case law that defined its contours. For that reason, there was no need to “clarify” or “technically correct” RCW 4.96.020. Instead, HB 1553 substantively modified the application of the statute and in effect, *superseded* thirty years of case law. In other words, the Legislature moved the goalposts.

The thirty year time period between the passage of RCW 4.96.020 and its amendment in 2009 negates any argument that the “timing” of HB 1553 is significant or indicative of the Legislature’s intent to “clarify” or “cure” RCW 4.96.020, thereby making it retroactive in nature. Waiting

thirty years to make substantive changes to a statute hardly indicates a dispute, much less a “controversy.” Therefore, *Franklin County* is of no help to plaintiff.

IV. CONCLUSION

When the Legislature passed HB 1553 it made express changes to claim forms that clearly indicated its intent that the amendment applied prospectively. It also clearly provided a date certain for its application—July 26, 2009. Having evinced its clear intent that the amendment was not retroactive in nature, any argument to the contrary rings hollow and is properly rejected by this court. Therefore, the trial court order granting summary judgment should be affirmed.

Respectfully submitted this 7th day of November, 2011.

RESPECTFULLY SUBMITTED:

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