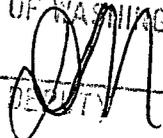


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STATE OF WASHINGTON

BY  DEPUTY

**NO. 492229-9-II  
IN THE COURT OF APPEALS OF THE STATE OF  
WASHINGTON  
DIVISION II**

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**In re the Matter of the Estate of**

**DEBORAH E. REID,**

**Deceased**

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**APPEAL FROM THE SUPERIOR COURT**

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**HONORABLE SUZAN CLARK**

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**BRIEF OF RESPONDENT**

**Kathleen McCann  
Minor Settlement Guardian ad Litem  
For Dillon Reid  
1014 Franklin St., Suite 202  
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## 1. INTRODUCTION

**Issue No. 1:** This first issue in the appeal is Brandon Saludaes appeal from the trial court's ruling on cross motions for summary judgment. The issue's whether a "child" under the Washington wrongful death statute RCW 4.20.020 includes someone who was the biological child of decedent but was adopted by other persons prior to decedent's death.

Respondents on appeal are, Dillon Reid and Laurene Reid, son and daughter of Deborah Reid. This reply brief is submitted on behalf of Dillon Reid.

### II. SUMMARY OF ARGUMENT FOR ISSUE NO. 1.

Respondent urges the court to find that the meaning of "child" under the wrongful death statute does not include a "child" of the decedent adopted by others prior to the decedent's death. A biological "child" of decedent adopted by another person is not a child of decedent under the wrongful death statute because of the meaning of "child" in the Washington statutes. The Washington adoption statute, RCW 26.33 makes an adopted child the "child" of his adopted parents for "all intents and purposes." "All intents and purposes" could include the "intents and purposes" of the Washington wrongful death statute. This is

the same analysis other states with adoption statutes have conducted and the same conclusion they have reached.

### **III. Standard of Review.**

The parties agree that Issue #1, the definition of “child” is an issue of statutory interpretation and a question of law reviewed de novo by the Court of Appeals. *Calhoun v. State*, 146 Wash.App. 877, 885, 193 P.3d 188 (2008).

### **IV. Supplement to Appellant’s Statement of Facts and Procedural History.**

Appellant Brandon Saludares was born on August 19, 1982 to Deborah Reid, his biological mother and Charles Anthony Graves, his biological father. When he was 3 years old, he was adopted by Diane Saludares and Michael Saludares. In the decree of adoption, the Superior Court of Clark County, approved the consent to adoption executed by Brandon’s natural mother, Deborah Reid, and entered a decree by which Brandon Saludares was constituted the child of Diane Saludares and Michael Saludares.

All of the pleadings from this adoption file are filed under seal in this appeal.

The decedent, Deborah Reid, passed away on January 8, 2008. At the time of her death, Brandon Saludaes was 28 years old. Deborah Reid had two children at the time of her death, children born to her but who had not been adopted by others, Dillon Reid and Laurenne Reid.

Dillon and Laurenne Reid dispute the claim of Brandon Saludaes that he had a close relationship with Deborah Reid.

The Honorable Suzan Clark approved the settlement of the wrongful death claim (CR26) and heard cross motions for summary judgment filed by Dillon Reid, Laurenne Reid, and Brandon Saludaes on the question of whether Brandon Saludaes.

On July 29, 2016, Judge Clark, granted the Motion for Summary Judgment made on behalf of Dillon Reid and Laurenne Reid and denied the motion for summary judgment made on behalf of Brandon Saludaes. (CP 32, 36, 39, 42, 43, 45) Judge Clark determined, as set out in her Order on Motions, that *"Brandon Saludaes, a child born to Deborah E. Reid, who was adopted by others prior to Deborah Reid's death is not a statutory beneficiary under the terms of RCW 4.20.020, the Washington wrongful death statute, and is therefore not entitled*

*to a share of the wrongful death recovery made on behalf of decedent.” (CP51)*

On August 5, 2016, Judge Clark entered an order approving the distribution method for wrongful death settlement proceeds, authorizing the disbursement of 2/3rds of the settlement proceeds to Dillon Reid and Laurenne Reid, and reserving 1/3<sup>rd</sup> of the settlement, held in trust, as security for Brandon Saludaes claim pending the decision of the Court of Appeals.

#### **V. RESPONSES TO APPELLANTS ARGUMENT**

##### **A. The Trial Judge’s decision was correct and consistent with the rules of statutory construction**

The decision of the trial judge about the meaning of the term “child” is consistent with the legislative context of the wrongful death act. The legislative context includes the adoption statute which defines the effect of a decree of adoption.

The rules of statutory construction pertinent to this case are:

1. When called on to interpret a statute, the courts give effect to legislative intent. *State v. Hammock*, 154 Wn. App. 630. (2010)

2. To determine legislative intent, the court looks first to the plain language of the statute. *Estate of Haselwood v. Bremerton Ice Arena, Inc.*, 166 Wash.2d 489, 498, 210 P.3d 308 (2009).

3. Plain meaning is discerned from the ordinary meaning of the language at issue, the context of the statute in which the provision is found, related provisions, and the statutory scheme as a whole. *State v. Jacobs*, 154 Wash.2d 596, 600, 115 P.3d 281 (2005). *In re Estate of Blessing*, 174 Wash. 2d 228 (2012).

4. If the statute is unambiguous, the court's inquiry is at an end. *Cerrillo v. Esparza*, 158 Wash.2d 194, 201, 142 P.3d 155 (2006).

5. The legislature is presumed to be familiar with its own prior legislation relating to the subject at hand and with the court decisions construing legislation. *El Cordoba Dormitories, Inc., v. Franklin County Public Utilities District*, 82 Wn. 2d 858, 862-63, 514 P. 2d. 524 (1973).

6. The court avoids reading a statute in ways that will lead to absurd or strange results. *Lane V. Harborview Medical Center*, 154 Wn.App. 279, 289, 227 P.3d 297 (2010). *In re Dependency of M.S., Sigurdson v. State of Washington* 156 Wn. App. 907, 236 P. 3d 214 (2010).

In the Washington Supreme Court *In re Estate of Blessing*, 174 Wash. 2d 228 (2012) stated:

*Our objective in construing a statute is to determine the legislature's intent. If the statute's meaning is plain on its face, then we must give effect to that plain meaning as an expression of legislative intent. Plain meaning is discerned from the ordinary meaning of the language at issue, the context of the statute in which the provision is found, related provisions, and the statutory scheme as a whole. State v. Jacobs, 154 Wash.2d 596, 600, 115 P.3d 281 (2005). When a statutory term is undefined, the court may look to a dictionary for its ordinary meaning. State v. Gonzalez, 168 Wash.2d 256, 263, 226 P.3d 131, cert. denied, 131 S.Ct. 318, 178 L.Ed.2d 207 (2010).*

**B. Washington Adoption statute makes clear that the meaning of “child” does not include persons adopted by others prior to decedent’s death under the Washington Wrongful Death Act.**

The status of “child” under the wrongful death act should be read as a legal relation to a parent rather than a biological relation. As set out in Washington probate and adoption statutes and case law discussed below, the Legislature has abandoned blood relationship (consanguinity) as the overriding policy consideration in defining the parent-child relationship.

This court should, like courts of other states who have considered this question and when there was no definition of “child” in the state’s wrongful death statute, find that the “plain meaning” of “child” in a wrongful death statute does not include children adopted by others prior to decedent’s death. See Cumulative Report. 67 A.L.R. 2d 745. *“Child adopted by another as beneficiary of action or settlement for wrongful death of natural parent.”*

Case law in California, Arkansas, Michigan, Virginia, and Florida have held that the “plain meaning” of “child” is found in the context of state statutes, specifically referencing adoption

and probate statutes. These courts have concluded that adoption cuts off the rights of a child adopted by another from being a statutory beneficiary in a wrongful death action.

The California Appellate court in *Phraner v. Cote Mart, Inc.*, 55 Cal. App. 4th 166, 63 Cal. Rptr. 2d 740 (4th Dist. 1997) addressing this issue observed that: "*Other states addressing this issue generally reach the same result. (See, e.g., Matter of Estate of Renaud (1993) 202 Mich.App. 588 [509 N.W.2d 858]; Johnson v. Parrish (1981) 159 Ga.App. 613 [284 S.E.2d 111]; Wasley v. Brown (E.D.Va. 1961) 193 F.Supp. 55. Contra, Fillingame v. Patterson (S.D.Miss. 1988) 704 F.Supp. 702.*

In 1997, the California Court decided in *Phraner* (op. cite) and found that a child adopted by others after birth did not have standing in wrongful death action arising from death of natural mother in a vehicular accident because adoption terminates the relationship of parent and child. In California, as in Washington, the California Wrongful Death Statute did not define "child" or "children." The California Court of Appeals looked to the adoption statute and to the probate code which governed the effect of an adoption on the parent and child relationship to define the word "child".

In *Phraner* (op cite.) the California Court stated:

*Julia correctly asserts the "purpose behind the wrongful death statute is to provide compensation for the loss of companionship and other losses resulting from decedent's death." (Marks v. Lyerla, supra, 1 Cal.App.4th at p. 561.) She suggests we judicially create standing in wrongful death actions for children who maintain a relationship with their biological parent even after adoption. However, Julia, "like any number of other persons who, in particular cases, may suffer injury ... and personal loss by the death of an individual, is without legal recourse absent specific statutory remedy.*

The Arkansas Court in *Webb v. Harvel*, 563 F. Supp.172 (1983) also considered the "plain reading" of the term "child" under the Arkansas Wrongful Death Statute and held that:

*A plain reading of this provision of the adoption act dictates only one conclusion. That conclusion is that an adoption not only terminates all legal relationships between the adopted individual and his natural parents and legally makes him a stranger to them, it also commands that all courts, including this one, recognize that principle in construing all statutes. Since that is the case, the Court believes that, in construing Ark.Stat. Ann. § 27-908, this provision of the adoption act requires that Randy Treadway be considered to be a stranger to his natural father. No other conclusion seems reasonable. The adoption act specifically says that, in construing statutes, the Court shall determine that there is no legal relationship existing between the natural parent and the adopted child, and must (not may) consider that child as a complete stranger to the natural father.*

The Michigan Court of Appeals similarly held in *Estate of Renaud*, 202 Mich. App. 588 (1993) that an adoption cuts off the rights of claimant, natural child of decedent, to claim a share in intestate also cuts her rights to claim under the wrongful death,

looking to the meaning of “child” to inform the court in statutory interpretation under Wrongful Death in the context of adoption law in Michigan. The decedent in *Estate of Renaud*, (op. cite), a father, was survived by five natural children. One of them was adopted by her mother’s new husband and the court found this adoption disqualified this child, adopted by another, from participating as a statutory beneficiary in the Wrongful Death claim.

The Florida Supreme Court in *Gessner v. Powell* 283 So. 2d 101 (1970) considered the meaning of “child” and whether or not a minor child legally adopted by another has a right of action for the wrongful death of his natural father and held:

*It is clear that, under the express terms of Florida’s statute, a decree of adoption has the effect of severing the legal ties between a child and his natural parents, except for inheritance rights expressly reserved.*

In the Florida opinion, *Gessner v. Powell* 283 So. 2d 101 (1970) the Florida Supreme Court in expressly adopting the opinion of the Florida Court of Appeals which held:

*It is our view and we so hold that under the facts of this case, the legal adoption of the decedent’s natural minor child prior to decedent’s death had the effect of removing the child from the category of a surviving ‘minor child’ within the meaning and intent of Section 768.02, F.S.1967. We reach this conclusion by two*

*different lines of reasoning, either one of which we feel would be entirely sufficient by itself to sustain our view.*

*In the first place, the status of a child in respect to its right to sue for the wrongful death of a parent is determined at the time of the death of the parent. Florida Power & Light Co. v. Bridgeman, 1938, 133 Fla. 195, 182 So. 911. The decedent's child having been legally adopted by others prior to the decedent's death, we need to determine the effect, if any, which the judgment or decree of adoption had upon the child's relationship to its natural parent. We think the answer is clearly stated in Section 63.151, F.S.1967, F.S.A., which provides in its material portions as follows:*

*Effect of adoption. By any judgment or decree of adoption the child shall be the child and legal heir of the adopting parent or parents, entitled to all rights and privileges, and subject to all obligations, of a child born to such parent or parents in lawful wedlock. After the adoption the natural parents, if living, are relieved of all legal duties and obligations due from them to the child and are divested of all rights with respect to the child \* \* \*. Nothing in this law shall prevent a legally adopted child from inheriting from the natural parents under the laws of this state or any state.*

*With the exception of the right to inherit from the natural parents which is expressly reserved, we view this statute as providing that the effect of a judgment or decree of adoption completely severs every legal and moral tie which theretofore existed between the child and its natural parent or parents. The legislature intended this statute to place the adopted child as far as possible in the same position as the natural child (of the adoptive parents) \*52 for all intents and purposes. In re Baker's Estate, Fla.App.1965, 172 So.2d 268. The logical corollary, although admittedly not one which must mandatorily be drawn from such proposition, is that to all intents and purposes (except as expressly provided), the child is removed from its former relationship to the natural parent.*

**C. The Washington Wrongful Death, Adoption Statute and Probate Statutes Should Be Interpreted consistently with each other.**

*In placing a judicial construction upon a legislative enactment, the entire sequence of all statutes relating to the same subject matter should be considered. Connick v. Chehalis, 53 Wash 2<sup>nd</sup> 288 (1958). The legislature, in enacting the Wrongful Death Act, is presumed to know of the adoption statute and the meaning of the word "child" as a legal relationship and not one of consanguinity.*

*Where....two statutes relate to the same subject matter, the court will, in its attempt to ascertain legislative purpose, read the sections as constituting one law to the end that a harmonious total schema maintains the integrity of both is derived. Beach v. Board of Adjustment 73 Wash 2d 343 (1968).*

**D. Under both the Washington Adoption Statute and the Decree of Adoption entered , Brandon Saludaes is a "child" of his adoptive parents and not a "child" of decedent.**

The Decree of Adoption entered August 19, 1982 states that Brandon Jeffrey Saludaes "*is constituted the child of the petitioners, Diane Saludaes and Michael Saludaes, and each of them is hereby constituted a parent of the child to the same degree and effect as if the child has been born as the issue of*

*the marriage existing between petitioners.*” Decree of Adoption page 1, lines 17 to 22, filed under seal in this appeal.

The Findings of Fact and Conclusions of Law supporting the Decree of Adoption of Brandon Saludaes by Diane and Michael Saludaes provides that “*The Petition of Diane Saludaes and Michael Saludaes for the adoption of said child (Brandon) should be granted and to all legal intents and purposes said child should be the child of Petitioners.*” Findings of Fact Conclusions of Law page 2, lines 17-19.

The consent to adoption of her natural child executed by Deborah Reid states: “*That I fully understand that the nature and effect of a decree of absolute adoption is to extinguish and terminate all rights, duties, obligations and liabilities of the parent or parents of the adopted child in relation to the custody, maintenance and education of the child thereafter, and also to deprive the parents or parent permanently of her or their parental rights in respect to the adopted child.*” Page 1-2 of consent to adoption of natural parent, Deborah Reid, filed under seal herein.

The consent to adoption of Deborah Reid is a consent to termination of the parent-child relationship between her and Brandon Saludaes. Her consent was *specifically* approved by

the court in its decree of adoption. See Decree of adoption of Brandon Saludaes, page 2.

Appellant Brandon Saludaes claims that the parent-child relationship with Deborah Reid remains intact, he is still her "child," because there was no "relinquishment" or termination order in this adoption. This is not true. There was a "relinquishment" because there was a voluntary written consent to adoption which was approved by the court.

A "relinquishment" is defined by statute and by case law as "the voluntary surrender of custody of a child to the department, an agency, or *prospective adoptive parents*." RCW 26.33.020(11). *In re Dependency of M.S., Sigurdson v. State of Washington* 156 Wn. App. 907, 236 P. 3d 214 (2010).

**E. The Express Terms of the Washington Adoption Statute, RCW 33.260, makes an adopted child a "child" "for all intents and purposes, and for all legal incidents, the child, legal heir, and lawful issue of the adoptive parent."**

The effect of a decree of adoption is defined by statute. This provides the evidence that the legislature intended, once a child is adopted by another, they are no longer the "child" of the birth parent.

Adoption is a legal action which confers to the adoptive parents the same rights and obligations with respect to a child as if the child had been born to them. RCW 26.33.260 (1). Likewise the adopted child is freed from legal obligations to their biological parents and the adoption divests the biological parent of all rights and obligations regarding the child (except past due child support). RCW 26.33.260(1).

RCW 26.33.260 provides in its *express terms* that a decree of adoption has the effect of severing the legal ties between a child and his natural parents.

RCW 26.33.260 states:

*The entry of a decree of adoption divests any parent or alleged father who is not married to the adoptive parent or who has not joined in the petition for adoption of all legal rights and obligations in respect to the adoptee, except past-due child support obligations. The adoptee shall be free from all legal obligations of obedience and maintenance in respect to the parent. The adoptee shall be, to all intents and purposes, and for all legal incidents, the child, legal heir, and lawful issue of the adoptive parent, entitled to all rights and privileges, including the right of inheritance and the right to take under testamentary disposition, and subject to all the obligations of a natural child of the adoptive parent.*

Consistent with RCW 26.33.260, Appellant Brandon Saldares is not the “child” of his biological mother but is the “child” of his adoptive parents “for all intents and purposes”.

**F. The adoption decree is an appropriate order terminating the parent child relationship of Brandon Saludaes and Deborah Reid.**

Brandon Saludaes argues that he remains Deborah Reid's child because no *separate order* terminating Deborah Reid's parent-child relationship was entered in this adoption.

Though no separate order terminating parent child relationship was entered in this adoption, the termination statute requires no specific separate order. The statute requires an "appropriate order" under RCW 26.33.130. The "appropriate order" in this case is the decree of adoption and the findings.

RCW 26.33.130. Termination order-Effect

*(1) If the court determines, after a hearing, that the parent-child relationship should be terminated pursuant to RCW 26.33.090 or 26.33.120, the court shall enter an appropriate order terminating the parent-child relationship.*

RCW 26.33.260(1) provides that the entry of a decree of adoption "divests any parent . . . of all legal rights and obligations in respect to the adoptee."

The decree of adoption of Brandon Saludaes, entered 31 years ago, has not been set aside and is a final decree. Washington courts have repeatedly emphasized the importance of finality in adoption. In *In re Adoption of Baby Girl K*, 26

Wash.App. 897, 615 P.2d 1310 (1980), the court refused to allow a birth mother to revoke her written surrender of her child to an adoption agency, citing the "strong public interest in the finality of these [adoption] procedures." *Baby Girl K*, 26 Wash.App. at 905, 615 P.2d 1310.

**G. The status of "Child" for a person adopted by another has a clear termination point with the biological parent in the decree of adoption as contrasted with the status of "stepchild".**

In making its ruling on the statutory meaning of "child", this court will review the reasoning of the Supreme Court in *Blessing* (op. cite). Here, the Washington Supreme Court considered the definition of "stepchild and stepchildren" as statutory beneficiaries under the Washington Wrongful Death Statute. The Court in *Blessing* looked to plain meaning of the term, statutory analysis and an inheritance tax case, *Bordeau* 37 Wash 2d 573 in deciding the issue. The *Blessing* Court stated that the step-parent relationship was an "affinity" relationship and under the *Bordeaux* line of cases, and was intact and remaining even after the death of the individual whose marriage brought the relationship into existence. *Bordeaux*, 37 Wash. 2d at 573-574

and In re Estate of Blessing (op. cite). The relationship of step child, a relationship of affinity, did require a valid marriage of the parent and step parent. The court found there was no ability to legally terminate the affinity relationship or "divorce" the former stepchild therefore "stepchild" status was not terminated when the parent and step father divorced.

In the case at bar, the status of "child" is a legal relationship and not an affinity relationship. The legal relationship has been terminated by operation of law with the adoption where the adoptee becomes the "child" of the adoptive parents "*for all intents and purposes*".

**H. The Washington Probate Code makes an adopted child "issue" of his adoptive parents and not of his biological parents.**

Under Washington Probate Law RCW § 11.02.005. (8) (Definition of *issue*) Brandon Saludares is the *issue* of his adoptive parents and not of his biological mother because he was adopted by others and the biological mother's consent to adoption was approved by the decree of adoption. "*Issue*" under RCW 11.02.005 (8) means all the lineal descendants of an individual. An adopted individual is a lineal descendant of each of

*his or her adoptive parents and of all individuals with regard to which each adoptive parent is a lineal descendant.*

In *the Estate of Wiltermood*. 78 Wash.2d 238 (1970), the Washington Supreme Court found that an adoption changes the definition of the word "heirs" for purposes of intestate succession. The reasoning in *Wiltermood* (op.cite) parallels the reasoning that should be applied in this case. Where an adoption in *Wiltermood* (op. cite) changes the definition of the word "heirs" regarding the adoption, an adoption changes the definition of the word "child". The Court in *Wiltermood* stated (op. cite)

*We have concluded, however, that RCW 11.04.085 limits no rights belonging to adopted children by virtue of their adoption. Instead, it changes the definition of the word 'heirs' for the purpose of intestate succession.*

*RCW 11.02.005. Therefore, the term 'issue,' as used in RCW 11.04.015, to be within the definition of 'heir' for the purposes of intestate succession, excludes adopted children claiming a share of their natural parent's estate. The two statutes thus read are consistent with one another. ESTATE of WILTERMOOD. 78 Wash.2d 238 (1970)*

The Court in the *Estate of Donnelly*, 81 Wn. 2d 430 (1972) stated that "the legislative policy of providing a "clean slate" to the adopted child permeates our scheme of adoption."

*The consistent theme of the relevant legislation is that the new family of the adopted child is to be treated as his natural family. The only conclusion consistent with the spirit of our overlapping adoption and inheritance statutes is that RCW 11.04.085 was*

*intended to transfer all rights of inheritance out of the natural family upon adoption and place them entirely within the adopted family.*

**I. It is unnecessary to look to the dictionary for the meaning of “child” because the plain meaning of “child”, given the intent of the legislature and the legislative context, is that child or children does not include children adopted by others.**

Appellant Brandon Saludaes maintains this court should look to Black’s Law dictionary to determine the meaning of the word “child”. The definition of “child” under the wrongful death statute is looked to only if the statute itself does not provide the meaning. The plain meaning should be construed, as set forth above, and consistent with the definition of child under RCW 26.33.

If this court does look to the dictionary, Black’s Law Dictionary states that “child” has two meanings in the law, one is strictly a correlative of parent and one as the opposite of adult. The Black’s Law dictionary definition places the definition of “child” in the context of domestic relations and probate law.

**Black’s Law Dictionary: What is Child?**

*This word has two meanings in law; (1) In the law of domestic relations, and as to descent and distribution, it is used strictly as the correlative of "parent" and means a son or daughter as in relation with the father or mother. (2) in the law of negligence, and in laws for the protection of children, it is used as the Child opposite of "adult" and means the young of the human species. Miller v. Finegan, 26 Fla 29, 7 South. 140 6 L. R.A. 813.*

**J. Having a close familial relationship with the decedent does not make one a statutory beneficiary under the Washington Wrongful Death Act.**

Appellant Brandon Saludares states he maintained a close relationship with Deborah Reid after the adoption. The closeness of a relationship and/or degree of emotional loss does not, qualify one as a statutory beneficiary under Wrongful Death. In *Tait v Wahl* 97 Wash. App. 765 (1999), the Washington Court of Appeals held that, even though a niece and her children depended on the decedent and had a "parent-child like" relationship with decedent and her children had familial relationships with decedent, they could not maintain a cause of action under wrongful death because they were not statutory beneficiaries.

**K. Expanding the definition of a statutory beneficiary in a Wrongful Death Claim to someone born to decedent but**

**adopted by others prior to decedent's death would lead to absurd or strange results.**

Granting a child adopted by others prior to decedent's death the right to claim proceeds of a wrongful death claim would expand the category of persons able to recover for the loss in a wrongful death claim to an unreasonable degree.

An expansive definition would impose a difficult burden on the personal representative in locating potential beneficiaries. It would require personal representatives, a quasi-fiduciary to potential beneficiaries, to search for persons born to decedent but placed for adoption to give notice of a potential claim. This strange result should not be adopted by this court and was not contemplated by the legislature.

A child placed for adoption by others rarely continues to have a strong family relationship with their biological parent. They may or may not know that they were adopted. They may not know until later in life. The support from parents the adopted child is entitled to is with the new legal family, their adopted parents, rather than with their biological parents.

It is one of the fundamental rules of statutory construction is that a court should avoid reading a statute that leads to a

strange result. Lane V. Harborview Medical Center, 154 Wn.App. 279, 289, 227 P.3d 297 (2010).

**Issue No. 2 on Appeal.**

**The trial court's reservation of 1/3<sup>rd</sup> of the settlement proceeds was reasonable and provided adequate security for Brandon Saludares' potential claim should he prevail on appeal.**

Appellant Brandon Saludares maintains on appeal that Judge Clark should not have disbursed 2/3rds of the settlement proceeds, reserving 1/3<sup>rd</sup> of the distribution for the potential claim of Brandon Saludares pending appeal. This issue was considered by Commissioner Bearnse of the Court of Appeals on Brandon Saludares's motion to stay disbursement. Commissioner Bearnse found that *"this court agrees with the trial court that a partial disbursement stay is sufficient to protect the interests of all parties and accordingly entered a partial disbursement stay on the same terms set by the trial court in its August 5, 2016."*

In reserving 1/3<sup>rd</sup> of the settlement proceeds pending appeal, trial court appropriately set proportionate security for Brandon Saludares should he prevail in his appeal.

RAP 8.1(c) (3) authorizes protection of a part of a

decision when funds are secured by other means. Under this rule, a bond amount is typically fixed as such sum as the trial court determines is appropriate to fully secure any loss that a party may suffer because of the party's inability to enforce that part of the judgement being superseded. No supersedeas bond was required of Brandon Saludaes, a significant cost saving to him.

The trial court made the disbursement and reservation decision in exercising sound discretion. It is not reasonable to expect that Brandon Saludaes, one of three potential claimants, would be entitled to 100% of the proceeds of the settlement if he succeeds on appeal. The court knew that one of the claimants, Dillon Reid was a minor and still dependent on Deborah Reid for support and parental guidance when she passed away. Brandon Saludaes was 28 years old. The minor should be entitled to the benefit of his claim. This court should find that reservation of 1/3<sup>rd</sup> of the settlement proceeds was within the sound discretion of the trial court.

#### **IV. CONCLUSION**

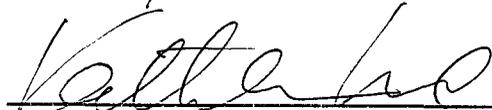
The trial court's Order on Motions for Summary Judgment holding that Brandon Saludaes, born to decedent but

adopted by other persons prior to decedent's death, is not a "child" for purposes of the Washington Wrongful Death Statute should be affirmed.

The trial court's Order Approving Distribution method should be affirmed.

This Court is respectfully asked to affirm the decisions of the trial court.

Dated this 12 day of October, 2016.

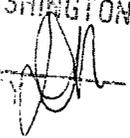


Kathleen McCann, WSBA #12196  
Minor Settlement Guardian ad Litem for Dillon Reid

FILED  
COURT OF APPEALS  
DIVISION II

2016 OCT 14 AM 10:33

NO. 492229-9-II  
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

STATE OF WASHINGTON  
BY  DEPUTY

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In re the Matter of the Estate of

DEBORAH E. REID,

Deceased

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APPEAL FROM THE SUPERIOR COURT

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HONORABLE SUZAN CLARK

---

DECLARATION OF ELECTONIC TRANSMISSION

Kathleen McCann  
Minor Settlement Guardian ad Litem  
Dillon Reid  
1014 Franklin St., Suite 202  
Vancouver, WA 98660  
360.694.9525

COMES NOW Kathleen McCann and declares as follows:

1. My name is Kathleen McCann. I am a citizen of the United States, over the age of eighteen (18) years, a resident of the State of Washington, and am not a party to this action.
2. On October <sup>12</sup>/~~12~~, 2016, I sent a copy of the Reply Brief of Dillon Reid; Declaration of Kathleen McCann re Electronic Transmission, and copy of letter to David Ponzoha by e-mail to the following person(s):

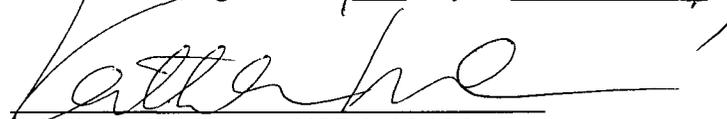
Ben Shafton [bshafton@ccrslaw.com](mailto:bshafton@ccrslaw.com)

William Gaar [weg@buckley-law.com](mailto:weg@buckley-law.com)

Michael Higgins [mike\\_higgins@marsh-higgins.com](mailto:mike_higgins@marsh-higgins.com)

I DECLARE UNDER PENALTY OF PERJURY AND THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND RELIEF.

Dated at Vancouver, Washington, this 12 day of October, 2016

  
Kathleen McCann, WSBA 12196  
Minor Settlement Guardian ad litem for Dillon Reid